

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Clifton Newman, Circuit Court Judge

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S.C. Supreme Court

BRUCE WILSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001275

A P P E N D I X

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense

Division of Appellate Defense

PO Box 11589

Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON

Attorney General

MEGAN HARRIGAN

Assistant Attorney General

P. O. Box 11549

Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 2005-GS-40-24, 26, 56

State of South Carolina)
)
) TRANSCRIPT OF RECORD
) (Trial and Guilty Pleas)
Bruce J. Wilson,)
)
) Defendant.)

January 4 and 5, 2006
Columbia, South Carolina

BEFORE:

THE HONORABLE JAMES W. JOHNSON, JR., JUDGE; and a
jury

APPEARANCES:

KATHRYN LUCK CAMPBELL, DEPUTY SOLICITOR
MARGARET FENT, ASSISTANT SOLICITOR
Attorneys for the State

KATHERINE HUDGINS, ATTORNEY AT LAW
Attorney for the Defendant

JENNY H. WILLIAMS
Official Circuit Court Reporter
(803) 576-1743

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1 Wednesday, January 4, 2006

2 **THE COURT:** All right. The first matter this
3 morning is The State vs. Bruce J. Wilson. It's
4 indictment 05-GS-40-24. Mr. Wilson is present,
5 represented by Ms. Hudgins. This is a case for trial
6 today. I think there were a couple of matters to
7 take care of before the jury panel is sent up. Ms.
8 Hudgins.

9 **MS. HUDGINS:** Thank you, Your Honor. May it
10 please the Court. Your Honor, I've met with Mr.
11 Wilson this morning and we have discussed trial
12 clothing attire. Mr. Wilson has informed me that he
13 does not wish to dress for trial. This is clearly
14 against my advice. I believe that that would have a
15 detrimental effect on this jury, his jury. And I
16 would just ask the Court to inquire of Mr. Wilson if
17 that's the way he wishes to proceed.

18 There is clothing available in the Public
19 Defender's Office for Mr. Wilson's use. I've also
20 had contact with his grandmother, and I believe she
21 could get clothing here for him this afternoon if she
22 could get here. So, I would simply ask the Court to
23 make an inquiry, ask Mr. Wilson if this is how he
24 wishes to proceed.

25 **THE COURT:** All right. All right. You are

1 Bruce J. Wilson. Is that correct?

2 **MR. WILSON:** Yes, sir.

3 **THE COURT:** All right. Mr. Wilson, you've heard
4 what Ms. Hudgins has indicated to the Court, that --
5 of course you are here for trial. You are dressed in
6 I believe clothing issued by the Department of
7 Corrections. Is that right?

8 **MR. WILSON:** Yes, sir.

9 **THE COURT:** There is clothing available to you.
10 And I would advise you, your attorney has advised
11 you, to perhaps change into non-marked clothing
12 because I think having SCDC on the clothing that you
13 have on may have a detrimental effect on your case.
14 Your lawyer has advised you the same thing, has
15 indicated to me that you've indicated you want to
16 wear what you've got on. Is that correct?

17 **MR. WILSON:** Yes, sir.

18 **THE COURT:** All right. And you do understand
19 that there are other clothes available to you?

20 **MR. WILSON:** Yes, sir.

21 **THE COURT:** All right, sir. Has anybody forced
22 you to wear your prison-issued clothing?

23 **MR. WILSON:** No, sir.

24 **THE COURT:** All right, sir. I find Mr. Wilson
25 is aware that he has a right not to wear that

1 clothing. It is available. And he has made the
2 decision to stay dressed as he is. You can have a
3 seat. All right.

4 **MS. HUDGINS:** Your Honor, I guess the additional
5 matter that I have not noticed, I don't know whether
6 security -- I know that there may have been a little
7 problem downstairs earlier. But I don't -- I don't
8 know how security wants to deal with this. I am
9 concerned about the fact that he is shackled and that
10 effect. I obviously understand there are security
11 concerns. And I am not sure how much of an effect or
12 shock it would have given the fact that he is dressed
13 in his prison attire. But I would ask the Court to
14 also address that with Mr. Wilson.

15 **THE COURT:** Well, I'm quite honestly not quite
16 sure how to handle that. Solicitor, you stood.

17 **MS. CAMPBELL:** Your Honor, I spoke to the
18 deputies earlier, and they indicated to me that if he
19 stays in his garb they keep the shackles on him, I
20 believe is what they told me.

21 **THE COURT:** That's part of the uniform. Is that
22 correct?

23 **DEPUTY:** Yes, sir. I mean, he's already in
24 Corrections clothes. He has made that choice. So, I
25 mean, he won't be standing up in front of the jury

1 anyway. So he made a choice to stay in inmate
2 clothes. It's just, I mean, it's left up to you,
3 Your Honor.

4 **THE COURT:** All right.

5 **MS. HUDGINS:** I just -- I didn't -- I'd like to
6 make sure that Mr. Wilson understands that his choice
7 to remain in --

8 **THE COURT:** If he stays in his prison uniform he
9 will remain handcuffed, shackled through the trial.
10 Do you understand, Mr. Wilson?

11 **MR. WILSON:** Sir?

12 **THE COURT:** Do you understand that?

13 **MR. WILSON:** Yes, sir. I understand.

14 **THE COURT:** All right, sir. And you still want
15 to wear your prison outfit?

16 **MR. WILSON:** Really I want another attorney.

17 **THE COURT:** Well, we're not dealing with that
18 issue right now. We're talking about how you are
19 dressed for the trial.

20 **MR. WILSON:** It don't matter how I'm dressed. I
21 don't care how I'm dressed. It don't matter to me.

22 **THE COURT:** Well, when you say it doesn't matter
23 to you, I can't force you to put these other clothes
24 on. Okay? You have to decide how you want to dress.
25 You've been given the opportunity to do that. You

1 have chosen to come into the courtroom with your SCDC
2 clothing on. Do you want to change at this time?

3 **MR. WILSON:** No.

4 **THE COURT:** And do you understand you will
5 remain with the handcuffs and the shackles?

6 **MR. WILSON:** Yes.

7 **THE COURT:** All right. You've made that
8 decision.

9 All right. Let's deal with the other issues
10 that he has just brought up. He wants another
11 lawyer. I'll be glad to hear from you on that
12 matter, Mr. Wilson. You'll need to stand up while
13 you're talking to me, please, sir. I need a reason,
14 if there is a reason.

15 **MR. WILSON:** It seems like, man, first of all, I
16 ain't talked to this woman but what, twice, three
17 times in the whole year and a half, a year and some
18 days. And the whole time, man, she was talking like,
19 you know, I mean, like really ain't even going to put
20 no real effort into my case. I got two letters from
21 her. I got one letter and then I got one yesterday,
22 you know.

23 **THE COURT:** Well, let me ask Ms. Hudgins; Ms.
24 Hudgins, are you prepared to go forward with the
25 trial?

1 **MS. HUDGINS:** I am prepared to go forward with
2 the trial, Your Honor.

3 **THE COURT:** And have you had any trouble
4 communicating with Mr. Wilson as you've prepared for
5 the trial?

6 **MS. HUDGINS:** No, Your Honor, I have not. I
7 made the trip down to Evans Correctional and met with
8 him at that time. I sent him a letter when I was
9 first appointed to represent Mr. Wilson. There were
10 some plea negotiations that we entered into based on
11 my meetings with Mr. Wilson at Evans. Those plea
12 negotiations fell through. I've written a lengthy
13 letter explaining all of our options at that point.

14 I have reviewed the discovery, including the
15 videotapes, with the Solicitor's Office at that point
16 and on my own. He was then transported to enter a
17 plea in front of Judge Manning I believe in the fall.
18 He chose not to enter a plea at that point in front
19 of Judge Manning. And we have been on notice for
20 trial. We were on notice for trial from the
21 beginning of December, and that court schedule did
22 not allow that.

23 So I'm certainly ready and prepared to go
24 forward. I've had ample time to talk with Mr. Wilson
25 and explain his options. He has seen the videotapes,

1 Your Honor. The Solicitor's Office transported him,
2 and he has been able to see the videotapes of
3 certainly the incident that we are here before you
4 today and the other incidents as well, Your Honor.

5 **THE COURT:** All right. Mr. Wilson, can you be
6 specific on there's anything that you want her to do
7 that she has not done?

8 **MR. WILSON:** Number one, okay, she said -- she
9 said that she's been keeping up-to-date with me,
10 which is not true, you know what I mean. Like when
11 she came down there to Evans, I've raised points with
12 her when she supposed to say she already went over my
13 motion. I've had to raise points with her she can't
14 identify. I've got to go show it to her. Okay.

15 Then, it's a lot of issues really, you know what
16 I mean. But mainly, you know what I mean, it really
17 ain't no contact. There really wasn't no contact
18 made, you know what I'm saying.

19 **THE COURT:** Well, there's obviously been some
20 contact based on what you just told me.

21 **MR. WILSON:** Okay. She wrote me --

22 **THE COURT:** This is what I need you to tell me.
23 You're not satisfied. You indicate you're not
24 satisfied. I need to know why. I want to know what
25 she hasn't done that you --

1 **MR. WILSON:** I don't feel like she is going to
2 represent me to her full ability.

3 **THE COURT:** Okay. Be specific. What is it
4 you've asked her to do she hasn't done? Have you
5 given her a list of witnesses? Do you have any
6 witnesses?

7 **MR. WILSON:** I don't have no witnesses.

8 **THE COURT:** Okay. So what is it you want her to
9 do?

10 **MR. WILSON:** It's -- it's just that, you know, I
11 mean, she ain't -- nothing. I'm saying you want to
12 go forward with it, let her go forward with it. I
13 feel like she ain't going to represent me to her
14 fullest ability. You know, that's how I feel,
15 because that's the way, her way has shown towards me.

16 **THE COURT:** All right. There have been no
17 reasons presented to the Court to dismiss counsel,
18 and Ms. Hudgins will continue as counsel for Mr.
19 Wilson.

20 All right. And for the record, I did have a
21 conference with defense counsel and the solicitor
22 concerning the scheduling. I believe the plan at
23 this time is to select a jury and actually start the
24 trial after lunch, pre-trial matters taken up after
25 the selection of the jury.

1 And also for the record, Ms. Hudgins has brought
2 to the Court's attention that there may be a Lyle
3 issue; there may not be. And we'll wait until we get
4 into the trial to determine whether the State intends
5 to offer any Lyle evidence. If so, at that point the
6 Court will conduct a hearing as required to determine
7 whether or not such evidence will be admissible.

8 Anything else we need to put on the record at
9 this time, Ms. Hudgins?

10 **MS. HUDGINS:** Nothing further.

11 **THE COURT:** Solicitor?

12 **MS. CAMPBELL:** Your Honor, I did get some Voir
13 Dire. I'd just like to address that prior to the
14 jury coming up.

15 **THE COURT:** All right. I haven't seen it. It
16 may be up here, but I haven't seen it. All right,
17 Solicitor.

18 **MS. CAMPBELL:** May it please the Court, Your
19 Honor. As far as number 1, I have no problem with
20 that; other than usually it's a close personal friend
21 rather than an acquaintance.

22 **THE COURT:** I'll ask what I normally ask when it
23 comes to these fairly standard questions. And then
24 if you've got --

25 **MS. CAMPBELL:** And number 2, Your Honor, we just

1 make that reciprocal, if they've ever been
2 represented by the Public Defender's Office,
3 Appellate Defense, that type of thing.

4 **THE COURT:** All right.

5 **MS. CAMPBELL:** I have no problem with number 3,
6 no problem with number 4. I think number 5 would be
7 included in your standard. I'll be handing up a
8 witness list as soon as I find it. As far as numbers
9 6, 7, 8 and 9, Your Honor, I think those are standard
10 in kind of your general charge to the jury. And then
11 as far as number 10, Your Honor, I have no problem
12 with the victim of a robbery, but I would also ask
13 the reciprocal, if anyone has ever had someone close
14 to them or them being accused of a robbery. Or
15 fashion it in whatever language you think
16 appropriate. But ...

17 **THE COURT:** Any objection to the requests that
18 she has made?

19 **MS. HUDGINS:** No objection, Your Honor.

20 **THE COURT:** I believe the strikes are ten and
21 five.

22 **MS. CAMPBELL:** That's my understanding, Your
23 Honor.

24 **THE COURT:** All right. Anything further before
25 we get the panel upstairs?

1 **MS. HUDGINS:** Nothing from the defense, Your
2 Honor.

3 **MS. CAMPBELL:** Your Honor, I'm getting the other
4 copies of the witness list. I'll just hand this one
5 up to you. And I'll get one for the clerk and for
6 the defense.

7 **THE COURT:** All right. Jackie, go ahead and get
8 a panel up here, please.

9 **THE CLERK:** Yes, sir.

10 (Pause)

11 (Whereupon, a role call is conducted of the
12 jury, and Sherry Pool is determined to be the missing
13 juror)

14 (Pause)

15 **THE CLERK:** She's on the way.

16 **THE COURT:** Okay.

17 (Pause)

18 **THE COURT:** All right. We've got everybody
19 here. Ladies and gentlemen on the jury panel, my
20 name is Jim Johnson. I'm from Laurens County. It
21 will be my pleasure to be presiding over this
22 courtroom this week. You've been brought here for
23 jury selection for the next case for trial. This is
24 in this courtroom a term of criminal or General
25 Sessions court. You may have been through the jury

1 selection process on another case already this week,
2 and if it was a civil case, it was done differently.

3 Cases in General Sessions court are processed
4 through the court system by a document called an
5 indictment. That is a piece of paper that I'm
6 holding in my hand. It's got the case number, the
7 case name and what the charges are in this particular
8 case. It is not evidence of the charge that it
9 contains and it cannot be considered by the jury as
10 evidence of the charge that it does contain.

11 This is case number 05-GS-40-24 entitled The
12 State vs. Bruce J. Wilson. Mr. Wilson is present.
13 He is represented by Ms. Hudgins. If you'll
14 introduce yourself and your client to the jury panel
15 please, Ms. Hudgins.

16 **MS. HUDGINS:** I'm Katherine Hudgins. This is my
17 client, Bruce Wilson.

18 **THE COURT:** Thank you. The State in this case
19 will be presented by Ms. Katherine Luck Campbell and
20 co-counsel. Ms. Campbell, if you'll introduce
21 yourself and co-counsel to the jury panel, please.

22 **MS. CAMPBELL:** Hey. I'm Luck Campbell. This is
23 Margaret Fent. We'll be representing the State.

24 **THE COURT:** All right. Thank you. The charge
25 or the allegation that has been made in this

1 indictment is a charge of armed robbery. It is
2 alleged in the indictment that this offense occurred
3 in Richland County on or about August the 20th of
4 2004. It is alleged that the victim in the case was
5 one Gloria Norman who was working at a business known
6 as Pantry Express.

7 There are several potential witnesses who may be
8 called as witnesses in the case. I'm going to read
9 these names to you. And I would ask these
10 individuals if they are present for them to stand so
11 that you can see who they are. And after they've
12 stood for a second they can have a seat.

13 Sergeant Scott McDonald with the Richland County
14 Sheriff's Office. Captain Stan Smith also with the
15 Sheriff's Office. Investigator Travis Holdorf with
16 the Sheriff's Office. Gloria Norman. Franklin
17 Dixon. Investigator Bill Mann with the Sheriff's
18 Office. Deputy Chris Alexander with the Sheriff's
19 Office. Corporal Reggie Culp also with the Sheriff's
20 Office. Sergeant Shawn McDaniel with the Sheriff's
21 Office. Frederick Hill. Derrick Baker. Those are
22 potential witnesses in the case.

23 I've got a few questions to ask this jury panel
24 about this particular case. First of all, is there
25 anyone on the jury panel who is related by blood or

1 connected by marriage to the Defendant, Mr. Wilson,
2 or any of the potential witnesses in the case? If
3 you're related by blood or connected by marriage to
4 any of these individuals, would you please stand?

5 Is there anyone on the jury panel who has any
6 type of personal, business or social relationship
7 either with the defendant or with any of these
8 potential witnesses in the case? And when I say
9 personal, social relationship, if you are friends
10 with, belong to the same church, same civic
11 organization, anything along those lines, any type of
12 business or personal or social relationship, again
13 either with the defendant, Mr. Wilson, or any of the
14 potential witnesses in the case, would you please
15 stand?

16 Is there any member of the jury panel related by
17 blood or connected by marriage to either of the
18 attorneys or any of the attorneys involved in the
19 case; or if you have any other type of business,
20 personal or social relationship with the attorneys in
21 the case, would you please stand?

22 Is there any member of the jury panel who is
23 either presently or in the past been represented by
24 any of the attorneys in this case; if so, would you
25 please stand?

1 Does any member of the jury panel have -- are
2 you or any member of your immediate family employed
3 by either the Attorney General's Office, the
4 Solicitor's Office or the Public Defender's Office of
5 Richland County or any other private law practice?
6 If so, would you please stand?

7 All right, sir. Your name, please, sir?

8 **JUROR:** My name is Jay Clingman. My wife,
9 Sarah, has a law practice on Forest Drive.

10 **THE COURT:** And would the fact that she
11 practices law in any way affect your ability to be a
12 fair and impartial juror in this case, sir?

13 **JUROR:** No, sir.

14 **THE COURT:** All right, sir. You may have a
15 seat. And your name, please?

16 **JUROR:** Russell Hart. And my mom work for
17 Nelson Mullins.

18 **THE COURT:** And would the fact that she works
19 for a lawfirm in any way affect your ability to be
20 fair and impartial?

21 **JUROR:** No, sir.

22 **THE COURT:** Thank you. You may have a seat,
23 Mr. Hart. Your name, please, sir?

24 **JUROR:** My name is Michael Raines.

25 **THE COURT:** Yes, sir.

1 **JUROR:** My wife is employed as an attorney and
2 works for the Judicial Department of the State of
3 South Carolina.

4 **THE COURT:** All right. And would the fact that
5 she is employed in that capacity affect your ability
6 to be a fair and impartial juror?

7 **JUROR:** No, sir.

8 **THE COURT:** Thank you, Mr. Raines. You may have
9 a seat. Your name, please, ma'am?

10 **JUROR:** My name is Mary Smith. My husband is an
11 attorney with Gottlieb & Smith. My daughter is an
12 attorney, Lawrence Saunders. And my son-in-law is an
13 attorney, Harrison Saunders.

14 **THE COURT:** Would the fact that those family
15 members are engaged in the legal profession in any
16 way affect your ability to be fair and impartial in
17 this case, Ms. Smith?

18 **JUROR:** No, sir.

19 **THE COURT:** All right. You may have a seat.
20 Thank you. Your name, please, sir?

21 **JUROR:** It's Brandon Washington. And I'm an
22 office assistant at Ellis, Lawhorne & Simms.

23 **THE COURT:** And would the fact that you are
24 employed in that capacity affect your ability in this
25 case to be a fair and impartial juror?

1 **JUROR:** No.

2 **THE COURT:** Thank you, sir. You may have a
3 seat.

4 Has any member of this jury panel read or heard
5 or been told; or from any source at all, do you know
6 anything about the allegations that have been made in
7 this case? If so, would you please stand?

8 Is there any member of the jury panel who is
9 sensitive to or aware of any kind of bias or
10 prejudice that you might have that would prevent you
11 from being a fair and impartial juror if you are
12 selected in this case? Would you please stand?

13 Is there any member of the jury panel a member
14 of or a contributor to any group that has as one of
15 its primary concerns the promotion of law enforcement
16 or victims' rights? Such groups would include but
17 not be limited to MADD, SADD, CAVE, CADRE, any
18 similar type group. If you are either a member of or
19 contribute to any such group, would you please stand?

20 Is there any member of the jury panel who is
21 currently or in the past been employed by any
22 civilian or military law enforcement agency? If so,
23 would you please stand? All right. Your name again
24 please, sir?

25 **JUROR:** Jay Clingman.

1 **THE COURT:** And was it you or a member of your
2 family, Mr. Clingman?

3 **JUROR:** I was a Governor's constable in the
4 State Parks Service.

5 **THE COURT:** And would that in way affect your
6 ability to be fair and impartial in this case?

7 **JUROR:** No, sir.

8 **THE COURT:** Thank you, sir. You may have a
9 seat.

10 Is there anything in the nature of the
11 allegations that are made in this case that would
12 cause any member of this panel any problem in sitting
13 as an impartial juror? If so, would you please
14 stand?

15 If there's any member of this jury panel who
16 knows of any reason, whether it's something that I
17 have already touched on or any other reason that you
18 could not give both the Defendant and the State a
19 fair and impartial trial if you are selected as a
20 juror in this case, would you please stand?

21 All right. Solicitor, anything further from the
22 State?

23 **MS. CAMPBELL:** No, sir.

24 **THE COURT:** Ms. Hudgins, anything further from
25 the Defendant?

1 **MS. HUDGINS:** Your Honor, may we approach
2 briefly?

3 **THE COURT:** Sure.

4 (Whereupon, a bench conference is had)

5 **THE COURT:** If any member of the jury panel
6 either presently or in the past has been employed at
7 a convenience store, would you please stand?

8 And is there any -- all right. Your name,
9 please?

10 **JUROR:** I wasn't employed by a convenience
11 store, but I represented them. I was their executive
12 director.

13 **THE COURT:** Okay. And can you tell me what
14 store or what chain that was?

15 **JUROR:** All the convenience stores.

16 **THE COURT:** All right. And what's your name,
17 please?

18 **JUROR:** Kay Clamp.

19 **THE COURT:** And would that in any way affect
20 your ability to be a fair and impartial juror in this
21 case?

22 **JUROR:** No, sir.

23 **THE COURT:** All right. Thank you. You can have
24 a seat. Anyone else?

25 If any member of this jury panel who has ever

1 been a victim of or accused of a robbery, would you
2 please stand? All right. Your name, please, sir.

3 **JUROR:** Ernest Krasselt.

4 **THE COURT:** And I asked that question, accused
5 of or a victim of and you've responded. I need to
6 know --

7 **JUROR:** Victim of.

8 **THE COURT:** How long ago was that?

9 **JUROR:** 1998.

10 **THE COURT:** And would that experience in any way
11 affect your ability to be fair and impartial in this
12 case?

13 **JUROR:** No, sir.

14 **THE COURT:** All right. And it was Krasselt. Is
15 that right?

16 **JUROR:** Yes, sir.

17 **THE COURT:** All right. You may have a seat,
18 sir. And your name, please sir?

19 **JUROR:** Morris Sapp.

20 **THE COURT:** Mr. Sapp. And when was that, Mr.
21 Sapp?

22 **JUROR:** It was back probably -- I'm just
23 guessing -- probably 1982. I was a victim of a --

24 **THE COURT:** It's been a while?

25 **JUROR:** Yes, sir; it would have.

1 **THE COURT:** Would it have any impact on your
2 ability to be fair and impartial?

3 **JUROR:** No, sir.

4 **THE COURT:** Thank you, sir. That's Mr. Sapp.
5 Anyone else?

6 All right. Anything further from the defense at
7 this time?

8 **MS. HUDGINS:** Nothing further, Your Honor.

9 **THE COURT:** From the State?

10 **MS. CAMPBELL:** No, sir.

11 **THE COURT:** Ladies and gentlemen, your names are
12 going to be called one at a time. If your name is
13 called, if you'll bring your personal belongings with
14 you and come down to this microphone and simply turn
15 and face the attorneys and state your name, please.
16 All right, Madam Clerk. The strikes will be ten and
17 five.

18 **THE CLERK:** Number 104, Stephen Smith.

19 (White male)

20 **JUROR:** I'm Stephen Smith.

21 **THE CLERK:** What says the State?

22 **MS. CAMPBELL:** Please present Mr. Smith.

23 **THE CLERK:** What says the defense?

24 **MS. HUDGINS:** Please present the juror.

25 **THE CLERK:** Please have a seat in the jury box.

1 Number 87, Michael Raines.

2 (White male)

3 **JUROR:** Michael Raines.

4 **THE CLERK:** What says the State?

5 **MS. CAMPBELL:** Please present Mr. Raines.

6 **THE CLERK:** What says the defense?

7 **MS. HUDGINS:** Please excuse Mr. Raines from the
8 trial of this case.

9 **THE CLERK:** Please return to the back of the
10 courtroom. Number 69, Ernest Krasselt.

11 (White male)

12 **JUROR:** Ernest Krasselt.

13 **THE CLERK:** What says the State?

14 **MS. CAMPBELL:** Please present Mr. Krasselt.

15 **THE CLERK:** What says the defense?

16 **MS. HUDGINS:** Please excuse Mr. Krasselt from
17 the trial of this case.

18 **THE CLERK:** Please return to the back of the
19 courtroom. Number 124, Tamara Wilson.

20 (Black female)

21 **JUROR:** Tamara Wilson.

22 **THE CLERK:** What says the State?

23 **MS. CAMPBELL:** Please present Ms. Wilson.

24 **THE CLERK:** What says the defense?

25 **MS. HUDGINS:** Please present Ms. Wilson.

1 **THE CLERK:** Please have a seat in the jury box.

2 Number 119, Mary Watson.

3 (White female)

4 **JUROR:** Mary Watson.

5 **THE CLERK:** What says the State?

6 **MS. CAMPBELL:** Please present Ms. Watson.

7 **THE CLERK:** What says the defense?

8 **MS. HUDGINS:** Please present Ms. Watson.

9 **THE CLERK:** Please have a seat in the jury box.

10 Number 95, Lindsay Robinson.

11 (Black male)

12 **JUROR:** Lindsay Robinson.

13 **THE CLERK:** What says the State?

14 **MS. CAMPBELL:** Please excuse Mr. Robinson.

15 **THE CLERK:** Please return to the back of the
16 courtroom. Number 67, Justin Kendall.

17 (White male)

18 **JUROR:** Justin Kendall.

19 **THE CLERK:** What says the State?

20 **MS. CAMPBELL:** Please present Mr. Kendall.

21 **THE CLERK:** What says the defense?

22 **MS. HUDGINS:** Please excuse Mr. Kendall from the
23 trial of this case.

24 **THE CLERK:** Please return to the back of the
25 courtroom. Number 82, Shenna Pegues.

1 (Black female)

2 **JUROR:** Shenna Pegues.

3 **THE CLERK:** What says the State?

4 **MS. CAMPBELL:** Please present Ms. Pegues.

5 **THE CLERK:** What says the defense?

6 **MS. HUDGINS:** Please present Ms. Pegues.

7 **THE CLERK:** Please have a seat in the jury box.

8 Number 99, John Sapp.

9 (White male)

10 **JUROR:** John Sapp.

11 **THE CLERK:** What says the State?

12 **MS. CAMPBELL:** Please present Mr. Sapp.

13 **THE CLERK:** What says the defense?

14 **MS. HUDGINS:** Please excuse Mr. Sapp from the
15 trial of this case.

16 **THE CLERK:** Please return to the back of the
17 courtroom. Number 55, Carolyn Harari Hinkler or
18 Hinkler Harari.

19 (White female)

20 **JUROR:** Carolyn Hinkler Harari.

21 **THE CLERK:** What says the State?

22 **MS. CAMPBELL:** Please present Ms. Harari.

23 **THE CLERK:** What says the defense?

24 **MS. HUDGINS:** Please present the juror.

25 **THE CLERK:** Please have a seat in the jury box.

1 Number 90, Thomas Rice.

2 (White male)

3 **JUROR:** Thomas Rice.

4 **THE CLERK:** What says the State?

5 **MS. CAMPBELL:** Please excuse Mr. Rice.

6 **THE CLERK:** Please return to the back of the
7 courtroom. Number 118, Brandon Washington.

8 (Black male)

9 **JUROR:** Brandon Washington.

10 **THE CLERK:** What says the State?

11 **MS. CAMPBELL:** Please present Mr. Washington.

12 **THE CLERK:** What says the defense?

13 **MS. HUDGINS:** Please present Mr. Washington.

14 **THE CLERK:** Please have a seat in the jury box.

15 Number 122, Christopher Williams.

16 (Black male)

17 **JUROR:** Christopher Williams.

18 **THE CLERK:** What says the State?

19 **MS. CAMPBELL:** Please present Mr. Williams.

20 **THE CLERK:** What says the defense?

21 **MS. HUDGINS:** Please present Mr. Williams.

22 **THE CLERK:** Please have a seat in the jury box.

23 Number 102, Heather Shewchuk.

24 (White female)

25 **JUROR:** Heather Shewchuk.

1 **THE CLERK:** What says the State?

2 **MS. CAMPBELL:** Please present Ms. Shewchuk.

3 **THE CLERK:** What says the defense?

4 **MS. HUDGINS:** Please excuse Ms. Shewchuk from
5 the trial of this case.

6 **THE CLERK:** Please return to the back of the
7 courtroom. Number 115, Teresa Wardlaw.

8 (White female)

9 **JUROR:** Teresa Wardlaw.

10 **THE CLERK:** What says the State?

11 **MS. CAMPBELL:** Please present Ms. Wardlaw.

12 **THE CLERK:** What says the defense?

13 **MS. HUDGINS:** Please excuse Ms. Wardlaw from the
14 trial of this case.

15 **THE CLERK:** Please return to the back of the
16 courtroom. Number 21, Edward Dove.

17 (Black male)

18 **JUROR:** Edward Dove.

19 **THE CLERK:** What says the State?

20 **MS. CAMPBELL:** Please excuse Mr. Dove.

21 **THE CLERK:** Please return to the back of the
22 courtroom. Number 120, Brenda Whitehead.

23 (White female)

24 **JUROR:** Brenda Whitehead.

25 **THE CLERK:** What says the State?

1 **MS. CAMPBELL:** Please present Ms. Whitehead.

2 **THE CLERK:** What says the defense?

3 **MS. HUDGINS:** Please excuse Ms. Whitehead from
4 the trial of this case.

5 **THE CLERK:** Please return to the back of the
6 courtroom. Number 52, Russell Hart.

7 (White male)

8 **JUROR:** Russell Hart.

9 **THE CLERK:** What says the State?

10 **MS. CAMPBELL:** Please present Mr. Hart.

11 **THE CLERK:** What says the defense?

12 **MS. HUDGINS:** Please present Mr. Hart.

13 **THE CLERK:** Please have a seat in the jury box.
14 Number 20, Teresa Douglas.

15 (Black female)

16 **JUROR:** Teresa Douglas.

17 **THE CLERK:** What says the State?

18 **MS. CAMPBELL:** Please excuse Ms. Douglas.

19 **THE CLERK:** Please return to the back of the
20 courtroom. Number 114, Robert Walker.

21 (White male)

22 **JUROR:** Robert Walker.

23 **THE CLERK:** What says the State?

24 **MS. CAMPBELL:** Please present Mr. Walker.

25 **THE CLERK:** What says the defense?

1 **MS. HUDGINS:** Please excuse Mr. Walker from the
2 trial of this case.

3 **THE CLERK:** Please return to the back of the
4 courtroom. Number 34, Stefanie Fleming.

5 (Black female)

6 **JUROR:** Stefanie Fleming.

7 **THE CLERK:** What says the State?

8 **MS. CAMPBELL:** Please present Ms. Fleming.

9 **THE CLERK:** What says the defense?

10 **MS. HUDGINS:** Please present Ms. Fleming.

11 **THE CLERK:** Please have a seat in the jury box.
12 Number 85, Edwanna Portee.

13 (Black female)

14 **JUROR:** Edwanna Portee.

15 **THE CLERK:** What says the State?

16 **MS. CAMPBELL:** Please present Ms. Portee.

17 **THE CLERK:** What says the defense?

18 **MS. HUDGINS:** Please present Ms. Portee.

19 **THE CLERK:** Please have a seat in the jury box.

20 Number 105, Torrance Squire.

21 (Black male)

22 **JUROR:** Torrance Squire.

23 **THE CLERK:** What says the State?

24 **MS. CAMPBELL:** Please present Mr. Squire.

25 **THE CLERK:** What says the defense?

1 **MS. HUDGINS:** Please present Mr. Squire.

2 **THE CLERK:** Please have a seat in the jury box.

3 Number 64, Kenneshia Jones.

4 (Black female)

5 **JUROR:** Kenneshia Jones.

6 **THE CLERK:** What says the State?

7 **MS. CAMPBELL:** Please excuse Ms. Jones.

8 **THE CLERK:** Please return to the back of the
9 courtroom. Number 15, Kay Clamp.

10 **JUROR:** Kay Clamp.

11 **THE CLERK:** Does the State challenge for cause?

12 **MS. CAMPBELL:** Please present Ms. Clamp.

13 **THE CLERK:** What says the defense?

14 **MS. HUDGINS:** Please excuse Ms. Clamp from the
15 trial of this case.

16 **THE CLERK:** Please return to the back of the
17 courtroom. Number 17, Jay Clingman.

18 (White male)

19 **JUROR:** Jay Clingman.

20 **THE CLERK:** Does the State challenge for cause?

21 **MS. CAMPBELL:** Please present Mr. Clingman.

22 **THE CLERK:** What says the defense?

23 **MS. HUDGINS:** Please excuse Mr. Clingman from
24 the trial of this case.

25 **THE CLERK:** Please return to the back of the

1 courtroom. Number 19, Anna Dent.

2 (White female)

3 **JUROR:** Anna Dent.

4 **THE CLERK:** Does the State challenge for cause?

5 **MS. CAMPBELL:** Please present Ms. Dent.

6 **THE CLERK:** Does the defense challenge for
7 cause?

8 **MS. HUDGINS:** Please present Ms. Dent.

9 **THE CLERK:** Please have a seat.

10 **THE COURT:** We'll select an alternate. The
11 strikes will be two and one on the alternate.

12 **THE CLERK:** Number 29, Wynnee Fair.

13 (Black female)

14 **JUROR:** Wynnee Fair.

15 **THE CLERK:** What says the State?

16 **MS. CAMPBELL:** Please excuse Ms. Fair.

17 **THE CLERK:** Please return to the back of the
18 courtroom. Number 68, Teresa Kinsey.

19 (White female)

20 **JUROR:** Teresa Kinsey.

21 **THE CLERK:** Does the State challenge for cause?

22 **MS. CAMPBELL:** Please present Ms. Kinsey.

23 **THE CLERK:** What says the defense?

24 **MS. HUDGINS:** Please excuse Ms. Kinsey from the
25 trial of this case.

1 **THE CLERK:** Please return to the back of the
2 courtroom. Number 117, Angela Washington.

3 (Black female)

4 **JUROR:** Angela Washington.

5 **THE CLERK:** Does the State challenge for cause?

6 **MS. CAMPBELL:** Please present Ms. Washington.

7 **THE CLERK:** What says the defense?

8 **MS. HUDGINS:** Please present Ms. Washington.

9 **THE CLERK:** Please have a seat in the jury box.

10 **THE COURT:** Will there be any motions, any
11 matters of law concerning the striking of the jury?
12 Anything from the State?

13 **MS. CAMPBELL:** Yes, sir.

14 **THE COURT:** All right. Ladies and gentlemen,
15 those of you who have not been selected in the case,
16 I'm going to ask you to step outside of the courtroom
17 in this hallway. Don't leave this floor, please.
18 Just step outside the courtroom. Those of you who
19 have been selected in the case, please do not discuss
20 the case. But I'm going to send you back to the jury
21 room for a few moments while I take care of some
22 matters of law that I'm required to do outside of
23 your presence. If you'll go with the bailiff to the
24 jury room, please. Please don't discuss this case.

25 (Jury out at 11:08 a.m.)

1 **THE COURT:** All right. Before I hear your
2 motion, Ms. Campbell, will there be any motions from
3 the defense?

4 **MS. HUDGINS:** No, Your Honor. I have reviewed
5 the strikes and have no problem.

6 **THE COURT:** All right, Ms. Campbell.

7 **MS. CAMPBELL:** Your Honor, taking them in order
8 in which she struck them, the first one I have no
9 problem with. I understand that his wife worked for
10 the Justice Department. I think that's a racially
11 neutral reason.

12 The second one, Your Honor, he's been the victim
13 of a robbery, and I would concede that's a racially
14 neutral reasonable.

15 The next one, Your Honor, I believe she struck
16 was Mr. Kendall. He was a white male. He is a
17 student. There were numerous other students I
18 believe you're aware that were presented of a similar
19 nature that he was that were put on the jury by the
20 State and the defense. And I know of no racially
21 neutral reason that she would have struck him.

22 **THE COURT:** I guess the easiest thing to do is
23 just to respond as we go down the list. Ms. Hudgins.

24 **MS. HUDGINS:** Beg the Court's indulgence, Your
25 Honor. Let me -- Your Honor, as I recall, I don't

1 have any specific recollection, but I believe after
2 conferring with my client he did not want me to seat
3 juror number 67 who is a white male. I believe
4 that's part of the reason for my striking
5 Mr. Kendall. And obviously we didn't strike all the
6 white males that were presented. We do have some
7 latitude in striking. I would say that the reason
8 for our strike had nothing to do with the color of
9 his skin, that there was a racially neutral reason,
10 that we just simply did not like the demeanor that
11 the juror exhibited while he presented himself to us.

12 And I would point out that the victim in this
13 case is a white female, not a white male. And I
14 would point out the fact that there were several
15 black males seated on this jury.

16 **THE COURT:** Can you be more specific on what it
17 was about his demeanor that caused you to strike him?

18 **MS. HUDGINS:** I think he is -- and I can't
19 remember exactly. There was one gentleman that just
20 simply appeared very, very conservative, Your Honor.
21 I just felt like that that would not be a juror that
22 would be able to hear the facts objectively.

23 **THE COURT:** Ms. Campbell, any response?

24 **MS. CAMPBELL:** Yes, sir, Your Honor. I believe
25 he was dressed in a similar manner to Stephen Smith

1 who is one of the other two white males she did
2 actually put on the jury, as well as Mr. Russell Hart
3 whose mother I believe is an attorney who is dressed
4 similarly. I know of no distinction between the
5 other two students who were of a similar nature and a
6 similar situation.

7 Unless she can elucidate further, I believe her
8 reason is is because her client didn't like the way
9 he looked. And I do think the court has ruled that
10 that is not a racially neutral reason.

11 **MS. HUDGINS:** As long as he didn't like the way
12 he looked because the way he looked was white, then I
13 don't see how that ...

14 **THE COURT:** All right. Let's go on down the
15 strikes. The next one was number 99, Mr. Sapp.

16 **MS. CAMPBELL:** Your Honor, we would concede that
17 he had been a victim of a robbery.

18 **THE COURT:** The next one was Ms. Shewchuk,
19 number 102.

20 **MS. CAMPBELL:** Ms. Shewchuk was employed at Blue
21 Cross/Blue Shield. She was a white female. She also
22 put on the jury Ms. Hinkler who is employed at an
23 animal hospital who is also a white female. I know
24 of no gender or racial neutral or gender neutral
25 reason which she would strike Ms. Shewchuk.

1 **MS. HUDGINS:** Your Honor, my notes are clear on
2 this. My notes from jury qualification on Monday say
3 that she works for Palmetto GBA. And that's the
4 reason I struck her, because of her employment with
5 Palmetto GBA.

6 **MS. CAMPBELL:** That's Blue Cross/Blue Shield?

7 **UNKNOWN PERSON:** They are the same.

8 **MS. CAMPBELL:** They're the same. So you struck
9 her because she works with Blue Cross/Blue Shield.

10 **MS. HUDGINS:** That's correct.

11 **MS. CAMPBELL:** And that's your race and gender
12 neutral reason?

13 **MS. HUDGINS:** That's correct.

14 **MS. CAMPBELL:** Your Honor, I do not think that
15 pursuant to the case law that that would be a neutral
16 reason unless she can show some reason why a person
17 who works for Blue Cross/Blue Shield should not be
18 put on this jury.

19 **MS. HUDGINS:** Your Honor, again, I didn't strike
20 her because she was white. I struck her because she
21 works for an insurance company.

22 **THE COURT:** All right. Go to your next strikes
23 and the next one that the State challenges. If
24 you're not challenging them, we don't need to talk
25 about them.

1 **MS. CAMPBELL:** Yes, sir. Teresa Wardlaw for a
2 heating and air company. She was a white female.

3 **MS. HUDGINS:** That's juror number 115, Your
4 Honor. My notes indicated that she worked -- that
5 her husband and she owned a heating and air
6 conditioning unit. And I can tell you my own
7 personal reason for striking her, is that I have
8 talked with my heating and air conditioning person
9 and he's terrified of robberies. I carry that over
10 to her because of her employment with heating and air
11 conditioning.

12 **MS. CAMPBELL:** Again, Your Honor, we would
13 submit that is not a racially or a gender neutral
14 reason.

15 Going to the next one, Your Honor, which is
16 Ms. Brenda Whitehead, she is employed by Palmetto
17 Utilities.

18 **MS. HUDGINS:** I struck her because she lives in
19 Blythewood, Your Honor.

20 **THE COURT:** Enlighten me. I don't know what the
21 situation with that is.

22 **MS. HUDGINS:** Blythewood is out Farrow Road
23 ways. It's not exactly in the same area, but I --

24 **MS. CAMPBELL:** It's not in the same area of the
25 county as this occurred.

1 **MS. HUDGINS:** Well, then that was my mistake.
2 It wasn't because she was white.

3 **THE COURT:** All right. Next challenge.

4 **MS. CAMPBELL:** Mr. Robert Walker I believe is
5 the next one, Your Honor. He is a white male. He is
6 employed by Total Quality Logistics Services.

7 **MS. HUDGINS:** Your Honor, the reason I struck
8 him is because he had a very interesting t-shirt on
9 during jury qualification yesterday that said
10 "Antiflag". I have no idea what that meant, but I
11 have a feeling that it might -- he might be some sort
12 of political activist and might have his own mind
13 about what to do in the jury room.

14 **THE COURT:** All right. And the next challenge.

15 **MS. CAMPBELL:** The next challenge, Your Honor,
16 would be Kay Clamp. I did inform defense counsel
17 that I knew her in the past. I would concede that
18 that could be a potential reason for her.

19 And with Mr. Clingman, I would concede that
20 since he was employed as a constable that that would
21 be a race --

22 **MS. HUDGINS:** In regard to Ms. Clamp, too, she
23 also represented convenience stores.

24 **MS. CAMPBELL:** And the next one, Your Honor, is
25 an alternate. Let me find out where she works. It

1 was Ms. Teresa Kinsey. She lists I believe in -- she
2 lists her occupation as unemployed.

3 **MS. HUDGINS:** Your Honor, the reason I struck
4 Ms. Kinsey is because I have written from jury
5 qualification yesterday that she and her husband
6 owned a mobile contracting firm. Again, the
7 contractors I have come to my house I talk with. My
8 heating and air conditioning is broken a lot. But a
9 mobile contracting unit would be somebody that would
10 be susceptible to robberies. And I thought that that
11 was a person that I would not want on this jury. It
12 had nothing to do with the fact she was white.

13 **MS. CAMPBELL:** Your Honor, if I might, I just
14 wanted to clarify that last one. I wasn't sure. At
15 first she said that the contractors that she talks to
16 are conservative, but then she changed it to just
17 that she thought they would be conservative?

18 **MS. HUDGINS:** Your Honor, I didn't say anything
19 about conservative. I said subject to robberies and
20 are concerned about robberies.

21 **MS. CAMPBELL:** Is it that you talked with one
22 that said that or that you just think that? I just
23 wasn't clear.

24 **MS. HUDGINS:** It's based on my personal
25 experience with the contractors that come into my

1 home. That's a race neutral reason.

2 **MS. CAMPBELL:** Your Honor, if I may address one
3 issue just as far as the Blythewood one. I would
4 note she did put on Russell Hart who lives on Dibble
5 Lane in Columbia at 29223 which is the Woodlands
6 which is an area much closer to this, where this
7 occurred than any Blythewood address. There are
8 others, Your Honor, I am looking for them, that are
9 closer in proximity to Blythewood than this actual
10 Farrow Road address.

11 **MS. HUDGINS:** And that was just simply my
12 mistake in thinking quickly. But if you look at the
13 juror list, it doesn't say Columbia; it says
14 Blythewood. And that was the reason for the strike,
15 Your Honor.

16 **THE COURT:** All right.

17 **MS. CAMPBELL:** Your Honor, one other thing. Not
18 to interrupt the Court. But the address where this
19 is is actually a 29203 zip code which she would have
20 been aware of Farrow Road. She did put on
21 Mr. Torrance Squire who lives not far at all from
22 this who has the exact same zip code as where this
23 offense occurred. She didn't seem to be concerned
24 with that one either.

25 **MS. HUDGINS:** There is a pretty good

1 explanation. I didn't know where the zip code was.
2 I wasn't looking at the zip codes. Perhaps I should
3 have been, but I wasn't.

4 **THE COURT:** All right. I'm going to take a
5 brief break while I go take a look at two different
6 matters. We'll take about a ten-minute break.

7 **MS. CAMPBELL:** Thank you, Your Honor.

8 (Whereupon, a break is taken)

9 **MS. CAMPBELL:** May it please the Court, Your
10 Honor?

11 **THE COURT:** Yes.

12 **MS. CAMPBELL:** Over the break I had a chance to
13 review some of the jurors she did put on.

14 **THE COURT:** Right.

15 **MS. CAMPBELL:** I believe Ms. Shewchuk, she has
16 mentioned the reason she didn't put her on was
17 because she worked for Palmetto GBA. I would note
18 for the record that Ms. Stefanie Fleming just happens
19 to be employed by the exact same corporation,
20 Palmetto GBA which is a division of Blue Cross/Blue
21 Shield, and she did put her on.

22 **THE COURT:** Who is that?

23 **MS. CAMPBELL:** Ms. Fleming. She would be juror
24 number 34 --

25 **THE COURT:** All right.

1 **MS. CAMPBELL:** -- who was I think the third to
2 the last juror put on the main panel.

3 **THE COURT:** All right. Any other statements or
4 arguments that Ms. Hudgins or the solicitor would
5 like to make?

6 **MS. HUDGINS:** Nothing from the defense, Your
7 Honor.

8 **THE COURT:** All right.

9 **MS. CAMPBELL:** Your Honor, I would just refer to
10 the case law which I know you're familiar with; I
11 don't need to -- but any pretextural reason, and I
12 would submit that if you put the five strikes taken
13 as a whole and her reason for them, that would be the
14 State's position on those five.

15 **THE COURT:** All right. As to -- I'm not going
16 to go over all of them. On the majority of them, I
17 find that the reasons provided by counsel to be
18 racially neutral with the exceptions of number 67,
19 Mr. Kendall. The first response was that the
20 Defendant just didn't want him on the jury, which
21 does not meet the standard. And then Ms. Hudgins
22 talked about his demeanor but could not be more
23 specific than that. And he I believe is a student.
24 There were other students who were seated.

25 Also as to Ms. Whitehead, that she lives in

1 Blythewood and it is close to the location, I don't
2 think that meets the criteria.

3 And then the last one that Ms. Campbell just
4 indicated where there is a black female, Ms. Fleming,
5 who is employed at the same -- by the same company
6 as -- who was the other one? Shewchuk?

7 **MS. CAMPBELL:** Yes, sir.

8 **THE COURT:** So as to those three I find that
9 insufficient reasons have been provided. For that
10 reason we will re-strike the jury. We start de novo
11 as I understand it. So we'll pick another jury. I
12 don't know what you all normally do around here,
13 whether we get a whole new panel up here or what the
14 easiest thing to do is. Jackie, what have you all
15 done in the past?

16 **THE CLERK:** She only has 30 jurors, and I
17 believe she just sent them to lunch so that they will
18 be back at 2:30 for Judge Barber.

19 **THE COURT:** All right. I am going to excuse
20 these folks and we'll get another panel after lunch.
21 We'll go ahead and deal with the pre-trial matters
22 after I excuse them.

23 **MS. CAMPBELL:** Yes, Your Honor. I think if they
24 need numbers, I think these can be mixed back in is
25 my understanding.

1 **THE COURT:** Yes. And with the exception to the
2 three that I have just indicated, the ones who were
3 stricken, if they happen to be put back on the panel
4 and they are stricken again, that's no violation.

5 **MS. CAMPBELL:** Fine.

6 **THE COURT:** All right. Do I need to get these
7 folks back in, or can I excuse them until what time
8 did you say?

9 **THE CLERK:** 2:30.

10 **THE COURT:** 2:30.

11 **THE CLERK:** Yes, sir.

12 **THE COURT:** I'm going to bring these folks back
13 in and -- I'd better get them all back in. Where are
14 my bailiffs?

15 (Pause)

16 **THE COURT:** Got everybody?

17 **THE BAILIFF:** That's everybody, Your Honor.

18 **THE COURT:** Ladies and gentlemen, because of
19 some motions and arguments that have been made, we
20 are going to re-strike a jury in this case. We won't
21 be able to do that until after lunch. You may or may
22 not be in the panel that is back up here, but the
23 folks downstairs have been excused until 2:30. And
24 so I'm going to excuse you folks until 2:30. You
25 need to be in your jury assembly room, not back up

1 here, but the jury assembly room at 2:30. So I'll
2 excuse you at this time. Thank you very much.
3 Everyone else stay seated, please.

4 (Whereupon, the jurors not chosen are excused).

5 **THE COURT:** All right. You can bring the jury
6 in, please.

7 (Jury in at 11:45 a.m.)

8 **THE BAILIFF:** Your Honor, the jury is present.

9 **THE COURT:** All right. Ladies and gentlemen, as
10 a result of some rulings that I have made based on
11 some arguments that have been made by the attorneys,
12 we will re-strike a jury in this case. So, the rest
13 of the jury panel has been excused until 2:30. I'm
14 going to excuse you folks. You may or may not be
15 selected on the jury. We'll have another panel
16 brought up here at 2:30. So I'm going to excuse you
17 folks until 2:30. And when you come back, go to your
18 jury assembly room downstairs and they'll bring
19 another panel in here. Again, you may or may not be
20 on that panel. But have a nice lunch. And we'll see
21 you back at 2:30. Everyone else stay seated, please.

22 (Jury excused from the trial of the case).

23 **THE COURT:** All right. Let's get into the
24 pre-trial matters. As I understand it, we do have a
25 statement. We will need a Jackson v. Denno. Also

1 there's an identification issue. Is that correct?

2 **MS. CAMPBELL:** Yes, sir.

3 **THE COURT:** All right, Solicitor.

4 **MS. CAMPBELL:** May it please the Court. The
5 State would call Investigator Sergeant McDaniels.

6 **MS. HUDGINS:** Is this the Jackson v. Denno?

7 **MS. CAMPBELL:** The statement, yes.

8 SHAWN MCDANIELS, after being duly sworn,
9 testifies as follows:

10 **THE CLERK:** Please have a seat. State your full
11 name for the record.

12 **WITNESS:** Shawn McDaniels.

13 DIRECT EXAMINATION

14 **BY MS. CAMPBELL**

15 **Q** Sergeant McDaniel, where are you employed?

16 **A** Richland County Sheriff's Department.

17 **Q** What do you do there, sir?

18 **A** I am currently Sergeant over Region Four.

19 **Q** Sergeant over Region Four?

20 **A** Yes, ma'am.

21 **Q** And in the past have you worked as an investigator in
22 the Major Crime Unit?

23 **A** I did.

24 **Q** And how long have you been employed there in that
25 capacity?

1 **A** Approximately three years in the Armed Robbery
2 Division.

3 **Q** I want to turn your attention back to December the
4 20th of 2004. Did you become involved in the
5 investigation involving these robberies, the robbery
6 at 8550 Farrow Road?

7 **A** Yes, I did.

8 **Q** And specifically involved with a man, a suspect in
9 the case, Bruce Wilson?

10 **A** Yes. Yes, ma'am.

11 **Q** At the time you became involved, were there
12 outstanding warrants for him?

13 **A** Yes, there were.

14 **Q** For an armed robbery including the August 20th
15 robbery at 8550 Farrow Road?

16 **A** Yes, ma'am.

17 **Q** How did you become involved with him?

18 **A** I was contacted by who was my Sergeant at that time,
19 Sergeant McDonald. He had asked me -- I was
20 currently assigned to the evening shift. He asked me
21 to make contact with --

22 **MS. HUDGINS:** Your Honor, I hate to interrupt
23 Sergeant McDaniels. But this statement as I am
24 reading through it, this statement, are you
25 attempting to try to get this statement in in your

1 case in chief?

2 **MS. CAMPBELL:** No.

3 **MS. HUDGINS:** Then I'm not sure why we're going
4 through it.

5 **MS. CAMPBELL:** I have to prove that he was given
6 his rights he was given on two different occasions
7 and he never invoked. I'm not going into the
8 substance of this statement.

9 **MS. HUDGINS:** Well, the rights were given to him
10 by Officer McDonald as well.

11 **MS. CAMPBELL:** Three days later.

12 **MS. HUDGINS:** So, I just don't understand the
13 relevance of invoking twice if --

14 **THE COURT:** Well, let me hear the testimony.
15 Maybe I'll be able to decipher it. Thank you.

16 **MS. HUDGINS:** Thank you, Your Honor.

17 **THE COURT:** Go ahead.

18 **Q** I'm sorry. Sergeant, go ahead.

19 **A** I was asked by Sergeant McDonald to make contact with
20 Mr. Wilson. He advised me that he had outstanding
21 warrants. I had got a phone call from the desk
22 sergeant saying that Mr. Wilson had actually come to
23 headquarters himself.

24 **Q** Okay. And you actually made contact with the
25 defendant in this case at the Richland County

1 Sheriff's Department?

2 A I did.

3 Q And that's on Two Notch Road?

4 A Yes, ma'am.

5 Q And approximately what time did you come in contact
6 with him?

7 A Approximately around 7:00, 7, 7 p.m.

8 Q And that evening did you have an opportunity to ask
9 him some questions about a robbery that had occurred
10 at the 8550 Farrow Road?

11 A I did.

12 Q And I want to show you a copy of this advice of
13 rights. Prior to asking him any questions about
14 anything, did you advise him of his rights?

15 A I did.

16 Q And the sheet I just gave you is actually the
17 original advice of rights as you gave them to him
18 that night?

19 A Yes, ma'am.

20 Q And on that sheet also I believe there are some
21 signatures. Is that correct?

22 A Yes, there is.

23 Q And whose signature is this here on the right side?

24 A That's Mr. Wilson's.

25 Q And that would be Mr. Wilson who is here in the

1 courtroom?

2 **A** Yes, ma'am.

3 **Q** And over here there's a witness area. Is that your
4 signature?

5 **A** That's my signature.

6 **Q** Your signature?

7 **A** Yes, ma'am.

8 **MS. CAMPBELL:** Your Honor, at this time we'd
9 mark it as State's Exhibit 1 for I.D. for this
10 hearing.

11 **THE COURT:** It will be marked for
12 identification.

13 (WHEREUPON, State's Exhibit No. 1 is marked for
14 identification.)

15 **Q** I'm going to hand you State's Exhibit 1. And can you
16 tell the judge basically how you went through
17 advising him of his rights and what his responses
18 were?

19 **A** I read the actual content of this letter to him. I
20 paused inbetween each sentence and asked him if he
21 understood what I said. And I would check off each
22 box located on the left side of each sentence and
23 wait for him to acknowledge yes or no. And I --

24 **Q** And did the Defendant appear to understand you when
25 you went through his rights with him?

1 **A** Yes, ma'am.

2 **Q** And I believe that you mentioned that you checked off
3 after you advised him of all his rights. Are those
4 rights checked off there?

5 **A** Yes, ma'am.

6 **Q** And after advising him of his rights -- and, Your
7 Honor, for the record, we'll hand it up to the
8 Court -- that's exactly what you went through, are
9 the words on that paper, right?

10 **A** Yes, ma'am.

11 **Q** After advising him of that, then did he acknowledge
12 that he understood his rights in any manner?

13 **A** Yes, he did.

14 **Q** How did he do that?

15 **A** He read it.

16 **Q** He read it?

17 **A** Yes, ma'am. I gave it to him.

18 **Q** And did he actually sign off that he knew what his
19 rights were?

20 **A** Yes, he did.

21 **Q** At the bottom of that page is there a separate
22 section called waiver of rights?

23 **A** Yes, ma'am.

24 **Q** And did you go through that with him as well?

25 **A** I did.

1 **Q** And did he seem to understand you or respond
2 coherently when you were going through his rights?

3 **A** Yes, ma'am.

4 **Q** And did he actually waive his rights on than evening?

5 **A** Yes, he did.

6 **Q** And how did he acknowledge that on that piece of
7 paper?

8 **A** By his signature.

9 **Q** And, again, is that your signature witnessing that?

10 **A** Yes, ma'am.

11 **MS. CAMPBELL:** Your Honor, at this time I would
12 hand up to the Court State's Exhibit 1 for I.D.
13 purposes.

14 **THE COURT:** All right.

15 **Q** Do you know approximately how long you actually
16 talked to the Defendant that night?

17 **A** I can't recall exactly how long it was.

18 **Q** But you were able to take a statement about another
19 robbery actually. Is that correct?

20 **A** Yes, ma'am.

21 **Q** During the course of that, at any point did he ever
22 ask for his attorney?

23 **A** No, ma'am.

24 **Q** Did he ever tell you he didn't want to talk with you
25 any more?

1 **A** No, ma'am.

2 **Q** At any point did you threaten or coerce him in any
3 way?

4 **A** No, ma'am.

5 **Q** Did you promise him anything to get him to talk to
6 you on that evening?

7 **A** No, ma'am.

8 **Q** At the end of your conversation, or a statement that
9 was actually reduced to writing in that case, did you
10 have occasion to advise him that someone else may be
11 talking to him?

12 **A** I did.

13 **Q** And who was that, sir?

14 **A** Sergeant McDonald.

15 **Q** And what did you tell him about Sergeant McDonald
16 talking to him?

17 **A** I told him that Scott McDonald would more than likely
18 want to talk to him on a later date.

19 **Q** What was his response when you indicated that
20 Sergeant McDonald might want to talk to him at a
21 later date?

22 **A** He was cooperative. He agreed to it.

23 **Q** Was the Defendant in custody at the time you were
24 talking to him?

25 **A** At that time, yes, he was.

1 Q And, in fact, was he booked into the county jail that
2 evening?

3 A That night he was.

4 Q And he would have remained in custody over the next
5 several days until Sergeant McDonald talked to him?

6 A Yes, ma'am.

7 Q And again, during the period of time that you were
8 talking to the Defendant you never promised anything,
9 threatened him or did anything to get him to talk?

10 A No, ma'am.

11 Q And at any time did he ask for a lawyer or tell you
12 he didn't want to talk to you?

13 A No, ma'am.

14 MS. CAMPBELL: Your Honor, that's all I have of
15 this witness.

16 THE COURT: All right. Cross examine, Ms.
17 Hudgins.

18 MS. HUDGINS: Thank you, Your Honor. May it
19 please the Court.

20 CROSS EXAMINATION

21 BY MS. HUDGINS

22 Q Sergeant McDaniels, are you aware of the fact that at
23 the time that you were attempting to serve the
24 warrant on Mr. Wilson that he was in fact down at
25 headquarters trying to turn himself in?

1 **A** I had got -- I had received a phone call from the
2 desk sergeant stating that he was actually in the
3 lobby of headquarters.

4 **Q** Okay. So do you know the approximate amount of time
5 between the time he entered the doors of the Richland
6 County Sheriff's Department -- I'm assuming it's on
7 Two Notch Road -- and the time you were able to
8 interview him?

9 **A** I can't recall the approximate time. I do know that
10 I was on call that evening. I was currently on a
11 separate crime scene when I received the phone call,
12 and I came to headquarters.

13 **Q** Okay. Would it have been an hour? Two hours? Four
14 hours?

15 **A** I can't recall, to be honest with you.

16 **Q** You just can't recall. Okay. When you walked into
17 the Sheriff's Department, did you immediately take
18 him into custody and take him back?

19 **A** I made contact with him and took him upstairs.

20 **Q** Okay. And at that point did you advise him that he
21 was under arrest for armed robbery?

22 **A** I believe I served the warrants on him, the arrest
23 warrants on him.

24 **Q** And that was done in your office at the Richland
25 County Sheriff's Department?

1 **A** In my office.

2 **Q** And your office is on the second floor? It's a big
3 room divided into cubicles? Or do you have a
4 separate walled office?

5 **A** It's divided into cubicles.

6 **Q** And was Mr. Wilson handcuffed at this time?

7 **A** No, ma'am.

8 **Q** So he was not handcuffed?

9 **A** No, ma'am.

10 **Q** But he was not free to leave?

11 **A** No, ma'am.

12 **Q** And you served the warrants on him. Did he
13 understand the warrants? How many warrants were
14 served on him at that time?

15 **A** I believe there were three served on him at that
16 time.

17 **Q** Three were served by you at that time?

18 **A** I believe so.

19 **Q** And do you have the advice of rights form in front of
20 you, Sergeant McDaniels?

21 **A** Yes, ma'am.

22 **Q** And the time on the top of the page where it says
23 time on the Advice of Rights form, would you please
24 read that into the record?

25 **A** It's 20:54 hours. That's 8:54 p.m.

1 Q And is there a line through the 5?

2 A I see a line through the 5. But, I mean, it could
3 have been a typo.

4 Q A typo? It's handwritten.

5 A Well, that's what I mean. I mean a mistake.

6 Q And it's your impression that the advice of rights
7 was given at 20:54 and then the statement was given
8 at 21:01?

9 A Yes, ma'am.

10 Q So that's a difference between; 20:54 is 8:54 and
11 21:01 is 9:01?

12 A Yes, ma'am.

13 Q At that point Mr. Wilson had just been served with
14 warrants, and obviously he did not have an attorney
15 with him?

16 A No, he did not.

17 Q And he had not had an opportunity to be screened by
18 the Public Defender's Office?

19 A At that point, no, he hadn't.

20 MS. HUDGINS: Beg the Court's indulgence one
21 moment.

22 THE COURT: All right.

23 MS. HUDGINS: I don't have any further
24 questions, Your Honor.

25 THE COURT: All right. Redirect?

1 **MS. CAMPBELL:** No, sir.

2 **THE COURT:** All right. You may step down, sir.

3 **WITNESS:** Thank you.

4 **MS. CAMPBELL:** The State would call Sergeant
5 McDonald.

6 SCOTT MCDONALD, after being duly sworn,
7 testifies as follows:

8 **THE CLERK:** Please have a seat. State your full
9 name for the record.

10 **THE WITNESS:** Scott McDonald.

11 DIRECT EXAMINATION

12 **BY MS. CAMPBELL**

13 **Q** Sergeant McDonald, where are you employed?

14 **A** Richland County Sheriff's Department.

15 **Q** How long have you been employed there, sir?

16 **A** Approximately 17 and a half years.

17 **Q** And what do your duties include?

18 **A** I'm a sergeant in major crimes, primarily responsible
19 for armed robberies.

20 **Q** Did you become involved in the investigation of a
21 series of armed robberies at 8550 Farrow Road back in
22 2004?

23 **A** Yes, I did.

24 **Q** And during the course of your investigation were you
25 able to develop a suspect named Bruce Wilson?

1 **A** Yes, I did.

2 **Q** And, in fact, you're the one I believe that initially
3 placed three armed robbery indictments on him?

4 **A** That's correct.

5 **Q** Turning your attention to December 20th of 2004, did
6 you become aware that Mr. Wilson had turned himself
7 in at the Richland County Sheriff's Department?

8 **A** Yes. I believe I got a call that night from the desk
9 sergeant letting me know that Mr. Wilson had turned
10 himself in. We had run him in the media I believe
11 earlier that day, having trouble locating him. And
12 we'd gotten several calls from citizens trying to tip
13 us off where he may be. And he ended up turning
14 himself in that night.

15 **Q** And that evening did you actually go in and interview
16 the Defendant yourself?

17 **A** No. I talked to one of my detectives at the time,
18 Investigator McDaniels, who was working that night.
19 And he agreed to serve the warrants and to try to
20 interview him on these charges.

21 **Q** And to your knowledge, in fact did Sergeant McDaniels
22 interview him that night?

23 **A** Yes, he did.

24 **Q** And over the course of the next several days, did you
25 have an opportunity to actually make contact with Mr.

1 Wilson?

2 **A** Yes. On December 23rd I actually was able to get
3 down there to interview him. I was tied up on some
4 other matters, at the time some other cases.

5 **Q** So on December 23rd? So that would have been two,
6 two and a half, three days after he was actually
7 arrested?

8 **A** That's correct.

9 **Q** And where was he when you made contact with him?

10 **A** He was at the Richland County Detention Center.

11 **Q** And when you made contact with him, where did you
12 take him, or where were you --

13 **A** I transported him back up to headquarters to my
14 office to interview him.

15 **Q** And you were going to interview him?

16 **A** Right.

17 **Q** Prior to interviewing him, did you advise him of his
18 rights?

19 **A** Yes, I did.

20 **Q** And I'm going to show you this document which I
21 believe is the original. Is that an Advice of Rights
22 form?

23 **A** Yes, it is.

24 **Q** And is that the actual Advice of Rights form used
25 with Mr. Wilson on December 23rd of 2004?

1 **A** Yes, it is.

2 **Q** And what was the purpose of you re-interviewing the
3 Defendant in this case?

4 **A** Re-interviewing him?

5 **Q** Mm-hmm (affirmative).

6 **A** Because his previous statement was a lot of holes in
7 it that I knew to be false, being the case
8 investigator.

9 **Q** And is that unusual to interview a Defendant more
10 than once?

11 **A** No.

12 **Q** When you advised him of his rights, can you briefly
13 tell the judge how you advised him and what rights
14 you went through?

15 **A** I talked with him and, you know, I asked him, can you
16 read and write, and he assured me he could. I then
17 went through these sentence by sentence reading him
18 his rights, reiterating his rights to him, made sure
19 he understood, and checked them off as I went down.

20 **Q** Prior to initiating contact with him, one thing I
21 forgot is, had you checked with Officer McDaniels and
22 make sure that he had not invoked any of his rights
23 prior to that?

24 **A** That's correct.

25 **Q** On this date when you went through his rights, did he

1 seem to be coherent and respond appropriately as you
2 advised him of his rights?

3 **A** Yes, he did.

4 **Q** Did he appear to be under the influence of any
5 alcohol or drugs?

6 **A** No, he did not.

7 **Q** Did he appear to understand you when you were talking
8 to him?

9 **A** Yes, he did.

10 **Q** During the course of advisement of his rights, did
11 you promise him anything or threaten him in any way?

12 **A** No, ma'am.

13 **Q** Did you attempt to coerce him to get him to talk to
14 you?

15 **A** No.

16 **Q** In your opinion as an investigator for the last 17
17 and a half years, did he appear to understand his
18 rights?

19 **A** Yes, he did.

20 **Q** And on that piece of paper, as you went through his
21 rights, after explaining his rights to him, did he
22 acknowledge that he had heard his rights in any way
23 on that piece of paper?

24 **A** Right.

25 **Q** And how was that?

1 **A** He signed the paper right here.

2 **Q** And there's a witness signature also. Whose
3 signature is that?

4 **A** That's my signature.

5 **Q** And this happened on the 23rd. What time of day was
6 it when you actually advised him of his rights?

7 **A** 16:41 which is 4:41 in the afternoon.

8 **Q** Once you advised him of his rights, you did you also
9 ask him whether or not he wanted to waive his rights?

10 **A** Yes.

11 **Q** And did you go through this paragraph here at the
12 bottom of this same page?

13 **A** Yes, I did.

14 **Q** And, again, did he acknowledge whether he wanted to
15 waive his rights and speak to you?

16 **A** Yes, he did.

17 **Q** And, again, he signed it and then you witnessed it?

18 **A** That's correct.

19 **Q** And this is the original form you used?

20 **A** Yes.

21 **MS. CAMPBELL:** Your Honor, at this time we'd
22 mark it as State's Exhibit 2 for I.D. for this
23 hearing.

24 **THE COURT:** It will be marked as State's 2.

25 **MS. CAMPBELL:** And I'll go ahead and mark

1 State's 3.

2 (WHEREUPON, State's Exhibit No. 2 is marked for
3 identification.)

4 (WHEREUPON, State's Exhibit No. 3 is marked for
5 identification.)

6 Q At any time in the course of advising him of his
7 rights and prior to asking him questions, did he ever
8 ask for an attorney after you advised him of his
9 rights?

10 A No, he did not.

11 Q Did he ever tell you he didn't want to talk any more?

12 A No.

13 Q During the course of your interview which I'll get to
14 in a minute, did he ever ask for either of those
15 things or tell you he didn't want to talk?

16 A No.

17 MS. CAMPBELL: Your Honor, at this time I would
18 hand up to the Court State's Exhibit 2 for I.D.

19 THE COURT: All right.

20 Q Once you advised him of his rights and he had agreed
21 to waive his rights, did he in fact give you a
22 statement that afternoon?

23 A Yes, he did.

24 Q Did he make contact with anybody else while he was at
25 the Sheriff's Department prior to giving you this

1 statement?

2 **A** Yes. He wanted to speak -- I believe she was
3 girlfriend at the time. I don't recall her name.
4 But we allowed him to call her, and she actually came
5 to headquarters and they were allowed to talk in
6 private for a brief period.

7 **Q** And that was actually prior to you advising him of
8 his rights and everything?

9 **A** No. No. That would be after advising him of his
10 rights.

11 **Q** Okay. And I want to show you the statement that was
12 actually taken in this case. Do you recognize
13 State's Exhibit 3 for I.D.?

14 **A** Yes, I do.

15 **Q** And it indicates that you were taking a statement?

16 **A** Right. Again, it's 16:43 hours which is 4:43.

17 **Q** And during the course of taking this statement he
18 actually had the opportunity to talk to this woman?

19 **A** That's correct.

20 **Q** And that was at his request?

21 **A** Correct.

22 **Q** But at any time did he ever ask for an attorney?

23 **A** No.

24 **Q** And, in fact, the only person he did ask for you got
25 to come down and actually speak to him after he spoke

1 to her on the phone?

2 A Correct.

3 Q Was she present when he was giving the statement?

4 A No.

5 Q And when you were able to get the statement, did he
6 indicate -- and explain to the Court, there were a
7 series of armed robberies in 2004 at the Pantry
8 Express. Is that correct?

9 A Yes. There was a total of four at this location.

10 Q One occurred in March, one in June, one in August,
11 and then one in October. Is that correct?

12 A That's correct.

13 Q And were you asking him separately about his
14 involvement in each of those four incidents?

15 A Yes, I was.

16 Q And the statement that you took involves statements
17 about the other three as well as the one we're here
18 on today?

19 A That's correct.

20 Q But was he able to give you some pertinent
21 information about his involvement in the August 20th
22 robbery?

23 A Yes, he was.

24 Q And I believe that would be on page 2 of his
25 statement, the second paragraph?

1 **A** That is correct.

2 **Q** And it goes down to the last line on that same page.
3 Is that correct?

4 **A** Yes.

5 **MS. CAMPBELL:** Your Honor, that would be the
6 pertinent part of the statement we're intending to
7 offer at this point without going into any Lyle
8 issues.

9 **THE COURT:** All right.

10 **MS. HUDGINS:** And I'm assuming that would
11 exclude the last question on page 2?

12 **MS. CAMPBELL:** Yes. On the October 25th. Yes.
13 I would hand that up to the Court.

14 **Q** During the course of -- you talked to him for a
15 period of time then; she was coming in and out and
16 things?

17 **A** A couple of hours or better, yeah.

18 **Q** During the course of that time, at any point, did you
19 threaten him in any way?

20 **A** No.

21 **Q** Promise him anything to get him to talk?

22 **A** No.

23 **Q** Did you deprive him of any substance like food or
24 water if he had asked for it?

25 **A** No.

1 Q And, in fact, you provided the one person he wanted
2 to talk to?

3 A Yes.

4 Q At any point during that entire time you're
5 interviewing him those couple of hours, did he ask
6 for a lawyer?

7 A Ask for --

8 Q A lawyer.

9 A No.

10 Q Or an attorney?

11 A No.

12 Q Did he ever tell you he didn't want to talk to you
13 any more?

14 A No.

15 MS. CAMPBELL: That's all I'd have, Your Honor,
16 on this issue.

17 THE COURT: All right. Cross examine.

18 MS. HUDGINS: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. HUDGINS

21 Q Sergeant McDonald, I'm a little confused on the
22 timing. You said you went down to the jail and
23 picked Mr. Wilson up?

24 A That's correct.

25 Q Is that correct? I don't mean to step on you. So at

1 that point he was unable to make bond on these
2 charges?

3 **A** Correct.

4 **Q** And then you had checked on whether he was able to
5 make bond, or did you just check on whether or not he
6 was still housed?

7 **A** Before I went down there I checked to make sure he
8 was still there, yes.

9 **Q** Were you present for the bond hearing?

10 **A** No, I wasn't.

11 **Q** And did you check to see whether or not he'd been
12 screened for a public defender at that point?

13 **A** At ...?

14 **Q** At the point when you went to get him and take him
15 back to the Richland County Sheriff's Department.

16 **A** No, I did not.

17 **Q** You did not check on that information?

18 **A** No.

19 **Q** But you know he had been incarcerated for three days
20 without posting bond?

21 **A** Right.

22 **Q** Now, you took him back to the Richland County
23 Sheriff's Department, and you took him upstairs to
24 your office?

25 **A** That's correct.

1 Q And was he in handcuffs at that point?

2 A Yes.

3 Q And that would be standard?

4 A Well, let me explain that. For the ride up he was.
5 Once he was brought into my office, I took his
6 handcuffs off him as he sat in the chair.

7 Q So he was sitting in your office without handcuffs?

8 A That's correct.

9 Q Okay. Now, I believe that you stated that you talked
10 with Mr. Wilson for a period of time and you read him
11 his Miranda. You've got the Advice of Rights form in
12 front of you, Sergeant McDonald?

13 A No. I don't.

14 Q I believe that's State's Exhibit 2. Thank you, Your
15 Honor. So you read him his Advice of Rights form and
16 then he requested to see his girlfriend or common law
17 wife?

18 A Not immediately, no. As we continued to talk, I'd
19 have to guess 45 minutes or so maybe into talking
20 about these cases, that's when he was kind of
21 wrestling with some things and he wanted to talk to
22 her.

23 Q Okay. So you read him his Miranda rights. He did
24 not request that his attorney be called at any point
25 during that?

- 1 **A** No.
- 2 **Q** You began the taking of his statement?
- 3 **A** That's correct.
- 4 **Q** Okay. And during the course of taking the statement
- 5 you took a break?
- 6 **A** I'm not sure I follow you. What do you mean by
- 7 taking a break?
- 8 **Q** Okay. Well, on the Advice of Rights form the time
- 9 states 16:41?
- 10 **A** That's correct.
- 11 **Q** And on the actual statement, and I'll just hand you a
- 12 copy of mine, it says 16:43?
- 13 **A** Right. That's when the statement was begun.
- 14 **Q** Okay.
- 15 **A** We would question and answer type and then we'd
- 16 discuss things and, you know, we'd type it as we
- 17 went. And at some point into the interview he wanted
- 18 to talk to this other female. I believe it was a
- 19 girlfriend.
- 20 **Q** And that's exactly what I'm getting to. So although
- 21 the interview process began at 16:43 and there were
- 22 breaks taken after that 16:43 timeframe --
- 23 **A** When I think of a break I think of not discussing the
- 24 case for a period of time. And we discussed the
- 25 case. Even while she was in route to headquarters,

1 we would still be discussing. We didn't just stop.

2 Q Oh. I understand. At what point did she come in?

3 A Like I said, it could be an hour later, 45 minutes to
4 an hour later. I am not sure of the exact time.

5 Q And he specifically asked you to talk to her at some
6 point during the --

7 A He had called her. I allowed him to call her on the
8 phone. He was wrestling with some things dealing
9 with this.

10 Q When you say he was wrestling with some things what,
11 exactly do you mean?

12 A Well, he was upset with the charges he was being
13 presented with, and he was just kind of wrestling
14 with things trying to -- you know, the first
15 statement I had told him didn't make a whole lot of
16 sense with the facts that I had and knew about the
17 case. And we were trying to clarify those. And he
18 was just kind of wrestling, you know, letting it all
19 out, I guess you could call it the truth.

20 Q So at some point she was called, and you obviously
21 gave him an opportunity to speak with her?

22 A Right. They were allowed to speak in private for a
23 brief period; a few minutes, five minutes maybe. I
24 don't know.

25 Q And this is after the time period of 16:43 --

- 1 **A** That's correct.
- 2 **Q** -- as stated on that?
- 3 **A** That's correct.
- 4 **Q** So does it say anywhere, do you have any recollection
5 or any notes that indicate when the statement ceased?
- 6 **A** No.
- 7 **Q** But at some point there was -- and when I mean a
8 break, the break was for him to be able to talk
9 with --
- 10 **A** There was a brief break, yes.
- 11 **Q** And you say that it was 30 minutes? 45 minutes?
- 12 **A** Before she showed up or --
- 13 **Q** No. That she had an opportunity to speak with him
14 privately.
- 15 **A** I don't think they talked for maybe more than maybe
16 five minutes, ten minutes.
- 17 **Q** Five to ten minutes?
- 18 **A** Something like that; as I recall, yes.
- 19 **Q** Okay. I note that the date is 12-23-04?
- 20 **A** That's correct.
- 21 **Q** Any mention of the Defendant's birth date?
- 22 **A** I'm not sure I follow you.
- 23 **Q** That doesn't ring any bells to you? Nothing was
24 mentioned to you about his date of birth during your
25 interview process on 12-23-04?

1 **A** I think when I was doing the booking report, either I
2 had it on the warrant or I may have asked him what
3 his date of birth was.

4 **Q** I want to talk to you just briefly about some of the
5 facilities at the time Richland County Sheriff's
6 Department. You do in fact have interview rooms at
7 the Richland County Sheriff's Department?

8 **A** No, we don't.

9 **Q** You don't have any interview rooms?

10 **A** No.

11 **Q** Any?

12 **A** Not a specified interview room, no.

13 **Q** And you don't have the ability to audiotape or
14 videotape interviews when you're taking statements
15 from individuals?

16 **A** We have no capability that do that, no.

17 **Q** You have no capability to do that. Have you ever in
18 your 17 years as a law enforcement officer video or
19 audiotaped an individual giving a statement in
20 reference to a crime?

21 **A** Never.

22 **Q** Can I have that one sheet of paper back? I think
23 that's the one that's got the holes in it. Thank
24 you. Beg the Court's indulgence.

25 **THE COURT:** Okay.

1 (Pause)

2 Q And, Sergeant McDonald, were there any other
3 witnesses to the statement?

4 A No. It was just myself and --

5 Q Just you and Mr. Wilson?

6 A That's correct.

7 Q Did the female in any way -- I mean, did she stay
8 around for any further questioning after she had an
9 opportunity to speak with Mr. Wilson?

10 A She may have hung around in the lobby area we have up
11 in C.I.D. She wasn't present with us during the
12 interview, no.

13 Q So she was not present in your cubicle when you were
14 interviewing Mr. Wilson?

15 A No.

16 Q And can you give me approximately how long the
17 interview took? You said you weren't sure when it
18 finished. But do you have an approximation of how
19 long the interview took?

20 A Probably two to two and a half hours.

21 Q Probably two to two and a half hours. Thank you,
22 Sergeant McDonald. I don't have any further
23 questions, Your Honor.

24 THE COURT: Redirect?

25 MS. CAMPBELL: No, sir.

1 **THE COURT:** All right. You may step down. All
2 right, Solicitor.

3 **MS. CAMPBELL:** That would be all from the State
4 on this matter.

5 **THE COURT:** All right. On this matter anything
6 from the defense?

7 **MS. HUDGINS:** Your Honor, on this matter Mr.
8 Wilson would like to take the stand. I would call
9 Mr. Wilson to the stand.

10 **THE COURT:** All right. You will be permitted to
11 do so. Come around and be sworn, please.

12 BRUCE J. WILSON, after being duly sworn,
13 testifies as follows:

14 **THE CLERK:** Please have a seat. State your full
15 name for the record.

16 **WITNESS:** Bruce Juraine Wilson.

17 **COURT REPORTER:** I'm sorry. Middle name?

18 **THE WITNESS:** Juraine.

19 **COURT REPORTER:** Would you spell it, please?

20 **THE WITNESS:** J-U-R-A-I-N-E.

21 **COURT REPORTER:** Thank you.

22 DIRECT EXAMINATION

23 **BY MS. HUDGINS**

24 **Q** Mr. Wilson, how old are you?

25 **A** Thirty.

1 Q What's your date of birth?

2 A . 5.

3 Q Beg your pardon?

4 A .

5 Q Your date of birth is ?

6 A Yes, ma'am.

7 Q Do you remember the incident on 12-23 when Sergeant
8 McDonald came and spoke -- picked you up at the
9 county jail and brought you back at the Richland
10 County Sheriff's Department for an interview?

11 A Yes, ma'am.

12 Q Can you tell the Court what happened?

13 A When he came to the county jail to pick me up, he
14 introduced hisself (sic) to me. And we had got in
15 his, I think his truck. I believe it was his truck.
16 And we went to Two Notch Road. When we got there he
17 wanted to question me about some armed robberies,
18 what took place. And during the course of his
19 questioning me, he was like, well, you might as well
20 tell me the truth, your buddies done gave you up and
21 whatnot.

22 So, I was like, man, at first I was like, I
23 don't know what you're talking about, you know what I
24 mean. He was like, well, I can let you read the
25 statement, you know what I mean, let you see the

1 videotapes. So when he said the videotapes, I said,
2 let me see the videotape then. Then he wound it
3 through the thing like he was getting the videotape,
4 but he was like, oh, they must be already done been
5 sent off.

6 So I was like, man, I don't know what's going
7 on. So I was like, well, I can't give no statement
8 or nothing 'til, you know what I mean, I wanted to
9 talk to my wife, my common law wife. He was like,
10 well, here, you can call her, you know what I mean.
11 So he called. He dialed the number for me. So I was
12 talking to her on the phone because it was her
13 birthday, you know what I mean.

14 And she asked me where I was at. I told her I
15 was on Two Notch Road. So she wanted to know, you
16 know what I mean, could she come down there. So I
17 asked him. He was like, yeah. So I told her yeah,
18 you know what I mean. He said just --

19 Q You told her yeah what? You have to -- you asked
20 him --

21 A I asked him could she come down here to see me. He
22 said -- he said yes, she could.

23 Q Okay.

24 A So I told her, yes, that he said she can come see me.
25 So --

1 Q Because it was her birthday?

2 A Yes. It was her birthday. So once he did that, he
3 was like, well, I'm going to put you in the tank
4 until, you know, she gets here. And then you all go
5 in the office. I said, are we going to be alone? He
6 said like, yeah. He said, you all go up in the
7 office alone and you discuss and then, you know, you
8 come out and give me a statement. I said, well, all
9 right, like that. So then he puts me in the tank
10 until she came.

11 Once she came though, I ain't had no handcuffs
12 or nothing on at first. But when she came, he put
13 shackles on my legs. So I went in the office. He
14 closed the door, you know, and had the blinds closed.
15 So we're sitting talking. We was in there
16 approximately 30 to 40 minutes sitting there talking,
17 you know.

18 And she was telling me, you know, just to tell
19 the truth, you know what I mean. And I was like,
20 yeah, well, I gave an agreement, I said I would give
21 him a statement, you know what I mean, if he let you
22 come down here and tell him, you know, what's going
23 on. She said, just tell him the truth, you know what
24 I mean; and, you know, hopefully it will work out for
25 the best, you know what I mean, like that.

1 So I told her, I said, okay, you know what I
2 mean. But we were conversating about the kids and
3 whatnot, you know what I mean, for, like I said,
4 about approximately 20 minutes. At first he came,
5 and I was like -- he was like -- well, I said, give
6 me a couple of minutes. So he gave me about 15, 20
7 more minutes, you know what I mean. So we sat there
8 and talked.

9 So after we had done talked, he came. He was
10 like, well, it was over. I told him, yeah, we're
11 finished or whatnot. So she left. So we went back
12 to his cubicle. And he started asking me questions
13 and whatnot. And I answered the questions. I
14 started answering the questions. That's when I
15 started giving my statement.

16 Q Okay.

17 A But --

18 Q So did Sergeant McDonald make you any promises based
19 on this visit with your wife?

20 A Yeah. He had told me, you know what I mean, I had --
21 I told him -- I made an agreement with him I would
22 give him a statement if he let me see my wife.

23 Q He made that agreement with you or you made that
24 agreement with him?

25 A About the same. Well, I guess the same, you know.

1 I -- well, let me see. I think I brought it up. And
2 I said -- I think I brought it up.

3 Q Okay.

4 A I believe. Yeah.

5 Q So you're saying that you would not have given a
6 statement had you not been allowed to see your wife?

7 A Yes. I wouldn't have gave him no statement. And I
8 kind of figured he knew that. That's why he went
9 through with it, you know. But like he had said, he
10 said he had read me my rights. But I still didn't
11 give no statement, you know what I mean. Because he
12 said, you know what I mean, before he even read me my
13 rights, he was asking me, you know what I mean, he
14 was like, I've got warrants for this here and this
15 hear. We've got you; this and that and that and
16 that. So I'm -- like he said, I was tussling with
17 myself because I had a hat on my head then, you know.
18 So I was pulling at my hair --

19 Q Because why? I couldn't understand you, Mr. Wilson.
20 I'm sorry.

21 A When he said I was tussling with myself, you know
22 what I mean, which I was, you know what I mean. I
23 was -- you know what I mean. I had a hat on my head.
24 So I was like, man, you know, pulling my hair and
25 whatnot. I said, man, I can't give no statement like

1 that, you know what I mean. He was like, well, we've
2 got you. Regardless if you've got a statement or
3 not, we've got you. You know what I mean. Your
4 co-defendant wrote a statement. You know what I
5 mean. I'm trying to give you an opportunity to help
6 yourself. Like that. You know what I mean.

7 **Q** So you're saying but for your statement --

8 **A** But there was never no questioning at the point where
9 he said he questioned me and we stopped; no, there
10 wasn't none of that.

11 **Q** But you did provide Sergeant McDonald with a
12 statement?

13 **A** Yes.

14 **MS. HUDGINS:** Your Honor, I don't have any
15 further questions.

16 **THE COURT:** Cross examine.

17 **MS. CAMPBELL:** Yes, Your Honor. Just a few.

18 CROSS EXAMINATION

19 **BY MS. CAMPBELL**

20 **Q** Mr. Wilson.

21 **A** Yes, ma'am.

22 **Q** What's your common law wife's name?

23 **A** Thelma Addison.

24 **Q** Deborah Addison?

25 **A** Thelma Addison.

1 Q How do you spell her last name?

2 A A-D-D-I-S-O-N.

3 Q Okay. Does she still live here in town?

4 A Yes. She stays in Blythewood, South Carolina.

5 COURT REPORTER: Excuse me. Can I have this
6 moved in front of him?

7 Q Can I move this in front of you just so she can hear
8 you better? Is that okay, Jenny?

9 COURT REPORTER: Yes. Thank you.

10 Q And, Mr. Wilson, you would agree, you remember
11 talking to this officer that first night when you
12 came to the Sheriff's Department?

13 A Yes, ma'am.

14 Q And he advised you of your rights?

15 A Yes, ma'am.

16 Q And you talked to him for a period of time?

17 A Yes, ma'am.

18 Q And you gave him a statement?

19 A Yes, ma'am.

20 Q And at no point did you tell him you wanted a lawyer
21 or anything, did you?

22 A No, ma'am.

23 Q Okay. And during that period of time when he told
24 you about your rights, you understood what they were
25 and you agreed to talk to him?

1 A Yes, ma'am.

2 Q Okay. And on the second day, three days later, when
3 Sergeant McDonald came and got you, he advised you of
4 your rights. You testified to that?

5 A Yes.

6 Q And you understood what your rights were?

7 A Yes.

8 Q And then you signed the Waiver of Rights form?

9 A Yeah. I signed it. Yes, ma'am.

10 Q Okay. And just, State's Exhibit 2, that's your
11 signature?

12 A Yes, ma'am.

13 Q And you can read and write?

14 A Yes, ma'am.

15 Q And you understood what your rights were and that you
16 were waiving them?

17 A Yes, ma'am.

18 Q And you agreed to talk to him?

19 A Yes, ma'am.

20 Q And at no time did he threaten you or anything to
21 make you talk?

22 A No, ma'am.

23 Q And it was your idea to talk to your wife that day,
24 wasn't it?

25 A In a way, on her birthday, yeah, I wanted to speak to

1 her.

2 Q Well, it wasn't Sergeant McDonald's idea to talk to
3 your wife, because he didn't know who she was?

4 A No. But he did ask me, you know, because I was
5 tussling with myself. He asked me -- how did he put
6 it? How did he put it that day? He put it like, you
7 know, you need somebody. In so many words, he put it
8 like, you know, he was trying to see if I needed
9 somebody to come to a conclusion what to do.

10 Q So --

11 A And I can't put in the exact words how he said it,
12 but in so many words; in other words, he, you know,
13 was saying --

14 Q So it was Sergeant McDonald's suggestion that you
15 call someone to help you come to a conclusion?

16 A No, ma'am.

17 Q That's your testimony? Is that right?

18 A What?

19 Q Was it Sergeant McDonald that suggested you call
20 someone? Is that your testimony now?

21 A Sergeant -- no. See, they glanced right together.
22 So you're trying to get me confused.

23 Q Okay. Well, I don't mean to get you confused.

24 A Yeah. You're trying to get me confused. But let me
25 get this straight for you.

1 Q Thank you?

2 A Sergeant -- hold up -- McDaniels and McDonald, see,
3 I'm confused with it because it's max. But anyway,
4 when it was about the phone call, me and my wife, it
5 was McDonald.

6 Q Who suggested you call someone to come down and help
7 you come to terms with your tussling?

8 A No. He said not to come down. He said, he asked me,
9 it was something like do I need somebody to talk to
10 to help me come to a conclusion what to do.

11 Q Okay. And when he said that to you, did you tell him
12 yes?

13 A I asked him to let me call my wife.

14 Q So your testimony is it wasn't your idea to call your
15 wife; it was Sergeant McDonald's idea for you to call
16 someone else down to the station. Is that your
17 testimony?

18 A In a way.

19 Q Okay. And once he had made the suggestion for you to
20 call this person, did you want to call this person?

21 A Yeah. After he made the suggestion, yeah.

22 Q Okay.

23 A Because it was her birthday anyway.

24 Q Did he know it was her birthday?

25 A No. Not that I know of.

- 1 Q Did he know there was someone out there that you
2 wanted to talk to on their birthday?
- 3 A No.
- 4 Q And you made contact with Ms. Addison. Is that
5 correct?
- 6 A Yes, ma'am.
- 7 Q And you spoke to her on the phone?
- 8 A Yes, ma'am.
- 9 Q And when you spoke to her on the phone, after that,
10 did you want her to come see you?
- 11 A No. She asked could she come down to see me. I
12 asked --
- 13 Q Did she talk to Sergeant McDonald at that point?
- 14 A No. I asked him.
- 15 Q So you asked him?
- 16 A Yes. I asked him, I said, she want to know could she
17 come down here. He said yes.
- 18 Q Okay. So it was your idea or her idea for her to
19 come see you?
- 20 A Yeah.
- 21 Q And she came to see you. Is that correct?
- 22 A Yes. She came down.
- 23 Q And when she came to see you, you got to talk to her?
- 24 A Yes.
- 25 Q By yourself?

1 **A** He had done talked to her before I got in the office
2 though to talk to her.

3 **Q** He had talked to her?

4 **A** You know, I wish she was here to -- go ahead.

5 **Q** She's here in town though, right?

6 **A** Yes. She's here in town.

7 **Q** And when you talked to her on that day, you said you
8 were by yourself. He let you talk to her. You
9 wanted to see her because it was her birthday and you
10 wanted to talk to her about whether or not you were
11 going to give a statement?

12 **A** Yeah.

13 **Q** So you talked to her. And Sergeant McDonald wasn't
14 even there. Is that correct?

15 **A** No, he wasn't. We was in the office by ourself.

16 **Q** And the reason you wanted to talk to her is she is
17 someone you trust, right?

18 **A** Yeah.

19 **Q** And someone you wanted to talk to about whether or
20 not to give a statement? Or did you just want to
21 talk to her about her birthday?

22 **A** Yeah.

23 **Q** Which one?

24 **A** About the statement.

25 **Q** About the statement. And Sergeant McDonald wasn't

1 present. And this was a person you chose to contact?

2 **A** Yeah.

3 **Q** That you wanted to make contact with for advice and
4 that you spoke to alone to get advice?

5 **A** But first of all, before I answer that, when she
6 first got there, Sergeant McDonald had done put into
7 her head that I was looking at 40 years. So when I
8 walked in the office, she was already crying.

9 **Q** She was crying?

10 **A** Yes.

11 **Q** Well, let me ask you this. You were arrested on
12 three counts of armed robbery three days before that,
13 right?

14 **A** Yes.

15 **Q** And you'd been through the system on a number of
16 occasions, having been arrested for armed robbery
17 prior to this?

18 **A** I ain't been convicted. So it don't make no
19 difference. Arrested.

20 **Q** Did you know when you were arrested for armed robbery
21 before this that it carries up to 30 years?

22 **A** Yes.

23 **Q** Did she know that --

24 **A** If I'm convicted, yes.

25 **Q** And did she know that you'd been arrested on three

- 1 counts of armed robbery?
- 2 **A** Yes.
- 3 **Q** And she knew you'd been arrested for that before?
- 4 **A** No.
- 5 **Q** She didn't know that?
- 6 **A** Nah.
- 7 **Q** And you never told her how much time you were facing?
- 8 You never contacted her during that three-day period?
- 9 **A** Nah. I ain't had the opportunity.
- 10 **Q** So, when you found out -- you were aware that
- 11 Sergeant McDonald had talked to her, according to
- 12 you, prior to you talking to her?
- 13 **A** Yeah. She told me.
- 14 **Q** And you took that into account, right?
- 15 **A** To be honest, I still wouldn't want to give no
- 16 statement until she -- you know what I mean, she kind
- 17 of helped persuade me to give a statement, too, from
- 18 the things which he had done told her.
- 19 **Q** So your contention is now, two years later, that she
- 20 was told by Sergeant McDonald --
- 21 **A** Two years later?
- 22 **Q** A year and a half later.
- 23 **A** A year and a half later?
- 24 **Q** A year later. Correct me. Tell me.
- 25 **A** A year and 13 days, to be exact.

1 Q A year and 13 days later your contention is that
2 Sergeant McDonald told her that you were facing 40
3 years, and that made her give you advice to give a
4 statement? Is that your testimony?

5 A I ain't say they gave me advice to give a statement.
6 I said that kind of persuade (sic) me to give a
7 statement. But I had done gave him my word if she
8 come down there to see me I will give a statement.

9 Q You had given him your word that if she came down you
10 would give a statement?

11 A That's right.

12 Q And you could have given a statement saying you were
13 there but not involved, but you chose to give a
14 statement saying you did the armed robbery?

15 A I ain't gave no statement saying I did the armed
16 robbery.

17 Q What statement did you think you gave on that day?

18 A I gave a statement, but it ain't had nothing about
19 armed robbery. On that statement did it say anything
20 about it was armed?

21 Q I believe you denied being armed during the robbery.

22 A Okay.

23 Q But you said you did the armed robbery. Is that
24 correct?

25 A I said I was there at the time of the robbery.

1 Q Okay.

2 A The strong armed robbery.

3 Q But you agree you supplied the information --

4 A I said it wasn't no armed robbery.

5 Q Do you agree you supplied the information that's in
6 the statement?

7 A Hmm?

8 Q Do you agree you supplied the information that's in
9 the statement we're talking about?

10 A Yes.

11 Q And at no time, it's your testimony, is that Sergeant
12 McDonald threatened you in any way?

13 A Nah.

14 Q But your contention is here today, a year and 13 days
15 later, that there was an agreement?

16 A Yes.

17 Q And that's the reason you gave a statement?

18 A Yes.

19 Q But it was your idea to call your wife, because he
20 didn't know she existed?

21 A I'm going to say this again.

22 Q Okay.

23 A Okay. I wanted to call her. Okay. He said -- he
24 asked was there anyone would I like to talk to about
25 this incident, you know. Yeah. That's who I wanted

1 to talk to. So that's who I called.

2 Q And then she came down and talked with you some more?

3 A Yes.

4 Q And she gave you advice?

5 A But had he had talked to her before I talked to her.

6 Q I got that part. And then she gave you advice.

7 A Well, make sure you put it in.

8 Q And just for the record, she's not an attorney, is
9 she?

10 A What?

11 Q Your wife is not an attorney or a lawyer, is she?

12 A Nah.

13 Q Thank you.

14 **THE COURT:** Anything further?

15 **MS. HUDGINS:** Just briefly on redirect, Your
16 Honor. May it please the Court.

17 REDIRECT EXAMINATION

18 **BY MS. HUDGINS**

19 Q Mr. Wilson, when your wife first got there, your
20 testimony is that she spoke with Sergeant McDonald?

21 A Yes. She -- he --

22 Q And that was outside your presence?

23 A Yes. While I was still in the little holding area
24 they had me in.

25 Q Okay. And then after she spoke with Sergeant

1 McDonald she came and spoke with you?

2 **A** No. Then he took me around there where she was at in
3 the office. They was already -- she was already in
4 the office when I got there.

5 **Q** You say when you got there she was crying?

6 **A** Yes.

7 **Q** And that was based on her conversation with Sergeant
8 McDonald?

9 **A** Yes.

10 **Q** And it's your testimony that you were coerced by her
11 to give this statement?

12 **A** Yeah. Well, I was persuaded, whatever.

13 **Q** But for her advise to you, based on her conversation
14 with Sergeant McDonald, you would not have given a
15 statement?

16 **A** No. I wouldn't have gave a statement. Even though I
17 had gave my word, I wouldn't have gave him a
18 statement.

19 **MS. HUDGINS:** Thank you, Your Honor. I don't
20 have any further questions.

21 **THE COURT:** Anything further, Ms. Campbell?

22 **MS. CAMPBELL:** No, sir.

23 **THE COURT:** You may step down, sir. All right.
24 Anything else by way of testimony, evidence on the
25 Jackson v. Denno issue?

1 **MS. CAMPBELL:** If I could put Sergeant McDonald
2 up just to --

3 **THE COURT:** Sergeant, you've already been sworn.
4 We won't re-swear you, but you are still under oath.
5 Was there anything further, Ms. Hudgins, from the
6 defense?

7 **MS. HUDGINS:** Nothing further, Your Honor.

8 **THE COURT:** All right. Thank you.

9 SCOTT MCDONALD, after being recalled and
10 reminded he is still sworn, testifies as follows:

11 DIRECT EXAMINATION

12 **BY MS. CAMPBELL**

13 **Q** Sergeant McDonald, just a few questions. Did you
14 suggest during the course of your talking to Mr.
15 Wilson on December the 23rd of 2004, did you suggest
16 he call someone that day, sir?

17 **A** No. He asked if he could call someone.

18 **Q** And that was his idea, not yours?

19 **A** That's correct.

20 **Q** In any way did you suggest to him he should call
21 someone or anything of that nature?

22 **A** No.

23 **Q** But you had advised him he had a right to an
24 attorney?

25 **A** Yes.

1 Q Did he ask -- who asked -- did he ask if his wife
2 could come down and speak to him, or his girlfriend
3 or whatever?

4 A Yes. Well, he asked if he could speak to her. And I
5 said, well, what's her number? And I dialed the
6 number for him and let him talk to her. And he was
7 explaining to her what he was doing. He was down at
8 Richland County on these charges.

9 Q So we was the one that actually informed her of the
10 charges?

11 A Right.

12 Q Did she -- subsequent to the phone call, did you talk
13 to her on the phone?

14 A I talked to her briefly on the phone. And she, you
15 know, asked if she could come down, and I said that
16 would be fine.

17 Q And during the course of your conversation, did you
18 tell her at any point he was facing 40 years?

19 A No. I don't recall that.

20 Q Was he present when you were talking to her on the
21 phone?

22 A Yes.

23 Q So he heard what you were saying to her?

24 A Right.

25 Q Did she come down to the station that day?

1 **A** Yes, she did.

2 **Q** And when she first came to the station, did you take
3 her aside and tell her to get a statement or
4 something of that nature?

5 **A** No. I talked to her when she got there, explained
6 the situation, explained the evidence we had at this
7 point and basically just let laid it all out for her.
8 And then I allowed her to go in there and speak with
9 him about it.

10 **Q** At any point did the during of your conversations
11 with her that day, did you tell her you needed her to
12 help you get a statement or anything of that nature?

13 **A** No.

14 **Q** And at whose request did she actually come down to
15 the station that day?

16 **A** Mr. Wilson's request.

17 **Q** And what was the reason you explained to her what he
18 was facing and things of that nature?

19 **A** Say that again?

20 **Q** Did she want him to understand what he was facing?

21 **A** Yes. I explained all the charges, the evidence we
22 had against him at that point and, you know, let her
23 talk to him at that point.

24 **Q** And did he actually have an opportunity to spend some
25 time alone with her that day?

1 **A** Yes, he did.

2 **Q** And it was subsequent to that that he actually gave
3 you a statement?

4 **A** Correct.

5 **Q** At any time either prior or during the course of
6 this, at any time did you make an agreement or some
7 kind of promise that if he got to talk to her you got
8 a statement?

9 **A** No.

10 **Q** Or were any words to that effect used that day?

11 **A** No. He -- like I said earlier, he was kind of
12 wrestling with the gravity of his situation, facing
13 four armed robberies, and was kind of not sure, you
14 know. He wanted to talk to someone a little bit more
15 about this before he talked to me and gave me a
16 statement. So I allowed him to call her. And she
17 wanted to come down and talk to him further about it,
18 and I said that would be fine.

19 **Q** At any point did he make the agreement with you that
20 if you got her down there and he got to talk to her
21 that he would definitely give you a statement or
22 anything of that nature?

23 **A** I don't recall that. No.

24 **Q** And did you make any promises of that nature in any
25 way?

1 **A** No.

2 **Q** That if he got to talk to her that you got your
3 statement?

4 **A** No.

5 **MS. CAMPBELL:** That's all I'd have, Your Honor.

6 **THE COURT:** Anything further?

7 **MS. HUDGINS:** Your Honor, I don't have any
8 further questions of the Sergeant.

9 **THE COURT:** All right. You may step down. All
10 right. What's the other issue? Identification? Is
11 that right? Let's go ahead and deal with that.

12 **MS. CAMPBELL:** The State would call Gloria
13 Norman.

14 GLORIA NORMAN, after being duly sworn, testifies
15 as follows:

16 **THE CLERK:** Please have a State. State your
17 full name for the record.

18 **MS. HUDGINS:** Your Honor, may I approach counsel
19 for a moment?

20 **THE COURT:** Sure.

21 (Pause)

22 **MS. HUDGINS:** Thank you, Your Honor.

23 DIRECT EXAMINATION

24 **BY MS. CAMPBELL**

25 **Q** Ms. Norman, where are you employed?

1 **A** I'm employed at Pantry Express which is a Shell
2 station at 8550 Farrow Road.

3 **Q** And how long have you been working there, ma'am?

4 **A** Up to date, almost two years. It will be two years
5 in February.

6 **Q** I want to turn your attention back first of all to
7 March of 2004. Were you working one evening when a
8 robbery occurred?

9 **A** Yes, ma'am; I was.

10 **Q** And can you tell the judge briefly what happened on
11 that evening?

12 **A** There was an incident that -- I think I was putting
13 up cigarettes or something. I was on a step stool.
14 And I noticed a gentleman coming in. He had a hooded
15 sort of jacket on. And his -- the face seemed to be
16 a little bit obscured because it was kind of hidden.
17 It was kind of a big hood. And I was assuming he was
18 just going by to get some coffee or something. So I
19 just followed to see where he was going.

20 **MS. HUDGINS:** Your Honor, I would object at this
21 point. I think this is going into a prior
22 shoplifting that happened prior to the actual armed
23 robbery, and I'm not sure of the relevance as to Neil
24 v. Biggers.

25 **MS. CAMPBELL:** Your Honor, I believe the only

1 relevancy at to the Neil v. Biggers would be that she
2 did see him on two prior occasions, once during a
3 shoplifting and again that day during a robbery that
4 actually occurred. And she therefore when he robbed
5 her some six months later recognized him and later
6 was able to identify him.

7 **THE COURT:** I'll permit it, overrule the
8 objection. Go ahead.

9 **Q** Thank you, sir. Go ahead, Ms. Norman.

10 **A** So I had gotten -- I was seeing where he was going.
11 I was assuming that he was going to go get some
12 coffee. And it was kind of cold that evening. So
13 that was understandable, him having a jacket with a
14 hood on it and I think nothing of it. Before I knew
15 it, he came right behind the register. He was
16 standing right there.

17 **Q** And were you behind the register also?

18 **A** Yes, ma'am, I was.

19 **Q** And at that point did he have any type of weapon that
20 you saw on him?

21 **A** Yes. He had a knife in his right hand.

22 **Q** In his right hand?

23 **A** Yes, ma'am.

24 **Q** And did he say anything to you when he came behind
25 the register?

1 **A** He demanded for me to open the drawer. And I was so
2 nervous, I think that was probably my third evening I
3 had worked the evening shift, my third night working
4 the evening shift. Because I was -- I got very, very
5 nervous, kind of frantic. I almost got to the point
6 I couldn't even -- I was afraid I wouldn't be able to
7 open the register. That's how nervous I was. It
8 took me a while for me to get my act together where
9 the register would open.

10 **Q** Were you able to open the register?

11 **A** Yes. Finally, yes.

12 **Q** Did you give him money? Did he take money? What
13 happened?

14 **A** I believe at that point I had handed him the money.

15 **Q** It was in the register?

16 **A** Yes, ma'am.

17 **Q** And at that point did he stay in the store or did he
18 leave?

19 **A** He left. But he kept saying, "Hurry, hurry. Open
20 up. Open up. Open that drawer."

21 **Q** And during the course of this, when you saw him, did
22 he get up close to you?

23 **A** Yes. He was probably standing I would say about two
24 and a half feet away from me on the left side.

25 **Q** Okay. And at any point during the course of this,

1 you mentioned that his face was kind of obstructed
2 when you first saw him?

3 **A** Yes.

4 **Q** Did you get a look at his face?

5 **A** Even with the hood on, I couldn't get a good view of
6 his face because of the hood. It was kind of
7 obscured.

8 **Q** But when he came up close to you, were you able to
9 see his face?

10 **A** Yes.

11 **Q** So when he first walked in, you couldn't see it. It
12 was kind of obscured?

13 **A** That's right.

14 **Q** But then when he got up within two and a half feet,
15 you can see his face?

16 **A** Yes.

17 **Q** And did you recognize him from something that
18 occurred earlier that day?

19 **A** Yeah. It was earlier that evening. I realized it
20 was the same individual that came in earlier that
21 evening. And he had asked to use the telephone,
22 something about he got left or got stranded or
23 something. Somebody had dropped him off or he made
24 some sort of excuse. He needed a ride or something.
25 He needed to use the phone, find out where his buddy

1 went. He got stranded somehow in the store. And --

2 **Q** You'd actually seen him in the store earlier that
3 evening?

4 **A** Yes. It was earlier that evening. And so I let him
5 use the phone. And he had called someone. I don't
6 know who he called. Okay. It was later that I
7 recognized him coming into the store. And he had
8 asked for, I think first it was a pack of cigarettes.
9 He wanted to know how much it was. And then it was a
10 carton of cigarettes. Then he wanted two cartons
11 of -- as a matter of fact, it was Newports. So I
12 went to the back and got those two cartons. That's
13 when he ran off with those cartons of cigarettes.

14 **Q** And that occurred on the same day that we're talking
15 about in March?

16 **A** It was that same evening. Mm-hmm (affirmative).

17 **Q** You continued to work at the Pantry Express. Is that
18 correct?

19 **A** Yes, ma'am.

20 **Q** And I want to turn your attention to August the 20th
21 of 2004?

22 **A** Yes.

23 **Q** Were you working the night shift that night?

24 **A** Yes, ma'am; I was.

25 **Q** And in the early morning hours, I believe it was

1 around 2 or 3:00 in the morning --

2 **A** Yes.

3 **Q** -- did you get robbed again?

4 **A** Yes, ma'am; I did.

5 **Q** And tell the judge what happened on this robbery?

6 **A** I was in the back of the store. I was putting ice in
7 a bucket where we fill it up for the fountain drinks.
8 And I was filling up the bucket of ice. And as I
9 came out, I noticed two men standing right where you
10 have your lottery display for your lottery tickets.
11 I noticed there was two men standing there when I
12 came out from the back.

13 **Q** Okay.

14 **A** And I think I sort of asked them if I could help you
15 or something like that, and they mentioned about
16 cigarettes.

17 **Q** Okay. And one of the men actually spoke to you?

18 **A** Yes.

19 **Q** And one of them started asking you about cigarettes.
20 Is that correct?

21 **A** Right.

22 **Q** And did you kind of have a conversation back and
23 forth with him?

24 **A** Yes. When I looked at them I asked -- I think I
25 mentioned something about, how old are you and do you

1 have an I.D.

2 Q And during the course of talking to the one man on
3 the other side of the counter, what happened to the
4 other man?

5 A Okay.. The other man that was standing right next to
6 him, right directly behind or in front of the lottery
7 ticket display had come around.

8 Q Behind the counter?

9 A Yes, ma'am.

10 Q And was he armed with anything when he came around
11 the counter?

12 A Yes, ma'am.

13 Q What did he have?

14 A He had a knife.

15 Q And which hand did he have the knife in? Do you
16 remember?

17 A He had it in his right hand.

18 Q And at that point when you looked up and saw him, did
19 you recognize him?

20 A Yes.

21 Q And how did you recognize him?

22 A I recognized him for the height and the build and
23 everything else and then having the same weapon. And
24 he demanded for the drawer to be opened. Of course
25 this time I -- I was a little bit more relaxed. I

1 was a little bit more relaxed. I could open the
2 drawer a little bit faster, you know, not be so
3 nervous and panicky, that I decided to keep my cool
4 on this one.

5 **Q** During the course of this one, how close did he get
6 to you? Do you know?

7 **A** Well, I would say probably about three feet.

8 **Q** Three feet?

9 **A** Mm-hmm (affirmative).

10 **Q** And you're estimating on this?

11 **A** Yes.

12 **Q** Was it close enough for you to see his face?

13 **A** Yes.

14 **Q** And what was lighting like in that store that night?
15 Were the lights on?

16 **A** Yes. The lights were all on.

17 **Q** Could you see about as good as you can see in here?

18 **A** Yes, ma'am.

19 **Q** And he was right up on you. Is that correct?

20 **A** Yes.

21 **Q** And you got a good look at his face?

22 **A** Yes, ma'am.

23 **Q** And the other man, that was on the other side of the
24 counter, did you get a good look at him, too?

25 **A** Yes. I was seeing he was directly in front of me.

1 Q Do you know how long they were in the store?

2 A Positively, no. I did not really know how long they
3 were in the store.

4 Q Is there a videotape of this that accurately reflects
5 everything?

6 A Yes.

7 Q After you were robbed on August, the 20th of 2004, did
8 you call the police?

9 A Yes, ma'am. Immediately called the police.

10 Q And did you give a description of the men that had
11 robbed you?

12 A Yes, ma'am.

13 Q I want to turn your attention first to about a month
14 later, on September the 24th of 2004. Did you have
15 an occasion to meet with Sergeant McDonald?

16 A Yes, ma'am; I did.

17 Q And did he show you a photo line-up?

18 A Yes. Yes, he did.

19 Q And I'm showing you this photo line-up. You saw a
20 total of two photo line-up's. Is that right?

21 A Mm-hmm (affirmative). Yes, ma'am.

22 Q And I show you this. And do you recognize this
23 six-man photo line-up?

24 A Yes, I do.

25 Q And when Sergeant McDonald showed you that line-up,

1 did he tell you which one to pick or anything?

2 A Yes, he did.

3 Q He told you which one to pick?

4 A No, no. No. He -- no. He asked me to look at it
5 and for me to pick which one was in the store.

6 Q To see if you recognized --

7 A Yes. To identify him.

8 Q -- anyone that had robbed you?

9 A Right.

10 Q And did you look at those six photos?

11 A Yes, I did.

12 Q You looked at all of them. And did you recognize
13 anyone?

14 A Yes. I recognized one.

15 Q Which one was that?

16 A And that was number 6.

17 Q Number 6. And are those your initials underneath it?

18 A Yes, ma'am, it is.

19 Q And after you recognized the person, did you put your
20 initials underneath?

21 A Yes, I did. It's dated also.

22 Q Okay. And I believe you also then signed off on this
23 affidavit --

24 A Yes.

25 Q -- saying that's who you recognized?

1 **A** Right.

2 **Q** And you said in this one you recognized him as the
3 robber from the occasion in August and the one in
4 March?

5 **A** Yes, ma'am. Mm-hmm (affirmative).

6 **Q** And there were two men involved in the one in August.
7 Is that correct?

8 **A** Yes, ma'am. There was two.

9 **Q** I want to your turn your attention to another month
10 later, about November the 3rd of 2004. Did you have
11 an occasion to meet with Sergeant McDonald again?

12 **A** Yes, ma'am; I did.

13 **Q** And did he show you another photo line-up?

14 **A** Yes, ma'am, I did.

15 **Q** And, again, did he tell you which one to pick or
16 anything?

17 **A** No. No. He didn't tell me which one to pick.

18 **Q** Did you have an opportunity to look at these six
19 individuals?

20 **A** Yes, I did.

21 **Q** And what -- when you looked at those six individuals,
22 did you recognize anyone in that line-up?

23 **A** Yes, ma'am. I immediately recognized number 6. And,
24 I mean, it was just like it was a flash.

25 **Q** And when you recognized number 6, did you realize

1 something about your earlier identification?

2 A Yes. That I --

3 Q And tell the judge what you realized when you saw
4 that man?

5 A Well, I realized that this was actually the
6 individual, this in this photo.

7 Q Was the individual --

8 A -- is the one, is the one that robbed me twice.

9 Q Okay. And the individual that you picked out
10 earlier --

11 A Mm-hmm (affirmative).

12 Q -- how many times did he rob you? There were two men
13 involved in the August robbery, right?

14 A Yes.

15 Q Was he one of those two men?

16 A Yes.

17 Q Were both those men involved in the August robbery?

18 A Yes.

19 Q And of those two, which one also did the March
20 robbery that you recognized?

21 A This one. Number 6.

22 Q The one he had shown to you in November?

23 A Yes.

24 Q And then once you recognized him -- and at any
25 point -- now, he didn't tell you which one to pick,

1 did he?

2 **A** No, no. No, he didn't.

3 **Q** Did you fill out this affidavit?

4 **A** Yes.

5 **Q** And does that indicate which one you recognized?

6 **A** Yes. Uh-huh (affirmative).

7 **Q** And you recognized him based on having seen him in
8 the store and being robbed by him?

9 **A** Yes.

10 **Q** You mentioned earlier, too, that you recognized the
11 guy the second time from the height and build and
12 everything?

13 **A** Yes.

14 **Q** But in these pictures there's no height or build.
15 How did you recognize him? Based on his face?

16 **A** Yes, ma'am.

17 **Q** And both of these was based on the face?

18 **A** Right.

19 **MS. CAMPBELL:** Your Honor, at this time we'd
20 mark them State's I believe 4 and 5?

21 **COURT REPORTER:** Yes.

22 (WHEREUPON, State's Exhibit No. 4 is marked for
23 identification.)

24 (WHEREUPON, State's Exhibit No. 5 is marked for
25 identification.)

1 **MS. CAMPBELL:** That's all I have, Your Honor.

2 **THE COURT:** Cross examine.

3 **MS. HUDGINS:** Thank you, Your Honor. If I may
4 use the State's Exhibits just to make --

5 **THE COURT:** Sure.

6 **MS. HUDGINS:** I've got copies of my own
7 obviously. Just to make sure it's clear, so I know
8 which are which. Thank you, Your Honor.

9 CROSS EXAMINATION

10 **BY MS. HUDGINS**

11 **Q** Mr. Wilson, I just want to be clear and go in
12 sequential order about which line-up you were shown
13 first. I'm going to hand you what's been marked as
14 State's Exhibit No. 4. Would you read the date that
15 you were shown that photo line-up?

16 **A** That was September 24th, '04.

17 **Q** September 24th, '04. And in that photo line-up you
18 picked out an individual in spot number 6?

19 **A** Yes.

20 **Q** Okay. And you identified that person in spot number
21 6 as the person that committed both the robbery on
22 March the 29th as well as the robbery on August the
23 20th?

24 **A** At that time I thought, yes.

25 **Q** Okay.

1 **A** Yes. At that time. This is dated --

2 **Q** At that time in September --

3 **A** Because this was the first one I had seen the photo.

4 **Q** And that's exactly what I needed to establish. This
5 was the first photo line-up?

6 **A** Yes. Yes, ma'am.

7 **Q** Now, Ms. Norman, were you able -- did Sergeant
8 McDonald show you a series of photo line-up's when he
9 showed you this photo line-up?

10 **A** I -- yes. Yes, he did. And then we came to that
11 part of that page when I saw that one.

12 **Q** So there were several pages that actually made up
13 your photo identification in this case?

14 **A** Yes, ma'am. Yes.

15 **Q** Do you know how many pages prior to this one you
16 viewed?

17 **A** It might have been a couple of them, two or three.

18 **Q** Two?

19 **A** I don't know exactly how many.

20 **Q** Okay. That's fine. And you reference a book. Was
21 this compiled in a book?

22 **A** I can't remember if it was or not.

23 **Q** But were they pages like this?

24 **A** Yes.

25 **Q** Okay. They were black and white --

1 **A** Yes, ma'am.

2 **Q** -- pages? They weren't color pages?

3 **A** No.

4 **Q** And in your photo identification process, you were
5 never shown a sequential line-up where you were shown
6 one individual at a time in a series?

7 **A** I believe there might have been a few. I'm not
8 positive. I'm not really positive.

9 **Q** And I'm sorry. I didn't mean to hurry you. So you
10 believe that Sergeant McDonald may have showed you
11 individual pictures and then showed you the pictures
12 of the photo line-up?

13 **A** I believe he may have, but I can't remember if he did
14 or not.

15 **Q** That's fine. And, Ms. Norman, I just direct your
16 attention to the back of what's been marked as
17 State's Exhibit No. 4. If you could just verify that
18 that is in fact your signature and that you have
19 identified the individual in number 6 as the person
20 that committed both armed robberies or both
21 robberies? I think it says both armed robberies.

22 **A** Yes. That is my signature.

23 **Q** That is your signature?

24 **A** Mm-hmm (affirmative).

25 **Q** And at that time you believed that this individual

1 had in fact committed both of those robberies?

2 **A** Yes.

3 **Q** Now, I direct your attention to August 20th of 2004.

4 Another robbery happened in your store?

5 **A** Mm-hmm (affirmative).

6 **Q** And you were again shown some photo line-up's by
7 Sergeant McDonald, correct?

8 **A** Yes, ma'am.

9 **Q** Now, were you ever shown this photo line-up again by
10 Sergeant McDonald when you were interviewed in
11 reference to the August 20th photo line-up?

12 **A** Yes. That I can't say for sure.

13 **Q** Okay. That's fine. If you don't know, that's fine.
14 I understand. But you know for a fact that you were
15 shown --

16 **A** Yeah. Yeah. I was shown that one again, yes.

17 **Q** You were shown this one again?

18 **A** Mm-hmm (affirmative).

19 **Q** And did you identify an individual again from the
20 August 20th robbery?

21 **A** I recognized the face of that one, yeah. At that
22 time I recognized it.

23 **Q** And did you fill out a form?

24 **A** I had seen it before.

25 **Q** And did you fill out a form for Sergeant McDonald

1 indicating that?

2 **A** What do you mean?

3 **Q** Similar to the form that you filled out -- similar to
4 this form that you filled out --

5 **MS. CAMPBELL:** Your Honor, I don't mean to
6 object. I think it's somewhat misleading. These
7 were about August 20th.

8 **MS. HUDGINS:** And I'm asking about the
9 August 20th. She's indicated that she saw a photo
10 line-up containing Franklin Dixon in reference to the
11 August 20th. And I'm just asking if she filled out a
12 form similar to this form for the August 20th
13 identification.

14 **A** Yes. I believe --

15 **MS. CAMPBELL:** This form is for the August 20th.

16 **A** Yes.

17 **THE COURT:** We're getting the incident dates
18 which as I understand it is August the 20th. And I
19 know there was some testimony about when these were
20 actually shown, which I believe was in September and
21 October or something like that.

22 **A** Yeah. The 24th.

23 **THE COURT:** So let's be sure we're all talking
24 about the same thing.

25 **A** Okay. Yes.

1 **THE COURT:** So, just by number or by date as to
2 when they were shown or something like that.

3 **MS. HUDGINS:** And I apologize to the Court and
4 to the witness.

5 **A** I'm sorry. I was getting --

6 **Q** No, no. My questions may be confusing. And I
7 apologize. Apparently they are. I'm talking about
8 in November when you were shown this photo line-up,
9 were you also shown the photo line-up that you were
10 shown on September 24th?

11 **A** Right.

12 **Q** Okay. And at that point you picked out this same
13 individual?

14 **A** Right.

15 **Q** In November?

16 **A** Mm-hmm (affirmative).

17 **Q** Now, I hand you what's been marked as State's Exhibit
18 No. 5. Can you say the date or tell the Court the
19 date that you viewed that photographic line-up?

20 **A** It's November the 3rd.

21 **Q** November the 3rd?

22 **A** 2004.

23 **Q** 2004. And, Ms. Norman, could you just flip State's
24 Exhibit No. 5 to the back. And is that your
25 signature?

1 **A** Yes, ma'am, it is.

2 **Q** And at that point you identified the individual in
3 space number 6, correct?

4 **A** Yes. Yes, ma'am.

5 **Q** Now, during that photographic line-up did Sergeant
6 McDonald also show you another series of photographs
7 as he did when he showed you the September 24th
8 line-up?

9 **A** Yeah. I think it was maybe a few. Not many.

10 **Q** He showed you a few prior to this one?

11 **A** Yeah.

12 **Q** Where were you when the photographic line-up was
13 shown to you?

14 **A** I believe I was at his office.

15 **Q** You were in Sergeant McDonald's office. Was there
16 anyone else present with you when the photographic
17 line-up was shown?

18 **A** No. No, ma'am.

19 **Q** And so you initially identified the person in number
20 6?

21 **A** Yes.

22 **Q** On September 24th of '04?

23 **A** Mm-hmm (affirmative).

24 **Q** And then you were re-interviewed in November and
25 said, oh, it wasn't in fact the person identified on

1 receive 24th; it's the same person or a different
2 person but in the same block, in number 6?

3 **A** Exactly.

4 **Q** In the same space?

5 **A** Yes, ma'am.

6 **Q** Thank you, Ms. Norman.

7 **MS. HUDGINS:** I don't have any further
8 questions, Your Honor.

9 **THE COURT:** Redirect?

10 **MS. CAMPBELL:** No, sir.

11 **THE COURT:** All right. You may step down.

12 **MS. CAMPBELL:** The State would call Sergeant
13 McDonald.

14 **THE COURT:** You're still under oath, sir.

15 SCOTT MCDONALD, after being recalled and
16 reminded he is still sworn, testifies as follows:

17 DIRECT EXAMINATION

18 **BY MS. CAMPBELL**

19 **Q** Sergeant McDonald, during the course of your
20 investigation, did you initially develop a suspect in
21 at least one of these armed robberies as a Franklin
22 Dixon?

23 **A** Yes, I did.

24 **Q** And briefly tell the Court how you developed him as a
25 suspect?

1 **A** After the robbery on August 20th some lottery tickets
2 were stolen, and subsequently these lottery tickets
3 were attempted to be passed at a couple of different
4 stores. And as soon as they tried to be passed, the
5 Lottery Commission is apparently notified immediately
6 upon this. And they called the store and alert the
7 clerk there are stolen lottery tickets and the store
8 does everything they can to get a description, get a
9 vehicle description, you know, notify the police, et
10 cetera.

11 Based on this from two different stores, I was
12 able to identify one of the persons that tried to
13 pass these stolen lottery tickets, did a search
14 warrant at his residence, interviewed him. He gave
15 me a nickname of the suspect by the name of "Cookie",
16 lived in the Greenview area of Columbia.

17 I subsequently put an e-mail out to all the
18 other investigators in C.I.D. if anyone was familiar
19 with a "Cookie" in this area. I got two names
20 provided to me. One was Franklin Dixon. One was
21 Willie Goins. I pulled up their pictures. They both
22 looked fairly similar. One was a little bit larger
23 than the other. I put both of them in photo
24 line-up's, took them back to the person that had
25 passed the stolen lottery tickets, and he was able to

1 positively I.D. Mr. Dixon as the man that gave him
2 the stolen lottery tickets.

3 I showed him the other photo line-up as well.
4 He didn't recognize anyone in there as being it. So
5 franklin Dixon at that point was identified as the
6 man that had given him the stolen lottery tickets.
7 From there I got with Ms. Norman and showed her that
8 same photo line-up, and she positively identified him
9 as being one of the Defendants.

10 Q And I show you what's been marked as State's
11 Exhibit --

12 **THE COURT:** When you say "him" now, you're
13 talking about Mr. Dixon?

14 A Mr. Dixon. That's correct.

15 Q And I know you State's Exhibit No. 4. You indicate
16 she positively identified Mr. Dixon. Is that the
17 photo line-up you showed her?

18 A That is the one and only line-up I showed her.

19 Q And at that point did it have any writing on it, or
20 was that her writing?

21 A That was her writing.

22 Q And she indicated at that point that that was the man
23 or one of the men that had robbed her on August the
24 20th?

25 A That's correct.

1 Q And did she also indicate at that point that she
2 thought that was the man that had robbed her on
3 March, in March also?

4 A That is correct.

5 Q Subsequent to her identifying Mr. Dixon, were you
6 able to get warrants for him?

7 A Yes, I did.

8 Q And was he in fact arrested on these charges?

9 A Yes, he was.

10 Q Did Mr. Dixon give a statement?

11 A Yes. He gave a statement.

12 Q Based on that information from Mr. Dixon, were you
13 able to were you able to identify the co-defendant in
14 the case from the August 20th --

15 A That is correct. Mr. Bruce Wilson.

16 Q As well as the October one?

17 A That's right.

18 Q And based on the information he had given you, did
19 you develop another line-up that you wanted to show
20 Ms. Norman?

21 A Yes, I did.

22 Q And when did you show that line-up to Ms. Norman?

23 A On November 3rd, 2004.

24 Q And I believe that's been marked State's Exhibit 5?

25 A Correct.

1 Q When she looked at that six-person line-up, did she
2 recognize anyone?

3 A Number 6.

4 Q And when she recognized number 6, did she give you
5 some additional information?

6 A She did. She said he was the one that had robbed her
7 previously. She had mistaken on the first pick Mr.
8 Dixon as being the one involved in March.

9 Q Did she indicate still though that Mr. Dixon was the
10 one involved in August?

11 A Yes.

12 Q So that would be Mr. Dixon she identified and Mr.
13 Wilson as being the two that perpetrated the robbery
14 in August. Is that correct?

15 A That is correct.

16 Q And then she further clarified for you that Mr.
17 Wilson was the one who had actually come in March?

18 A That's correct. I took a short statement from her
19 just to clarify that.

20 Q And during that time did you re-show her -- and it's
21 been confusing in here -- did you re-show her any
22 line-ups or anything?

23 A No. She was shown a single line-up both times; no
24 other line-ups, no other pictures individually.

25 Q And when you presented the line-ups to her did you

1 tell her which one to pick? Did you influence her in
2 any way?

3 **A** No, I did not.

4 **Q** And in fact what did you say to her when you
5 presented the line-ups?

6 **A** Let me see if I can find it in my notes. I should
7 have what I asked her. I asked her does she see
8 anyone in these pictures that robbed her on
9 August 20th 2004. Ms. Norman carefully studied the
10 line-up and she indicated Mr. Dixon at that point and
11 she indicated he had been the one on March 20th.

12 **Q** As well. And then when you showed the line-up on
13 November the 3rd --

14 **A** I once again asked her the same question: Do you see
15 anyone in these pictures that robbed you on August
16 20th.

17 **Q** And she indicated ...?

18 **A** She had. Number 6, Mr. Wilson.

19 **Q** And that's when she informed you that he had been the
20 one actually that came in on the March one also. Is
21 that correct?

22 **A** That is correct.

23 **MS. CAMPBELL:** That's all I have.

24 **THE COURT:** All right. Cross examine.

25 **MS. HUDGINS:** Thank you, Your Honor. May it

1 please the Court.

2 CROSS EXAMINATION

3 **BY MS. HUDGINS**

4 **Q** Sergeant McDonald, when you -- and I'm going to try
5 to be real quick. When you interviewed Ms. Norman on
6 November the 3rd --

7 **A** Mm-hmm (affirmative).

8 **Q** -- she had already picked out Franklin Dixon from a
9 previous line-up shown to her on September the 24th I
10 believe?

11 **A** That is correct.

12 **Q** Okay. And just so we're clear for the record, you
13 showed her a photo line-up on September 24th of '04
14 that contains a picture of Franklin Dixon?

15 **A** That's correct.

16 **Q** And Mr. Dixon is located in spot number 6 of your
17 six-person photo line-up?

18 **A** That's correct.

19 **Q** Okay. And at that point when you interviewed her or
20 showed her this photo line-up on September 24th of
21 '04, she indicated that Mr. Dixon was in fact the
22 individual that had robbed her on March 29th of '04
23 in addition to the person that robbed her on
24 August 20th of '04?

25 **A** That is correct.

1 Q Okay. Then I believe in reviewing your notes, you
2 indicated you brought -- after an arrest for Mr.
3 Dixon was executed --

4 A Mm-hmm (affirmative).

5 Q -- you called Ms. Norman back in and told her of the
6 arrest of Mr. Dixon?

7 A That's correct.

8 Q Okay. And you asked her if she could look at some
9 more pictures in an effort to identify a
10 co-defendant?

11 A This was on when? November 3rd?

12 Q It's on page 7 of your investigative notes. It looks
13 like it may be prior to 10-25 of '04. It's up at the
14 second paragraph of page 7 of your investigative
15 notes.

16 A Yeah. I asked her if she was positive Wilson was the
17 suspect that had robbed her both times, because she
18 had already identified Mr. Dixon as doing this. And
19 she indicated to me that, you know, due to both
20 suspects looking so similar she didn't have this
21 picture to look at before. Also Norman is correct in
22 identifying Dixon from the robbery of 8-20-04 and now
23 identifying Wilson for this same robbery. There is a
24 similarity between the two of them. They both have
25 very similar characteristics.

1 Q I understand. But if you look at the top of that
2 page, if you go up there, you indicate telling Ms.
3 Norman that in fact she needed to identify a
4 co-defendant in the case. If she could look at some
5 more pictures in an effort to identify a
6 co-defendant. Do you see where I'm reading?

7 A Yes.

8 Q And that's in fact what you did?

9 A I asked her if she could look at some more pictures,
10 yes.

11 Q To identify a co-defendant?

12 A Which would be this line-up here.

13 Q Okay.

14 A Not a series of pictures, not a series of line-ups,
15 but that one line-up.

16 Q Okay. And this is the line-up that's been marked as
17 State's Exhibit No. 5?

18 A Yes.

19 Q Okay. Now, when you asked her to come in and
20 identify a co-defendant, did you re-show her what's
21 marked as State's Exhibit 4?

22 A No, I did not.

23 Q The photo line-up that contains Franklin Dixon?

24 A Right. No, I did not.

25 Q You did not she re-show her this?

1 **A** No, I did not.

2 **Q** The only photographic line-up that you showed to her
3 on November the 5th of 2004 is the photo line-up
4 containing Mr. Wilson?

5 **A** That is correct.

6 **Q** Okay. I want to get to the -- I'll go ahead and ask
7 you about it now. The positioning of State's Exhibit
8 No. 4 which is the 9-24-04 --

9 **A** Mm-hmm (affirmative).

10 **Q** -- Mr. Dixon is located in spot number 6?

11 **A** Correct.

12 **Q** The photographic line-up that's marked as State's
13 Exhibit No. 5 which was shown to Ms. Norman on
14 November 5th of 2004 --

15 **A** Mm-hmm (affirmative).

16 **Q** -- Mr. Wilson, the suspected co-defendant in this
17 case, you've already told her that this was a
18 suspected co-defendant, is located in box number 6?

19 **A** He is in number 6. I didn't tell her he was the
20 co-defendant. She identified him as the
21 co-defendant.

22 **Q** Understood. Prior to showing her the photographic
23 line-up though you told her that you needed her to
24 identify a co-defendant. You didn't say which one.

25 You just said you needed her to identify a

1 co-defendant?

2 **A** I had some pictures for her to look at. That's
3 correct.

4 **Q** Okay. And both the Defendant, Mr. Dixon, and the
5 Defendant, Mr. Wilson, are both located in spot
6 number 6 of the photographic line-up?

7 **A** That is correct.

8 **Q** Sergeant McDonald, I want to get into a little bit
9 about your training in photographic line-ups. When
10 was the last time you took a refresher course at the
11 academy about photographic line-ups?

12 **A** As far as I'm aware, there are no courses on
13 photographic line-ups.

14 **Q** Have you ever taken a course on how to conduct a
15 photographic line-up?

16 **A** No. It's on-the-job training.

17 **Q** And at the Richland County Sheriff's Department have
18 you ever had an opportunity to give a sequential
19 photographic line-up?

20 **A** No. We do line-ups just as you see there.

21 **Q** In your experience at the time Richland County
22 Sheriff's Department have you ever had an opportunity
23 to do live line-ups where a victim would actually see
24 through two-way glass?

25 **A** I did that on one occasion. It was a one-on-one type

1 situation.

2 Q It wasn't a series of individuals. It was --

3 A No.

4 Q Are you aware of any of the -- you say you haven't
5 ever taken a course on conducting photographic
6 line-ups. Are you aware of any of the research about
7 the dangers of photographic line-ups in
8 misidentification?

9 A No. I mean, I've seen things, TV, here and there,
10 Court TV, that type stuff. No courses or anything
11 like that.

12 Q And you've never ever in your training done a
13 sequential line-up where you showed one individual at
14 a time?

15 A No.

16 Q Are you familiar with a blind photographic
17 identification procedure?

18 A A blind?

19 Q (Nods head affirmatively).

20 A No, I'm not.

21 Q You were in fact the person that showed her this
22 photographic line-up?

23 A That's correct.

24 Q And at that point you knew that Bruce Wilson was a
25 suspect in your case?

1 **A** Correct. I believed him to be a suspect. I didn't
2 know for sure until she looked at him.

3 **Q** Fair enough. You believed -- but prior to you
4 showing the photographic line-up to Ms. Norman, you
5 believed Mr. Wilson to be a suspect in your case?

6 **A** Correct.

7 **Q** And you were the only one there present showing Ms.
8 Norman these photographs?

9 **A** That's correct.

10 **Q** And he was in the number 6 position, the same as
11 Franklin Dixon?

12 **A** That's correct.

13 **Q** Thank you, Sergeant McDonald.

14 **MS. HUDGINS:** I don't have in any further
15 questions, Your Honor.

16 **MS. CAMPBELL:** Just a couple of questions.

17 REDIRECT EXAMINATION

18 **BY MS. CAMPBELL**

19 **Q** You also had reason to believe he was a suspect in an
20 additional two other armed robberies. Is that
21 correct?

22 **A** That is correct.

23 **Q** And you showed I believe a line-up from that June
24 armed robbery to Mr. Baker, and he was actually able
25 to pick Mr. Wilson, right?

1 **A** He was.

2 **Q** And that was a one-person armed robbery. Is that
3 correct?

4 **A** The June one?

5 **Q** The June one.

6 **A** Yes.

7 **Q** And then on October 25th there was also reason for
8 you to believe he did the October 25th armed robbery
9 as well?

10 **A** That's correct.

11 **Q** And you showed Mr. Frederick Hill a photo line-up as
12 well. Is that correct?

13 **A** That's correct.

14 **Q** Was Mr. Hill able to pick out someone?

15 **A** No, he wasn't.

16 **Q** And that would be based on the same information you
17 had?

18 **A** That's correct.

19 **MS. CAMPBELL:** Thank you, sir.

20 **THE COURT:** Any recross?

21 **MS. HUDGINS:** Beg the Court's indulgence.

22 (Pause)

23 RECROSS EXAMINATION

24 **BY MS. HUDGINS**

25 **Q** Sergeant McDonald, when you showed Mr. Baker the

1 photographic line-ups, or line-up, did you include a
2 picture of Mr. Dixon?

3 **A** No.

4 **Q** Thank you.

5 **MS. HUDGINS:** I have nothing further, Your
6 Honor.

7 **THE COURT:** All right, sir. You may step down.

8 **MS. CAMPBELL:** That's all, Your Honor.

9 **THE COURT:** All right. Anything from the
10 defense as far as the evidence is concerned?

11 **MS. HUDGINS:** No, Your Honor.

12 **THE COURT:** All right. All right. We're at
13 1:15. Let's go ahead and break for lunch. Be back
14 at 2:30. I'll hear whatever arguments and make a
15 ruling before we go forward. We'll break until 2:30.

16 **MS. HUDGINS:** Thank you, Your Honor.

17 (Whereupon, a lunch break is taken)

18 **THE COURT:** All right. Before we resume on the
19 two issues that were pending, the issue of the
20 statement made by the Defendant, I find that the
21 Defendant was advised of his rights. He understood
22 his rights and waived his rights. And taking the
23 circumstances, the totality of the circumstances, the
24 statement made by the Defendant was freely and
25 voluntarily given. For that reason, that statement

1 will be admitted.

2 On the issue of identification, again taking all
3 of the circumstances into consideration, the
4 identification will be permitted and will be
5 admissible. All right. I think that's all that I
6 had not ruled on prior to lunch.

7 And for the record, the Defendant has now
8 indicated to counsel that he wished to dress in
9 civilian clothes and has been permitted to do so and
10 has dressed in civilian clothes here in the
11 courtroom.

12 Anything else we need to get on the record
13 before we get a jury panel up, Solicitor?

14 **MS. CAMPBELL:** Your Honor, just to make sure, I
15 did hand up to your law clerk and to the defense
16 counsel a new potential witness list for the State.
17 It has one name added.

18 **THE COURT:** One name. All right. And Ms.
19 Hudgins, anything we need to get on the record?

20 **MS. HUDGINS:** Your Honor, I just think for
21 purposes of the Jackson v. Denno and the -- I
22 understand your ruling. I just think for purposes of
23 the record I need to clarify argument for argument
24 purposes.

25 **THE COURT:** Sure.

1 **MS. HUDGINS:** In terms of the Jackson v. Denno
2 hearing, it was the Defendant's testimony that his
3 statement was coerced as a result of the conference
4 with his wife and that he was under the impression
5 that Sergeant McDonald had said that if he arranges
6 that meeting with his wife, it being his wife's
7 birthday, that he would then give him a statement.
8 We would just point that out as evidence coming from
9 Mr. Wilson himself and point that out as to the
10 involuntariness of that statement, Your Honor.

11 In terms of the Jackson v. Denno hearing, Your
12 Honor, the two-prong test under Neil v. Biggers
13 requires that the identification process not be
14 tainted and that there not be the possibility of a
15 mistaken identity. I may not be quoting that exactly
16 correctly, but that's the basis for the two-prong
17 Neil v. Biggers test.

18 Your Honor, placing the two suspects in the
19 exact same location on this six-person line-up is I
20 would argue inherently tainted. And the basis for
21 misidentification is clear in that she misidentified
22 Mr. Dixon as being involved in the March 29th
23 incident when in fact he was not. I just place that
24 on the record. I understand the Court's rulings.

25 But I think given the nature of the photo

1 line-up and the two suspects, especially in light of
2 the fact that the one suspect was known and the
3 witness, Ms. Norman, was brought in to identify a
4 subject, was placed in the exact identical position
5 as the subject that she identified earlier would
6 taint this identification, and we would ask that it
7 be excluded.

8 **THE COURT:** All right. Solicitor, do you want
9 to put anything on the record in response?

10 **MS. CAMPBELL:** Your Honor, I just -- I mean,
11 case law I think is clear on that. I think what her
12 argument goes to is its weight, not its
13 admissibility. There was no evidence that anyone
14 told her who to pick or anything of that nature. And
15 I think the record is good for the admissibility of
16 the identification.

17 **THE COURT:** Well, based on what was presented to
18 the Court, I look at it more as coincidence than
19 anything else. I certainly don't think that it was
20 intentional or in any way overly suggestive. The
21 fact that the Defendant's photograph and the
22 co-defendant's photograph on two separate photo
23 line-ups I think at least a month apart just happened
24 to be in the same location on that sheet. But your
25 point is on the record. And my ruling would remain

1 the same.

2 **MS. HUDGINS:** Thank you, Your Honor.

3 **THE COURT:** All right. Anything further?

4 **MS. CAMPBELL:** No, sir.

5 **MS. HUDGINS:** Just the additional requested Voir
6 Dire that's not included in my written Voir Dire.

7 **THE COURT:** All right.

8 **MS. HUDGINS:** And I believe that was the
9 convenience store question. And I apologize if
10 that's not in there.

11 **THE COURT:** That's fine. All right, Solicitor.

12 **MS. CAMPBELL:** If you do the convenience store
13 or retail store, I think it might be --

14 **MS. HUDGINS:** I have no objection to that, Your
15 Honor.

16 **MS. CAMPBELL:** Okay.

17 **MS. HUDGINS:** The only other thing, and I don't
18 know if the Court wants to do this now or wants to
19 wait 'til later, but we do need to settle the records
20 of a couple of the witnesses, including Mr. Wilson.

21 **THE COURT:** We can take care -- we've had
22 conversation in the hallway indicating that we would
23 have jury selection and then opening statements. And
24 we can deal with those issues either when we get done
25 this afternoon or in the morning before we start

1 back. But we'll get that done before anybody
2 testifies.

3 **MS. HUDGINS:** Thank you, Your Honor.

4 **THE COURT:** All right. Anything further? All
5 right. Jackie, let's get our panel up here, please.

6 (Pause)

7 **THE BAILIFF:** The jury is all present, Your
8 Honor.

9 **THE COURT:** All right. Thank you. Ladies and
10 gentlemen, some of you have been in this courtroom.
11 Some of you have not. My name is Jim Johnson. I
12 live up in Laurens County. It's my pleasure to be
13 presiding over the court in this courtroom this week.
14 We are holding General Sessions or criminal court in
15 this courtroom, and we will select a jury for the
16 next case for trial.

17 When a case is presented in criminal court it
18 has been processed through the court system by a
19 document called an indictment. It is this piece of
20 paper that I'm holding. It contains the name of the
21 case, the number of the case and the charge that is
22 made in the case. It is not evidence of the charge
23 that it contains and cannot be considered by the jury
24 as evidence of that charge.

25 This is case No. 05-GS-40-24 entitled the State

1 vs. Bruce J. Wilson. The charge in the indictment is
2 one of armed robbery. It is alleged in the
3 indictment that this offense occurred in Richland
4 County on or about August the 20th, 2004, and that
5 the victim in the case is one Gloria Norman who was
6 employed and working at an establishment called
7 Pantry Express. Those are the allegations that are
8 made in the case.

9 The Defendant, Mr. Wilson, is present. He is
10 represented by Ms. Hudgins. If you'll introduce
11 yourself and your client to the panel, please, Ms.
12 Hudgins.

13 **MS. HUDGINS:** My name is Katherine Hudgins, and
14 this is my client, Bruce Wilson.

15 **THE COURT:** Thank you. The State in this case
16 will be represented by Solicitor Campbell. If you'll
17 introduce yourself and co-counsel, please.

18 **MS. CAMPBELL:** I'm Luck Campbell. I'm with the
19 Solicitor's office. And this is Margaret Fent.
20 She's also an Assistant Solicitor.

21 **THE COURT:** Thank you. There are a number of
22 potential witnesses. And I'm going to ask these
23 people to stand if they're in the courtroom as I read
24 their name just for a minute so you can see them.
25 And then they can have a seat. Potential witnesses

1 in the case, and these first several are all employed
2 with, associated with the Richland County Sheriff's
3 Office: Sergeant Scott McDonald, Captain Stan Smith,
4 Investigator Travis Holdorf, Investigator Bill Mann,
5 Deputy Chris Alexander, Corporal Reggie Culp,
6 Sergeant Shawn McDaniels.

7 And these next ones are not affiliated with the
8 Sheriff's Office: Gloria Norman, Franklin Dixon,
9 Frederick Hill, Derrick Baker, Thelma Addison. Those
10 are potential witnesses in the case.

11 If anyone on this jury panel is related by blood
12 or connected by marriage either to the Defendant, Mr.
13 Wilson, any of these potential witnesses, will you
14 please stand at this time.

15 If any member of the jury panel has any type of
16 business, personal, or social relationship of any
17 kind or if you know either the Defendant or any of
18 these potential witnesses, will you please stand?

19 Is there any member of the jury panel who has
20 read or seen or heard or from any source at all knows
21 anything about the allegations that have been made in
22 this case; if so, would you please stand.

23 If any member of this jury panel is sensitive to
24 or aware of any kind of bias or prejudice that you
25 might have that would prevent you from being a fair

1 and impartial juror in this case, would you please
2 stand.

3 If there is any member of this jury panel or any
4 member of your immediate family who is either
5 currently or in the past been employed by the
6 Attorney General's Office, the Solicitor's Office,
7 any prosecuting attorney's office or any defense
8 lawfirm or any Public Defender's Office, would you
9 please stand. All right. Your name, please, sir?

10 **JUROR:** My name is Michael Raines.

11 **THE COURT:** And, Mr. Raines, if you'll tell me
12 who and with whom that person is employed.

13 **JUROR:** My wife is an attorney and was a
14 prosecutor in Richland County for I think with
15 juveniles.

16 **THE COURT:** All right. And would the fact that
17 she has been employed in that capacity affect your
18 ability to be fair and impartial in this case?

19 **JUROR:** No, sir.

20 **THE COURT:** Thank you, sir. You can have a
21 seat. Anyone else? Your name, please, ma'am?

22 **JUROR:** Marianne Smith.

23 **THE COURT:** All right. And if you'll tell me
24 who and where they are employed, please.

25 **JUROR:** My son-in-law is a defense attorney,

1 Harrison Saunders. He was with Jack Swerling and
2 it's now -- I can't think of the name of the -- it's
3 a brand new lawfirm. I can't think of the name.

4 **THE COURT:** Still defense work. Is that right?

5 **JUROR:** Right.

6 **THE COURT:** And would that relationship in any
7 way affect your ability to be fair and impartial?

8 **JUROR:** No, sir.

9 **THE COURT:** Thank you. You may have a seat.
10 Anyone else?

11 Is any member of the jury panel a member of or
12 do you contribute to any group that has as one of its
13 primary concerns the promotion of law enforcement or
14 victims' rights, groups such as SADD, MADD, CAVE,
15 CADRE, any of these sentiment type groups? If so,
16 would you please stand?

17 Is there anything in the nature of the
18 allegations that are made in this case that would
19 cause any member of the jury panel any particular
20 problem in sitting as a juror and being fair and
21 impartial in this case? If so, will you please
22 stand? Excuse me.

23 Is there any member of the jury panel, any
24 member of your immediate family who has ever been
25 either the victim of or accused of a robbery? If so,

1 would you please stand?

2 All right. Your name, please, ma'am.

3 **JUROR:** My name is Darlene Free.

4 **THE COURT:** Free?

5 **JUROR:** Yes.

6 **THE COURT:** And, Ms. Free, was it you or a
7 member of your family?

8 **JUROR:** A member of my family.

9 **THE COURT:** And were they accused of or a victim
10 of a robbery?

11 **JUROR:** They were accused.

12 **THE COURT:** And how long ago has that been?

13 **JUROR:** Seven, eight years ago.

14 **THE COURT:** Was that in Richland County?

15 **JUROR:** Richland County.

16 **THE COURT:** Would that experience in any way
17 affect your ability to be a fair and impartial juror
18 in this case?

19 **JUROR:** No.

20 **THE COURT:** All right. Thank you, Ms. Free.
21 You may have a seat.

22 Is there any member of the jury panel, any
23 member of your immediate family who is employed in
24 either a retail business or a convenience store? If
25 so, would you please stand? All right. Your name

1 again?

2 **JUROR:** Your Honor, I was. My name is Kay
3 Clamp.

4 **THE COURT:** And, Ms. Clamp, you were at some --

5 **JUROR:** I was.

6 **THE COURT:** Okay. How long ago has that been,
7 Ms. Clamp?

8 **JUROR:** Seven years.

9 **THE COURT:** And would that experience in any way
10 affect your ability to be a fair and impartial juror
11 in this case?

12 **JUROR:** No, sir.

13 **THE COURT:** Thank you. You may have a seat.

14 Has any member of this jury panel ever been
15 employed by any civilian or military law enforcement
16 agency? If so, would you please stand?

17 Does any member of the jury room know of any
18 reason, whether it concerns questions that I have
19 already asked or any other reason, that you could not
20 give both the State and the defense a fair and
21 impartial trial if you are selected as a juror in
22 this case? If so, would you please stand?

23 All right, Solicitor. Anything further?

24 **MS. CAMPBELL:** No, sir.

25 **THE COURT:** Ms. Hudgins?

1 **MS. HUDGINS:** Nothing further, Your Honor.

2 **THE COURT:** Strikes are five and ten. As your
3 name is called, if you'll bring your personal
4 belongings, come down, stand in front of the
5 microphone down here and simply state your name,
6 please. All right, Jackie.

7 **THE CLERK:** Number 122, Christopher Williams.
8 (Black male)

9 **JUROR:** Christopher Williams.

10 **THE CLERK:** What says the State?

11 **MS. FENT:** Please present Mr. Williams.

12 **THE CLERK:** What says the defense?

13 **MS. HUDGINS:** Please present Mr. Williams.

14 **THE CLERK:** Please have a seat in the jury box.
15 Number 21, Edward Dove.

16 (Black male)

17 **JUROR:** Edward Dove.

18 **THE CLERK:** What says the State?

19 **MS. FENT:** Please excuse Mr. Dove.

20 **THE CLERK:** Please return to the back of the
21 courtroom. Number 49, Wanda Hall.

22 (Black female)

23 **JUROR:** Wanda Hall.

24 **THE CLERK:** What says the State?

25 **MS. FENT:** Please present Ms. Hall.

1 **THE CLERK:** What says the defense?

2 **MS. HUDGINS:** Please present Ms. Hall.

3 **THE CLERK:** Please have a seat in the jury box.

4 Number 95, Lindsay Robinson.

5 (Black male)

6 **JUROR:** Lindsay Robinson.

7 **THE CLERK:** What says the State?

8 **MS. FENT:** Please excuse Mr. Robinson.

9 **THE CLERK:** Please return to the back of the
10 courtroom. Number 29, Wynee Fair.

11 (Black female)

12 **JUROR:** Wynee fair.

13 **THE CLERK:** What says the State?

14 **MS. FENT:** Please excuse Ms. Fair.

15 **THE CLERK:** Please return to the back of the
16 courtroom. Number 82, Shenna Pegues.

17 (Black female)

18 **JUROR:** Shenna Pegues.

19 **THE CLERK:** What says the State?

20 **MS. FENT:** Please present Ms. Pegues.

21 **THE CLERK:** What says the defense?

22 **MS. HUDGINS:** Please present Ms. Pegues.

23 **THE CLERK:** Please have a seat in the jury box.

24 Number 42, Kwakita Gibbs.

25 (Black female)

1 **JUROR:** Kwakita Gibbs.

2 **THE CLERK:** What says the State?

3 **MS. FENT:** Please present Ms. Gibbs.

4 **THE CLERK:** What says the defense?

5 **MS. HUDGINS:** Please present Ms. Gibbs.

6 **THE CLERK:** Please have a seat in the jury box.

7 Number 52, Russell Hart.

8 (White male)

9 **JUROR:** Russell Hart.

10 **THE CLERK:** What says the State?

11 **MS. FENT:** Please present Mr. Hart.

12 **THE CLERK:** What says the defense?

13 **MS. HUDGINS:** Please present Mr. Hart.

14 **THE CLERK:** Please have a seat in the jury box.

15 Number 20, Teresa Douglas.

16 (Black female)

17 **JUROR:** Teresa Douglas.

18 **THE CLERK:** What says the State?

19 **MS. FENT:** Please excuse Ms. Douglas.

20 **THE CLERK:** Please return to the back of the

21 courtroom. Number 128, Brent Suber.

22 (Black male)

23 **JUROR:** Brent Suber.

24 **THE CLERK:** What says the State?

25 **MS. FENT:** Please present Mr. Suber.

1 **THE CLERK:** What says the defense?

2 **MS. HUDGINS:** What's this juror's number?

3 **THE CLERK:** 128.

4 **MS. HUDGINS:** Please present Mr. Suber.

5 **THE CLERK:** Please have a seat in the jury box.

6 Number 85, Edwanna Portee.

7 (Black female)

8 **JUROR:** Edwanna Portee.

9 **THE CLERK:** What says the State?

10 **MS. FENT:** Please present Ms. Portee.

11 **THE CLERK:** What says the defense?

12 **MS. HUDGINS:** Please present Ms. Portee.

13 **THE CLERK:** Please have a seat in the jury box.

14 Number 2, Daniel Aguilar.

15 (Spanish male).

16 **JUROR:** Daniel Aguilar.

17 **THE CLERK:** What says the State?

18 **MS. FENT:** Please present Mr. Aguilar.

19 **THE CLERK:** What says the defense?

20 **MS. HUDGINS:** Please present Mr. Aguilar.

21 **THE CLERK:** Please have a seat in the jury box.

22 Number 103, Marianne Smith.

23 (White female)

24 **JUROR:** Marianne Smith.

25 **THE CLERK:** What says the State?

1 **MS. FENT:** Please present Ms. Smith.

2 **THE CLERK:** What says the defense?

3 **MS. HUDGINS:** Please present Ms. Smith.

4 **THE CLERK:** Please have a seat in the jury box.

5 Number 8, Phillip Brazell.

6 (White male)

7 **JUROR:** Phillip Brazell.

8 **THE CLERK:** What says the defense?

9 **MS. FENT:** Please present Mr. Brazell.

10 **THE CLERK:** What says the defense?

11 **MS. HUDGINS:** Please excuse Mr. Brazell from the
12 trial of this case.

13 **THE CLERK:** Please return to the back of the
14 courtroom. Number 124, Tamara Wilson.

15 (Black female)

16 **JUROR:** Tamara Wilson.

17 **THE CLERK:** What says the State?

18 **MS. FENT:** Please present Ms. Wilson.

19 **THE CLERK:** What says the defense?

20 **MS. HUDGINS:** Please present Ms. Wilson.

21 **THE CLERK:** Please have a seat in the jury box.

22 Number 131, Jeanette Geiger.

23 (Black female)

24 **JUROR:** Jeanette Geiger.

25 **THE CLERK:** What says the State?

1 **MS. FENT:** Please present Ms. Geiger.

2 **THE CLERK:** What says the defense?

3 **MS. HUDGINS:** Please excuse Ms. Geiger from the
4 trial of this case.

5 **THE CLERK:** Please return to the back of the
6 courtroom. Number 75, Cheryl Mcrae.

7 (Black female)

8 **JUROR:** Cheryl Mcrae.

9 **THE CLERK:** What says the State?

10 **MS. FENT:** Please present Ms. Mcrae.

11 **THE CLERK:** What says the defense?

12 **MS. HUDGINS:** Please present Ms. Mcrae.

13 **THE CLERK:** Please have a seat in the jury box.
14 Number 61, Tashara Hutchinson.

15 (Black female)

16 **JUROR:** Tashara Hutchinson.

17 **THE CLERK:** What says the State?

18 **MS. FENT:** Please present Ms. Hutchinson.

19 **THE CLERK:** What says the defense?

20 **MS. HUDGINS:** Please present Ms. Hutchinson.

21 **THE CLERK:** Please have a seat in the jury box.

22 **THE COURT:** All right. We'll select an
23 alternate. Strikes are two and one on the alternate.

24 **THE CLERK:** Number 102, Heather Shewchuk.

25 (White female)

1 **JUROR:** Heather Shewchuk.

2 **THE CLERK:** What says the State?

3 **MS. FENT:** Please present Ms. Shewchuk.

4 **THE CLERK:** What says the defense?

5 **MS. HUDGINS:** Please present Ms. Shewchuk.

6 **THE CLERK:** Please have a seat in the jury box.

7 **THE COURT:** All right. Any motions? Any
8 matters of law concerning striking of the jury? From
9 the State?

10 **MS. FENT:** No, Your Honor.

11 **THE COURT:** From the defense?

12 **MS. HUDGINS:** If I may confer with my client for
13 one moment, Your Honor?

14 **THE COURT:** Sure.

15 (Pause)

16 **MS. HUDGINS:** No objection, Your Honor.

17 **THE COURT:** All right. Those of you who were
18 not selected in this case, if you'll step back
19 downstairs to your assembly room, please. Everyone
20 else stay seated.

21 (Whereupon, the jurors not selected for this
22 trial are excused from the courtroom).

23 **THE COURT:** All right. Ladies and gentlemen,
24 you are the jury in this case. The first thing we're
25 going to do, I'm going to ask you to stand and raise

1 your right hand. The clerk will administer your oath
2 as the jury in this case. Madam Clerk, if you'll
3 swear the jury, please.

4 **THE CLERK:** At the end of the statement that I'm
5 about to give you, please respond by saying "I do".

6 (Whereupon, the jury is sworn)

7 **THE CLERK:** You may be seated.

8 **THE COURT:** Ladies and gentlemen, I'm going to
9 make some very brief comments to you and sort of
10 outline for you what you can anticipate as far as the
11 procedure is concerned in this case. What I'm about
12 to tell you is not intended to serve as a substitute
13 for the detailed instructions of the law that I will
14 give you at the conclusion of the case but simply to
15 give you some explanation of what procedurally will
16 be occurring. When I conclude my remarks to you, I'm
17 going to recognize the attorneys to make brief
18 opening statements to you.

19 The attorneys when they're making these opening
20 statements of course are not testifying. The
21 testimony will come from the witnesses. But the
22 opening statements are an opportunity for the lawyers
23 to explain to you their position in this case. I
24 will recognize the Solicitor's Office first because
25 the State in this case will have the burden of proof.

1 And I will explain that in detail to you at the end
2 of the case. But after the Solicitor's Office gives
3 their opening statement, then I'll recognize the
4 defense attorney for the same purpose.

5 And after you've heard from the attorneys, we
6 will proceed with the presentation of testimony and
7 other evidence. And when all of that evidence has
8 been presented to you, then the attorneys will come
9 back before you and make what are called closing
10 arguments. And then I will instruct you as to what
11 the law is in this case and then you will be sent
12 back to deliberate and to reach a verdict.

13 Now, your purpose as jurors once you have been
14 selected, you have been sworn, you have now become
15 judges. Just as much as I'm a judge, you are judges,
16 but you are the judges of the facts. I'm the judge
17 of the law. But you have to determine what the facts
18 in this case are. You make that determination based
19 on the testimony and other evidence that's presented
20 here in the courtroom. And under the oath that you
21 have just taken, you make that determination. You
22 then accept and apply the law as I will explain it to
23 you and then you'll deliberate and reach a verdict in
24 the case.

25 Now, you are not permitted at any time to

1 discuss this case with anybody. I think that's
2 fairly common knowledge, but I think jurors are
3 sometimes surprised to hear the judge telling them
4 that while the case going on you cannot discuss it
5 among yourselves. It's improper to do that. So
6 don't talk about this case to anybody, whether it's
7 family and friends tonight when you go home or
8 whether it's with your fellow jurors back in the jury
9 room or if you're walking out, you're walking with a
10 fellow juror, please don't discuss this case. You
11 can only do that in the jury room at the end of the
12 case when I have instructed you what the law is and
13 you are sent back to deliberate. That's the first
14 time and the only time that you can discuss the case,
15 and of course at that time only with your fellow
16 jurors.

17 Now, I never know what cases might generate
18 publicity, but you are the jury in the case and you
19 have to make your determination of what the facts are
20 based on the evidence here in this courtroom, not
21 something you might read or hear on television. So
22 if you see an article in the paper or hear something
23 on television or the radio and you recognize that
24 it's talking about this case, don't read it. Don't
25 listen to it. Don't pay any attention to it. And I

1 may ask you during the trial whether anyone has
2 either purposefully or inadvertently seen or heard
3 something about the case. We don't want anyone to be
4 influenced by something they might read or hear about
5 the case.

6 From time to time during the course of the trial
7 the lawyers may object to certain questions that are
8 asked. As a matter of fact, I'd be amazed if we
9 didn't have some objections. You should not hold
10 that against that lawyer or the lawyer's client. If
11 the lawyer makes an objection, that is simply the
12 lawyer's way of letting this Court know that a rule
13 of evidence has come into play.

14 And at that point in time I'm going to have to
15 make a ruling. And if I sustain the objection, you
16 are not permitted to try to guess at what the answer
17 would have been or guess at what that exhibit might
18 have been if it had been permitted or allowed into
19 evidence. Again, you can only rely on the testimony
20 and other evidence that is admitted into the record.

21 And also from time to time during some trials
22 there may be exhibits that are admitted into evidence
23 and the attorneys ask permission to publish those
24 exhibits to the jury. And that simply means to take
25 that exhibit, whatever it might be, whether it's a

1 photograph or some document, and pass it around among
2 the jury while the trial is going on. There's
3 nothing wrong with that. But I would caution you to
4 please continue to listen to the testimony while the
5 witnesses are testifying if you're passing some
6 document around.

7 I've had some jurors express concern to me
8 before and that they didn't think they had long
9 enough to take a look at whatever that object may
10 have been that was being passed around in the jury
11 box while the trial was going on. All of the
12 exhibits that are admitted into evidence will be with
13 you in the jury room when you are deliberating. So
14 you can look at them as long and as hard as you want
15 to back in your jury room.

16 The only other thing I will tell you at this
17 point is to please give all of the attorneys and all
18 of the witnesses your full attention. One of the
19 things that I'll be doing during the course of the
20 trial is I sort of keep an eye on you folks to be
21 sure you're staying awake and alert. We'll take a
22 break about every hour, hour and 15 minutes.

23 If you get to the point where you have got to
24 take a break and it doesn't look like I'm about to
25 take one, just raise your hand, get my attention.

1 We'll break a break at that point in time. If you
2 are not able to hear or understand what someone is
3 testifying to, do the same thing. Just raise your
4 hand. I'll be sure that everyone speaks loudly and
5 clearly enough for you to understand what they've got
6 to say.

7 But again, please give both attorneys your full
8 attention as they make their opening statements.
9 Now, I talked to the attorneys before we selected the
10 jury. And what we plan to do today is you'll hear
11 their opening statements and then we're going to
12 break for the day, and we'll start with testimony
13 tomorrow morning. But if you'll please give both
14 attorneys your full attention as we proceed with the
15 opening statements. All right, Solicitor.

16 **MS. FENT:** Ladies and gentlemen, this case is
17 about the Defendant, Bruce Wilson, using the Pantry
18 Express at 8550 Farrow Road, the Shell station, as
19 his 24-hour piggy bank.

20 On August the 20th of 2004, Bruce Wilson
21 together with his co-defendant, Franklin Dixon, early
22 morning hours, 2 a.m., walked into that Pantry
23 Express where Gloria Norman was working, where Gloria
24 Norman was putting in a dollar's worth of work for a
25 dollar's worth of pay.

1 The Defendant walked in with his friend. They
2 were dressed in baseball caps to hide their identity.
3 They walked around to the counter where Franklin
4 walked up to the counter and started asking for
5 cigarettes.

6 Bruce walked around the counter, behind the
7 counter where Gloria was working, had a knife and
8 demanded that she open the register and give her
9 (sic) the money. She acted as quickly as she could.
10 She opened the register. And you are going to see
11 THE videotape of this crime. You will be in there,
12 in that Pantry Express with the three of them. And
13 you'll see on the videotape how both the Defendant
14 and Franklin reach into that cash register and take
15 the money out of their 24-hour piggy bank.

16 They then leave the store. Gloria follows them
17 out to see exactly where they're going, turns back
18 around, calls the police immediately, tells them what
19 they're wearing, what direction they fled in. A
20 couple of customers come in. They stay with her
21 while the police -- she waits for the police.

22 The police are called then and go looking in the
23 direction that she has pointed the Defendant went and
24 Franklin went. You're going to hear from Franklin.
25 He is going to take the stand and he's going to tell

1 you his involvement and his involvement, how after
2 they fled the Shell station they went down and they
3 dumped their clothes, the hats, the clothes that they
4 were wearing. You're going to hear from law
5 enforcement how, sure enough, they found this
6 clothing down in the place that he said they dumped
7 them.

8 The Defendant and Franklin then, having just
9 taken out money from their 24-hour piggy bank go and
10 buy some crack with the money that they just stole
11 from Gloria Norman.

12 This case is about an armed robbery. You're
13 also going to hear not only from Franklin. You are
14 going to hear from Gloria. You are going to see the
15 videotape and be in that Pantry Express when the
16 armed robbery happens.

17 But you're also going to hear how the
18 investigation took its path. Not only did they take
19 some money, but some lottery tickets were stolen
20 during that armed robbery. And believe it or not,
21 the Lottery Commission takes their tickets very
22 seriously. So when these tickets start showing up at
23 other convenience stores attempting to be cashed for
24 money, those convenience store clerks alarmed that
25 these are stolen tickets get descriptions of vehicles

1 and license tags of those people that are now trying
2 to exchange those lottery tickets.

3 From that investigation of tracking those
4 vehicles, the tag numbers, some suspects of people
5 that are trying to turn those tickets in or trying to
6 get the money from those tickets, their names come
7 up. The investigators talk to those individuals, and
8 our first individual is identified, Franklin, that
9 the tickets had come from Franklin.

10 The investigators go and talk to Franklin about
11 his involvement, about what he knows. And Franklin
12 admits to robbing the Shell station on August 20th of
13 2004. And he admits robbing it with Bruce Wilson.

14 Bruce Wilson is now in the custody of the police
15 and he gives a statement to law enforcement. Yes, I
16 was with Franklin on August 20th of 2004, and I
17 robbed the Shell station, the Pantry Express.

18 So you will hear from Gloria. You will hear
19 from Franklin. You will see the videotape. And you
20 will hear of the Defendant's statement admitting to
21 his involvement.

22 You might be asking yourself, what is this case
23 about? Well, this case is about, ladies and
24 gentlemen, the Constitution of the United States of
25 America; allows a person to have a trial, a jury

1 trial, with no questions asked. That's what this is
2 about. This is about the Defendant using the Pantry
3 Express as a 24-hour piggy bank. And after you hear
4 the State's evidence we will come back to you and ask
5 to you find the Defendant guilty of armed robbery.
6 Thank you.

7 **THE COURT:** All right. Ms. Hudgins.

8 **MS. HUDGINS:** Thank you, Your Honor. May it
9 please the Court?

10 **THE COURT:** All right.

11 **MS. HUDGINS:** Counsel, Ladies and Gentlemen of
12 the Jury, this is my client. His name is Mr. Bruce
13 Wilson. To the allegations of armed robbery Bruce
14 Wilson pleads not guilty.

15 Now, you've heard the solicitor in her brief
16 opening argument, and I'm going to be equally brief.
17 It's been a long day I know. I appreciate your
18 patience. I'll probably be more brief than she was.

19 But as we go through this trial, you're going to
20 hear testimony. You're going to hear testimony from
21 this witness stand. And you're going to hear some
22 conflicting testimony. And as you hear that
23 conflicting testimony, there are a couple of things
24 that I would like for you to keep in mind.

25 Now, we've all heard the phrase, some people see

1 a glass as half full and others see a glass as half
2 empty. And we all sort of know what that means. A
3 person that sees a glass as half full is optimistic,
4 sees things, accepts things for what they are, is
5 somewhat positive about things. A person that sees a
6 glass as half empty though is critical and wants to
7 know and wants to question things. Half empty; half
8 full.

9 Now, ladies and gentlemen, as we go through the
10 testimony in this case, no matter what kind of person
11 you may be in terms of your life and seeing the glass
12 as half full or half empty; today you have taken an
13 oath. Judge Johnson administered the jury oath to
14 you. And as jurors you have sworn to look at the
15 State's evidence in this case as half empty. That is
16 your sworn oath today.

17 Now, what exactly does that mean? What that
18 means is that as Mr. Bruce Wilson sits there he is
19 presumed innocent. And each and every one of you
20 must presume that he is innocent throughout the trial
21 of this case. Judge Johnson will instruct you on
22 that. You will hear it as Judge Johnson instructs
23 you on the law. It's the presumption of innocence.

24 That presumption of innocence can be lifted if,
25 and only if, the State can prove each and every

1 element of the crime to each and every one of you
2 beyond a reasonable doubt. We've all heard that
3 word. Here in this courtroom today for you all it is
4 very important. The elements of this crime is the
5 law of this case. And as I have stated, Judge
6 Johnson is going to give you the law at the end of
7 the case.

8 You, however, are the judges of the facts. You
9 will decide what happened. And you are going to take
10 all of your experience and all of your knowledge and
11 you are going to listen to the testimony that's given
12 to you from this witness stand and you're going to
13 watch that videotape and you are going to decide what
14 happened. You are going to decide if the State has
15 met its burden in proving each and every element of
16 the crime. And I submit to you, ladies and
17 gentlemen, the State's evidence in this case is half
18 empty. They simply in this case cannot meet that
19 burden.

20 Now, there's basically one issue that's going to
21 need to be resolved by you. And I'm going to leave
22 it at that. I told you I was going to be brief. I
23 am going to be very brief. I just ask you to be
24 critical in your thinking, half empty; and at the end
25 of the day you will find, at the end of the

1 testimony, at the end of the evidence you will find
2 that Mr. Bruce Wilson is not guilty of armed robbery.
3 Thank you.

4 **THE COURT:** All right. Ladies and gentlemen,
5 that's where we're going to break for the day. There
6 is one other matter that we do need to take care of,
7 and I'm going to ask you to go ahead and tend to it
8 this afternoon. In South Carolina there are two
9 different ways of having a jury foreman or a forelady
10 selected. One way is for me to simply choose one of
11 you and appoint that person. The other is to let you
12 decide who you would like for that person to be.

13 Your foreman or your forelady's vote is no more
14 important. It does not count any more than any other
15 member of the jury. But the foreman will preside in
16 the jury room and be the spokesperson for the jury
17 here in the courtroom. For about the past ten years
18 I've let the juries determine who they would like for
19 that person to be.

20 So I'm going to excuse you in just a minute, but
21 I'm going to send you back to the jury room so you
22 can see where it is. That's where you'll come in the
23 morning. But before you go I want you to discuss
24 among yourselves and decide who you would like your
25 foreman or your forelady to be. Write their name on

1 a slip of paper. Give it to the bailiff. And then
2 you are excused until 9:30 tomorrow morning. And
3 when you come back tomorrow, don't go downstairs.
4 Come straight on up here to your jury room. And I
5 know of no reason we cannot start right at 9:30
6 tomorrow morning.

7 So, if you'll go with the bailiff to your jury
8 room, select a foreman or a forelady. Now, the
9 alternate juror is not eligible to serve as the
10 foreperson of the jury. But once you've made that
11 selection and notified the bailiff of who that is,
12 then you'll be dismissed until 9:30 tomorrow morning.
13 If you'll go with the bailiff to your jury room.
14 Everyone else stay seated, please. Everyone else
15 stay seated, please.

16 (Jury out at 4:23 p.m.)

17 **THE COURT:** All right. We'll recess 'til 9:30
18 in the morning. Anything else we need to take care
19 of this afternoon? Ms. Hudgins?

20 **MS. HUDGINS:** Not from the defense, Your Honor.

21 **THE COURT:** Solicitor? All right. See you all
22 at 9:30 in the morning.

23 (Whereupon, the proceedings are concluded for
24 the day, to be reconvened tomorrow morning)
25

1 Thursday, January 5, 2006

2 **THE COURT:** All right. What do we need to get
3 on the record this morning before we get started back
4 on the trial?

5 **MS. CAMPBELL:** I think Ms. Hudgins mentioned she
6 wanted to settle some records.

7 **MS. HUDGINS:** That's correct, Your Honor.

8 **THE COURT:** All right.

9 **MS. HUDGINS:** I believe there are three -- well,
10 there are two witnesses from the State. We need to
11 settle their records. I guess we need to settle the
12 record of the Defendant offered for impeachment
13 purposes. Obviously if the Defendant chooses to take
14 the stand --

15 **COURT REPORTER:** I'm sorry. I couldn't hear
16 you.

17 **MS. HUDGINS:** These are for impeachment
18 purposes. If the Defendant chooses to take the
19 stand, he'll need to know what offenses they'll be
20 able to --

21 **THE COURT:** All right. Who are the State's
22 witnesses that we need to take care of just for -- I
23 assume it would be the co-defendant.

24 **MS. HUDGINS:** The co-defendant, Franklin Dixon,
25 and the witness, Gloria Norman. And the solicitor

1 and I have met and discussed the -- there is no
2 question about what the actual offenses are. I just
3 wanted to put on the record what those offenses are
4 so we're all clear.

5 **MS. CAMPBELL:** I believe we're taking Ms.
6 Norman. I believe we both agree nothing is
7 impeachable as far as what's on her record.

8 **MS. HUDGINS:** The DUI second is.

9 **MS. CAMPBELL:** It carries a year or less. It
10 has to be.

11 **MS. HUDGINS:** DUI second carries a year or more.

12 **THE COURT:** No. It carries up to a year.

13 **MS. CAMPBELL:** Up to a year.

14 **MS. HUDGINS:** Up to a year? So that's a
15 non-impeachable offense?

16 **MS. CAMPBELL:** Correct.

17 **MS. HUDGINS:** Okay.

18 **THE COURT:** Right. So is there anything on Ms.
19 Norman that the defense would intend to use for
20 impeachment purposes?

21 **MS. HUDGINS:** No, Your Honor.

22 **THE COURT:** All right. And what about on Mr.
23 Dixon?

24 **MS. CAMPBELL:** On Mr. Dixon, Your Honor, we both
25 agree that there are some things. I believe in 1996

1 he was convicted of petty larceny, and then in 1997
2 he was convicted of forgery and shoplifting.

3 **THE COURT:** Forgery and what?

4 **MS. CAMPBELL:** Shoplifting.

5 **THE COURT:** Are there any other charges that you
6 would intend to use for impeachment purposes on him?

7 **MS. HUDGINS:** Those are the only three that I'm
8 aware of that are not too remote in time.

9 **MS. CAMPBELL:** He has additional charges, but
10 they are --

11 **THE COURT:** The State doesn't have any problem
12 with those?

13 **MS. CAMPBELL:** No, sir.

14 **THE COURT:** All right. All right. And then the
15 Defendant's record.

16 **MS. CAMPBELL:** The Defendant's record, Your
17 Honor, I believe within the ten-year period he does
18 have some prior strong armed's that are too remote.
19 We would agree he does have one from I believe 1997.

20 **MS. HUDGINS:** I believe it's a 1998 conviction.

21 **MS. CAMPBELL:** 1998 conviction for a strong
22 armed robbery. And then he has a failure to stop for
23 a blue light from 2002; and then finally a throwing
24 bodily fluids on an employee by a prisoner from 2004.
25 And that would be the ones we think are within the

1 time period.

2 **THE COURT:** Any objection? Any arguments you
3 want to make on those three charges, Ms. Hudgins?

4 **MS. HUDGINS:** I have reviewed the rap sheet. I
5 am not aware of any arguments. May I confer with my
6 client for a moment, Your Honor?

7 **THE COURT:** Sure.

8 (Pause - conferring).

9 **MS. HUDGINS:** No, sir. There is no objection or
10 arguments.

11 **THE COURT:** To those three then. All right.
12 Then for impeachment purposes, those offenses have
13 been reviewed as to the two witnesses and the
14 Defendant and would be proper.

15 **MS. HUDGINS:** Thank you, Your Honor.

16 **THE COURT:** Anything else we need to do before
17 the jury is brought in? Anything from the defense?

18 **MS. CAMPBELL:** Just, Your Honor, we have the
19 video keyed up. And I think they played it for the
20 Defendant. I just ned to re-do it real kick.

21 **MS. HUDGINS:** And it's my understanding, Your
22 Honor, that the State has now decided possibly to
23 attempt to introduce some Lyle evidence. Obviously
24 when we get to the point in the trial where they
25 attempt to do that, I would obviously have some

1 objections to that.

2 **THE COURT:** Yes. Before any Lyle evidence is
3 presented to the jury, Solicitor, if you'll --

4 **MS. CAMPBELL:** We'll make a proffer.

5 **THE COURT:** -- bring it to the Court's attention
6 so I can get the jury out of here, please.

7 **MS. HUDGINS:** And normally in the course of a
8 trial at this point I would move to sequester the
9 witnesses. I, however, have spoken with my client
10 about that. And none of these witnesses are really
11 testifying as to the same set of events. Each has a
12 different perspective to bring in regards to their
13 testimony. And I don't think that motion is
14 necessary. I have talked with my client about that,
15 and he understands that and I think is in agreement
16 that that motion doesn't need to be made.

17 **THE COURT:** That's fine then. There is no
18 motion for me to deal with. All right. Anything
19 from the State before the jury is brought in?

20 **MS. CAMPBELL:** Just, Your Honor, if I can check
21 this video real quick. Your Honor, we are redacting
22 the statement. Depending on -- and I would hand up
23 to the Court ...

24 **THE COURT:** This is a redacted copy of the
25 statement that was introduced on March yesterday?

1 **MS. CAMPBELL:** At this point he was asked about
2 the second armed robbery that he did in June. I have
3 left that in at this point. And then the information
4 about the 8-20-2004.

5 **MS. HUDGINS:** Luck, these are the parts that
6 were supposed to be redacted. They've been left in
7 there.

8 **MS. CAMPBELL:** Let me see them. I think the
9 testimony will be that he did give a statement
10 originally to Sergeant McDaniels on the 20th, and
11 then three days later Sergeant McDonald talked to
12 him, and at that point he did change his statement.

13 **MS. HUDGINS:** I would object to that initial
14 statement on the grounds of relevance because he
15 doesn't talk about the 8-20 incident.

16 **MS. CAMPBELL:** We're not offering the substance
17 of the statement. We're going to go through
18 basically what we did pre-trial.

19 **MS. HUDGINS:** I would object to that, Your
20 Honor. I think that they have the statement from the
21 8-20 incident, and that's all that is relevant to
22 this case in chief.

23 **THE COURT:** As far as this document is
24 concerned, would you like to now change the original
25 statement? We'll redact that also.

1 **MS. CAMPBELL:** Okay.

2 **THE COURT:** And the rest of it; I mean, other
3 than your objection to it being admitted, Ms.
4 Hudgins, no other objections to it?

5 **MS. HUDGINS:** Yeah. Obviously premised on my
6 prior objection pre-trial on the Jackson v. Denno
7 issue. Now, as Your Honor can see at the top, they
8 do go in -- they left in -- anticipating the Lyle
9 evidence coming in, they've left in the 6-29
10 incident. Obviously before this statement can be
11 admitted, we'll have to address the Lyle issue.

12 **MS. CAMPBELL:** Yes. And we agree. I just left
13 that in at this point until you make a ruling.

14 **THE COURT:** Well, the one I've got, I don't see
15 says anything about that incident. Oh, yes, it does.
16 I see.

17 **MS. HUDGINS:** Competency.

18 **MS. CAMPBELL:** It's three lines.

19 **THE COURT:** I see. All right. We'll deal with
20 it when it comes in. But don't put this in front of
21 the jury without having a hearing on it.

22 **MS. CAMPBELL:** Yes, sir. We're ready.

23 **THE COURT:** All right. Let's get the jury in,
24 please. Did we get the name of -- here. I've got
25 it. Jenny, did you get the name of the foreman?

1 **COURT REPORTER:** No, sir.

2 **THE COURT:** Aguilar.

3 (Jury in at 10:08 a.m.)

4 **THE BAILIFF:** The jury is all present, Your
5 Honor.

6 **THE COURT:** All right. Thank you. The first
7 order of business, I will appoint Mr. Aguilar as the
8 foreman. That's the name I've been given. Again,
9 your vote is no more important, doesn't count any
10 more than any member of the jury, but you will
11 preside in the jury room and be the spokesman for the
12 jury here in the courtroom.

13 I hope you all had a good evening. We had a few
14 matters to take care of this morning. They have now
15 been taken care of and we will continue with the
16 trial. The State may call its first witness, please.

17 **MS. CAMPBELL:** May it please the Court.

18 **THE COURT:** All right.

19 **MS. CAMPBELL:** The State calls Gloria Norman.

20 **THE COURT:** If you'll come up and put your left
21 hand on the Bible and raise your right hand, please.

22 GLORIA D. NORMAN, after being duly sworn,
23 testifies as follows:

24 **THE COURT:** If you'll have a seat in the witness
25 box and state your full name, please.

1 **WITNESS:** My name is Gloria Delia Norman.

2 **MS. CAMPBELL:** Your Honor, may we approach on
3 one matter, please?

4 **THE COURT:** Sure.

5 (Whereupon, a bench conference is had)

6 **THE COURT:** That is fine, Ms. Campbell. You may
7 continue.

8 **MS. CAMPBELL:** Thank you.

9 DIRECT EXAMINATION

10 **BY MS. CAMPBELL**

11 **Q** Ms. Norman, are you from the Columbia area?

12 **A** Yes, ma'am; I am.

13 **Q** And what do you do for a living, ma'am?

14 **A** I am a store clerk at the Pantry Express.

15 **Q** And where is the Pantry Express located?

16 **A** At 8550 Farrow Road, Parklane.

17 **Q** Parklane and Farrow?

18 **A** Yes, ma'am.

19 **Q** And is that over near the Crafts Farrow Hospital and
20 all that area?

21 **A** Yes, ma'am.

22 **Q** How long have you been working at the Pantry Express
23 on Farrow?

24 **A** Well, next month will be two years.

25 **Q** And what are your duties as a clerk at the Pantry

1 Express? Just briefly tell the jury.

2 **A** Basically, it carries a lot of different duties. You
3 know, you take care of your customers at the
4 register. You stock the shelves and things like
5 that. You keep the outside area clean, you know, for
6 your pumps and all of your trash and all that, sweep
7 the parking lot, that sort of thing.

8 **Q** That type of thing?

9 **A** Yes, ma'am.

10 **Q** Are there different shifts that are worked at the
11 Pantry?

12 **A** Yes. There's three different shifts that is per day.
13 Your first shift is from 6 in the morning 'til 2 in
14 the afternoon. Your second shift extends from 2 in
15 the afternoon 'til 10:00 at night. And then your
16 third shift kicks in at 10 p.m. 'til 6 a.m.

17 **Q** So they're basically eight-hour shifts and it's open
18 24 hours?

19 **A** Yes, ma'am; it is. 24-7, 365.

20 **Q** And I want to turn your attention back to August of
21 2004, specifically the evening of August the 19th
22 into the morning hours of August the 20th. Were you
23 working that evening?

24 **A** Yes, I was.

25 **Q** And what were you doing that night at the Pantry?

- 1 **A** I was towards the stock room where we have our big
2 ice machine. And we also stock our groceries back
3 there. And I was -- we had these five-gallon buckets
4 that we fill with ice. That way we can either fill
5 the fountain drinks or there's some -- what do you
6 call like an ice holder? I mean, it contains, you
7 know, where you put your soft drinks and all you.
8 You can just keep them in the front of the store.
- 9 **Q** So you have to load the ice dispensers in the front
10 of the store with ice?
- 11 **A** Yes, ma'am.
- 12 **Q** And what time of night is this we're talking about?
13 Do you remember approximately?
- 14 **A** I would say probably about 2 or so.
- 15 **Q** What's your volume of business around 2 a.m. in the
16 morning typically?
- 17 **A** You know, it varies. People stop to maybe get gas or
18 maybe a coffee or soft drink, sort of like that.
19 But, you know, it's off and on. It not steady,
20 steady. You know, you have your low periods and you
21 have your high periods, different hours.
- 22 **Q** So that night around 2 a.m. or sometime around that
23 time you were in the back getting some ice to put in
24 the ice dispenser?
- 25 **A** Yes, I was.

1 Q And before we go any further, is there any type of
2 security equipment in the Pantry Express?

3 A There is an alarm that's in the back room that if
4 somebody comes in, it beeps. That's basically it.
5 There's no bell or anything at the door.

6 Q And as far as any type of videotaping or video
7 equipment, is there some of that in the store?

8 A Yes, ma'am; there is.

9 Q And in fact are there several different cameras in
10 the store that can capture pictures?

11 A Yes. There are four different cameras. Yes.

12 Q Okay. And I stopped you. Go ahead and tell them.
13 You were in the back getting some ice. And did you
14 have an occasion to come out of the back room?

15 A Yes. As I was coming out from the back room I
16 noticed there was two gentlemen behind the counter,
17 one a little bit closer towards the front of the
18 register. The other one was like right behind where
19 we have our lottery tickets. There is a bin for
20 lottery tickets, and one of the gentleman was
21 standing right behind there.

22 Q And as you came out of the back area into the front
23 area, did you have a conversation with either one of
24 the men?

25 A I think I asked them if I could help them or in some

1 way, you know, if I could help them. One mentioned
2 about cigarettes at that time.

3 Q So basically, they're standing in front of the
4 counter where a customer should be at that point?

5 A Yes.

6 Q And at that point you engage one or more of them into
7 a conversation?

8 MS. HUDGINS: Your Honor, I object to the
9 leading at this point.

10 THE COURT: I sustain as to the form of the
11 question.

12 Q What did you do when you came out of the back? Did
13 you talk to them?

14 A Yes, I did. I asked them what kind of cigarettes
15 they wanted. Or whoever I asked, I asked what kind
16 of cigarettes. And I believe they mentioned a pack
17 of Newports. So I asked for -- I believe I asked,
18 the first time I asked what the age was, how old they
19 were. And then I wanted to see some form of I.D.

20 Q And where were the two while you were having this
21 conversation? Were they still on the other side of
22 the counter?

23 A Yes, ma'am; they were.

24 Q And then tell the jury what happened.

25 A As I was going to get the pack of cigarettes from

1 right on top, there's a dispenser right up above the
2 register where you can go get the cigarettes. And as
3 I was lifting them down, I noticed one gentleman
4 coming around. He came like right behind where I
5 was.

6 Q Is that the one you'd been speaking to or the other
7 one?

8 A I believe it was the -- the one I was speaking to was
9 almost like almost in front of the register. The one
10 that came around, he -- I don't think he was the one
11 that spoke to me about the cigarettes. It was the
12 other gentleman.

13 Q And you said that the second man came around to
14 behind the counter?

15 A Yeah. He was the one the closest. As far as
16 entering to come around, he was the closest to coming
17 in.

18 Q Okay. And when he came around the counter, what
19 happened? What did you see?

20 A First, well, I realized that he -- the way he came so
21 suddenly kind of stunned me a little bit, and then I
22 realized I was probably in trouble at that point. So
23 he demanded for me to open the register.

24 Q And did you open the register?

25 A Yes, I did open the register.

1 Q Why would you just open the register because he told
2 you?

3 A Because I had saw he had -- he had a knife in his
4 right hand and he demanded for me to open the
5 register and kept telling me to hurry up and open it.

6 Q And as he came around the back, how close did he get
7 to you with the knife in his hand?

8 A I would say probably within three feet, three feet,
9 like towards my left. The register is here, and he
10 was like right there towards my left shoulder.

11 Q And were you able to open the register?

12 A Yes, I was able to open the register. And when the
13 register did open, I stepped back from the register.
14 I stepped back like maybe a foot or two. And that's
15 when he came up and put his hand to where the
16 register -- he lifted the tray from inside the
17 register. When he lifted it, he mentioned something
18 to the effect like, "Where's the money?" And I got a
19 little bit scared because I realized there wasn't
20 that much in there. So he lifted the money tray and
21 set it on the counter.

22 Q The money tray ended up on the counter?

23 A Yes, ma'am.

24 Q And then what happened? Do you remember?

25 A The gentleman that was in front of the counter on the

1 other side, he started taking the money out of the
2 register. And as he was doing that, the gentleman
3 that was -- he was the one that was -- he was leaving
4 from behind from where I was at. He was leaving.
5 And as he was leaving, he was ripping off some
6 lottery tickets trying to hurry up and get out of
7 there. He took quite a few lottery tickets.

8 Q And you mentioned that the one who came behind the
9 counter had a knife?

10 A Yes, ma'am.

11 Q Did you ever see whether or not the other one had a
12 knife?

13 A No, I did not.

14 Q The man that you mentioned got the lottery tickets,
15 which one was that? The one that you saw armed or
16 not armed?

17 A The one that was armed.

18 Q And for the record, they actually took some money
19 from the register?

20 A Repeat that question?

21 Q Did they get money out of the register?

22 A Yes.

23 Q And they took it with them?

24 A Yes, they did.

25 Q And could you tell whether one or both of them got

1 money?

2 **A** I believe it was the one in the front of me, the one
3 that was right behind or in front of the register or
4 in front of the counter, he is the one that started
5 taking all the money out. And the other guy was
6 trying to rip the tickets out of the lottery bin.

7 **Q** And is there a videotape of this whole incident?

8 **A** Yes, ma'am; there is.

9 **Q** Have you had an opportunity to review that?

10 **A** Yes.

11 **Q** And does that fairly and accurately represent what
12 happened that night?

13 **A** Yes, ma'am; it is.

14 **MS. CAMPBELL:** Your Honor, at this time we'd
15 offer the videotape into evidence.

16 **THE COURT:** Any objection?

17 **MS. HUDGINS:** I would have an objection to the
18 chain at this point.

19 **MS. CAMPBELL:** To what?

20 **MS. HUDGINS:** May we approach?

21 (Whereupon, a bench conference is had)

22 **THE COURT:** Ask another question, please.

23 **MS. CAMPBELL:** I'll ask her again, Your Honor.

24 **Q** Just for the record, you had an opportunity to review
25 this videotape from August the 20th of 2004?

1 **A** Yes.

2 **Q** And does it fairly and accurately represent what
3 happened that night at the Pantry?

4 **A** Yes, it is.

5 **MS. CAMPBELL:** Your Honor, at this time we'd
6 offer it into evidence.

7 **THE COURT:** Any objection at this time?

8 **MS. HUDGINS:** Your Honor, she hasn't even seen
9 this videotape. I mean, if the solicitor wants to
10 get this evidence in through this witness, I would
11 ask that she show the witness the videotape and allow
12 her to identify that. I mean, videotapes look the
13 same. I mean, I don't know how you identify this
14 videotape from another videotape. In that regard it
15 is different from a photograph.

16 **THE COURT:** Is there any way that the witness
17 can identify this videotape that you're holding,
18 Solicitor, as the one that she has reviewed?

19 **MS. CAMPBELL:** Your Honor, I believe it's got on
20 the top the date and the address where the incident
21 occurred.

22 **A** Yes.

23 **Q** And that reflects that it occurred on 8-20 of 2004?

24 **A** Yes.

25 **Q** And at 8550 Farrow Road which is the Pantry Express?

1 **A** Yes.

2 **Q** And in fact is that the video you reviewed at my
3 request?

4 **A** Yes, that is. That is the video.

5 **THE COURT:** All right. She has now identified
6 it. The objection is overruled. It will be
7 admitted. Is it marked as State's what?

8 **COURT REPORTER:** State's 6.

9 **MS. CAMPBELL:** I believe 6.

10 **THE COURT:** State's 6, over objection.

11 **MS. HUDGINS:** Thank you, Your Honor. Just
12 preserve our objection, please.

13 (WHEREUPON, State Exhibit No. 6 is admitted into
14 evidence.)

15 **MS. CAMPBELL:** Beg the Court's indulgence.

16 **THE COURT:** All right.

17 **MS. CAMPBELL:** Your Honor, with the Court's
18 permission, I would publish the video.

19 **THE COURT:** That's fine.

20 **MS. CAMPBELL:** And may the witness step down?

21 **THE COURT:** She may. She just needs to keep her
22 voice up.

23 **MS. CAMPBELL:** Your Honor, with the Court's
24 permission, can Dana come fix it?

25 **THE COURT:** Sure.

1 (Pause)

2 Q Okay. And I'm going to pause it at this point. Can
3 you tell the jury what these different -- if you want
4 to step over here, it might be better because they
5 can hear you better. Can you tell the jury what the
6 different angles are? Because this is -- how many
7 screens are there?

8 A There's four screens. And each screen has a separate
9 counter.

10 Q And what area of the store do they depict? Can you
11 briefly tell the jury that?

12 A That is I believe like directly above. On this area,
13 it's directly above on the ceiling.

14 Q What is this?

15 A This is the front door.

16 Q That's the front door?

17 A Yes, ma'am.

18 Q And what is this over here?

19 A This is the side door.

20 Q Okay. And what is this area here, the upper left
21 one?

22 A Okay. This area is the camera like behind the
23 counter. It sits in the corner right next to where
24 our computer is down here. It sits right against the
25 wall.

- 1 Q When you say behind the counter, what counter is
2 that?
- 3 A That's -- well, behind the counter facing right there
4 by the wall.
- 5 Q Is this where the register is?
- 6 A Yes. Both of them.
- 7 Q And is that normally where the clerk would be?
- 8 A Yes.
- 9 Q What area is this down here in the bottom left?
- 10 A Okay. This area is of the outside area where you --
- 11 Q It's inside the store?
- 12 A Yeah. It's inside the store. And there's a counter
13 directly above that on this floor.
- 14 Q Is there merchandise there?
- 15 A Yes, ma'am.
- 16 Q And then this one down here shows what area up here?
- 17 A Okay. This shows like towards the front of the door
18 where you have your registers here. This is a door
19 that goes into the back room.
- 20 Q So you're looking from this area into the counter?
- 21 A Yes. On the other side.
- 22 Q At this point do you know where you were?
- 23 A I believe I'm right around this area or in this area.
- 24 Q Does this show the back room?
- 25 A Yes.

1 Q Where is the back room?

2 A Oh, no. The back room? No. Where am I at? This is
3 the door that goes in the back room. I was coming
4 out of that door. Okay. That's me.

5 Q This is you?

6 A I'm going towards this way right here. Okay. There
7 is my ice bucket. I'm fixing to fill another bucket
8 of ice. I'm coming towards the back room where the
9 stock room is.

10 Q And for the record, if someone is entering the store
11 at that time of night, what door do they have to come
12 in?

13 A They have to come in through this door because this
14 door is always locked. This is the only one that's
15 unlocked. Now I'm getting my ice, filling the bucket
16 up. That's what you're hearing. That's me coming
17 out.

18 Q And I'm going to fast forward a little bit. Oops. I
19 turned it too far. Let me back it up. Okay? Okay.
20 And you watch this upper right quadrant.

21 A I'm still in the back room doing the ice.

22 Q Is that you coming out?

23 A Yes. Yeah. I'm coming out right now with the ice
24 bucket.

25 Q And who is up here?

1 **A** Okay. He's the one who's asking for the cigarettes.
2 I'm asking for an I.D. So when he came up, I saw his
3 face.

4 **THE COURT:** Ma'am. Ma'am, when you are
5 speaking -- can you all stop that for one second,
6 Solicitor? When you are speaking, please speak
7 loudly enough. The court reporter has got to be able
8 to hear what you've got to say and I need to be able
9 to hear it as well as the other folks here. So,
10 please, I know the solicitor is right there at you,
11 but please keep your voice up.

12 **MS. CAMPBELL:** Thank you, Your Honor.

13 **THE COURT:** All right. Continue.

14 **A** Okay. Right at that point he was taking the lottery
15 tickets out of the bin.

16 (Pause)

17 **A** That's when I called the police.

18 **Q** Speak up.

19 **A** I went outside to see where he went or where they
20 both went. I went outside to look and then I came
21 back to make a call to the police.

22 **Q** Okay. Let me back it up. And that's your actual
23 phone call to 911?

24 **A** Yes.

25 **Q** Taking it without the audio this time, what are you

1 doing at this point?

2 **A** At this point I'm asking -- okay. Now I am listening
3 to what he has to say for what he wants.

4 **Q** Okay. And you're face-to-face with him at that
5 point?

6 **A** Yes, I am; face-to-face with him.

7 **Q** And did you ever see that man with any kind of
8 weapon?

9 **A** No.

10 **Q** Okay. And there --

11 **A** I'm starting to reach for the pack of cigarettes he
12 was asking for.

13 **Q** Which which person wanted?

14 **A** This person here.

15 **Q** And did this person ever come around the counter?

16 **A** No. No. He did not. See, now that's when I started
17 to realize someone is coming behind the counter.

18 **Q** And for him to come behind the counter, he would have
19 had to come through there and behind?

20 **A** Yes, ma'am. Yes.

21 **Q** You mentioned that he had something in his hand. Can
22 you show the jury?

23 **A** Yes. Right here in his right hand he had a knife,
24 like a regular kind of kitchen knife.

25 **Q** And where is the knife at that point?

1 **A** I believe he had it to his side down here for me to
2 see it.

3 **Q** And that's how close he got to you?

4 **A** Yes.

5 **Q** What are you doing at that point?

6 **A** I -- I guess I was listening for what he was telling
7 me, to open up the register. That's when I saw him.
8 I mean, he was pretty close to me, pretty close to
9 me, and demanded for me to open the register.

10 **Q** And in these photographs you can just see the back of
11 the butt of the knife in his hand?

12 **A** Yes. Okay. That's when the register is opened.

13 **Q** Okay.

14 **A** And I stepped a way back. I went a couple of --

15 **Q** What's this item that comes up on the screen? Do you
16 know?

17 **A** That usually tells you if you have a purchase or
18 something, it tells you the amount of the purchase
19 and what it is for the item.

20 **Q** So would it come up on the screen when you opened the
21 register?

22 **A** Yes.

23 **Q** And then you see one or both of them reaching in,
24 right?

25 **A** Yes. Now, he is the one that lifted the tray from

1 the register because the tray lifts out from the
2 register door.

3 Q And in fact you could see a wad of money in his hand
4 at that point?

5 A Yes.

6 Q And that's the guy behind the counter?

7 A Yes. So when he had left, when he had put it on the
8 counter, this one in the front just took the
9 remaining money that was in the register.

10 Q I want to turn your attention now to down here.

11 A Uh-huh (affirmative).

12 Q Who is that right there?

13 A Okay. He is the one that's coming from the counter
14 here. He is the one who's just leaving. Right at
15 this point he is taking the lottery tickets from the
16 bin. He's just like trying to get as many as he can
17 as quickly as he can.

18 Q And this is the other guy?

19 A Yes. Now, see, this door is locked.

20 Q And at that point I believe you follow them out the
21 door. Were you able to see which direction they went
22 in once they got outside?

23 A Yes. Yes. Once they got out, okay, your door is
24 facing here; and they went down the side of the
25 building on the left.

- 1 Q Okay. If you're looking out in front?
- 2 A Yes.
- 3 Q Okay. You can -- I'll move this down. Do you know
- 4 approximately how much money they took that night?
- 5 A I think it was estimated about 60.
- 6 Q About \$60?
- 7 A Yes, ma'am.
- 8 Q And then they also took the lottery tickets?
- 9 A Yeah. They took about six of the \$10 tickets.
- 10 Q And it's on the video; but basically, how were the
- 11 two dressed that night?
- 12 A They both were wearing hats. And one had, oh, a blue
- 13 sort of overall. And the other one I think was just
- 14 wearing a tee --
- 15 Q Dark clothing?
- 16 A Yeah. Yeah. Kind of dark.
- 17 Q You were on the video. Of course you called the
- 18 police. Did the police respond that night?
- 19 A Yes, ma'am; they did.
- 20 Q And were they able to retrieve the videotape?
- 21 A Yes.
- 22 Q And you basically told them what happened?
- 23 A Yes.
- 24 Q And gave them that information?
- 25 A Right.

- 1 Q The two men on the tape that you could tell exactly
2 how close, did you get a good look at them?
- 3 A Yes, I did.
- 4 Q And was the lighting in the store that night as it is
5 on the tape?
- 6 A Yes. It's --
- 7 Q Is it as good as it is in here?
- 8 A Yes, it is. Yeah.
- 9 Q The one man that came behind the counter, when you
10 saw him, had you ever seen him before?
- 11 A When I first saw him, he looked like he might have
12 been a little bit familiar to me.
- 13 Q He was familiar?
- 14 A Yes.
- 15 Q I want to take your attention -- you gave a report to
16 the police that night. At a later date, about a
17 month later, in September, did you have an occasion
18 to meet with a Sergeant McDonald?
- 19 A Yes, I did.
- 20 Q Specifically, September the 24th of 2004?
- 21 A Yes.
- 22 Q And was that down at headquarters, Sheriff's
23 Department?
- 24 A Yes. Yes, it was.
- 25 Q And when you met with him that day, what was the

1 purpose of you meeting with him?

2 **A** To see if I could identify for the incident happened,
3 if I could identify anyone on the photos.

4 **Q** And I'm going to show you what's been marked as
5 State's Exhibit No. 4. Do you recognize that?

6 **A** Yes, I do.

7 **Q** And on September 24th, is that the six-man line-up
8 that was shown to you?

9 **A** Yes.

10 **Q** And when he showed it to you, do you remember what he
11 told you to look at? Did you look at all the
12 pictures?

13 **A** Yes. I looked at all the pictures.

14 **Q** And did anyone tell you who to pick?

15 **A** No.

16 **Q** And when you looked at the pictures, did you
17 recognize anyone?

18 **A** Yes, I did.

19 **Q** And which man did you recognize?

20 **A** I recognized number 6 photo.

21 **Q** Okay. And on this now, I notice on State's Exhibit
22 No. 4 there's some writing under the number 6 photo.
23 Whose writing is that, ma'am?

24 **A** Okay. That is my initial with the date on it.

25 **Q** And did you actually put that on that picture?

1 **A** Yes. Yes, I did.

2 **Q** Was that after you recognized the man?

3 **A** Yes.

4 **Q** And was he one of the ones that came in and robbed
5 you?

6 **A** Yes.

7 **Q** And I believe attached to this also is an affidavit.
8 Do you recognize that?

9 **A** Yes, I do.

10 **Q** And what does that affidavit reflect?

11 **A** Okay. It reflects I identified the person on the
12 photo.

13 **Q** And this person that you identified, was he the one
14 that was armed or the one that was on the other side
15 of the counter?

16 **A** He was the one that was on the other side of the
17 counter.

18 **Q** I want to turn your attention now to November 3rd,
19 about another month later than that.

20 **A** Yes.

21 **Q** Did you have an occasion to meet with Sergeant
22 McDonald again?

23 **A** Yes, I did.

24 **Q** And did you go down to headquarters? No. I
25 believe -- I don't know where this took place. I

1 believe it took place at the Pantry Express or at
2 headquarters. I don't know.

3 **A** No. It was at headquarters.

4 **Q** And did you have an occasion to meet with Sergeant
5 McDonald on that date?

6 **A** Yes. Yes, I did.

7 **Q** And again, did he show you some more pictures?

8 **A** Yes. Yes. He showed me some more pictures.

9 **Q** And I show you State's Exhibit No. 5. Do you
10 recognize that?

11 **A** Yes, I do.

12 **Q** And what is that?

13 **A** Okay. This is the photos that I was given to
14 identify.

15 **Q** Okay. And again, he showed you these? Did anyone
16 tell you who to pick out or anything?

17 **A** No. No, he did not.

18 **Q** And when you looked at these photographs a month
19 later, did you recognize anyone in State's Exhibit 5?

20 **A** Yes. Yes, I did. Immediately I did.

21 **Q** And in that one who did you recognize?

22 **A** I recognized photo number 6.

23 **Q** Number 6? And how did you recognize him?

24 **A** By -- that's the first flash that came to my mind
25 that I had -- I realized this was the actual person

1 that did rob me.

2 **MS. HUDGINS:** Your Honor, as to this testimony,
3 this would be subject to my previous objections.

4 **THE COURT:** All right. So noted. Go ahead.

5 **MS. CAMPBELL:** Thank you, sir.

6 **Q** This was the one that -- when you say did rob you,
7 was this the one with the knife?

8 **A** Yes. Yes, ma'am.

9 **Q** And at the time when he showed you this line-up, was
10 there any -- there is again your initials down here
11 and the date?

12 **A** Yes.

13 **Q** Did you put those on after you identified him?

14 **A** Yes, I did.

15 **Q** And the affidavit that's attached just indicates you
16 recognized him?

17 **A** Yes.

18 **MS. CAMPBELL:** Your Honor, at this time we'd
19 offer State's Exhibits 4 and 5 into evidence.

20 **MS. HUDGINS:** Your Honor, may we approach?

21 **THE COURT:** Sure.

22 (Whereupon, a bench conference is had)

23 **MS. HUDGINS:** Thank you, Your Honor.

24 **THE COURT:** Other than that?

25 **MS. HUDGINS:** Subject to my previous objection,

1 Your Honor.

2 **THE COURT:** Subject to previous objection,
3 overruled. It is admissible, State's 4 and 5.

4 (WHEREUPON, State's Exhibit No. 4 is admitted
5 into evidence.)

6 (WHEREUPON, State's Exhibit No. 5 is admitted
7 into evidence.)

8 **Q** Ms. Norman, the tape accurately reflects what
9 happened that night. Is that correct?

10 **A** Yes. Yes, it does.

11 **Q** And the two men that robbed you that night, do you
12 see either of them here in the courtroom today?

13 **A** Yes.

14 **Q** And can you identify him for the jury?

15 **A** Yes. He is right over there with the white shirt.

16 **Q** The gentleman with the white shirt sitting next to
17 his lawyer?

18 **A** Yes.

19 **MS. CAMPBELL:** Your Honor, may the record
20 reflect she's identified Bruce Wilson?

21 **THE COURT:** All right. It so indicates.

22 **MS. CAMPBELL:** Thank you.

23 **Q** The man that you just identified, of the two men that
24 robbed you, what role did he play?

25 **A** He played in the armed robbery with the lottery

1 tickets.

2 **Q** Was he the one that was armed or not armed?

3 **A** He was the one that was armed.

4 **MS. HUDGINS:** Your Honor.

5 **THE COURT:** Wait a minute.

6 **MS. HUDGINS:** Objection to the leading.

7 **THE COURT:** Overruled on that particular
8 question. You may answer that question.

9 **MS. HUDGINS:** Thank you, Your Honor.

10 **Q** I'm sorry. I didn't get your answer.

11 **A** Yes. He was the one that was armed.

12 **Q** And of the two, was he the one that came behind the
13 counter or not?

14 **A** Yes. He is the one that came from behind the
15 counter.

16 **Q** Beg the Court's indulgence. Thank you, Ms. Norman.
17 Please answer any questions that defense counsel may
18 have.

19 **A** Thank you.

20 **THE COURT:** Cross examine.

21 **MS. HUDGINS:** Thank you, Your Honor. May it
22 please the Court?

23 **THE COURT:** All right.

24 CROSS EXAMINATION

25 **BY MS. HUDGINS**

- 1 Q Good morning, Ms. Norman.
- 2 A Good morning.
- 3 Q I have quite a few questions. And I know we've been
4 over the videotape. I'm not going to pull that
5 videotape back out again. But I do want you to
6 explain to the jury how big an area -- the area where
7 you would stand behind the cash register, how big of
8 an area would that be, Ms. Norman?
- 9 A I would say probably --
- 10 Q And you can --
- 11 A -- eight feet by maybe twelve feet. You talking
12 about for the work area inside?
- 13 Q Yes, ma'am.
- 14 A Probably eight feet wide by maybe twelve feet; ten to
15 twelve.
- 16 Q So it's not a real large area?
- 17 A No.
- 18 Q And there are other items around the area, other
19 things that you need for your work. There's the case
20 register?
- 21 A Yes.
- 22 Q I believe you mentioned the computer was back there?
- 23 A Right. Right. And where your cigarettes are.
- 24 Q The cigarettes are up above the register?
- 25 A Right. And there's some behind us, too, behind the

1 register, the cigarette compartment there.

2 Q So it's a fairly closed in area?

3 A Yes. If you have two people, it's kind of closed.

4 Yeah. It's a little small.

5 Q And you just said if you have two people back there.

6 That's your space?

7 A Yes.

8 Q That's the employee of the --

9 A Right. Right.

10 Q And so obviously, when the individual that was seen
11 in the video came into your space, that's --

12 A Yeah. He's just like right there.

13 Q I understand.

14 A Yeah. Right inside.

15 Q And while this person is sort of invading your space,
16 your small area of space, you sort of saw him in your
17 peripheral vision. But you're still carrying on a
18 conversation with the gentleman that's in front of
19 the counter?

20 A Right. That's asking for cigarettes, yes.

21 Q So your attention is directed towards the gentleman
22 that's asking for the cigarettes?

23 A Yes.

24 Q And at that point the other individual comes around.

25 And I think if you look at that video, you would

1 agree with me that it happened very quickly?

2 A Yes. Yes, it did.

3 Q And the video, I think it's, you know, maybe not even
4 a minute?

5 A It's -- it happened very quickly.

6 Q It happened very quickly?

7 A Yes.

8 Q And this was somebody that was invading your space.
9 And you were frightened?

10 A Yes, I was.

11 Q And rightfully so.

12 A Yes..

13 Q I'd like to talk with you a little bit about the
14 photo identification procedure. You were never shown
15 a live photo line-up?

16 A No, ma'am. No.

17 Q Like you see on television where people are standing
18 there?

19 A No. No.

20 Q And you're behind double plated glass?

21 A No.

22 Q Nothing like that?

23 A No. Not anything like it.

24 Q And you never were shown individual photographs?

25 A No.

1 Q Okay. When the police responded to your store, when
2 they responded or when they came to your store, I
3 believe it was Officer Alexander who is seated in the
4 courtroom, did he --

5 A Yes.

6 Q And he took statements from you or took some
7 information from you that night?

8 A Yes. Yes.

9 Q And was he the very first police officer that came?
10 He was the very first police officer that you talked
11 to?

12 A Yes.

13 Q And that was very recent and very close to the time
14 that this took place?

15 A Yes, ma'am.

16 Q Okay.

17 A Mm-hmm (affirmative).

18 Q And you gave him all the information you had at that
19 point?

20 A Yes. Yes, I did.

21 Q I just want to talk to you; you told the jury a
22 little bit about the shifts where you work. I
23 believe there's a first, second and third shift?

24 A Yes.

25 Q It would appear from the timing on the videotape that

1 you were working third shift that night?

2 **A** Yes, I was.

3 **Q** And you had just come on to your shift?

4 **A** Yeah.

5 **Q** And I'm going to hand you what's been marked as
6 State's Exhibit No. 4 and State's Exhibit No. 5 which
7 were the photo line-ups Sergeant McDonald showed to
8 you. Would you agree with me that both of the
9 individuals are located in spot number 6 of each of
10 these photographic line-up's?

11 **A** Yes. I do agree.

12 **Q** But these were two separate line-ups shown on two
13 different occasions?

14 **A** Yes.

15 **Q** Okay. Thank you, Ms. Norman. I don't have any
16 further questions.

17 **A** Thank you.

18 **THE COURT:** Any redirect?

19 **MS. CAMPBELL:** No, sir.

20 **THE COURT:** All right. You may step down. Call
21 your next witness, please.

22 **MS. FENT:** The State calls Deputy Alexander.

23 **THE COURT:** Come up and be sworn, please, sir.

24 CHRIS ALEXANDER, after being duly sworn,

25 testifies as follows:

1 **THE COURT:** All right. You may have a seat and
2 state your full name, please.

3 **THE WITNESS:** My name is Chris Alexander, a
4 Richland County Deputy Sheriff.

5 DIRECT EXAMINATION

6 **BY MS. FENT**

7 **Q** Deputy, how long have you been with the Sheriff's
8 Department?

9 **A** A little over five years now.

10 **Q** Okay. And as a deputy, what are your daily
11 responsibilities and duties?

12 **A** To patrol my region, which is the Region 3 area which
13 consists of everything inbetween the Monticello and
14 Farrow Road area, to answer calls, to assist the
15 citizens and make it a safer area for our citizens to
16 live.

17 **Q** Okay. On August 20th of 2004, were you on duty in
18 the early morning hours around 2 a.m.?

19 **A** Yes, ma'am; on permanent night shift. And I work
20 from 7 p.m. to 7 a.m.

21 **Q** Okay. Around that time were you called out to the
22 Pantry Express on Farrow Road?

23 **A** At approximately 2:14 a.m. I was dispatched to 8550
24 Farrow Road, and I arrived at approximately 19
25 minutes after 2.

1 **Q** Okay. And how is it that you were dispatched out
2 there? How did you get the call?

3 **A** Basically, in that type of call, being an armed
4 robbery call, it's toned out over the radio so all
5 units in the area will hear it and the closest unit
6 can get there as quickly as possible.

7 **Q** Okay. And what was the nature of the call?

8 **A** It was put out as an armed robbery call.

9 **Q** Okay. You arrived. What time did you say that you
10 arrived at the Pantry Express?

11 **A** Approximately 2:19.

12 **Q** Okay. And is this Pantry Express located in Richland
13 County?

14 **A** Yes, ma'am; it is.

15 **Q** Okay. Upon arrival there, what do you see? Who all
16 is there?

17 **A** As I am arriving in the parking lot, the victim, Ms.
18 Norman, meets me at the door, advises me that two
19 black males wearing black clothes and ball caps --

20 **MS. HUDGINS:** Objection to hearsay, Your Honor.

21 **THE COURT:** Overruled. Go ahead.

22 **MS. HUDGINS:** Thank you, Your Honor.

23 **A** -- exited the store to the left and entered the area
24 going toward the railroad tracks back toward the
25 State Park facility area. At that time I made sure

1 she didn't need any medical attention and began
2 securing the crime scene so evidence and a proper K-9
3 track could be conducted.

4 Q Okay. So your first purpose in arriving and making
5 contact with the victim or person that made the call
6 is what? What information do you need to get?

7 A Description of the suspects, direction of travel so I
8 can coordinate other units to set up a perimeter.

9 Q Okay. Are there any other officers there at the
10 location at that point?

11 A There are officers that are going in the area. And
12 since we were familiar with that area and I had a
13 direction of travel, I started to coordinate my
14 officers to get in the area of the State Park and be
15 on the lookout for anyone.

16 Q Okay. And at this point you said you're looking for
17 two black males wearing black clothes?

18 A Yes, ma'am.

19 Q Okay. And what about any other types of weapons?
20 You said the nature of the call was an armed robbery.
21 What type of weapon are you looking for?

22 A When I arrived I was told that one of the subjects
23 had a knife. And I also relayed that to my other
24 officers so they would be aware if they made contact
25 with anyone.

1 Q Okay. And I'm going to back up a step. You said
2 that you're securing the scene. What is that?

3 A Maintaining the scene for any chance to lift any
4 fingerprints, anything of trace evidence that would
5 be able to connect the subjects to the crime and put
6 them at the crime scene --

7 Q Okay. So basically, --

8 A -- as far as --

9 Q -- you're trying to keep as few people as possible
10 within the crime scene?

11 A Yes, ma'am.

12 Q Okay. So you said you start directing officers in
13 what location?

14 A The State Park facility which is just behind the 8550
15 Farrow Road area on the other side of the railroad
16 tracks.

17 Q Okay. If you're leaving the Pantry Express from the
18 front door, would that be towards the left?

19 A Yes, ma'am.

20 Q Okay. About how many officers do you think you kind
21 of directed?

22 A That evening I believe there was at least six of us
23 on the road. So I had at least five other officers
24 on the perimeter.

25 Q Okay. So then what do you do next?

1 **A** I requested a lab unit and an investigator as well as
2 a K-9. Since I had a possible start for a track, I
3 called for a K-9 unit as well to start a K-9 track.

4 **Q** And about how much longer did the K-9 unit arrive?

5 **A** It was probably about ten minutes before the K-9 unit
6 arrived on the scene and probably another couple, two
7 to five minutes, before we had the K-9 on the ground
8 actually beginning to start the track.

9 **Q** Okay. Explain to me how you start that track and
10 what you did with that K-9 unit?

11 **A** With Ms. Norman being able to give me a point of
12 where they entered a field that is next to the Shell
13 station, I advised the K-9 unit upon his arrival that
14 they entered at that point that she directed me to,
15 and that's where we took the dog in and began the
16 track from there.

17 And from there the K-9 tracked through the field
18 down onto the railroad tracks, down the railroad
19 tracks, a small, say, about 150 yards, took an abrupt
20 left up a hill into the State Park facility area, and
21 from there the track led another 200 yards or so
22 before we discovered some clothing articles that
23 appeared to have been disregarded in a hurry.

24 **Q** Who all is running the K-9 unit? You're obviously
25 there. Who else is there?

- 1 **A** I backed the K-9 officer, Teddy Santhackus, and his
2 dog, Barry, up that night.
- 3 **Q** Okay. And how do you all typically proceed? How
4 many people go out with the canine?
- 5 **A** Usually it's just the canine and one officer. In
6 this particular situation, that's what we had.
- 7 **Q** Okay. And what --
- 8 **A** The canine and myself.
- 9 **Q** I'm sorry.
- 10 **A** That's okay.
- 11 **Q** What are your duties in terms of --
- 12 **A** The K-9 handler has to focus on the dog. So my job
13 is to watch the areas around us and make sure no one
14 is laid down and waiting to possibly ambush us or any
15 other reasons, aspect of harm that might be out there
16 waiting for us.
- 17 **Q** Okay. About how long do you think you were running
18 the track until you found these articles of clothing?
- 19 **A** Probably about 30 to 40 minutes before we found the
20 articles of clothing.
- 21 **Q** Okay. And do you recall what articles of clothing
22 you found?
- 23 **A** There was a black pair of pants, ball cap, I believe
24 another pair of jeans and two dark colored shirts.
- 25 **Q** Did you fill out basically a property log or an

1 evidence log logging in the items that you found?

2 **A** Yes, we did.

3 (WHEREUPON, State Exhibit No. 7 is marked for
4 identification.)

5 **Q** I'm going to show you what's been marked as State's
6 Exhibit No. 7 and ask you if you recognize that?

7 **A** Yes, ma'am. This is my evidence inventory sheet that
8 I filled out when I collected the evidence that we
9 found.

10 **Q** Okay. The articles of clothing?

11 **A** Yes, ma'am.

12 **Q** Okay. And can you refresh your memory as to what
13 articles of clothing you actually picked up at that
14 location?

15 **A** I had one blue ball cap, two black shirts --
16 correction. One black shirt, one black pair of
17 pants, another black call cap and another pair of
18 blue jeans.

19 **MS. HUDGINS:** Your Honor, may I approach counsel
20 for a minute?

21 **THE COURT:** Yes.

22 (Pause)

23 **MS. HUDGINS:** Thank you, Your Honor.

24 **THE COURT:** Sure.

25

1 (WHEREUPON, State's Exhibit No. 8 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 9 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 10 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 11 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 12 is marked for
10 identification.)

11 Q Deputy, I'm going to show you what has been marked as
12 State's Exhibits 8 through 12. And if you can just
13 take a look at those before we show them to the jury,
14 go through the box, and ask you if you recognize
15 those items?

16 A All right. Yes, ma'am. These are the clothes that I
17 found on that K-9 track.

18 Q Okay. And where exactly was it that you found the
19 clothes?

20 A Probably about 200 yards after we entered the State
21 Park facility around some buildings.

22 Q When you found these articles, what did you do with
23 them?

24 A I secured them and bagged them. And then K-9
25 continued to track for a little while longer, but the

1 track had gone cold by that point. So we called it.

2 Q Okay. And then what did you do with the clothes
3 after you --

4 A I returned to 8550 Farrow Road, and from there I took
5 the clothing up to headquarters and secured them in
6 an evidence locker.

7 MS. FENT: The State offers into evidence
8 articles, Exhibits 8 through 12, and I'll tender them
9 to defense counsel for personal inspection.

10 MS. HUDGINS: Your Honor, beg the Court's
11 indulgence. My client would like to see it. I know
12 of no objection at this point.

13 THE COURT: Sure.

14 (Pause)

15 MS. HUDGINS: That's without objection, Your
16 Honor.

17 THE COURT: Without objection, State's 8 through
18 12 are admitted.

19 (WHEREUPON, State Exhibit No. 8 is admitted into
20 evidence.)

21 (WHEREUPON, State Exhibit No. 9 is admitted into
22 evidence.)

23 (WHEREUPON, State Exhibit No. 10 is admitted
24 into evidence.)
25

1 (WHEREUPON, State Exhibit No. 11 is admitted
2 into evidence.)

3 (WHEREUPON, State Exhibit No. 12 is admitted
4 into evidence.)

5 Q Deputy, real quickly, now that they're admitted into
6 evidence, State's Exhibit 11, which item is that?

7 A That's a black hat with the gold leaves on the bill.

8 Q Okay. State's Exhibit 12, what's that?

9 A A navy blue ball cap with CFD on it.

10 Q State's Exhibit 8?

11 A A black sweatshirt.

12 Q State's Exhibit 9?

13 A A black pair of what appears to be sweatpants.

14 Q And State's Exhibit 10?

15 A A pair of blue jeans.

16 (WHEREUPON, State's Exhibit No. 13 is marked for
17 identification.)

18 Q I'm going to show you what's been marked as State's
19 Exhibit No. 13 and ask you if you generally recognize
20 what's depicted here?

21 A Yes, ma'am. That is a map of the Farrow Road State
22 Park area.

23 Q Okay. And does the map include where the Pantry
24 Express is?

25 A Yes, ma'am, it does.

1 **Q** Okay. And would it help you to be able to refer to
2 this map to show the general direction from the
3 Pantry Express to where you found the clothes and
4 where you --

5 **A** I could.

6 **MS. FENT:** We'd offer into evidence State's
7 Exhibit No. 13.

8 **MS. HUDGINS:** I would like to see it.

9 (Pause)

10 **MS. HUDGINS:** That's without objection, Your
11 Honor.

12 **THE COURT:** Without objection, State's 13 is
13 admitted.

14 (WHEREUPON, State's Exhibit No. 13 is admitted
15 into evidence.)

16 **MS. FENT:** May the witness be allowed to come
17 down off the witness stand?

18 **THE COURT:** Sure. Keep your voice up, please.

19 **Q** Deputy, as loud as you can so the furthest jurors can
20 hear you, everyone can hear you, where is the Pantry
21 Express?

22 **A** The Pantry Express is located right here at the
23 corner of Parklane and Farrow Road.

24 **Q** And on the map it looks like there's a push pin in
25 that?

- 1 **A** Yes, ma'am.
- 2 **Q** Picture of the push pin. And if you can just.
- 3 basically just show us the direction that you went in
- 4 to look for everything?
- 5 **A** We picked up the K-9 track right at the edge of the
- 6 parking lot to the farthest left point of the Pantry
- 7 Express. We tracked down, went over to the railroad
- 8 tracks. We tracked down the railroad tracks 'til
- 9 somewhere in this area.
- 10 **Q** You're going towards Hinton Street?
- 11 **A** Yes, ma'am.
- 12 **Q** Okay.
- 13 **A** From there we took an abrupt left and went over a
- 14 steep hill over a fence into the State Park facility.
- 15 What's not depicted on here is the old buildings that
- 16 are still here. We tracked through three of these
- 17 building facilities where we found the clothing
- 18 probably about this area here.
- 19 **Q** Okay. So kind of even to where it says street,
- 20 abbreviation for street?
- 21 **A** That's correct.
- 22 **Q** And you're headed from the direction of the Pantry
- 23 Express towards where it says State Park in the
- 24 direction of Brookmont Lane?
- 25 **A** Yes, ma'am. That was the direction the track was

1 heading when it went cold.

2 Q Okay. Thank you very much.

3 A All right.

4 MS. FENT: I have no further questions at this
5 time. Please answer any questions from defense
6 counsel.

7 THE COURT: All right. Ms. Hudgins, cross
8 examine.

9 MS. HUDGINS: Thank you, Your Honor. Beg the
10 Court's indulgence.

11 (Pause)

12 MS. HUDGINS: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MS. HUDGINS

15 Q Good morning, Deputy Alexander.

16 A Good morning.

17 Q You were the first of law enforcement to respond or
18 to go to the Pantry Express on the night of August
19 20th, 2004?

20 A Yes, ma'am.

21 Q And as part of your duties, you are trained in how to
22 properly fill out an incident report, correct?

23 A Yes, ma'am.

24 Q And that would be one of the things that you would do
25 in the normal course of your investigations or your

1 going to a scene of an incident being called to an
2 incident? One of the things that you would do would
3 be to fill out an incident report?

4 **A** Yes, ma'am.

5 **Q** And one of the very important things about filling
6 out incident reports is -- you're the first one on
7 the scene -- is that they be accurate?

8 **A** Yes, ma'am.

9 **Q** Obviously that's important. And reliable?

10 **A** Yes, ma'am.

11 **Q** And the importance of that being that you're the
12 first person on the scene, that things are very fresh
13 in a witness's mind when you're talking to a witness;
14 since you're the first person on the scene, you would
15 probably get the most accurate vision or the most
16 accurate information from that witness at that time?

17 **A** Sometimes, depending on how shaken up that they are.

18 **Q** Understandable. And on the night of the incident you
19 in fact filled out an incident report?

20 **A** Yes, ma'am, I did.

21 **Q** And based on the information you obtained, a
22 description of the two gentleman that entered the
23 store?

24 **A** Yes, ma'am.

25 **Q** And the information would be as reflected on your

1 incident report?

2 **A** Yes, ma'am.

3 **Q** And in fact the information states that subject
4 number one was between the ages of 18 and 26. Do you
5 have your incident report in front of you?

6 **A** Yes, ma'am, I do. Yes, ma'am. That's what it
7 states.

8 **Q** And that the height would be five-nine to six feet?

9 **A** Yes, ma'am.

10 **Q** And the description for subject number two is black
11 male? It's on page 2.

12 **A** Yes, ma'am.

13 **Q** Between the ages of 18 and 26?

14 **A** Yes, ma'am.

15 **Q** Five-nine to six feet tall?

16 **A** Yes, ma'am.

17 **Q** And that was taken on the night of the incident?

18 **A** Yes, ma'am.

19 **Q** Based on your investigation?

20 **A** Yes, ma'am.

21 **Q** Okay. Now, Deputy Alexander, you talked with us a
22 little bit about these items of clothing that were
23 retrieved pursuant to the K-9 search. And you
24 indicated that you retrieved the items and then you
25 took them back to headquarters and secured them in a

1 locked evidence --

2 **A** Yes, ma'am, I did.

3 **Q** Okay. Do you know if anything was -- at what point
4 would it be your responsibility or would it be the
5 investigator's responsibility to send these items off
6 for forensic evaluations?

7 **A** That would be up to the lab. Once I turn it in, it's
8 in the custody of the evidence handler and the lab.

9 **Q** So the evidence handler. Do you have a lab right
10 there at the Richland County Sheriff's Department
11 that would perform some of the forensic information?

12 **A** We do now. But at the time of this incident our lab
13 was not up and running in that DNA aspect.

14 **Q** Would you tell the jury a little bit about when I
15 talk to you -- and I know what we're talking about
16 when we say forensic information. But could you
17 elaborate to the jury about what that means?

18 **A** I'm not a forensic expert. I just know what little I
19 do. Sometimes I even process small scenes for
20 fingerprints. But forensics is the process of
21 checking evidence, fingerprints, hair samples, blood,
22 whatever the case may be, that can actually be traced
23 back to someone and positively I.D. them.

24 **Q** So there's various ways that forensic evidence can
25 help law enforcement in trying to solve crimes?

1 **A** Yes, ma'am.

2 **Q** And so it's an important tool?

3 **A** Mm-hmm (affirmative).

4 **Q** It's available to the Richland County Sheriff's
5 Department?

6 **A** It is now.

7 **Q** Okay. And to your knowledge there were no forensics
8 retrieved from these items of clothing?

9 **A** None that I'm aware of.

10 **Q** Now, I'd like to talk with you a little bit more,
11 Deputy Alexander, about the track of the dogs. And I
12 guess it would be easiest if you could step down if
13 it's all right. May the witness step down? Your
14 Honor, is that --

15 **THE COURT:** Sure. Just keep your voice up,
16 please.

17 **Q** I will stand up there. But if you could show us
18 again for the benefit of the jury where your track
19 ended?

20 **A** The track ended -- if this depicted the buildings, I
21 could give you a better vicinity. But the track
22 ended back in the deep portion of State Park. And we
23 were running this direction when the track -- when
24 the canine pretty much lost the scent.

25 **Q** Okay. So right about here, in the middle of this

1 State Park area. And tell the jury what the old
2 State Park facility is?

3 **A** It's a prison facility to the best of my knowledge,
4 and it still houses some inmates in a couple of
5 buildings.

6 **Q** Okay. So at this point the track ends?

7 **A** Pretty much. The -- due to the fact that the
8 facility is still occupied and that there is foot
9 traffic in certain areas, the canine was picking up
10 too many different tracks, and so we called it off.

11 **Q** So at this point you have no idea where the track
12 continued?

13 **A** No, ma'am. Too much contamination.

14 **Q** Thank you, Deputy Alexander. You can have a seat.
15 Deputy Alexander, did you have an opportunity -- you
16 didn't have the opportunity to interview any of the
17 other witnesses that happened to come into the store
18 later that evening?

19 **A** To my knowledge, I don't believe there was any
20 witnesses in the store when it occurred.

21 **Q** But you're aware that there were two people that
22 entered the store afterwards and may have stayed with
23 Ms. Norman until you were able to get there?

24 **A** I don't recall, to be honest.

25 **Q** But it's fair to say that you didn't interview them

1 if you can't recall them? That's a fair statement?

2 **A** Yes, ma'am.

3 **Q** Okay. Beg the Court's indulgence for one moment,
4 Your Honor.

5 **THE COURT:** All right.

6 **MS. HUDGINS:** I don't have any further
7 questions, Your Honor. Thank you.

8 **THE COURT:** Any redirect?

9 **MS. FENT:** Nothing further, Your Honor.

10 **THE COURT:** All right, sir. You may step down.

11 **MS. FENT:** Your Honor, may this witness be
12 excused?

13 **THE COURT:** Any objection?

14 **MS. HUDGINS:** No objection, Your Honor.

15 **THE COURT:** You're excused, sir. All right.
16 Before you call your next witness, we've been going
17 about an hour and ten minutes. We'll take about a
18 ten-minute recess. Ladies and Gentlemen, please
19 don't discuss the case. You're excused to your jury
20 room. Everyone else stay seated, please, while the
21 jury is excused.

22 (Jury out at 11:15 a.m.)

23 **THE COURT:** Be sure that affidavit on those
24 things gets redacted.

25 **MS. CAMPBELL:** Yes, sir.

1 **THE COURT:** All right. We'll take about ten
2 minutes.

3 **MS. HUDGINS:** Thank you, Your Honor.

4 (Whereupon, a break is taken)

5 **THE COURT:** All right. I have been advised that
6 there will be a plea in this case. Is that correct?

7 **MS. HUDGINS:** That's correct, Your Honor.

8 **THE COURT:** All right. Let's go ahead.
9 Pleading to three charges. Is that right, Ms.
10 Hudgins?

11 **MS. HUDGINS:** That's correct, Your Honor.

12 **THE COURT:** All right. The three indictments
13 that have been handed up are 05-GS-40-24, 26 and 56,
14 The State vs. Bruce J. Wilson. Mr. Wilson, raise
15 your right hand for me, please, sir.

16 Bruce J. Wilson, having been first duly sworn,
17 pleads guilty as follows:

18 **THE COURT:** All right, sir. You can put your
19 hand down. I need to get some information from you
20 before we really get started. If you'll tell me your
21 age, please, sir. Age?

22 **MR. WILSON:** Thirty.

23 **THE COURT:** Thirty? And how much formal
24 education do you have, Mr. Wilson?

25 **MR. WILSON:** Eleventh grade.

1 **THE COURT:** Eleventh grade. Do you have a GED?

2 **MR. WILSON:** Yes, sir.

3 **THE COURT:** You do have a GED. And I know
4 during some of the hearings during the trial there's
5 been some testimony. Are you currently married?

6 **MR. WILSON:** No, sir. Just common law.

7 **MS. ADDISON:** We're common law.

8 **THE COURT:** All right. At one time you all were
9 together. Is that right?

10 **MR. WILSON:** How much time were we together?

11 **MS. HUDGINS:** At one time.

12 **THE COURT:** At one time.

13 **MR. WILSON:** Yeah.

14 **THE COURT:** All right. Do you have any
15 children, Mr. Wilson?

16 **MR. WILSON:** No, sir.

17 **THE COURT:** All right, sir. And what kind of
18 work have you done in the past, generally speaking?

19 **MR. WILSON:** Roofing, brick work.

20 **THE COURT:** Construction type work?

21 **MR. WILSON:** Yes, sir.

22 **THE COURT:** Of course I am aware that you are
23 now living with the Department of Corrections. What
24 I need to find out is how long he has been in jail
25 that he would be entitled to credit for on whatever

1 sentence might be imposed. He's serving a sentence
2 on something else. Is that right?

3 **MR. WILSON:** A sentence --

4 **THE COURT:** Has he been out of jail at all since
5 these warrants were served on him?

6 **MS. HUDGINS:** No, sir, Your Honor.

7 **THE COURT:** All right. And when were these
8 warrants served on him? Do we know that?

9 **MS. HUDGINS:** In November of 2004 I believe.

10 **MR. WILSON:** December.

11 **MS. CAMPBELL:** December 20th was when he
12 actually turned himself in.

13 **THE COURT:** December the 20th of '04?

14 **MS. CAMPBELL:** And I'm not aware of when he was
15 revoked.

16 **THE COURT:** And you've been in continuously
17 since then. Is that right?

18 **MR. WILSON:** Yes, sir.

19 **MS. HUDGINS:** I believe he was arrested and then
20 his probation was revoked.

21 **THE COURT:** All right. All right, Ms. Hudgins.
22 You are appointed or retained on the case?

23 **MS. HUDGINS:** I'm appointed, Your Honor.

24 **THE COURT:** The three indictments that I have
25 announced into the record are all I believe armed

1 robbery charges, each one of which is I believe a
2 most serious offense. A violent offense carries up
3 to 30 years and is an 85 percent offense. Have you
4 explained all of that to Mr. Wilson?

5 **MS. HUDGINS:** I have explained the consequences
6 of the most serious offenses. I have explained the
7 violent nature of the offenses to which he is
8 pleading and the 85 percent rule, the strike law. He
9 understands that. I believe he understands that
10 fully, Your Honor.

11 **THE COURT:** And I believe under the law, since
12 these pleas are being tendered on the same day, it
13 would be count as one strike. Is that your
14 understanding?

15 **MS. HUDGINS:** That is my understanding.

16 **THE COURT:** And in your opinion does Mr. Wilson
17 understand these charges and the possible sentence
18 that could be imposed?

19 **MS. HUDGINS:** He does, Your Honor.

20 **THE COURT:** All right. Mr. Wilson, I had to get
21 that information from your lawyer. I know she's
22 talked to you about that. At this point in time do
23 you have any questions about what these charges are
24 that you are pleading to or what the possible
25 sentence could be on any of these charges? Do you

1 have any questions about that?

2 **MR. WILSON:** No, sir.

3 **THE COURT:** All right. Now, you have signed the
4 paperwork, it has now been presented to the Court,
5 indicating that you do want to enter a guilty plea to
6 three counts of armed robbery. Is that correct?

7 **MR. WILSON:** Yes, sir.

8 **THE COURT:** All right. And, Mr. Wilson, is that
9 your decision?

10 (No response)

11 **THE COURT:** Sir?

12 **MR. WILSON:** Yes, sir.

13 **THE COURT:** Pardon me?

14 **MR. WILSON:** Yes, sir.

15 **THE COURT:** All right. Have you made that
16 decision freely and voluntarily?

17 **MR. WILSON:** Yes, sir.

18 **THE COURT:** All right. Have there been any
19 promises made to you or have any threats been made
20 against you by anyone, whether it's the Solicitor's
21 Office, law enforcement, or anyone else to get you to
22 plead to these charges?

23 **MR. WILSON:** No, sir.

24 **THE COURT:** All right. You're doing it because
25 that's the decision that you have made?

1 **MR. WILSON:** Yes, sir.

2 **THE COURT:** All right. Now, have you had
3 sufficient time to discuss all of this with Ms.
4 Hudgins?

5 **MR. WILSON:** Yes, sir.

6 **THE COURT:** All right. At this time any
7 complaints you want to put about the representation
8 she has provided for you? Anything you'd like to say
9 about that?

10 **MR. WILSON:** No, sir.

11 **THE COURT:** All right. I'll find that you're
12 satisfied with your representation. I am sure that
13 Ms. Hudgins has gone over with you the rights that
14 you have that you're going to give up if you enter
15 this plea. I'm required to do that here in the
16 courtroom.

17 At any time if you need more time to talk with
18 her, if you don't understand something, stop me.
19 I'll give you whatever time you need to speak with
20 your lawyer.

21 Of course you do have the right to have a jury
22 trial. I know that you know what a jury trial is
23 because we're in the middle of one. But you have the
24 right to have each one of these cases tried by a
25 jury. A jury would be selected from the citizens of

1 Richland County. The State would have the burden of
2 proving your guilt beyond a reasonable doubt.

3 As a Defendant you are not required and have no
4 burden to prove that you're not guilty. They have to
5 prove that you are. Now, you do have the right and
6 would have the right to subpoena witnesses to come in
7 and testify on your behalf. You would also have the
8 right to present any defenses that might be available
9 to you. But again, the burden of proof would remain
10 with the State to prove your guilt beyond a
11 reasonable doubt. That would be the purpose of the
12 trial.

13 If you enter this plea, of course you will give
14 up your right to have a jury trial both in the cases
15 that we're in the middle of the trial on and these
16 other cases. Do you understand that?

17 **MR. WILSON:** Yes, sir.

18 **THE COURT:** All right. Mr. Wilson, you have the
19 right of confrontation. And the best way I can
20 explain that to you is simply tell you that you do
21 have the right to confront the witnesses, to look at
22 them, to see who they are and to have your lawyer
23 cross examine those witnesses while they testify.

24 When a person decides to plead guilty, they will
25 give up and waive their right to confront those

1 witnesses. The State's not required to bring their
2 witnesses to court for a guilty plea. That's a right
3 that you will be giving up if you enter the plea to
4 these charges. Do you understand that?

5 **MR. WILSON:** Yes, sir.

6 **THE COURT:** All right. Another very important
7 right that you have that you will be giving up is
8 your right to remain silent. Under the Constitution,
9 no one anywhere, not your lawyer, not the solicitor,
10 not the judge, no one can force you to take the
11 witness stand and testify against yourself. Your
12 silence cannot be used against you. The jury is
13 advised and ordered they can't use that against you.
14 They can't even discuss that back in the jury room.
15 It is an important right.

16 If you plead guilty, you must give up that right
17 in order to admit your guilt in open court. So
18 that's another important right you'll be giving up if
19 you enter this plea. Do you understand that?

20 **MR. WILSON:** Yes, sir.

21 **THE COURT:** At this time, Mr. Wilson, any
22 questions from me that you have about these rights
23 that I've gone over with you?

24 **MR. WILSON:** No, sir.

25 **THE COURT:** And understanding that you will give

1 up these rights if you enter this plea on these
2 charges, is that what you want to do?

3 **MR. WILSON:** Yes, sir.

4 **THE COURT:** All right, sir. And are you guilty
5 of the charges that you are pleading to here today?

6 **MR. WILSON:** Yes, sir.

7 **THE COURT:** All right, sir. And, Solicitor, any
8 negotiations in the case that need to be placed on
9 the record?

10 **MS. CAMPBELL:** Your Honor, the only negotiation
11 is he is pleading to three out of the four armed
12 robberies. We are not prosecuting the one that occurred
13 in June. We have contacted the victim in that case
14 and he is in agreement with this plea.

15 **MS. HUDGINS:** And concurrent.

16 **THE COURT:** And, Ms. Hudgins, is that your
17 understanding of the extent of the negotiations?

18 **MS. HUDGINS:** In addition to the concurrent
19 nature of the sentence.

20 **THE COURT:** And whatever sentence would be
21 concurrent.

22 **MS. HUDGINS:** Yes, sir, Your Honor. That's my
23 understanding.

24 **THE COURT:** And, Mr. Wilson, is that your
25 understanding of the extent of the negotiations in

1 the case?

2 **MR. WILSON:** Yes, sir. Yes, sir.

3 **THE COURT:** Pardon me?

4 **MR. WILSON:** Yes, sir.

5 **THE COURT:** All right. I can take judicial
6 notice of the testimony that's already been presented
7 in this case, but I'll be glad for to you supplement
8 that record as well as the others, Solicitor.

9 **MS. CAMPBELL:** Your Honor, the only thing I
10 would add is that March 29th of 2004, it happened
11 around 4:10 in the morning. The victim in that case
12 was Ms. Gloria Norman. Again the Defendant went in
13 by himself. He was armed with a knife. He
14 approached her behind the register. She opened the
15 register, got him the money. He got about \$200 in
16 that case. He did confess to that one, as well as
17 Ms. Norman picking him out of the line-up.

18 And October 25th of 2004, that one happened
19 shortly after midnight, around 12:38 in the morning.
20 The Defendant along with a co-defendant who was the
21 same co-defendant in this case, Mr. Dixon, entered
22 the incident location. They walked up. At that
23 point the Defendant actually I think approached the
24 counter. It was Mr. Dixon who actually my
25 understanding is went behind the counter in that one.

1 He was armed with a crack pipe. At that time they
2 then demanded money again from Mr. Frederick Hill who
3 was the clerk in that case. He was able to get the
4 drawer opened -- I'm sorry, Your Honor, -- and got
5 about \$250 in that one and then fled the scene. Mr.
6 Hill was not able to pick him out of line-up.
7 However, he did confess to that one also. And the
8 co-defendant in that one also gave a statement
9 implicating him.

10 **THE COURT:** All right. That is a sufficient
11 factual basis upon which to base the pleas on these
12 three charges along with the testimony that has been
13 taken in this case. The Court will accept Mr.
14 Wilson's plea. I find that he has entered this plea
15 freely and voluntarily with the advice and assistance
16 of counsel with whom he's indicated satisfaction.

17 Mr. Wilson, at this point in time, I'm assuming
18 you're not under the influence of any kind of drugs
19 or alcohol, are you?

20 **MR. WILSON:** No, sir.

21 **THE COURT:** Do you have any questions about
22 what's going on?

23 **MR. WILSON:** No, sir.

24 **THE COURT:** All right. Your plea has been
25 entered freely and voluntarily with the advice and

1 the assistance of counsel. I'm aware of some of the
2 prior record when we were settling the record for
3 purposes of impeachment. Anything else you'd like to
4 tell me as far as record?

5 **MS. CAMPBELL:** Yes, Your Honor. Back in 1992 he
6 was convicted on two counts of strong armed robbery
7 for which he received a YOA sentence. And that YOA I
8 think was subsequently revoked, his parole on that.
9 Other than that, it is the 1998 common law robbery, a
10 failure stop for blue lights from 2002, and a
11 throwing bodily fluids by prisoners on an employee of
12 the Department of Corrections.

13 **THE COURT:** He doesn't have any probation over
14 his head at this point in time?

15 **MS. HUDGINS:** Not at this time.

16 **MS. CAMPBELL:** I think he's been revoked in
17 full.

18 **MR. WILSON:** No, sir.

19 **THE COURT:** All right. I have accepted his
20 plea. Ms. Hudgins, I'll be glad to hear from you and
21 anything Mr. Wilson would like to tell me.

22 **MS. HUDGINS:** Thank you, Your Honor. May it
23 please the Court. As far as Mr. Wilson, he is 32
24 years of age. He is a lifelong resident of Columbia
25 and completed the eleventh grade at Richland

1 Northeast High School.

2 Your Honor, the evidence, the statements that
3 Mr. Wilson gives in regard to this all strongly
4 indicate what a severe addiction he has to crack
5 cocaine. You know, in one of them they were armed
6 with crack pipes, from both the statements that were
7 given. In the other one he admitted to being high on
8 crack and going into the store.

9 It would be my contention just looking at this
10 evidence that but for his addiction to crack cocaine
11 these robberies would not have taken place. I've
12 talked to Mr. Wilson about his drug abuse, his drug
13 addiction, Your Honor. He tells me he began smoking
14 marijuana at the age of nine. Apparently it was
15 accessible in his home at that time. It sounds to
16 me, while Mr. Wilson has not elaborated on it, it
17 sounded like he did not grow up in the best home type
18 environment if that type of material was available to
19 him.

20 As is typically the case, marijuana led to
21 powder cocaine in his teens. He was experimenting
22 with powder cocaine and other substances, Your Honor.
23 Hence, he was a behavior problem in school. He left
24 Richland Northeast or was asked to leave Richland
25 Northeast and was sent to the Olympia school and I

1 think after that went off to do his YOA. He did
2 obtain his GED while he was at Lee Correctional. And
3 I think that speaks highly of him.

4 Your Honor, he is so ashamed when he was on
5 probation, before he was you terminated on his
6 probation, he was sent to LRADAC. But frankly, in my
7 years of doing this, I've never seen anybody that
8 really benefited from the programs at LRADAC. There
9 aren't any programs that I'm aware of that are
10 successful within the Department of Corrections, that
11 there are attempts. With funding the way it is, I
12 know my clients are not getting the treatment that
13 they need.

14 It's no excuse. Mr. Wilson understands that's
15 no excuse. He understands the terror that he put in
16 the lives of these clerks, and he has indicated to me
17 that he is very sorry and he does want to address the
18 Court on that issue.

19 But, Your Honor, based on all of that, and
20 you've heard his prior record, he has not served a
21 substantial prison term, he understands what he's
22 facing on these very serious charges; we would ask
23 that you be as lenient as possible and encourage Mr.
24 Wilson. And I think he's really reaching out for
25 help and looking forward to being in the Department

1 of Corrections to get some help. Obviously he needs
2 help with addiction problems, and he hopes that he
3 can address that as well as some other issues.

4 Standing with him today is his significant
5 other. Her name is Thelma. And she is standing
6 beside him today and supports him 100 percent and
7 will be there for him once he completes his sentence,
8 Your Honor. So I'd ask you to take all of that into
9 consideration and fashion a sentence as leniently as
10 possible.

11 **THE COURT:** All right. Mr. Wilson, I'll be glad
12 to consider anything you'd like to tell me. Your
13 attorney indicated you did want to make a statement.

14 **MR. WILSON:** Yes. First of all, I want to
15 apologize to Ms. Norman for the horrible actions that
16 I have taken in her life, what had happened during
17 the incidents of the crime.

18 And, well, a lot of -- I have made a lot of bad
19 mistakes in my life. And one of the things, I think
20 my life started changing over when I decided to turn
21 myself in to the police department instead of
22 running, because I could have made the decision to
23 run, you know. But there wasn't no use to keep
24 running, looking over your shoulder. So I just went
25 ahead and turned myself on in to get it over with.

1 **THE COURT:** All right, sir. And, ma'am, was
2 there anything you wanted to say? You don't have say
3 a word, but you're standing here with him. If you
4 want to say anything, I'll be glad for you to.

5 **MS. HUDGINS:** She indicated to me that she
6 didn't want to say anything.

7 **THE COURT:** All right.

8 **MS. HUDGINS:** Your Honor, Mr. Wilson did
9 indicate to me that he was thankful that when he was
10 high that, thankfully, no one was hurt during these
11 incidents. And we'd just ask you to consider that,
12 Your Honor.

13 **THE COURT:** All right. Trying to take all of
14 these factors into consideration and the nature of
15 your offenses as well as whatever problems Mr. Wilson
16 may have as far as the drugs are concerned and his
17 prior record, the sentence of the Court is that on
18 each of these counts he be sentenced to 23 years.
19 They will run concurrently. He will get credit for
20 time back to December the 20th of 2004. I've ordered
21 ATU treatment and any other available drug treatment
22 while he's serving these sentences. Good luck to
23 you, Mr. Wilson.

24 **MS. CAMPBELL:** Thank you, Your Honor.

25 **MS. HUDGINS:** Thank you, Your Honor.

1 **THE COURT:** The exhibits will be returned to the
2 State. I think they were all State's Exhibits. Is
3 that right?

4 **COURT REPORTER:** Yes, sir. That's right.

5 (Whereupon, the proceedings are concluded)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth 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 and guilty pleas of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 4th and 5th days of January, 2006.

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

June 26, 2006

Jenny H. Williams

Jenny H. Williams, Court Reporter

57hBP

2010CP#006562

STATE OF SOUTH CAROLINA

County of

Richland

In the Court of Common Pleas

Bruce Wilson #192733

Full name and prison number (if any) of Applicant,

vs.

State of South Carolina

Name of Respondent.

APPLICATION FOR

POST-CONVICTION RELIEF

Newly discovered evidence2010 SEP 21 PM 3:03
CLERK OF COURT
C.P. & G.S.RICHLAND COUNTY
FILEDINSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention LEE CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence RICHLAND COUNTY COURTHOUSE
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2005-BS-40-24 ; ARMED ROBBERY
 - (b) 2005-BS-40-26 ; ARMED ROBBERY
 - (c) 2005-BS-40-26 ; ARMED ROBBERY
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 1/5/06
 - (b) 1/5/06
 - (c) 1/5/06

5. Check whether a finding of guilty was made

(a) after a plea of guilty

(b) after a plea of not guilty

(c) after a plea of nolo contendere

6. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. Richland County Court of Common Pleas

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. DISMISSAL WITH PREJUDICE

ii. _____

iii. _____

(c) the date of each such result:

i. 9/13/07

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Applicant alleges that his counsel was ineffective.

(b) _____

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Applicant contends that his indictments were shown legal process that failed to confer subject matter jurisdiction upon trial court to convict him.

(c) _____

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? ☒
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? ☒
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)?
- (d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Post-Conviction Relief Hearing
- ii.
- iii.
- iv.

(b) the name and location of the Court in which each was filed:

- i. Richland County Court of Common Pleas
- ii.
- iii.
- iv.

(c) the disposition thereof:

- i. Dismissal with prejudice
- ii.
- iii.
- iv.

(d) the date of each such disposition:

- i. 9/13/07
- 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.

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) NEWLY DISCOVERED EVIDENCE

(b) _____

(c) _____

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

(a) your arraignment and plea? ☒

(b) your trial, if any? ☒

(c) your sentencing? ☒

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ☒

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

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

i. KATHARINE A. HUDGINS, P.A.; 914 Richmond St., Suite 102;
Columbia, S.C. 29201

ii. CHARLIE J. JOHNSON, J.R.; 3614 Lombard, Dr., Suite D;
Columbia, S.C. 29204

iii. _____

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

i. ARRAIGNMENT, plea, trial, and sentencing

ii. P.C.R. Hearing

iii. _____

18. State clearly the relief you seek in filing this application.

REVISION OF CONVICTION AND/OR SENTENCE

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

No

STATE OF SOUTH CAROLINA

County of Richland

VERIFICATION

I, BRUCE WILSON #192733, 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.

Bruce Wilson

SWORN to and subscribed before me this 9day of Sept, 2010

[Signature]
Notary Public

(L.S.)

My Commission Expires: 11-4-2015

2010 SEP 21 PM 3:03
JEANNETTE W. MCGRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

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

I, BRUCE WILSON #192733, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

Bruce Wilson
Applicant

SWORN or affirmed to and subscribed before me this

9 day of Sept, 2010

[Signature]
Notary Public

11-4-2015

Prior PCR
 Case# 20062904
 Box# 47-K
 SRL# 50116

Prior CIA
 Case# 199301734
 Box# 036L
 SRL# 21073

ATTORNEY GENERAL'S OFFICE

RECEIVED 9/23/10
 ADMINISTRATIVE INSTRUCTIONS
 FILE OPEN INFO
 HAVE COPIES MADE
 ROUTE TO
 ORDER TRANSCRIPT
 PEN RECORDS CLERK RECORDS
 OTHER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

WILSON Bruce -
00192733,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2010CP4006562

RETURN AND
MOTION TO DISMISS2011 OCT -4 AM 9:53
JANETTE W. McBRIDE
C.C.P. & G.S.RICHLAND COUNTY
FILED

In response to the post-conviction relief application filed September 1, 2010, the Respondent would show the following.¹

I.

The Applicant is presently confined at Lee Correctional Institution. The PCR application is based on orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted and/or convicted of the following: Armed Robbery (3 counts) – 05-GS-40-24;26;56. The Applicant was represented by attorney Kathrine J Hudgins. The Applicant was sentenced on January 5, 2006 by The Honorable James W. Johnson, Jr.. The Remittitur date for the Applicant's direct

1

<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2010CP4006562&CourtType=G&CaseType=Civil&CourtAgency=40002>

WILSON Bruce - State's Return and Motion to Dismiss - (2010CP4006562)

appeal was N/A.²

Attached herewith and/or incorporated via the readily available Clerk of Court records are the records of the Richland County Clerk of Court regarding the subject convictions, and/or the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

According to the South Carolina Department of Corrections, the Applicant is serving the following sentence:

Offender Type Adult-straight Sentence Offense Armed Robbery Sentence Start Date 12/20/2004 Sentence Length 23 YRS, 0 MOS, 0 DYS Admission Date 02/08/2005
Committing County Richland Location Lee Projected Release Date 03/04/2026
Projected Parole Date Not Eligible Supervised Furlough Eligibility Not Eligible Sex
Offender Registry No
<https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00192733>

II.

Timeliness – S.C. Code §17-27-45(a)

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

² The Respondent reserves the right to amend the motion if additional relevant procedural history is found, such as more specific direct appeal information.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). It appears that this Application was filed beyond the statutory time period.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act. *See also*, Rule 243(c), SCACR:

(c) Explanation Required. If the lower court has determined that the post-conviction relief action is barred as successive or being untimely under the statute of limitations, the petitioner must, at the time the notice of appeal is filed, provide an explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court

was improper. If the petitioner fails to make a sufficient showing, the notice of appeal may be dismissed.

SUCCESSIVE

The Respondent submits that it appears that this PCR application is also possibly successive. Successive applications for post-conviction relief are disfavored.

Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been

raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel. (Aice v. State, 409 S.E.2d 392 (1991). Even a belated direct appeal claim is subject to limitations. Graham v. State, 378 S.C. 1, 661 S.E.2d 337 (2008)(Petitioner was barred from raising in successive post-conviction relief (PCR) application claim that he was denied the right to direct appeal due to the ineffective assistance of counsel, where claim could have been raised in first PCR application).

III.

As a general matter, the Respondent notes that a high bar exists to obtain post-conviction relief.

The writ of habeas corpus stands as a safeguard against imprisonment of those held in violation of the law. Judges must be vigilant and independent in reviewing petitions for the writ, a commitment that entails substantial judicial resources. Those resources are diminished and misspent, however, and confidence in the writ and the law it vindicates undermined, if there is judicial disregard for the sound and established principles that inform its proper issuance.
Harrington v. Richter, 09-587, 2011 WL 148587 (U.S. Jan. 19, 2011)

See also, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

The State must overcome many hurdles before an accused person is punished:

- (1) the magistrate may refuse to issue a warrant;
- (2) the magistrate may dismiss a case after a preliminary hearing;
- (3) a grand jury may refuse to indict;
- (4) the solicitor may nolle pross;
- (5) the trial judge may direct a verdict;

WILSON Bruce - State's Return and Motion to Dismiss - (2010CP4006562)

(6) a petit jury may refuse to convict if only one juror has a reasonable doubt;

(7) the judge may set the verdict aside notwithstanding a verdict of the jury;

(8) the appellate court may reverse the conviction.

If the accused person can prevail at any one of these stages of a proceeding, he goes free and is unpunished. On the other hand, the State must prevail at each of the eight stages before punishment is inflicted.

In addition to these many protections, the accused now has the right of application for post-conviction relief upon a proper showing. In almost any case a convicted person, given time for research, can come up with some sort of theory ostensibly warranting a new trial.

.....

Most of what Mr. Justice Harlan said in his separate opinion in *Mackey v. United States*, 401 U.S. 667, 91 S.Ct. 1160, 1179, 28 L.Ed.2d 404 (1971), with respect to collateral relief from a criminal conviction, is applicable here:

"Finality in the criminal law is an end which must always be kept in plain view. . . . At some point, the criminal process, if it is to function at all, must turn its attention from whether a man ought properly to be incarcerated to how he is to be treated once convicted. If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all. Surely it is an unpleasant task to strip a man of his freedom and subject him to institutional restraints. But this does not mean that in so doing, we should always be halting or tentative. No one, not criminal defendants, not the judicial system, not society as a whole is benefited by a judgment providing a man shall tentatively go to

jail today, but tomorrow and every day thereafter his continued incarceration shall be subject to fresh litigation on issues already resolved.

A rule of law that fails to take account of these finality interests would do more than subvert the criminal process itself. It would also seriously distort the very limited resources society has allocated to the criminal process. While men languish in jail, not uncommonly for over a year, awaiting a first trial on their guilt or innocence, it is not easy to justify expending substantial quantities of the time and energies of judges, prosecutors, and defense lawyers litigating the validity under present law of criminal convictions that were perfectly free from error when made final. (citation omitted) This drain on society's resources is compounded by the fact that issuance of the habeas writ compels a State that wishes to continue enforcing its laws against the successful petitioner to relitigate facts buried in the remote past through presentation of witnesses whose memories of the relevant events often have dimmed. This very act of trying stale facts may well, ironically, produce a second trial no more reliable as a matter of getting at the truth than the first."

Anderson v. Leeke, 271 S.C. 435, 440-42, 248 S.E.2d 120, 123 (1978).

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

IV.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired and for any other reasons as explained above.

Respectfully submitted,

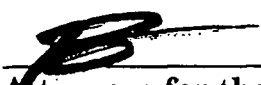
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 

Attorneys for the Respondents

September 22, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

WILSON Bruce -
00192733,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2010CP4006562

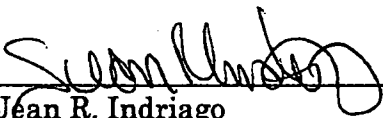
CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2011 OCT -4 AM 9:53
JEANETTE W. McBRIDE
C.C.P. & G.S.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

WILSON Bruce, #192733
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

DATED September ³⁰~~22~~, 2011.


Jean R. Indriago
Legal Assistant



ALAN WILSON
ATTORNEY GENERAL

Thursday, September 22, 2011

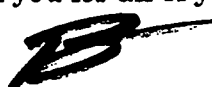
Clerk of Court - Richland County
Jeanette W. McBride
PO Box 2766
1701 Main Street, Room 205
Columbia, SC 29202

Re: PCR (2010CP4006562) - WILSON Bruce, 00192733 v. State

Richland County Clerk of Court:

Enclosed for filing is the State's Return and Motion to Dismiss in the PCR matter for:
WILSON Bruce, 2010CP4006562 v. State
(2010CP4006562).

Thank you for all of your assistance in this matter,


Brian T. Petrano
Assistant Attorney General
bpetrano@scag.gov

Enc.

cc. (Pro Se Applicant)
WILSON Bruce, #192733
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

WILSON Bruce, 00192733)

Plaintiff,)

vs.)

State)

Defendant.)

IN THE COURT OF COMMON PLEAS
5th JUDICIAL CIRCUIT

CASE NO.: 2010CP4006562

MOTION AND ORDER INFORMATION
FORM AND COVERSHEETPlaintiff's Attorney:
(Pro Se Applicant)WILSON Bruce, #192733
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Defendant's Attorney:

Brian T. Petrano, Bar No. 74244

Address:

PO BOX 11549

Phone: 803-734-3737 Fax 803-253-6283

E-mail: bpetrano@scag.gov

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II)
- ☒ 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

9/22/2011

Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT: \$ _____
- ☒ EXEMPT: w Cause in Child or Spousal Support
(check reason) buse 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: _____

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: \$ _____

FILED

2011 OCT -4 AM 9:53

JENNIFER W. MCBRIDE

C.C.P. & G.S.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
	)	2010-CP-40-06562
Bruce Wilson, #192733,	)	
	)	
Applicant,	)	
	)	
v.	)	CONDITIONAL ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

RICHLAND COUNTY
FILED
2012 APR 16 PM 3:49
JEANETTE W. McBRIDE
CLERK, P. & G.S.

This matter comes before this Court by way of an application for post-conviction relief filed September 21, 2010.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was true bill indicted at the April 2005 term of the Richland Grand Jury for two (2) counts of Armed Robbery (2005-GS-40-00024/00026); and at the July 2005 term for an additional charge of Armed Robbery (2005-GS-40-00056). He was represented by attorney Katherine Hudgins, Esquire, on the charge(s). On January 5, 2006, Applicant appeared before The Honorable James W. Johnson, Jr., where he pled guilty as indicted and was sentenced to twenty-three (23) years imprisonment on each count, all to run concurrently. Applicant did not appeal the pleas or sentences.

Applicant filed an application for Post-Conviction Relief (PCR) on May 23, 2006. (2006-CP-40-02981). He was represented by Charlie Jay Johnson, Jr., Esquire

on the action. The State made its Return to the application on December 14, 2006. An evidentiary hearing was convened into the matter on August 1, 2007, at the Richland County Courthouse at which Applicant was present with counsel. By order filed September 18, 2007, The Honorable James C. Williams denied and dismissed the application with prejudice.

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

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully;
 - (a) Applicant alleges that his counsel was ineffective.
 - (b) _____
 - (c) _____
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
 - (a) Applicant contends that his indictments were sham legal process that failed to confer subject matter jurisdiction upon trial courts to convict him.
 - (b) _____
 - (c) _____

In making its decision, the Court had before it the available records of the Richland County Clerk of Court regarding the subject convictions, and/or the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, and the *Respondent's Return and Motion to Dismiss*.

Findings of Fact and Conclusions of Law

Timeliness – S.C. Code §17-27-45(a)

This Court agrees with the Respondent that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160.

S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). For the purposes of this Order, the Applicant's conviction/sentence was "finalized" on the date of his conviction or the date of the Remittitur from any direct appeal, whichever was later, i.e. January 5, 2006. Adding one (1) year per S.C. Code § 17-27-45(a) and one (1) day per Rule 6(a), SCRCF means that this PCR application had to be filed by January 6, 2007. This Application was filed on September 21, 2010, which was more than three-and-a-half (3 ½) years after the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court shall summarily dismiss the application for post

conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

SUCCESSIVE

This PCR application must also be summarily dismissed as it appears it may also be successive in nature. Successive applications for post-conviction relief are disfavored. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." [Emphasis in original]. *Id.*, 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. *Id.* The

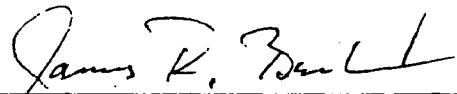
Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application(s). The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Once a PCR applicant obtains a complete adjudication on the merits of his original application, including an appeal, he may not make successive applications based on ineffective assistance of prior PCR counsel. (Aice v. State, 409 S.E.2d 392 (1991). Even a belated direct appeal claim is subject to limitations. Graham v. State, 378 S.C. 1, 661 S.E.2d 337 (2008)(Petitioner was barred from raising in successive post-conviction relief (PCR) application claim that he was denied the right to direct appeal due to the ineffective assistance of counsel, where claim could have been raised in first PCR application).

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted thirty (30) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have with the Richland County Clerk of Court and shall serve opposing counsel at the following address:

Assistant Attorney General
Robert D. Corney
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 16 day of April, 2012.



The Honorable James R. Barber, III
Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Bruce Wilson

☒ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-40-06562

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Bruce Wilson, Bar No.
Address:
LCI
990 Wisacky Highway
Bishopville, South Carolina 29010
phone: fax:
e-mail: other:

Defendant's Attorney:
Robert D. Corney, Bar No.
Address:
Post Office Box 11549
Columbia, South Carolina 29211
phone: 803-734-3737 fax: 803-734-5
e-mail: bpetrano@scag.gov other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and II)
☐ 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

April 13, 2012

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

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Bruce Wilson (SCDC #192733),

Plaintiff,

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-40-6562

**AMENDMENT TO APPLICATION FOR
POST-CONVICTION RELIEF**

2012 AUG 31 11:10:37
FILED
RICHLAND COUNTY
LEANNETTE V. MCBRIDE
C.C.P. & G.S.

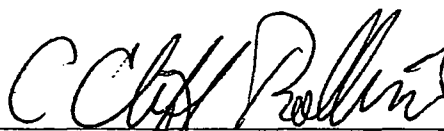
COMES NOW the Applicant Bruce Wilson, #192733, by and through the undersigned counsel, and amends the previously filed Application for Post-Conviction Relief filed on September 21, 2010 as follows:

- 1) The asserted grounds for the instant Application for Post-Conviction Relief are based on newly-discovered evidence.
- 2) The newly-discovered evidence claim relates to Applicant's assertion that the State failed to establish jurisdiction over Applicant sufficient to convict him pursuant to Indictments 2005-GS-40-24, 2005-GS-40-25, and 2005-GS-40-56, by reason of the State's failure to provide him with a preliminary hearing prior to these indictments.
- 3) Therefore, the Application for Post-Conviction Relief challenges Applicant's original conviction under the above-referenced indictments.
- 4) To this claim, Applicant amends and adds his assertion that the newly-discovered evidence claim also relates to his original Application for Post-Conviction Relief, filed in 2007, which was based on ineffective assistance of counsel.
- 5) Facts supporting this claim include the fact that Applicant's appointed counsel for his original PCR claim, failed to appeal the initial decision on Applicant's first PCR

claim, failed to inform the applicant of his failure to appeal, and in fact failed to inform the applicant that the attorney was no longer employed with the attorney's original law office, limiting the applicant's contact with his appointed counsel and preventing applicant from being made aware of the true status of his application.

Based on the foregoing, Applicant respectfully requests that the Court hear his amended application for Post-Conviction Relief in this matter.

Respectfully submitted,



C. Cliff Rollins
RICHARDSON PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
(803) 779-0016 facsimile
COUNSEL FOR PLAINTIFF

August 31, 2012
Columbia, South Carolina.

State of South Carolina)
)
 County of Richland)

In the Court of Common Pleas
 Fifth Judicial Circuit
 2010-CP-40-6562

Bruce Wilson,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)

Transcript of Record

October 18, 2012
 Columbia, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge

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

C. Clifford Rollins, Esquire
 Attorney for the Applicant

Robert D. Corney, Esquire, Assistant Attorney General
 Attorney for the Respondent

Elizabeth B. Harris, CVR-M
 Circuit Court Reporter

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1 MR. CORNEY: May it the please court? Your Honor, this
2 is the PCR of Bruce Wilson, docket number 2010-CP-40-6562.
3 Mr. Wilson was true-bill indicted at the April 2005 term of
4 the Richland County Grand Jury for two counts of armed
5 robbery and at the 2005 term for an additional count of
6 armed robbery. He was represented by Kat Hudgins.

7 Mr. Wilson pled guilty January 5, 2006, before Judge
8 Johnson to the charges as indicted following a short trial,
9 I believe. He started off on a trial and ended up pleading
10 guilty, Your Honor. He was sentenced to twenty-three
11 years' imprisonment on each count, all to run concurrently.

12 A PCR application was filed May 23, 2006. He was
13 represented by Mr. Charlie Johnson, Jr., on the
14 application. There was an evidentiary hearing before Judge
15 Williams held into that action on August 1, 2007, where Mr.
16 Wilson was present, and he testified at that PCR hearing.
17 The application was denied by Judge Williams with prejudice
18 by order filed September 18, 2007.

19 He filed the current application September 21, 2010.
20 Your Honor, the state submitted a return and motion to
21 dismiss the application as untimely filed and successive in
22 nature to Judge Barber, who signed a conditional order of
23 dismissal April 16, 2012, essentially provisionally denying
24 the application with prejudice while giving Mr. Wilson
25 thirty days to submit any responses he may have or

1 objections he may have to the summary dismissal of the
2 application.

3 After receiving Mr. Wilson's objections, Judge Barber
4 asked that this matter -- Judge Barber, obviously in his
5 capacity as chief administrative judge for common pleas,
6 reviewed those objections and asked that it be set for an
7 evidentiary hearing into a claim of newly discovered
8 evidence and belated, I guess, ineffective assistance of
9 PCR counsel-type claim in that he wasn't -- he asked for an
10 appeal or wasn't aware of his right to appeal the PCR
11 application and did never get his right to appeal that
12 former PCR. And that's what we're here on today, Your
13 Honor. He is represented by Cliff Rollins on the
14 application.

15 THE COURT: All right.

16 MR. CORNEY: I hope I didn't run through that too
17 quickly. Thank you, Judge.

18 THE COURT: Yes, sir.

19 MR. ROLLINS: Your Honor, I'm Cliff Rollins for the
20 plaintiff. If it please the court, I'd like to proceed and
21 have my client present his testimony.

22 THE COURT: Let me -- let's see, Mr. Rollins.

23 MR. ROLLINS: Yes, sir.

24 THE COURT: Are you at Richardson Plowden?

25 MR. ROLLINS: Yes, sir, I am.

1 THE COURT: My daughter is an attorney at Richardson
2 Plowden, so if there is a -- I always clear with lawyers or
3 address, have the lawyers address the issues regarding any
4 conflict with me hearing cases in which the firm that she
5 works with, the lawyers from her firm are involved. Have
6 you discussed that with Mr. Bruce Wilson?

7 MR. ROLLINS: The fact that your daughter works at my
8 law firm, Your Honor?

9 THE COURT: Yes, sir.

10 MR. ROLLINS: No, sir, I have not discussed that with
11 him.

12 THE COURT: All right, I believe you'll need to
13 discuss that with him, and the solicitor needs to -- I
14 mean, the prosecutor will need to -- well, you'll need to
15 discuss that with him outside the presence of the court.
16 Then I will need to know his position, as well as the
17 state's position.

18 MR. ROLLINS: Yes, Your Honor.

19 THE COURT: So, we'll ---

20 MR. CORNEY: Thank you, Judge, and I wasn't aware of
21 that, and that will be something I'll keep in mind from now
22 on.

23 THE COURT: All right. So, y'all need to discuss that
24 outside the presence of the court.

25 (OFF THE RECORD.)

1 THE COURT: Mr. Rollins.

2 MR. ROLLINS: Yes, Your Honor. I've discussed the
3 issues you brought up earlier with my client regarding your
4 daughter's employment at my firm, and he's willing to
5 proceed.

6 THE COURT: All right, is that correct, Mr. Wilson.

7 APPLICANT: Yes, sir.

8 THE COURT: You're fully informed about the issue of
9 my daughter being employed in the firm with your lawyer,
10 and you want me to handle the case?

11 APPLICANT: Yes, sir.

12 THE COURT: All right, and the state's position?

13 MR. CORNEY: I have no position on it at all, Your
14 Honor. If he's comfortable with it and he waives any
15 potential conflict, we're ready to get on.

16 THE COURT: Does the state raise any conflict?

17 MR. CORNEY: Oh, I apologize.

18 THE COURT: Or waive any conflict?

19 MR. CORNEY: I have no, I have no, no objection or
20 anything to that conflict.

21 THE COURT: All right.

22 MR. CORNEY: I'll waive any conflict.

23 THE COURT: All right, we will proceed.

24 MR. ROLLINS: All, Your Honor, please the court? I'd
25 like to call Bruce Wilson to the stand.

B. WILSON - DIRECT EXAMINATION BY MR. ROLLINS

7

1 BRUCE WILSON, BEING DULY SWORN,
2 TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Please have a seat there, sir. State
4 your full name for the record.

5 WITNESS: Bruce Wilson.

6 DIRECT EXAMINATION BY MR. ROLLINS:

7 Q. Mr. Wilson, are you currently incarcerated?

8 A. Yes.

9 Q. Where are you incarcerated?

10 A. Lee Correctional Institution.

11 Q. And what are you incarcerated for?

12 A. Three counts of armed robbery.

13 Q. You said three counts?

14 A. Yes.

15 Q. When were you arrested on those charges?

16 A. December the 20th of 19, 19 -- December the 20th of
17 2004.

18 Q. Okay, and where you provided with legal counsel after
19 your arrest on those charges?

20 A. Yes. The public defender office had appointed me Ned
21 Longshore.

22 Q. And were you represented by Ms. Longshore [sic]
23 throughout your trial process?

24 A. No, I wasn't. He, only thing he did, he had -- I, I
25 -- let me see. How do -- okay, they appointed him, but I

B. WILSON - DIRECT EXAMINATION BY MR. ROLLINS

8

1 didn't know he was my attorney until I got to Kirkland,
2 Kirkland for violation of probation, and I got paperwork
3 stating that he was my attorney, and that's when I was
4 informed who my attorney was.

5 Q. And was he your attorney throughout the trial process?

6 A. No, he was not.

7 Q. Were you represented by any other attorneys?

8 A. Yes. Kathleen [sic] Hudgins was my attorney through
9 trial. Kathleen Hudgins was my attorney during trial and
10 my plea.

11 Q. Did you ever request a preliminary hearing be held
12 with regard to the armed robbery charges?

13 A. Yes. My attorney Led -- Ned Longshore have requested
14 a preliminary hearing.

15 Q. All right. When did that -- when was that request for
16 a preliminary hearing made?

17 A. I believe my first for the, for three counts of -- for
18 my first -- I had four counts of armed robbery in all. For
19 three counts of armed robbery, he put in for my preliminary
20 hearing on December the 28th of 2004, and for the fourth
21 one he put in a preliminary hearing on December, December
22 the 30th of 2004.

23 Q. And was a preliminary hearing ever held with regards
24 to those charges?

25 A. No, they wasn't.

B. WILSON - DIRECT EXAMINATION BY MR. ROLLINS

9

1 Q. Was a preliminary hearing ever scheduled?

2 A. Well, to my knowledge, I didn't know about the
3 preliminary hearing until after my first preliminary
4 hearing -- I mean, my PCR hearing. And from the paperwork
5 what I have got from the courts in 2010, it stated that I
6 have requested preliminary hearing and they tried, they
7 attempted to have the hearing on March the 10th of 2005,
8 but it was continued due to -- it was continued, and then
9 they had done appointed me attorney Richard Cart --
10 Cathcart, and he put a continuance in, and then they took
11 him off my case for conflict of interest.

12 Q. Did you ever request that your preliminary hearing be
13 continued?

14 A. No, I did not.

15 Q. Were you eventually indicted by a grand jury on
16 charges?

17 A. Yes, I was in April.

18 Q. And when was your trial date?

19 A. My trial date was January the 3rd, 2006.

20 Q. And who was your attorney at that, at that time?

21 A. Kathleen Hudgins.

22 Q. And did you and Ms. Hudgins ever discuss prior to your
23 making a plea the matter of your request for a preliminary
24 hearing?

25 A. Well, Ms. Hudgins had came to see me. From the first

B. WILSON - DIRECT EXAMINATION BY MR. ROLLINS

10

1 time, she was mainly was asking me about pleaing, you know.
2 She was saying, the first thing she said was we need to
3 plea guilty, and I told her I didn't commit a armed robbery
4 and that I wasn't pleaing. But then I asked her was we
5 going to have a preliminary hearing. She said from my
6 knowledge we wasn't because I'd been indicted.

7 Q. And the PCR action that brings us here today and that
8 we're here to present to the court today, is that your
9 first PCR action that you've filed?

10 A. No. This is my second.

11 Q. Okay. Do you -- I don't need an exact date. Do you
12 recall approximately when you filed the first PCR action?

13 A. I filed my first PCR action in, I believe it was May
14 of 2006.

15 Q. Okay, and was that PCR action heard by the court?

16 A. Yes, it was.

17 Q. And were you represented by counsel on that initial
18 PCR action?

19 A. Yes, I was.

20 Q. And who was your counsel?

21 A. Mr. Charlie J. Johnson.

22 Q. And what were, what were the issues on your first PCR
23 action?

24 A. My first PCR action, I came up under ineffective
25 assistance of counsel. It was mainly behind suppression of

B. WILSON - DIRECT EXAMINATION BY MR. ROLLINS

11

1 evidence. That was basically what, what that PCR was
2 behind, and under, and under conflict of -- under coercion.

3 Q. Did you ever argue during that first PCR action that
4 the court lacked subject-matter jurisdiction over you
5 because you had requested a preliminary hearing and had
6 never been provided with one?

7 A. No, I did not because I didn't have knowledge of it
8 until 2000, I believe, 9. That's when I got knowledge of
9 the preliminary, preliminary hearing.

10 Q. When you were being represented by Mr. Johnson in that
11 initial PCR action, did you ever discuss with him what the
12 impact of -- what the impact might be on your claim
13 regarding your earlier request for a preliminary hearing
14 that was not held?

15 A. I think I might have mentioned something about a
16 preliminary hearing, but it wasn't -- raised the issue
17 because I didn't -- I never had no knowledge of it until
18 after my first PCR hearing.

19 Q. And just tell the court today in your own words, if
20 you can, what is -- what are you claiming here today on
21 this PCR action with regards to your -- the failure to hold
22 a preliminary hearing in your case?

23 A. Okay. My argument is this. I requested a preliminary
24 hearing, and by law it say, it states that from the time
25 you request a preliminary hearing, they have two days to

B. WILSON - DIRECT EXAMINATION BY MR. ROLLINS

12

1 have that preliminary hearing by right of due process. And
2 by them not having my preliminary hearing, they violated my
3 constitutional right, my fourteenth constitution right to
4 due process.

5 Q. Are you claiming that the general sessions court did
6 not have ---

7 A. Jurisdiction.

8 Q. --- jurisdiction to try your case?

9 A. Exactly. They never had jurisdiction of my case. My
10 case is still in magistrate court.

11 Q. How much time -- again approximately. I'm not looking
12 for exact dates, but approximately how much time passed
13 between the filing of your first PCR action and the filing
14 of the action that brings us here today?

15 A. I filed in '06, so it's about six years to this day,
16 'til I got here this day, but I had my first PCR hearing in
17 '07, August '07.

18 Q. And, and why was there such a time lapse between your
19 initial PCR application in which you argued those evidence
20 issues and this action which you're arguing a
21 subject-matter jurisdiction?

22 A. Because at the time of my hearing, after the hearing I
23 never been informed of disposition of the hearing. So, I
24 never had no -- I'm still thinking it was -- I was waiting
25 on a disposition. I never been informed of anything. I

B. WILSON - DIRECT EXAMINATION BY MR. ROLLINS

13

1 never talked back to my attorney. I never seen him no more
2 from the day of court.

3 Q. And by your attorney, are you referring to Mr.
4 Johnson?

5 A. Yes, sir.

6 Q. Did you ask Mr. Johnson to file an appeal of your
7 initial PCR action?

8 A. I couldn't ask him to file an appeal because I never
9 seen him again, anything. The only, the only information I
10 have to get in contact with, with him was that he was
11 working for, he was working for, he was working for Tara
12 Dawn Shurling Law Firm. And I tried to get in, I tried to
13 get in contact with him at Tara Dawn Shurling Law Firm, but
14 they told me he no longer had worked there. He hasn't been
15 working there for months. And at the time she said that,
16 if he haven't been working there for months, then when he
17 first got my case, he was working there. That's the only
18 place I knew of to get in contact with him. I didn't know
19 have no other contact information for him. So, by the time
20 we came for my preliminary -- for my PCR hearing, he was no
21 longer working for Tara Dawn Shurling.

22 MR. ROLLINS: Your Honor, may I approach my witness?

23 THE COURT: Yes, sir.

24 BY MR. ROLLINS:

25 Q. Mr. Wilson, I'm going to show you a document I have

B. WILSON - DIRECT EXAMINATION BY MR. ROLLINS

14

1 provided opposing counsel a copy of, and I want to ask you
2 a couple questions about it.

3 A. Uh-huh.

4 Q. This document, it's handwritten in your -- is this
5 your handwriting?

6 A. Yes, sir.

7 Q. And what is this document dated?

8 A. It's dated December 2010.

9 Q. And what, in fact, is this, this three-page document
10 I've handed you?

11 A. This is, this document is really, I had filed for my
12 motion discovery, to have another copy of my motion
13 discovery because it had been destroyed while I was on
14 lockup because a settlement leak at Lee Correctional
15 lockup. And I, I wanted to use -- to get it to present it
16 with my case to show that when I did get my motion
17 discovery, my -- the thing about my preliminary hearing was
18 not in my, in my motion discovery. So, I never had no, no
19 knowledge or anything of this about the preliminary hearing
20 and not having it.

21 Q. So, this was -- was this an attempt on your part to
22 act pro se, if you will, for yourself and find out more
23 about the status of your case?

24 A. Yes, and at the time I had already had done filed for
25 my PCR, but I just wanted that for my evidence to present

B. WILSON - DIRECT EXAMINATION BY MR. ROLLINS

15

1 so that it would show that, you know, I did get this later
2 and it was never in my motion discovery. So, I had it
3 withheld from me, so I couldn't use it as a defense.

4 Q. And who was this sent to?

5 A. I send this to, I sent this to the clerk of court,
6 Jeanette, Jeanette W. McBride.

7 MR. ROLLINS: And, Your Honor, I'd move at this time
8 this be marked as an exhibit to the hearing.

9 THE COURT: All right. What say you?

10 MR. CORNEY: I don't have any objection to it.

11 THE COURT: Okay, it's admitted.

12 (LETTER MARKED INTO EVIDENCE AS APPLICANT'S EXHIBIT
13 NUMBER 1.)

14 BY MR. ROLLINS:

15 Q. Mr. Wilson, did you receive any, any response to
16 Exhibit 1?

17 A. No, I did not.

18 Q. Well, let me show you this, this set of documents
19 right here. I'm sorry. Do you recognize -- this is a
20 sheaf of six or seven documents I'm handing you here. Do
21 you know what these are?

22 A. Yes. This, this is the paperwork that I got after I
23 had, I had wrote the clerk of court about the disposition
24 of my PCR hearing. And when they sent, when they sent me
25 some paperwork, they didn't send the disposition at that

B. WILSON - DIRECT EXAMINATION BY MR. ROLLINS

16

1 time, but they end up sending this along with some more
2 paperwork, and that's when I had got my knowledge of not
3 having my preliminary hearing.

4 Q. So, I mean, do you understand that this was, in
5 effect, a response by the court to your request that you
6 made in Exhibit 1?

7 A. Yes. This, this is what I -- this what came with --
8 once, once she had sent that, when she sent this paperwork
9 back, first exhibit back, she had sent this along with it.
10 That's how I end up with this.

11 Q. And do you see, I believe it's about three pages into
12 this packet I've handed you. Do you see that letter headed
13 Richland County Central Court?

14 A. Yes.

15 Q. Is that letter dated November 10, 2010, and addressed
16 to you?

17 A. Yes, it is.

18 Q. What, what, in effect, is this letter telling, is it
19 telling you?

20 A. I had wrote, I had wrote Richland County Central Court
21 requesting -- well, after I had wrote a request to the
22 clerk of court, they told me they cannot give those kind of
23 records out. That I'd have to write Central Court. So, I
24 wrote Central Court and that's when they -- and I was
25 asking them about me having a preliminary hearing, and they

1 sent this in response. They say:

2 In response to your letter dated November 1,
3 2010, our records reflect your preliminary
4 hearing was -- your preliminary hearing from the
5 above list of charges was scheduled for March the
6 10th, 2005, but continued. They was rescheduled
7 to -- they was rescheduled for July the 7th,
8 2005, at which time the court was notified by the
9 solicitor's office that you have been indicted.
10 Due to, due to the indictment, no preliminary
11 hearings was held. I have attached print, print
12 histories of each warrant for your arrest.

13 Q. Was this all news to you when you received this
14 letter, or were you aware of this information before
15 receiving this letter?

16 A. No, it was new. All this was new, and then, and then
17 once she had sent me this, then I turned around and wrote
18 again asking her for, asking her for the date when I have
19 filed for my, for my preliminary hearing.

20 Q. But is it, is it -- did receiving this letter clarify
21 for you the, the status of your first PCR action?

22 A. No, it did not. I didn't get that status until I
23 wrote again. I had wrote again, and that's when I got the
24 disposition, that the judge had come to a disposition less
25 than a month later in September.

B. WILSON - DIRECT EXAMINATION BY MR. ROLLINS

18

1 Q. September of when?

2 A. 2007.

3 Q. I'm sorry. Are you, are you telling me that 2010 was
4 the first time you became aware of the status of your 2007
5 PCR application?

6 A. No. I came into the status of my PCR application in
7 2009.

8 Q. Okay, and how did you become aware of the outcome of
9 your first PCR application?

10 A. After I, after I continuously kept sending requests
11 about it, they finally had notified me, sent me the
12 paperwork with the disposition of my application.

13 Q. If you'll look at the remainder of these documents,
14 just briefly look at the remainder of these documents that
15 I have handed you, is there any other information, new
16 information in here that you would have learned for the
17 first time about your case by looking at these documents?

18 A. Yes. When I first came, I was ignorant to the law.
19 So, didn't know, but once I seen that I'd never had my
20 preliminary hearing, I started looking into it and that's
21 when I came across it. You know, they're stating that if I
22 requested a preliminary hearing within ten days, then I'm
23 supposed to have this preliminary hearing unless I'm
24 indicted. But by me -- by them indicting me four months
25 down the line, you know, I'm still trying to figure where,

B. WILSON - DIRECT EXAMINATION / CROSS-EXAMINATION

19

1 where that ten-day guideline come in.

2 MR. ROLLINS: Your Honor, I'd move this packet of
3 documents be admitted as Exhibit 2 to this hearing.

4 MR. CORNEY: Without objection, Your Honor.

5 THE COURT: It's admitted without objection.

6 (PACKET OF DOCUMENTS MARKED INTO EVIDENCE AS
7 APPLICANT'S EXHIBIT NUMBER 2.)

8 BY MR. ROLLINS:

9 Q. And again, when did you file the current PCR action
10 that brings us here today? Was it subsequent to your
11 receipt of what's been marked, the information as what's
12 been marked as Exhibit 2?

13 A. Yes.

14 MR. ROLLINS: Begging the court's indulgence for a
15 moment, Your Honor.

16 (A PAUSE.)

17 MR. ROLLINS: If you'll answer any questions that the
18 state's counsel may have for you.

19 CROSS-EXAMINATION BY MR. CORNEY:

20 Q. Mr. Wilson, you said on direct a minute ago you never
21 asked Mr. Johnson to file an appeal, correct?

22 A. I never seen him again.

23 Q. Okay. You ---

24 A. So, I don't, I don't have no knowledge of appeals. I
25 never seen him. He never wrote me a letter, no nothing. I

B. WILSON - CROSS-EXAMINATION BY MR. CORNEY

20

1 don't have -- I never had no way to get in contact with him
2 to ask him about nothing, my case or anything. So, how can
3 I ask someone something that I don't see?

4 Q. Okay. You said you called over to Tara Shurling's
5 office because that's where you last knew that he worked?

6 A. Yes, I did.

7 Q. They weren't able to direct you in any way, shape, or
8 form of where he may have gone to?

9 A. No, they did not. Only thing they said was he no
10 longer work for our office.

11 Q. All right. Did you ever ask them where he had gone
12 to?

13 A. No, I did not.

14 Q. You ever send any letters to the office or anything
15 like that to Ms. Shurling's office for Mr. Johnson?

16 A. No. Once I had called, I think it was a week after
17 our hearing I had called, and they was like he no longer
18 worked there. No, I did not because, see, I was still
19 waiting on the disposition itself.

20 Q. So, you never asked them where Mr. Johnson had gone to
21 and never able to find that out?

22 A. No, I wasn't able to find that out.

23 Q. All right. Do you know who you spoke with over at Ms.
24 Shurling's office?

25 A. No, I do not.

B. WILSON - CROSS-EXAMINATION BY MR. CORNEY

21

1 Q. You do anything else to try to locate Mr. Johnson in
2 the thirty days following that hearing to tell him you
3 wanted to file an appeal?

4 A. He said he was going to get back with me when I left
5 out of this courtroom.

6 Q. Have you seen the order of dismissal from that PCR
7 action?

8 A. Yes, I have. I finally got the paperwork from
9 dismissal after I continuously sent to the clerk a request
10 to the clerk of court. I finally, I got it a year, like
11 about a year and a half down the line.

12 Q. When was that did you get that order of dismissal?
13 You say a year and a half down the line?

14 A. I think about, about a year, about a year down the
15 line, but I'm still thinking it was still in the courts
16 waiting on a decision.

17 Q. A year down the line from when your PCR, after you had
18 the hearing?

19 A. Yes.

20 Q. Okay. So, that was probably in two thousand -- let's
21 see.

22 A. About a, about a year. It was, it was like.

23 Q. 2008 maybe?

24 A. End, about the end '08, beginning '09, something like
25 that.

B. WILSON - CROSS-EXAMINATION BY MR. CORNEY

22

1 Q. Okay, the beginning of '08, end of '09 -- end of '08,
2 beginning of '09. You have a copy of that order up there
3 with you?

4 A. No, I do not.

5 Q. I've got one. I'll bring it up to you and let you
6 take a look at it.

7 (A PAUSE.)

8 MR. CORNEY: I apologize. Beg the court's indulgence
9 one minute.

10 (COUNSELORS CONFER.)

11 BY MR. CORNEY:

12 Q. All right, so this letter of dismissal, the one you
13 received.

14 MR. CORNEY: If I may approach the witness briefly,
15 Your Honor?

16 THE COURT: Yes.

17 MR. CORNEY: And I'll have to get copies to the court
18 of this. I'm just going to have him read from it if
19 there's no objection to that.

20 BY MR. CORNEY:

21 Q. So, you received this see the end of 2008, beginning
22 of 2009. I'm going to let you look at this last page here
23 at the conclusion. You can just read from this line down;
24 I'll give you a minute to read it.

25 (A PAUSE.)

1 A. Yes. I read it.

2 Q. All right, I'm going to pick it up from you. I'll
3 look right here with you if you don't mind me standing this
4 close to you. I don't want to make you uncomfortable or
5 anything.

6 But -- so, there, that part you just noticed right
7 there says:

8 This court advised the applicant that he must
9 file and serve a notice of appeal within thirty
10 days from the receipt by counsel of written
11 notice of entry of judgement to secure the
12 appropriate appellate review.

13 Correct?

14 A. So, that's after the judgement. Am I not correct?

15 Q. Correct, and that's in the order dismissal that you
16 said you received end of 2008 and beginning of 2009?

17 A. Yes.

18 Q. All right, and you didn't file this current PCR
19 application until -- I believe it was?

20 A. 2010.

21 Q. September 21, 2010, correct?

22 A. Yes.

23 MR. CORNEY: That all the questions I have, Your
24 Honor. Thank you.

25 THE COURT: Anything further?

B. WILSON - REDIRECT EXAMINATION BY MR. ROLLINS.

24

1 MR. ROLLINS: Just briefly redirect.

2 REDIRECT EXAMINATION BY MR. ROLLINS:

3 Q. You talked earlier about a leak that occurred in the
4 facility where you're being kept that destroyed some, some
5 documents?

6 A. Yes.

7 Q. Was the order that you were just shown included among
8 the documents that was destroyed?

9 A. Yes. It was -- I was on lockup at the time I came for
10 my P, PCR hearing. That's, that's why it was hard for me
11 really get out and use the phone because on lockup they
12 bring the phone around, might get it once a month. So, you
13 know, that's the only time I can call my attorney because,
14 as you know, Lee County is very strict, but...

15 Q. And ---

16 A. About that, what he had raised for me, it says I have
17 thirty days to appeal the decision, but it was, but then
18 them thirty days was still over with by the time I received
19 that application of the decision. By doing that, it still,
20 it still wasn't -- I still couldn't file it. I still
21 wouldn't be able to file it because it said it was still --
22 it was late. It would have been late because thirty days
23 after September was October.

24 Q. At the time you received this order of dismissal, did
25 you have any idea that you had an argument for

C. JOHNSON - DIRECT EXAMINATION BY MR. ROLLINS

25

1 subject-matter jurisdiction?

2 A. No, I did not.

3 MR. ROLLINS: Nothing further.

4 THE COURT: All right.

5 MR. CORNEY: We have no further questions from the
6 state, Your Honor.

7 MR. ROLLINS: Step down.

8 (THE WITNESS EXITS THE STAND.)

9 MR. ROLLINS: And, Your Honor, I'd like to call Mr.
10 Charlie Johnson to the stand.

11 THE COURT: All right, Mr. Charlie Johnson.

12 CHARLIE J. JOHNSON, JR., BEING
13 DULY SWORN, TESTIFIES AS FOLLOWS:

14 DIRECT EXAMINATION BY MR. ROLLINS:

15 Q. Mr. Johnson, you've been in the courtroom here, and
16 you've heard the prior testimony. Did you represent Mr.
17 Wilson on his first PCR action?

18 A. Yes, I did.

19 Q. And did you, in fact, change law firms or locations
20 contemporaneous with the conclusion of his initial PCR
21 action?

22 A. Yes, that's correct.

23 Q. Do you have any recollection as to whether you
24 informed Mr. Wilson that you were now working, going to be
25 working at a different firm?

C. JOHNSON - DIRECT EXAMINATION BY MR. ROLLINS

26

1 A. Probably I didn't because I think after the, after the
2 PCR hearing was when the decision to leave Tara Shurling's
3 law firm and start my own actually occurred.

4 Concerning the appeal of the PCR, it's my normal
5 standard to file an appeal, and after looking at this case,
6 if the appeal wasn't filed, it probably was a mistake made
7 by me. He had a right to have an appeal of his PCR. I've
8 done numerous PCRs over the years and if it wasn't filed,
9 it was not his fault.

10 Q. And so if there is no appeal that, that appears or
11 notice of appeal that appears in the official record, you
12 would understand that to indicate likely that you had not
13 filed one?

14 A. That's correct because as I said, it's been my
15 standard to file an appeal, but probably I didn't get in
16 touch with him. I know I told him that I would take care
17 of it after the judge's decision, and I told him that I
18 would do whatever I could to help him.

19 If for some reason when I left Tara Shurling's office
20 -- maybe the paperwork got mixed up. Maybe something that
21 I did there caused it not to be filed, but it wasn't
22 intentional on my part not to file an appeal, and I would
23 agree with him that he does have a right to have an appeal.

24 Q. And do you, do you have any recollection during the
25 time that you represented him on the initial PCR action

1 whether you discussed grounds to include subject-matter
2 jurisdiction argument based on the failure to hold a
3 preliminary hearing?

4 A. No, that wasn't the issue that were brought up in our
5 discussion. Neither him or I was aware of that at that
6 time. If it was, I, as I told him when I met with him, I
7 wanted to make sure that he got all his issues presented to
8 the court. If for some -- that was not a issue that
9 neither, neither him or I was aware of.

10 MR. ROLLINS: Okay. Thank you, Mr. Johnson. Answer
11 any questions the state may.

12 MR. CORNEY: I don't have any questions for this
13 witness, Your Honor. I'd just reserve a minute to make an
14 argument at the end.

15 THE COURT: All right. You may step down.

16 WITNESS: Thank you.

17 (THE WITNESS EXITS THE STAND.)

18 MR. ROLLINS: And, Your Honor, we'd call Kat Hudgins
19 to the stand, please.

20 KATHRINE H. HUDGINS, BEING DULY
21 SWORN, TESTIFIES AS FOLLOWS:

22 WITNESS: My name is Kathrine Hudgins. That's spelled
23 H-u-d-g-i-n-s.

24 DIRECT EXAMINATION BY MR. ROLLINS:

25 Q. Ms. Hudgins, once again you, you as well have been

K. HUDGINS - DIRECT EXAMINATION BY MR. ROLLINS

28

1 present during the previous testimony, so I will just ask
2 you to confirm. Did you represent Bruce Wilson during his,
3 during the plea negotiations regarding his ---

4 A. I did.

5 Q. --- his armed robbery, and you gave testimony at the
6 initial PCR action filed by Mr. Wilson. Is that right?

7 A. I don't recall it, but if I did, the record will
8 reflect that.

9 Q. And I want to ask you this. Are you able to testify
10 here today that you discussed issues relating to Mr.
11 Wilson's argument on subject-matter jurisdiction for
12 failure to hold a preliminary hearing relating to his
13 initial trial?

14 A. At the former PCR hearing?

15 Q. No. I, I'm going back before the PCR to the actual,
16 his actual trial.

17 A. I've reviewed my notes in my file, and I was appointed
18 in April of 2005. At that point he was already indicted,
19 so he wasn't entitled to a preliminary hearing at that
20 point. So, it's not something that I would have raised
21 with him, and I don't have anything in my file where he
22 would have raised that as a concern of his.

23 Q. And you've had -- other than what the file you were
24 given might reflect, you had no way of knowing what any
25 prior counsel of his may have discussed with him with

1 regards to a preliminary hearing?

2 A. I'd have no way of knowing what prior counsel
3 discussed with Mr. Wilson.

4 Q. And so you would have had no reason to bring that, any
5 testimony regarding a preliminary hearing, to the court's
6 attention at the first PCR application?

7 A. That's correct.

8 MR. ROLLINS: If Your Honor please?

9 (COUNSEL CONFERS WITH APPLICANT.)

10 BY MR. ROLLINS:

11 Q. Did you file any discovery motions on behalf of Mr.
12 Wilson during the time period that you represented him?

13 A. I, I did.

14 Q. And did you receive any response from the state
15 regarding the motions that you filed?

16 A. I did. I've got a trial notebook here. I've got
17 several video cassettes I reviewed with Mr. Wilson, my
18 notes. As far as I'm aware, I received all the, all of the
19 discovery that was requested in this case.

20 Q. Did you provide Mr. Wilson with a copy of those
21 materials?

22 A. I'm not sure if I provided him with a copy the
23 materials. I know I went over the discovery materials with
24 him, and I know I had to make arrangements for us to view
25 these video tapes so that he could see them as well. I

K. HUDGINS - DIRECT EXAMINATION BY MR. ROLLINS

30

1 believe the solicitor's office provided us with still
2 photos from those videos, but, but we had to make
3 arrangements for him to see the videos himself.

4 Q. But is it fair to say that, that your focus there
5 regarding discovery, you were addressing principally
6 evidence issues relating to the photographic lineup and
7 things like that being presented by the state?

8 A. I think that would be fair.

9 Q. And you don't recall anything in the discovery
10 materials presented by the state triggering an argument in
11 your mind that there might be a subject, subject-matter
12 jurisdiction argument ---

13 A. No.

14 Q. --- for Mr. Wilson?

15 A. The indictments were true billed by the grand jury.
16 There's not a subject-matter jurisdiction problem.

17 MR. ROLLINS: Nothing further. Answer any questions
18 he may ask.

19 MR. CORNEY: Your Honor, I don't have any questions.
20 I'd just like to thank Ms. Hudgins for her patience back
21 there this morning.

22 MR. ROLLINS: Indeed. Thank you, Ms. Hudgins.

23 WITNESS: No problem, counselor.

24 THE COURT: Thank you.

25 WITNESS: Thank you, Your Honor.

1 THE COURT: Yes.

2 (THE WITNESS EXITS THE STAND.)

3 THE COURT: Sir, any further witnesses?

4 MR. ROLLINS: No further witnesses.

5 THE COURT: By the state?

6 MR. CORNEY: No witnesses from the state, Your Honor.

7 Just a brief closing.

8 THE COURT: Any arguments?

9 MR. ROLLINS: Yes, Your Honor. The testimony that
10 we've presented here today reflects that in 2004, warrants
11 for armed robbery were issued against Mr. Wilson. He was
12 arrested on those warrants in late -- on December 20, 2004,
13 and he requested a preliminary hearing on December the 30th
14 or December 28th in one, on one charge and December 30th on
15 the another.

16 He was never given preliminary hearings on those
17 requests, and our argument today is that proceeding under
18 *State vs. Funderburk* and *State vs. Fortner* and its progeny
19 that once an accused has properly requested a preliminary
20 hearing, the magistrate court retains jurisdiction of those
21 charges and the, and the general sessions court is deprived
22 of jurisdiction until a preliminary hearing is held, and
23 ---

24 THE COURT: How about once they're indicted by the
25 grand jury?

1 MR. ROLLINS: Well, if they are indicted by the grand
2 jury, then yes, that grants the general sessions court
3 jurisdiction, but the jurisdiction of the general sessions
4 court and the grand jury is co-extensive, co-equal. And
5 under *Funderburk* and those associated cases, once you have
6 a proper request of a preliminary hearing, the general
7 sessions court and grand jury are deprived of jurisdiction
8 unless a session of general sessions court is held within
9 ten days, is convened within ten days after the request and
10 the issue is addressed then.

11 THE COURT: Well, there are many folks who would like
12 to have preliminary hearings who don't get preliminary
13 hearings because rather than have a preliminary hearing, or
14 if the magistrates don't have a preliminary hearing, the
15 state gets an indictment and it shifts from the --
16 jurisdiction shifts from the magistrate's court to the
17 circuit court. Do you have any cases that said that that's
18 not constitutional?

19 MR. ROLLINS: Yes. I have a copy of *State vs.*
20 *McClure* and *State vs. Funderburk* and *State vs. Fortner* with
21 me, Your Honor, and I understand all of those cases to
22 still be good law and say exactly that. That once a
23 request for a preliminary hearing is properly made -- which
24 it's indicated and the court is on the record here that
25 such a request was made -- unless a grand jury -- unless of

1 court of general sessions convenes more than ten days
2 afterwards and addresses, and addresses those ---

3 THE COURT: More than ten days?

4 MR. ROLLINS: Excuse me. Let me quote it correctly.

5 THE COURT: Tell me the name of the case you're citing
6 again, McClure?

7 MR. ROLLINS: Yes, *State vs. McClure*, M-c-c-l-u-r-e.
8 That's, the cite is 289 SE 2d 158, South Carolina 1982. If
9 I may approach? I've got a copy of it.

10 THE COURT: All right. 1982?

11 MR. ROLLINS: Yes, sir, and that case states:

12 Once the accused properly requests preliminary
13 hearing, the magistrate's court retains
14 jurisdiction, and the court of general sessions
15 is deprived of jurisdiction until such hearing is
16 held. No indictment may be true billed by the
17 grand jury when the circuit court lacks
18 jurisdiction since the grand jury's jurisdiction
19 is co-extensive with the criminal jurisdiction of
20 the court in which it is empanelled and for which
21 it is to make inquiry.

22 THE COURT: All right.

23 MR. ROLLINS: And, and the testimony presented today
24 indicates that Mr. Wilson has vigorously pursued his
25 judicial remedies in this case to the extent that he is

1 capable, given his position.

2 You've heard the testimony of Attorney Johnson, who
3 indicated it's typical of his practice to file an appeal in
4 these cases. That he typically does so, but he is unable
5 to testify that he, in fact, filed an appeal on behalf of
6 my client. And unless the state can produce an indication
7 that such an appeal was filed on the record, our position
8 is that no such appeal was held.

9 He's given testimony to indicate why there was a time
10 lapse. First why there was a time lapse between his first
11 PCR action and his second PCR action, and why the issue of
12 subject-matter jurisdiction was never brought up by him
13 during the pendency of the first action. The statute
14 17-27-90 indicates that any grounds that are voluntary or
15 intelligently waived in your initial PCR action can't be
16 brought up in a subsequent action unless the court finds a
17 ground for the relief asserted for which there was
18 sufficient reason why it was not asserted in the first
19 action. And subject-matter jurisdiction is an issue that
20 may be raised at any time.

21 And you have Mr. Wilson here who has explained to the
22 court he was simply unable to make contact with his counsel
23 after his first PCR action. He wasn't even aware what the
24 status of it was until he was able to get some response
25 directly from the Central Court as to what the status of

1 his action is. Thank you, sir.

2 THE COURT: All right. Yes, sir.

3 MR. CORNEY: Your Honor, I'll start by addressing the
4 belated appeal of the post-conviction relief application
5 previously had by Mr. Wilson in this case.

6 Mr. Wilson's own testimony was that he received the
7 order of dismissal in early -- or late 2008, early 2009.
8 The order specifically says on the last page, and I got him
9 to read it into the record and I didn't introduce this into
10 the record. I don't have a copy of it with me. I'd be
11 happy to introduce this as part of the record, but the last
12 page of the order of dismissal which he read in
13 specifically advises the applicant that he's got thirty
14 days from the time of receiving this order to file his
15 notice of appeal.

16 Addressing this sort of hybrid, newly discovered
17 evidence and belated direct appeal issue, he would have had
18 to file his post-conviction relief application within one
19 year from the receipt of this from, I guess, from notice
20 that he had the right to appeal. He's claiming he didn't
21 know he could have appealed it, and he couldn't get in
22 touch with Mr. Johnson. He would have had to file within
23 one year of receiving this notice showing -- telling him
24 that he had thirty days to appeal it in post-conviction
25 relief in order to be entitled to a belated direct appeal,

1 or a belated appeal post-conviction relief application.

2 THE COURT: He said they had a flood at -- which place
3 is it?

4 MR. CORNEY: At whatever institution he's at.

5 THE COURT: CCI?

6 APPLICANT: Lee Correction.

7 THE COURT: They had a flood in Bishopville, and he
8 lost his records.

9 MR. CORNEY: I don't see how that makes any difference
10 to file within one year a notice of appeal. The document
11 is about five page -- five lines long to file a notice of
12 appeal. All he had to do was submit it, and Appellate
13 Defense takes over.

14 He had one year in which to file his notice of appeal
15 after he learned he had to right to appeal, which is
16 plainly set forth in this order of dismissal. He did not
17 file it until September of 2010. That's outside of one
18 year from early 2009, as he says it. So, under the statute
19 for newly discovered evidence, which is 17-27, I believe --
20 I don't want to say it wrong off the top of my head, but
21 under the PCR statute 20 -- 17-27 section of the South
22 Carolina code, he would have had to file within one year
23 for post-conviction relief of his actual discovery of this
24 newly discovered evidence that he has the right to appeal.
25 Or within one year of when he could have, by the exercise

1 of due diligence, found out that he had a right to appeal.

2 He did not file within the one year, Your Honor, and
3 the state would submit that he's out of time now to bring
4 this post-conviction relief application. He sat on his
5 rights for outside of one year of the newly discovered
6 evidence statute to file the notice to get a belated direct
7 appeal. He was aware within -- and I'll leave it at that.
8 I'll leave -- I think I've made my point in that regard.

9 As far as the preliminary hearing, Your Honor, just
10 some case law I'd like to cite. *State vs. McClure*, which
11 was cited by opposing counsel a minute ago, specifically
12 says:

13 The defendant's right to request a preliminary
14 hearing is created by statute, and no
15 constitutional right to such a hearing -- this is
16 no constitutional right to such a hearing. That
17 such a hearing is not necessary before a grand
18 jury can indict a defendant.

19 He was true-billed indicted. That confers
20 subject-matter jurisdiction on the circuit court to hear
21 the matter.

22 Further in *State vs. McClure*, the state also -- the
23 opinion also went on to say:

24 An indictment returned true billed constitutes a
25 finding of probable cause and thus avoids the

1 need for a preliminary hearing.

2 After the true-bill indictments were returned, there
3 was no need to have a preliminary hearing. It had already
4 been decided. That was what Kat Hudgins came in here and
5 testified to: When I came on, they were true-bill indicted.
6 There was no need for a preliminary hearing.

7 *State vs. Gentry* is also a case that deals with that,
8 and that's at 363 SC 93, and that talks about essentially
9 that an indictment is just a notice document and has
10 nothing to do with a trial or plea court's jurisdiction
11 authority to hear a criminal matter.

12 And the opinion goes on to say that circuit courts
13 obviously have subject-matter jurisdiction to try criminal
14 matters, and the burden is on the defendant to show why his
15 particular, particular case was of some class of charges
16 which the -- which don't fall within that jurisdiction of
17 the circuit court.

18 Obviously here he was charged with armed robbery. The
19 circuit court obviously has subject-matter jurisdiction to
20 hear criminal cases. Armed robbery is a criminal case, so
21 it had subject-matter jurisdiction.

22 Also under *Bonnet vs. State* at 277 SC 17 from 1981,
23 the South Carolina Supreme Court specifically said:

24 A preliminary hearing can be waived by a
25 defendant entering into plea negotiations, and

1 his silence about -- silence about demanding a
2 preliminary hearing before entering a plea before
3 the plea court.

4 He entered a plea in this instance and never said a
5 word about I requested preliminary hearing and never got
6 it. He waived his right to have that preliminary hearing
7 by entering a guilty plea, Your Honor. Further, they were
8 returned true billed at that point in time, and so there
9 was no need to have a preliminary hearing.

10 As far as the allegation that subject-matter
11 jurisdiction was, I guess, taken away from the grand jury
12 to be able to indict him, Kathrine Hudgins came in here and
13 testified they were already true billed at the time that
14 she took over on the case. She didn't file the notice of
15 preliminary hearing, had nothing to do with it.

16 If the state -- if the court is inclined to hear that
17 allegation and give it any merit, I think we'll need to
18 leave the record open to have counsel come in that did
19 actually file the preliminary hearing to see exactly why a
20 hearing wasn't held. If this court is so inclined to think
21 that the grand jury didn't have jurisdiction to true-bill
22 indict him, we, we need to leave the record open to bring
23 in Mel, whatever he said his original attorney was who had
24 filed this notice of preliminary hearing, to find out
25 exactly why a hearing wasn't held.

1 It could have been any source of -- any host of
2 reasons why he decided not to have that preliminary
3 hearing. He could have decided I don't want to have a
4 preliminary hearing. Forget about it. We don't have that,
5 those facts, before the court at this time. So, I would
6 just request we leave the record open if the court is
7 inclined to buy into this notion that the grand jury didn't
8 have jurisdiction to true bill an indictment.

9 But other than that, I would rest on the testimony
10 presented and those cases I just cited to the court, which
11 I'll be happy to submit in a formal brief of any kind if
12 the court would like it if you need to see those more in
13 depth.

14 THE COURT: All right.

15 MR. CORNEY: Thank you, Judge.

16 THE COURT: Anything further?

17 MR. ROLLINS: Yes, Your Honor. Regarding the state's
18 arguments about the period of times that lapsed between the
19 filing of this current PCR action, *Pelzer vs. State*, 378 SC
20 516, notes that equitable tolling of the statute of
21 limitations on PCR action has been deemed available under a
22 variety of circumstances, and one of those circumstances
23 would be when a plaintiff, despite all due diligence, has
24 been unable to obtain vital information bearing on the
25 existence of his claim. And what you've heard from Mr.

1 Wilson here today is simply I did not understand that this
2 argument existed. I did not understand subject
3 jurisdiction, preliminary hearing jurisdiction questions
4 existed.

5 THE COURT: About the preliminary hearing?

6 MR. ROLLINS: Yes, sir.

7 THE COURT: Well, criminal rule 2 says, criminal rule
8 2(b) read:

9 If the defendant requests a preliminary hearing,
10 the hearing shall be held within ten days
11 following the request. Hearing shall not be
12 held, however, if the defendant is indicted by a
13 grand jury or waives the indictment before
14 preliminary hearing is held.

15 MR. ROLLINS: And, Your Honor, I hadn't heard any
16 testimony here today that, that he waived the indictment
17 before the preliminary hearing was held. The preliminary
18 hearing was requested later December 2004. The initial
19 preliminary hearing was scheduled for March of 2005. It
20 was not held at that time, and he was subsequently -- and
21 he wasn't even informed that it had been moved.

22 THE COURT: Well, I understand all that. The point,
23 the part that I am focusing on is that: The hearing shall
24 not be held, however, if the defendant is indicted by the
25 grand jury. That has been interpreted to mean that once

1 the defendant is indicted by a grand jury, there is no
2 right to a preliminary hearing.

3 MR. ROLLINS: Your Honor, I mean, I understand that.
4 The state's argument seems somewhat circular to me, which I
5 perceive it to be, you know, the court has jurisdiction
6 because he was indicted. But I've looked at, at *Funderburk*
7 and *Fortner* and *McClure*, and I don't see negative history
8 on those cases where they've been overruled. They appear
9 to me to still be good law.

10 THE COURT: Well, in the *McClure* case, the judge did
11 what you would have him to do. The judge dismissed the
12 case because the defendant didn't have a preliminary
13 hearing, and the appellate court reversed. And in that
14 instance, they reversed because he waived the preliminary
15 hearing.

16 MR. ROLLINS: Your Honor, I believe that the court in
17 *McClure* reversed actually because they found that the next
18 session, next convening of the general sessions court in
19 question occurred less than ten days from the time period
20 of, of the request of the hearing, which is in line with
21 what *Fortner* and the case said.

22 (COUNSEL CONFERS WITH APPLICANT.)

23 THE COURT: All right, anything further?

24 MR. ROLLINS: Just a second, Your Honor. With regard
25 to the state's contentions about the -- his receipt of the

1 PCR, or the order on the first PCR action, I, would just
2 note that the order says basically must appeal within
3 thirty days after the disposition of the case, and we're
4 dealing with pro-se client at that point who doesn't have
5 an understanding of what disposition of the case meant, and
6 I think ---

7 THE COURT: How do we know that?

8 MR. ROLLINS: Well, I think the testimony you received
9 from him today in the stand indicates he has acted pro se
10 for himself in this matter. That he has attempted to
11 educate himself about the law, but he's, he's not, he's not
12 an attorney.

13 THE COURT: All right.

14 MR. CORNEY: Your Honor, just the last thing I wanted
15 to say was just any alleged error in this preliminary
16 hearing issue is obviously harmless error; it's obviously
17 not prejudicial. The grand jury returned a true-billed
18 indictment anyway. A preliminary hearing wouldn't have
19 done -- made any different outcome had he had it. So, just
20 from *Strickland vs. Washington* analysis for PCR purposes,
21 there's no prejudice. And he would have -- charges would
22 have been found to have probable cause to bring him forth
23 on the charges anyway because the grand jury did true-bill
24 indict him on them in the end.

25 THE COURT: All right. Thank you all. I'll take it

1 under advisement..

2 MR. CORNEY: Thank you, Judge.

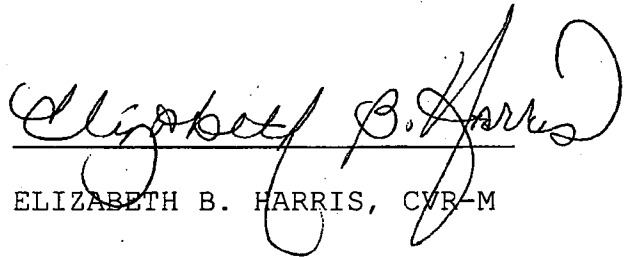
3 MR. ROLLINS: Thank you.

4 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 18TH DAY OF OCTOBER, 2012.

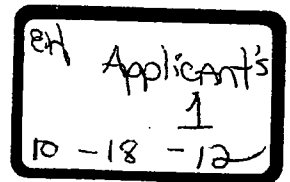
I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.


ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 14TH, 2013

BRUCE WILSON, #192733
 L.C.I. / SMU #110
 990 Wackerly Highway
 Bishopville, S.C. 29006



DECEMBER, 2010

TEOWETE W. McBRIDE
 RICHMOND COUNTY CLERK OF COURT
 P.O. Box 2706
 Columbia, S.C. 29202-2706

RE: BRUCE WILSON, #192733 v. STATE OF SOUTH CAROLINA
 Case No.: 2010-CP-40-0562

DEAR HONORABLE McBRIDE:

ENCLOSED FOR FILING IN THE ABOVE-CITED MATTER IS AN ORIGINAL AND ONE (1) EXTRA COPY OF THE NOTICE AND MOTION FOR DISCOVERY AND REQUEST FOR PRODUCTION OF DOCUMENTS. I WOULD APPRECIATE YOUR OFFICE FILING AND RETURNING A STAMP FILE COPY TO ME FOR MY FILE.

With personal kindest regards, I am

Sincerely,

Bruce Wilson

ENCLOSURES

cc: BRION T. PETRUCCI, ASSISTANT ATTORNEY GENERAL

State of South Carolina

County of RichlandBruce Wilson,
S.C.S.C. No. 192733,
Petitioner,

v.

The State of South Carolina,
Respondent.IN THE COURT OF COMMON PLEAS
Fifth Judicial Circuit
Case No.: 2010-CP-40-0542NOTICE AND MOTION FOR
DISCOVERYRICHLAND COUNTY
FILED

2010 DEC 14 AM 10:55

JEANETTE W. McBRIDE
C.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE THE UNDERSIGNED
PRO SE PETITIONER in the above-cited matter, will move before the
Presiding Judge of the Fifth Judicial Circuit on the tenth (10th)
day of service hereof or as soon thereafter as PRO SE PETITIONER
may be heard for an order permitting limited discovery under
S.C. Code Ann. § 17-27-150 on the grounds that the petitioner
needs to review the information within the Solicitor's file
concerning this matter.

Respectfully Submitted,
Bruce WilsonBruce Wilson, #192733
(PRO SE PETITIONER)Lee Correctional Institution
990 Wiscoky Highway
Bishopville, S.C. 29010

BRUCE WILSON, #192733
 L.C.J. /SMU #110
 990 W. So. Highway
 Bishopville, S.C. 29010

DECEMBER, 2010

BARON T. PETRENO, ESQUIRE
 ASSISTANT ATTORNEY GENERAL
 P.O. Box 11549
 Columbia, S.C. 29211-1549

RE: BRUCE WILSON, #192733 v. STATE OF SOUTH CAROLINA
 Case No.: 2010-CD-40-0502

DEAR MR. PETRENO:

ENCLOSED PLEASE FIND AN ORIGINAL COPY OF THE "NOTICE AND MOTION
 FOR DISCOVERY" AND "REQUEST FOR PRODUCTION OF DOCUMENTS" IN THE
 ABOVE-CITED MATTER.

WITH PERSONAL kindest regards, I AM

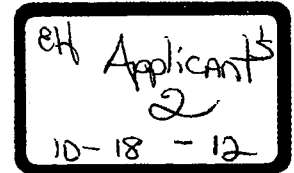
Sincerely,

Bruce Wilson

ENCLOSURES

cc: Richmond County Clerk of Court

MEMORANDUM



TO: The Honorable Reginald I. Lloyd
FROM: Deputy Public Defender Fielding Pringle
DATE: April 4, 2005

RE: Appointment of conflict attorney:

Defendant's Name:	Bruce Wilson
Warrant/Indictment Numbers:	I 895008
Offenses:	(1) Armed Robbery, robbery while armed or allegedly armed with a deadly weapon
Arrest date:	12/20/2004
Assigned Solicitor:	Richard Cathcart
Assigned Public Defender:	J. Van Ginhoven
In Jail?:	Kirkland Reception and Evaluation Center 4344 Broad River Road Columbia, SC 29210-
Co-Defendants:	Franklin Dixon
Preliminary Hearing Requested?:	Yes, conducted on 3/10/2005 (Continued)
Arresting Agency:	County
Complex Case?:	YES

The Public Defender requests appointment of a conflict attorney in the above matter due to a conflict with the representation of Franklin Dixon by the Richland County Public Defender's Office.

If the case is listed as complex, I am of the opinion that an attorney with more than average experience should be appointed to represent the defendant.

Fielding Pringle
Deputy Public Defender

MEMORANDUM

TO: The Honorable Reginald I. Lloyd
 FROM: Deputy Public Defender Fielding Pringle
 DATE: April 4, 2005

RE: Appointment of conflict attorney:

Defendant's Name:	Bruce Wilson
Warrant/Indictment Numbers:	H 709187, H 709186, H 709185
Offenses:	(1) Armed Robbery, robbery while armed or allegedly armed with a deadly weapon, (2) Armed Robbery, robbery while armed or allegedly armed with a deadly weapon, (3) Armed Robbery, robbery while armed or allegedly armed with a deadly weapon.
Arrest date:	12/20/2004
Assigned Solicitor:	Richard Cathcart
Assigned Public Defender:	J. Van Ginhoven
In Jail?:	Bond
	8046 BROOKMONT LN
	COLUMBIA, SC 29203
Co-Defendants:	Franklin Dixon
Preliminary Hearing Requested?:	Yes, conducted on 3/10/2005 (None)
Arresting Agency:	County
Complex Case?:	YES

The Public Defender requests appointment of a conflict attorney in the above matter due to a conflict with the representation of Franklin Dixon by the Richland County Public Defender's Office.

If the case is listed as complex, I am of the opinion that an attorney with more than average experience should be appointed to represent the defendant.

Fielding Pringle
 Deputy Public Defender.

Richland County Central Court

P.O. Box 192
1400 Huger Street
Columbia, S.C. 29202



Preliminary Hearings Division: (803) 576-2312
Domestic Violence Division: (803) 576-2301
Traffic/Criminal Division: (803) 576-2300
Jury Trial Division: (803) 576-2314
Civil Division: (803) 576-2310
TDD: (803) 576-2045

November 10, 2010

Bruce Wilson # 192733
Lee C.I. SMU #110
990 Wisacky Hwy
Bishopville, SC 29010

Re: State vs. Bruce Wilson
Warrant Number(s): H709185, 86, 87, and I895008

Dear Mr. Wilson,

In response to your letter dated November 1, 2010, our records reflect that your preliminary hearing for the above listed charges was scheduled for March 10, 2005, but was continued. They were rescheduled for July 7, 2005, at which time the court was notified by the Solicitor's Office that you had been indicted. Due to the indictment, no Preliminary Hearing was held. I have attached print histories of each warrant for your records.

If you need further assistance, please contact the Richland County Clerk of Court's Office at Post Office Box 192, Columbia, South Carolina 29201.

Sincerely,

A handwritten signature in cursive script, appearing to read "Verna D. Johnson".

Verna D. Johnson
Deputy Clerk of Court
Preliminary Hearing Division

Central Court

CASE HISTORY FOR CASE I895008

The State of South Carolina vs Bruce Juraine Wilson

FILED DATE: 12/31/2004

CASE TYPE: GS

STATUS: Transferred

JUDGE: Clerk Of Court

ARRESTING AGENCY: Richland County Sheriff Department

CASE PARTIES:

Defendant Wilson, Bruce Juraine

Lane, Columbia, SC 292033241

Officer Mcdonald, Scott

5623 Two Notch Road, Columbia, SC 29223

Victim Hill, Frederic L

Rd, Columbia, SC 29223

Public Defender Richland County Public Defender

Post Office Box 192, Columbia, SC 29201

Defendant Attorney Hudgins, Katherine H

914 Richland St, Suite A-102, Columbia, SC 29202

CASE HISTORY FOR CASE I895008

Wilson, Bruce Juraine
LaneAge: 35
DL#:DOB: ----
SSN: ----

Columbia, SC 292033241

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0139 Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we	10/25/2004	Preliminary Hearing Indicted	7/11/2005

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION
12/26/2004	9:00 am	Court event: Criminal/Traffic Court
12/23/2004	9:04 pm	Filing recorded: Bond Comment To Notes Screen.
12/23/2004	8:00 pm	Court event: Bond Hearing

Print Date: 11/09/2010
 Print Time: 1:28:12PM
 Requested By: TRAJOHNSON

CaseHistory.rpt

[Signature]
 Richland County Central Court
 Date: 11/9/10

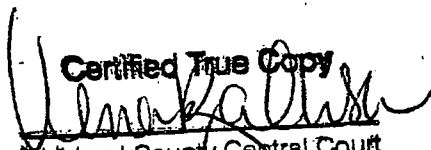
Page 1 of 2

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CASE HISTORY FOR CASE I895008

12/23/2004	12:00 am	Bond 308386 was set in the amount of .00 by McDuffie, Mildred W
12/30/2004	12:00 am	Filing recorded: Preliminary Hearing Request
12/31/2004	1:03 pm	Filing recorded: Bond Comment To Notes Screen
01/25/2005	2:00 pm	Court event: First Appearance Date
03/10/2005	10:30 am	Filing recorded: Continued
03/10/2005	12:45 pm	Court event: Preliminary Hearing ASGDC
07/07/2005	1:00 pm	Court event: Preliminary Hearing ASGDC

Print Date: 11/09/2010
Print Time: 1:28:12PM
Requested By: TRAJOHNSON

CaseHistory.rpt

Certified True Copy

Richland County Central Court
Date: 11/09/10

Page 2 of 2

Central Court
CASE HISTORY FOR CASE H709187

The State of South Carolina vs Bruce J Wilson

FILED DATE: 12/29/2004

CASE TYPE: GS

STATUS: Transferred

JUDGE: Clerk Of Court

ARRESTING AGENCY: Richland County Sheriff Department

CASE PARTIES:

Defendant Wilson, Bruce J

Lane, Columbia, SC 292033241

Officer McDonald, Scott

5623 Two Notch Road, Columbia, SC 29223

Victim Norman, Gloria

Lane, Columbia, SC 29223

Defendant Attorney Hudgins, Katherine H

914 Richland St, Suite A-102, Columbia, SC 29202

CASE HISTORY FOR CASE H709187

Wilson, Bruce J

Lane

Age: 35

DL#:

DOB: 1

SSN: 1

Columbia, SC 292033241

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
0139	Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we	8/20/2004	Preliminary Hearing Indicted	7/11/2005

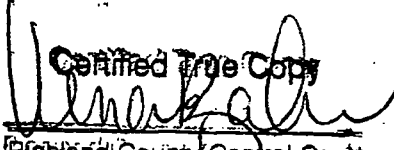
COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION
8/01/2004	9:00 am	Court event: Criminal/Traffic Court
8/21/2004	2:30 pm	Court event: Bond Hearing
8/21/2004	9:00 am	Court event: Bond Hearing
8/28/2004	11:06 am	Filing recorded: Preliminary Hearing Request
8/01/2005	9:00 am	Court event: First Appearance Date

Print Date: 11/09/2010
 Print Time: 1:28:55PM
 Requested By: TRAJOHNSON

CaseHistory.rpt

Certified True Copy

 Richland County Central Court
 Date: 11/9/10

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CASE HISTORY FOR CASE H709187

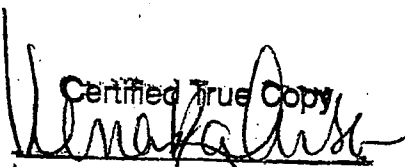
13/10/2005 12:45 pm Court event: Preliminary Hearing ASGDC

13/10/2005 10:30 am Filing recorded: Continued

17/07/2005 1:00 pm Court event: Preliminary Hearing ASGDC

Print Date: 11/09/2010
Print Time: 1:28:55PM
Requested By: TRAJOHNSON

CaseHistory.rpt


Certified True Copy
Richland County Central Court
Date: 11/9/10

Page 2 of 2

Central Court

CASE HISTORY FOR CASE H709186

The State of South Carolina vs Bruce Wilson

FILED DATE: 12/29/2004

CASE TYPE: GS

STATUS: Transferred

JUDGE: Clerk Of Court

ARRESTING AGENCY: Richland County Sheriff Department

CASE PARTIES:

Defendant Wilson, Bruce

Lane, Columbia, SC 292033241

Officer McDonald, Scott

5623 Two Notch Road, Columbia, SC 29223

Victim Baker, Derek

Columbia, SC 29209

Defendant Attorney Hudgins, Katherine H

914 Richland St, Suite A-102, Columbia, SC 29202

CASE HISTORY FOR CASE H709186

Wilson, Bruce

t Lane

Age: 35

DL#:

DOB: /

SSN:

Columbia, SC 292033241

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
0139	Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we	6/29/2004	Preliminary Hearing Indicted	7/11/2005

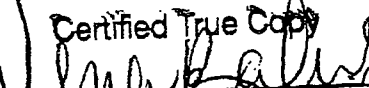
COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION
6/29/2004	9:00 am	Court event: Criminal/Traffic Court
7/21/2004	2:30 pm	Court event: Bond Hearing
7/21/2004	9:00 am	Court event: Bond Hearing
7/28/2004	11:08 am	Filing recorded: Preliminary Hearing Request
7/01/2005	9:00 am	Court event: First Appearance Date

Print Date: 11/09/2010
 Print Time: 1:29:18PM
 Requested By: TRAJOHNSON

CaseHistory.rpt

Certified True Copy

 Richland County Central Court
 Date: 11/9/10

Page 1 of 2

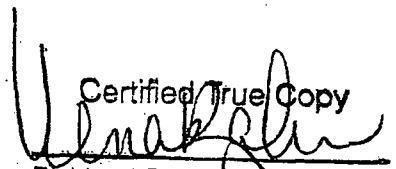
328

CASE HISTORY FOR CASE H709186

03/10/2005	12:45 pm	Court event: Preliminary Hearing ASGDC
03/10/2005	10:30 am	Filing recorded: Continued
07/07/2005	1:00 pm	Court event: Preliminary Hearing ASGDC

Print Date: 11/09/2010
Print Time: 1:29:18PM
Requested By: TRAJOHNSON

CaseHistory.rpt

Certified True Copy

Richland County Central Court
Date: 11/9/10

Page 2 of 2

Central Court

CASE HISTORY FOR CASE H709185

The State of South Carolina vs Bruce J Wilson

FILED DATE: 12/29/2004

CASE TYPE: GS

STATUS: Transferred

JUDGE: Clerk Of Court

ARRESTING AGENCY: Richland County Sheriff Department

CASE PARTIES:

Defendant Wilson, Bruce J

Lane, Columbia, SC 292033241

Officer McDonald, Scott

5623 Two Notch Road, Columbia, SC 29223

Victim Norman, Gloria

Columbia, SC 29209

Defendant Attorney Hudgins, Katherine H

914 Richland St, Suite A-102, Columbia, SC 29202

CASE HISTORY FOR CASE H709185

Wilson, Bruce J

Lane

Age: 35

DL#:

DOB:

SSN:

Columbia, SC 292033241

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
0139	Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we	3/29/2004	Preliminary Hearing Indicted	7/11/2005

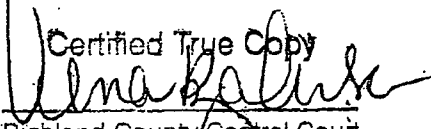
OST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION
2/29/2004	8:30 am	Court event: Criminal/Traffic Court
2/21/2004	2:30 pm	Court event: Bond Hearing
2/21/2004	4:06 pm	Filing recorded: Bond Comment To Notes Screen
2/21/2004	9:00 am	Court event: Bond Hearing
2/21/2004	12:00 am	BND SHAW recorded the following Case Note: CONC W/ H709186,H709185,H709187

Print Date: 11/09/2010
 Print Time: 1:29:36PM
 Requested By: TRAJOHNSON

CaseHistory.rpt

Certified True Copy

 Richland County Central Court
 Date: 11/9/10

Page 1 of 2

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

RECEIVED

CASE NUMBER: 2010CP4006562

JAN 14 2013

Bruce #192733 Wilson

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Voluntary Dismissal); ☐ 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 PUBLIC 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
		\$
		\$
		\$

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 _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 9 January 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Bruce #192733 Wilson

C. Clifford Rollins

Robert Daniel Corney

Bruce #192733 Wilson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeannette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Bruce Wilson, # 192733,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-06562

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2013 JAN -7 PM 2:11
JEANETTE W. MCBRIDE
C.C.P. & G.

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed September 21, 2010. The state filed a Return and Motion to Dismiss the application on September 30, 2011, requesting the action be summarily dismissed. Pursuant to this motion, the Honorable James R. Barber, III, issued a Conditional Order of Dismissal provisionally dismissing the action while giving Applicant thirty (30) days to submit his objections to the dismissal in writing. Upon receipt of Applicant's responses, Judge Barber requested the matter be set for hearing on Applicant's claim on newly-discovered evidence.

A hearing was convened into the matter before this Court on Thursday, October 18, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, C. Cliff Rollins, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying were Applicant's former trial counsel, Katherine Hudgins, Esquire, and former PCR counsel, Charlie J. Johnson, Jr., Esquire. Before this Court were copies of the records of the Richland County Clerk of Court, the relevant records of Applicant's conviction, and the records of Applicant's previous PCR action.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County Clerk. Applicant was true bill indicted at the April and July 2005 terms of the Richland Grand Jury for four (4) counts of Armed Robbery (2005-GS-40-0024, -0025, -0026, -0056). He was represented by Katherine Hudgins, Esquire, on the charge(s). On January 5, 2006, Applicant pled guilty to three counts of Armed Robbery as indicted before the Honorable James W. Johnson, Jr., and was sentenced to twenty-three (23) years imprisonment on each charge, all to run concurrently. The remaining charge (-0025) was *nolle prossed* by the state subsequent to the plea. No direct appeal was filed.

Applicant thereafter filed an application for PCR on May 23, 2006 (2006-CP-40-2981). He was represented by Charlie J. Johnson, Jr., Esquire, on the action. An evidentiary hearing into the matter was convened August 1, 2007, before the Honorable James C. Williams. Applicant was present and testified at the hearing. By order filed September 18, 2007, Judge Williams denied and dismissed the action with prejudice.

In the current action, Applicant alleges he is being held in custody unlawfully based upon the following:

- 1) The asserted grounds for the instant Application for Post-Conviction Relief are based on newly-discovered evidence.
- 2) The newly-discovered evidence claim relates to Applicant's assertion that the State failed to establish jurisdiction over Applicant sufficient to convict him pursuant to Indictments 2005-GS-40-24, 2005-GS-40-25, and 2005-GS-40-56, by reason of the State's failure to provide him with a preliminary hearing prior to these indictments.

- 3) Therefore, the Application for Post-Conviction Relief challenges Applicant's original conviction under the above-referenced indictments.
- 4) To this claim, Applicant amends and adds his assertion that the newly-discovered evidence claim also relates to his original Application for Post-Conviction Relief, filed in 2007, which was based on ineffective assistance of counsel.
- 5) Facts supporting this claim include the fact that Applicant's appointed counsel for his original PCR claim, failed to appeal the initial decision on Applicant's first PCR claim, failed to inform the applicant of his failure to appeal, and in fact failed to inform the applicant that the attorney was no longer employed with the attorney's original law office, limiting the applicant's contact with his appointed counsel and preventing applicant from being made aware of the true status of his application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington,

466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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).

Lack of Subject Matter Jurisdiction

Applicant first contends he is in possession of newly-discovered evidence which proves the plea court was without subject matter jurisdiction to accept his 2006 guilty plea. Applicant contends his discovery of the evidence supporting this allegation is sufficient to overcome the untimely and successive nature of the current PCR application.

At the PCR hearing, Applicant testified he was originally represented on the charges by public defender "Mel Longshore"¹, Esquire, but was appointed Kat Hudgins as his attorney after the PD's office was conflicted out of its appointment. Applicant stated prior to being relieved, Longshore requested a preliminary hearing be held on all four of the Armed Robbery arrest warrants, the first being filed December 28, 2004, and the second on December 30, 2004. Upon Hudgins taking over the appointment, Applicant said, he asked her about being brought before the Court for the preliminary hearing at which time she informed him he had been true bill indicted by the grand jury. Applicant alleged counsel said because of that, he would not get a preliminary hearing. Applicant testified he was not aware a hearing had ever been scheduled until after his prior PCR hearing in 2010, but upon receipt of a packet from the Richland County Clerk of Court he found out a preliminary hearing had been scheduled in March of 2005, but continued. Applicant stated he did not raise this issue in his prior PCR because he was not aware of it at the time. He finished by stating his due process rights were violated in not being afforded a preliminary hearing as the plea court was without jurisdiction to accept his subsequent guilty plea.

Counsel testified she was able to review her file from Applicant's case prior to the hearing and noted she was appointed in April of 2005 to represent Applicant, at which time the grand jury had already returned true billed indictments charging Applicant with four (4) counts of Armed Robbery. She went on to say once the grand jury indicts a defendant, they are no longer entitled to a preliminary hearing on the charges. Counsel said she never raised a motion or objection prior to his plea hearing based on the failure to afford him with a preliminary hearing as he never brought it to her attention one had been requested.

¹ After a review of the current members of the S.C. Bar, it appears there is no attorney by the name of "Mel" Longshore. Rather, Ned Longshore, Esquire, is a former Richland County assistant public defender who worked in that capacity at the time of Applicant's plea.

Charlie Johnson, Applicant's former PCR counsel for the 2006 action, testified he didn't raise any allegations related to the lack of a preliminary hearing or lack of subject matter jurisdiction in Applicant's prior PCR action because he was not aware of it.

After thorough review of the record and testimony presented, this Court finds Applicant has failed to satisfy his burden in proving this allegation. First, this Court would note Applicant's core contention is wholly without merit as any failure to afford Applicant with a preliminary hearing does not affect the circuit court's jurisdiction to accept his guilty plea. "[P]resentment of an indictment or a waiver of presentment is not needed to confer subject matter jurisdiction on the circuit court." State v. Gentry, 363 S.C. 93, 610 S.E.2d 494, fn.6 (2005). Id. "The indictment is a notice document" and the sufficiency of such is a wholly distinct concept from the circuit court's ability to hear cases as "circuit courts obviously have subject matter jurisdiction to try criminal matters." Id. at 102, 610 S.E.2d at 500. Applicant's guilty plea arose from criminal charges following Applicant's arrest in Richland County. Whether the indictments were deficient is inconsequential to the circuit court's subject matter jurisdiction to accept Applicant's guilty plea. Accordingly, this claim is without merit.

Further, the record and testimony before this Court indicate Applicant waived his right to such a preliminary hearing through his conduct before the plea court. Any allegation that the true billed indictments were erroneous as the grand jury was without jurisdiction to issue them would have properly been raised by Applicant prior to entry of his plea. Applicant's silence on the issue at his plea hearing and his subsequent entry of the guilty plea serve as a waiver of his right to preliminary hearing on the matter. See Bonnette v. State, 277 S.C. 17, 282 S.E.2d 597 (1981) (Plea negotiations and silence before the trial court concerning a desire for preliminary hearing constitute evidence of waiver of such a hearing). At the time of his plea, Applicant was well

aware he had requested a preliminary hearing from Longshore (if he did in fact make such a request as he now alleges he did), and, based on his PCR testimony, Applicant knew Longshore filed the requests for preliminary hearing. Therefore, his failure to challenge the indictments or otherwise make any mention of preliminary hearing at the plea hearing, along with his subsequent entry of the plea, serve as a waiver of his right to such a hearing.

Additionally, the claim is without merit as Applicant was true bill indicted by the grand jury prior to the convening of the preliminary hearing. Under Rule 2(b), SCRCrimP, a preliminary hearing "shall not be held...if the defendant is indicted by a grand jury...before the preliminary hearing is held." Further, "any delay in holding the preliminary hearing is not a ground for delay in prosecution of the case in the court of general sessions." State v. Hawkins, 310 S.C. 50, 55, 425 S.E.2d 50, 53 (Ct. App. 1992). Applicant's charges were true bill indicted by the Richland County Grand Jury on April 20, 2005, after the preliminary hearing was continued from its originally scheduled date of March 10, 2005. Therefore, Applicant was no longer entitled to a preliminary hearing on the charges after April 20, 2005.

Lastly, in the context of Strickland v. Washington, Applicant has failed to carry his burden in proving resulting prejudice from any alleged deficiency on counsel's part in this regard. The charges were ultimately presented to the Richland County Grand Jury where sufficient probable cause was found on each of the four (4) charges, as evidenced by the true bill indictments returned April 20, 2005. Therefore, this Court can find no reasonable probability that had counsel demanded such a preliminary hearing be held, the charges would have been dismissed by the presiding magistrate judge. "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which...will often be so, that course should be

followed.” Strickland v. Washington, 466 U.S. 668, 697, 104 S.Ct. 2052, 2069 (1984). For all of the reasons stated above, this allegation is denied.

Failure to File Appeal

Applicant also alleges PCR counsel was ineffective for failing to timely file an appeal of his prior application for post-conviction relief. Applicant testified he filed the previous PCR application in May of 2006, and was thereafter appointed PCR counsel for representation in the matter. When asked why there was a three (3) year delay between dismissal of the previous PCR action (September 18, 2007) and the filing of the current PCR action (September 21, 2010), Applicant stated he was never apprised of the court’s dismissal of the prior action by PCR counsel. Further, Applicant said, PCR counsel left the law firm he was working at and Applicant was therefore unable to locate PCR counsel to follow up on the status of the action. Applicant readily admitted he never asked PCR counsel to file an appeal of the PCR if it were denied, and stated he found out about the denial of his prior PCR action in 2009.

On cross-examination, Applicant again noted he was unable to ever speak with PCR counsel to ask the matter be appealed if denied and said his former law firm would not tell Applicant where PCR counsel worked thereafter. When inquired as to when he received a copy of the order dismissing the prior PCR action, Applicant said he received a copy of the order in “late 2008 or early 2009”.

PCR counsel testified he did not inform his clients that he would be leaving the law firm he had been working at prior to actually doing so. He stated his normal procedure is to file the notice of appeal for a PCR client upon receipt of the order of dismissal, regardless of whether the applicant actually requests an appeal or not, but said he failed to do so in this action. PCR counsel noted his failure to file the appeal was “not intentional” and said he “must have gotten

the paperwork mixed up". PCR counsel said if the appeal didn't get filed, it was his mistake, but agreed Applicant never asked that he file an appeal.

Based on the above, this Court finds Applicant is not entitled to a belated appeal of his prior PCR action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Applicant failed to exercise reasonable diligence in pursuing relief and has made a knowing and intelligent waiver of his right to such appellate review after obtaining full knowledge of his appellate rights. While the Court in Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999), held the statute of limitations does not apply to a claim for belated appeal, such a rule was imposed to "act as an applicant's final safeguard" to Applicant's right to appeal where he was unaware of his right to appeal until outside of the one (1) year directly following conviction.

In the current instance, Applicant readily concedes he received a copy of the order of dismissal in "late 2008" or "early 2009", which contains a paragraph in it clearly informing the applicant that he must file and serve a notice of appeal within thirty (30) days to secure appellate review, and specifically directing the applicant to Rule 243, SCACR, for the proper procedure to do so. With that information in mind and being fully aware thereafter of his right to appeal, Applicant waited until September 2010, more than a year after his receipt of the order in "early 2009", to file the current application requesting a belated appeal. The Uniform Post-Conviction Relief Act sets forth explicit restrictions to require applicants to timely file and diligently pursue relief. In particular, S.C. Code § 17-27-45(c) sets forth a one (1) year time limit for filing of an action when an applicant uncovers facts not previously known to him/her. That one year time limit is triggered by "the date of actual discovery" of the facts by Applicant, or the "date when the facts could have been ascertained by the exercise of reasonable diligence" by Applicant. This Court finds the current belated appeal cannot be granted as allowing such would contradict the

very purpose of these statutory time limitations. Applicant "actually discovered" he was entitled to an appeal of his previous PCR action in "early 2009". Therefore, he should have taken reasonable and diligent steps to secure such an appeal within the following one year time frame from his receipt of such information. Applicant failed to do so, filing the current action *at least* several months after the one year time frame had expired. Accordingly, the current request for a belated Austin appeal must be denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 31 day of Dec, 2012.



ERNEST KINARD, JR.
Presiding Judge
Fifth Judicial Circuit

Camden, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4006562

Bruce Wilson, #192733

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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.
- ☐ **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
		\$
		\$
		\$

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 _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 20th day of Feb., 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

Bruce Wilson, #192733 C. Clifford Rollins

ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert Daniel Corney

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Bruce Wilson, # 192733,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2010-CP-40-06562

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2013 FEB 19 AM 10:30
JEANETTE W. MURPHY
C.C.P. & D.S.

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed September 21, 2010. The state filed a Return and Motion to Dismiss the application on September 30, 2011, requesting the action be summarily dismissed. Pursuant to this motion, the Honorable James R. Barber, III, issued a Conditional Order of Dismissal provisionally dismissing the action while giving Applicant thirty (30) days to submit his objections to the dismissal in writing. Upon receipt of Applicant's responses, Judge Barber requested the matter be set for hearing on Applicant's claim on newly-discovered evidence.

A hearing was convened into the matter before this Court on Thursday, October 18, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, C. Cliff Rollins, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying were Applicant's former trial counsel, Katherine Hudgins, Esquire, and former PCR counsel, Charlie J. Johnson, Jr., Esquire. Before this Court were copies of the records of the Richland County Clerk of Court, the relevant records of Applicant's conviction, and the records of Applicant's previous PCR action.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County Clerk. Applicant was true bill indicted at the April and July 2005 terms of the Richland Grand Jury for four (4) counts of Armed Robbery (2005-GS-40-0024, -0025, -0026, -0056). He was represented by Katherine Hudgins, Esquire, on the charge(s). On January 5, 2006, Applicant pled guilty to three counts of Armed Robbery as indicted before the Honorable James W. Johnson, Jr., and was sentenced to twenty-three (23) years imprisonment on each charge, all to run concurrently. The remaining charge (-0025) was *nolle prossed* by the state subsequent to the plea. No direct appeal was filed.

Applicant thereafter filed an application for PCR on May 23, 2006 (2006-CP-40-2981). He was represented by Charlie J. Johnson, Jr., Esquire, on the action. An evidentiary hearing into the matter was convened August 1, 2007, before the Honorable James C. Williams. Applicant was present and testified at the hearing. By order filed September 18, 2007, Judge Williams denied and dismissed the action with prejudice.

In the current action, Applicant alleges he is being held in custody unlawfully based upon the following:

- 1) The asserted grounds for the instant Application for Post-Conviction Relief are based on newly-discovered evidence.
- 2) The newly-discovered evidence claim relates to Applicant's assertion that the State failed to establish jurisdiction over Applicant sufficient to convict him pursuant to Indictments 2005-GS-40-24, 2005-GS-40-25, and 2005-GS-40-56, by reason of the State's failure to provide him with a preliminary hearing prior to these indictments.

- 3) Therefore, the Application for Post-Conviction Relief challenges Applicant's original conviction under the above-referenced indictments.
- 4) To this claim, Applicant amends and adds his assertion that the newly-discovered evidence claim also relates to his original Application for Post-Conviction Relief, filed in 2007, which was based on ineffective assistance of counsel.
- 5) Facts supporting this claim include the fact that Applicant's appointed counsel for his original PCR claim, failed to appeal the initial decision on Applicant's first PCR claim, failed to inform the applicant of his failure to appeal, and in fact failed to inform the applicant that the attorney was no longer employed with the attorney's original law office, limiting the applicant's contact with his appointed counsel and preventing applicant from being made aware of the true status of his application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington,

466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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).

Lack of Subject Matter Jurisdiction

Applicant first contends he is in possession of newly-discovered evidence which proves the plea court was without subject matter jurisdiction to accept his 2006 guilty plea. Applicant contends his discovery of the evidence supporting this allegation is sufficient to overcome the untimely and successive nature of the current PCR application.

At the PCR hearing, Applicant testified he was originally represented on the charges by public defender "Mel Longshore"¹, Esquire, but was appointed Kat Hudgins as his attorney after the PD's office was conflicted out of its appointment. Applicant stated prior to being relieved, Longshore requested a preliminary hearing be held on all four of the Armed Robbery arrest warrants, the first being filed December 28, 2004, and the second on December 30, 2004. Upon Hudgins taking over the appointment, Applicant said, he asked her about being brought before the Court for the preliminary hearing at which time she informed him he had been true bill indicted by the grand jury. Applicant alleged counsel said because of that, he would not get a preliminary hearing. Applicant testified he was not aware a hearing had ever been scheduled until after his prior PCR hearing in 2010, but upon receipt of a packet from the Richland County Clerk of Court he found out a preliminary hearing had been scheduled in March of 2005, but continued. Applicant stated he did not raise this issue in his prior PCR because he was not aware of it at the time. He finished by stating his due process rights were violated in not being afforded a preliminary hearing as the plea court was without jurisdiction to accept his subsequent guilty plea.

Counsel testified she was able to review her file from Applicant's case prior to the hearing and noted she was appointed in April of 2005 to represent Applicant, at which time the grand jury had already returned true billed indictments charging Applicant with four (4) counts of Armed Robbery. She went on to say once the grand jury indicts a defendant, they are no longer entitled to a preliminary hearing on the charges. Counsel said she never raised a motion or objection prior to his plea hearing based on the failure to afford him with a preliminary hearing as he never brought it to her attention one had been requested.

¹ After a review of the current members of the S.C. Bar, it appears there is no attorney by the name of "Mel" Longshore. Rather, Ned Longshore, Esquire, is a former Richland County assistant public defender who worked in that capacity at the time of Applicant's plea.

Charlie Johnson, Applicant's former PCR counsel for the 2006 action, testified he didn't raise any allegations related to the lack of a preliminary hearing or lack of subject matter jurisdiction in Applicant's prior PCR action because he was not aware of it.

After thorough review of the record and testimony presented, this Court finds Applicant has failed to satisfy his burden in proving this allegation. First, this Court would note Applicant's core contention is wholly without merit as any failure to afford Applicant with a preliminary hearing does not affect the circuit court's jurisdiction to accept his guilty plea. "[P]resentment of an indictment or a waiver of presentment is not needed to confer subject matter jurisdiction on the circuit court." State v. Gentry, 363 S.C. 93, 610 S.E.2d 494, fn.6 (2005). Id. "The indictment is a notice document" and the sufficiency of such is a wholly distinct concept from the circuit court's ability to hear cases as "circuit courts obviously have subject matter jurisdiction to try criminal matters." Id. at 102, 610 S.E.2d at 500. Applicant's guilty plea arose from criminal charges following Applicant's arrest in Richland County. Whether the indictments were deficient is inconsequential to the circuit court's subject matter jurisdiction to accept Applicant's guilty plea. Accordingly, this claim is without merit.

Further, the record and testimony before this Court indicate Applicant waived his right to such a preliminary hearing through his conduct before the plea court. Any allegation that the true billed indictments were erroneous as the grand jury was without jurisdiction to issue them would have properly been raised by Applicant prior to entry of his plea. Applicant's silence on the issue at his plea hearing and his subsequent entry of the guilty plea serve as a waiver of his right to preliminary hearing on the matter. See Bonnette v. State, 277 S.C. 17, 282 S.E.2d 597 (1981) (Plea negotiations and silence before the trial court concerning a desire for preliminary hearing constitute evidence of waiver of such a hearing). At the time of his plea, Applicant was well

aware he had requested a preliminary hearing from Longshore (if he did in fact make such a request as he now alleges he did), and, based on his PCR testimony, Applicant knew Longshore filed the requests for preliminary hearing. Therefore, his failure to challenge the indictments or otherwise make any mention of preliminary hearing at the plea hearing, along with his subsequent entry of the plea, serve as a waiver of his right to such a hearing.

Additionally, the claim is without merit as Applicant was true bill indicted by the grand jury prior to the convening of the preliminary hearing. Under Rule 2(b), SCRCrimP, a preliminary hearing "shall not be held...if the defendant is indicted by a grand jury...before the preliminary hearing is held." Further, "any delay in holding the preliminary hearing is not a ground for delay in prosecution of the case in the court of general sessions." State v. Hawkins, 310 S.C. 50, 55, 425 S.E.2d 50, 53 (Ct. App. 1992). Applicant's charges were true bill indicted by the Richland County Grand Jury on April 20, 2005, after the preliminary hearing was continued from its originally scheduled date of March 10, 2005. Therefore, Applicant was no longer entitled to a preliminary hearing on the charges after April 20, 2005.

Lastly, in the context of Strickland v. Washington, Applicant has failed to carry his burden in proving resulting prejudice from any alleged deficiency on counsel's part in this regard. The charges were ultimately presented to the Richland County Grand Jury where sufficient probable cause was found on each of the four (4) charges, as evidenced by the true bill indictments returned April 20, 2005. Therefore, this Court can find no reasonable probability that had counsel demanded such a preliminary hearing be held, the charges would have been dismissed by the presiding magistrate judge. "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which...will often be so, that course should be

followed.” Strickland v. Washington, 466 U.S. 668, 697, 104 S.Ct. 2052, 2069 (1984). For all of the reasons stated above, this allegation is denied.

Failure to File Appeal

Applicant also alleges PCR counsel was ineffective for failing to timely file an appeal of his prior application for post-conviction relief. Applicant testified he filed the previous PCR application in May of 2006, and was thereafter appointed PCR counsel for representation in the matter. When asked why there was a three (3) year delay between dismissal of the previous PCR action (September 18, 2007) and the filing of the current PCR action (September 21, 2010), Applicant stated he was never apprised of the court’s dismissal of the prior action by PCR counsel. Further, Applicant said, PCR counsel left the law firm he was working at and Applicant was therefore unable to locate PCR counsel to follow up on the status of the action. Applicant readily admitted he never asked PCR counsel to file an appeal of the PCR if it were denied, and stated he found out about the denial of his prior PCR action in 2009.

On cross-examination, Applicant again noted he was unable to ever speak with PCR counsel to ask the matter be appealed if denied and said his former law firm would not tell Applicant where PCR counsel worked thereafter. When inquired as to when he received a copy of the order dismissing the prior PCR action, Applicant said he received a copy of the order in “late 2008 or early 2009”.

PCR counsel testified he did not inform his clients that he would be leaving the law firm he had been working at prior to actually doing so. He stated his normal procedure is to file the notice of appeal for a PCR client upon receipt of the order of dismissal, regardless of whether the applicant actually requests an appeal or not, but said he failed to do so in this action. PCR counsel noted his failure to file the appeal was “not intentional” and said he “must have gotten

the paperwork mixed up". PCR counsel said if the appeal didn't get filed, it was his mistake, but agreed Applicant never asked that he file an appeal.

Based on the above, this Court finds Applicant is not entitled to a belated appeal of his prior PCR action pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Applicant failed to exercise reasonable diligence in pursuing relief and has made a knowing and intelligent waiver of his right to such appellate review after obtaining full knowledge of his appellate rights. While the Court in Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999), held the statute of limitations does not apply to a claim for belated appeal, such a rule was imposed to "act as an applicant's final safeguard" to Applicant's right to appeal where he was unaware of his right to appeal until outside of the one (1) year directly following conviction.

In the current instance, Applicant readily concedes he received a copy of the order of dismissal in "late 2008" or "early 2009", which contains a paragraph in it clearly informing the applicant that he must file and serve a notice of appeal within thirty (30) days to secure appellate review, and specifically directing the applicant to Rule 243, SCACR, for the proper procedure to do so. With that information in mind and being fully aware thereafter of his right to appeal, Applicant waited until September 2010, more than a year after his receipt of the order in "early 2009", to file the current application requesting a belated appeal. The Uniform Post-Conviction Relief Act sets forth explicit restrictions to require applicants to timely file and diligently pursue relief. In particular, S.C. Code § 17-27-45(c) sets forth a one (1) year time limit for filing of an action when an applicant uncovers facts not previously known to him/her. That one year time limit is triggered by "the date of actual discovery" of the facts by Applicant, or the "date when the facts could have been ascertained by the exercise of reasonable diligence" by Applicant. This Court finds the current belated appeal cannot be granted as allowing such would contradict the

very purpose of these statutory time limitations. Applicant "actually discovered" he was entitled to an appeal of his previous PCR action in "early 2009". Therefore, he should have taken reasonable and diligent steps to secure such an appeal within the following one year time frame from his receipt of such information. Applicant failed to do so, filing the current action *at least* several months after the one year time frame had expired. Accordingly, the current request for a belated Austin appeal must be denied.

CONCLUSION

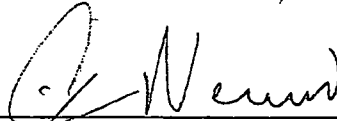
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13th day of February, 2013.



CLIFTON B. NEWMAN
Presiding Judge
Fifth Judicial Circuit

Kingstree, South Carolina.

COPY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

CASE NO.: 2010-CP-40-06562

Bruce Wilson, #192733)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

State of South Carolina)

Defendant.)

Plaintiff's Attorney:

C. Cliff Rollins, Bar No. 16631

Address:

Richardson Plowden & Robinson, PA

PO Drawer 7788, Columbia, SC 29202

Phone: 803-771-4400 Fax 803-779-0016

E-mail: crollins@rpcrlaw.com Other: _____

Defendant's Attorney:

_____, Bar No. _____

Address:

Phone: _____ Fax: _____

E-mail: _____ Other: _____

RICHLAND COUNTY
FILED
2013 JAN 16 AM 11:47
JEANETTE W. McBRIDE
C.C.P. & G.S.

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS II 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: Rule 59(e), SCRCP - Motion to Reconsider

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES / ☐ NO**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

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

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

January 15, 2013

Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT: \$ _____☒ EXEMPT:

(check reason)

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

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

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

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Bruce Wilson, #192733,

C/A No.: 2011-CP-40-02786

Applicant,

**APPLICANT'S MOTION TO
RECONSIDER UNDER RULE 59(e),
SCRPC**

v.

State of South Carolina,

Respondent.

RICHLAND COUNTY
FILED
JAN 16 AM 11:47
JANETTE W. McBRIDE
C.C.P. & G.S.

The Applicant hereby moves the Court to reconsider its Order of Dismissal of December 31, 2012, in each of the following matters and for each reason:

1. The Court's statement on Page 9 of the Order that "Applicant failed to exercise reasonable diligence in pursuing relief and has made a knowing and intelligent waiver of his right to such appellate review after obtaining full knowledge of his appellate rights" is not supported by the testimony on the record. Applicant testified that he was unable to even determine the status of his original PCR application for more than a year after the dismissal of the PCR action. This testimony is confirmed by that of Mr. Johnson, who testified that he never spoke with applicant again after the original PCR hearing. Applicant could not have made a "knowing and intelligent waiver" of his right to appeal the PCR decision when he was unable to even determine if a decision had been reached on his 2006 PCR claim until late 2008 or early 2009.

2. Applicant is entitled to a belated appeal of his initial PCR action under the holding of Austin v. State, 305 S.C. 453; 409 S.E.2d 395 (S.C. 1991). Austin holds that the right to seek appellate review for the denial of PCR is expressly authorized by state law. Further, a petitioner is entitled to the assistance of appellate counsel on PCR.

3. In Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (S.C. 1999) the court held that a PCR applicant is entitled to an Austin appeal if the PCR judge finds either (emphasis added) that the applicant requested and was denied an opportunity to seek appellate review, or the right to appellate review of a previous PCR order was not knowingly and intelligently waived.

4. Page 8 of the Order notes that Applicant "admitted he never asked PCR counsel to file an appeal of the PCR if it were denied." However, the following testimony was supported by both Applicant and Mr. Johnson, and not refuted by the State: (1) Applicant was unable to ever again communicate with his PCR counsel after the PCR hearing of August 1, 2007. (2) Applicant was unable to even determine if a decision had been reached on his August 1, 2007 PCR hearing until late 2008 or early 2009. Applicant is unaware of any duty under case law or statute to prophylactically request an appeal before learning of the results of a PCR hearing, and Applicant never had an opportunity to timely request an appeal of the original PCR after the hearing.

5. The Court's Order addresses and dismisses Applicant's newly-discovered evidence claim (lack of subject matter jurisdiction) and an ineffective assistance of counsel claim related to counsel's failure to request an appeal after the August 1, 2007 hearing. The intent of Austin, as explained by Odom, is that the Applicant receive his one, full, complete "bite at the apple." Applicant has never yet received his full bite at the apple, as he was never afforded an appellate review of the ineffective assistance of counsel issues pertaining to his original conviction, which included failure of trial counsel to file a suppression motions relating to Applicant's statement and his photo line-up.

6. Odom v. State provides that the statute of limitations does not apply to a claim for a belated appeal under Austin. Austin appeals are used to rectify unjust procedural defects, as when an attorney does not file a timely appeal. The Order notes that Austin is intended to act as

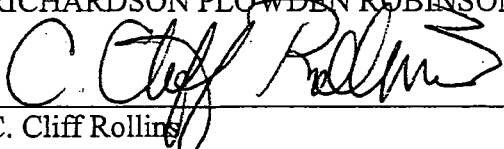
the final safeguard against unjust procedural errors, then proceeds to dismiss it by quoting the language of the Uniform Post-Conviction Relief Act. As the Odom court noted, "Austin's policy would be frustrated if the one-year statute of limitation applied to procedural errors made by PCR courts." Odom, 337 S.C. at 259, 523 S.E.2d at 756.

WHEREFORE, the testimony developed at the hearing of October 18, 2012 indicating that the Applicant is entitled to a belated appeal of his first PCR pursuant to Austin v. State, Applicant respectfully requests that this Court reconsider and amend its Order filed January 7, 2013 pursuant to Rule 59(e), SCRCP, to direct that Applicant be granted such belated appeal.

Dated this 15 day of January, 2013.

Respectfully submitted,

RICHARDSON PLOWDEN ROBINSON, P.A.


 C. Cliff Rollins
 PO Drawer 7788
 Columbia, South Carolina 29201
 (803) 576-3712
 Facsimile (803) 799-0016
 Email: crollins@RichardsonPlowden.com

COUNSEL FOR APPLICANT

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

Bruce Wilson, #192733,)

C/A No.: 2011-CP-40-02786

Applicant,)

CERTIFICATE OF SERVICE

v.,)

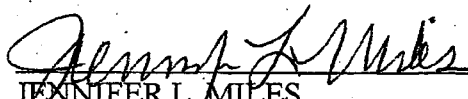
State of South Carolina,)

Respondent.)

I, the undersigned employee of Richardson Plowden & Robinson, P.A., County Clerk for the
Applicant Bruce Wilson, do hereby certify that I have served a copy of the *APPLICANT'S*
MOTION TO RECONSIDER UNDER RULE 59(e), SCRPC by causing a copy of the same to be
personally deposited in a United States Postal Service mail box, first class postage prepaid, with
the return address clearly visible, addressed as indicated below on this 15th day of January,
2013:

Robert D. Corney
Assistant Attorney General
Post Conviction Relief Section
SC Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

The Honorable J. Ernest Kinard, Jr.
Camden County Courthouse
PO Drawer 1707
Camden, SC 29021-1707


JENNIFER L. MILES
Legal Assistant to C. Cliff Rollins

January 15, 2013
Columbia, South Carolina.

RICHLAND COUNTY
FILED
2013 JAN 16 AM 11:17
JEANETTE W. BRIDDE
C.C.P. & G.S.

COPY 359

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Bruce Wilson, #192733,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2011-CP-40-0278

AMENDED
CERTIFICATE OF SERVICE

FILED
RICHLAND COUNTY
FEB 28 AM 9:54
JENNIFER L. MCBRIDE
C.C.P. & G.S.

I, the undersigned employee of Richardson Plowden & Robinson, P.A., counsel for the Applicant Bruce Wilson, do hereby certify that I have served a filed copy of the *APPLICANT'S MOTION TO RECONSIDER UNDER RULE 59(e), SCRPC* by causing a copy of the same to be personally deposited in a United States Postal Service mail box, first class postage prepaid, with the return address clearly visible, addressed as indicated below on this 26th day of February, 2013:

Robert D. Corney
Assistant Attorney General
Post Conviction Relief Section
SC Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549

The Honorable Clifton Newman
PO Box 516
Kingstree, SC 29556-0516



JENNIFER L. MILES

Legal Assistant to C. Cliff Rollins

February 26, 2013
Columbia, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-40-06562

RECEIVED

FEB - 4 2013

Bruce Wilson #192733
PLAINTIFF(S)

STATE OF SOUTH CAROLINA
DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☒ Other See Below
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court:

It has come to this Court's attention the Order of Dismissal filed in this Post-Conviction Relief Matter on January 7, 2013 was erroneously signed and entered. The matter was in fact heard October 18, 2012, by the Honorable Clifton Newman. Therefore, the Order entered by this Court on January 7, 2013 is hereby **RESCINDED** to defer judgment to Judge Newman as the presiding judge at the October 2012 hearing and the case is **RESTORED** pending his judgment on the matter.

Dated at Camden, South Carolina, this 28th day of January, 2013.


PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this 1 day of Feb, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

C. Cliff Rollins, Esquire
Richardson Plowden & Robinson, P.A.
1900 Barnwell Street
Columbia, SC 29201
ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert D. Corney, AAG
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, SC 29211
ATTORNEY(S) FOR THE DEFENDANT(S)


CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Bruce Wilson, #192733,	)	2010-CP-40-06562
	)	
Applicant,	)	
	)	RETURN TO RULE 59(e), SCRPC,
vs.	)	MOTION TO ALTER OR AMEND
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

This matter comes before this Court by way of Rule 59(e), SCRPC, Motion to Alter or Amend a Judgment submitted by PCR counsel for Applicant on February 26, 2013.

A hearing on Respondent's motion to summarily dismissing the action was convened before this Court on October 18, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, C. Cliff Rollins, Esquire. The state was represented by Robert D. Corney of the South Carolina Attorney General's Office. At the hearing, Applicant; Applicant's former trial counsel, Katherine Hudgins, Esquire; and Applicant's former PCR counsel, Charlie J. Johnson, Jr., Esquire, testified. By order filed February 19, 2013, this Court denied Applicant's request for relief with prejudice. The current post-hearing motion followed.

Respondent submits the February 19, 2013, order of dismissal entered contains all of the required findings of facts and conclusions of law required by S.C. Code § 17-27-80 and Rule 52(a), SCRPC. See also Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). Further, the current order of dismissal makes accurate, complete and appropriate findings based upon the testimony and arguments presented at the PCR hearing. Therefore, Respondent requests this Court deny Applicant's Rule 59(e), SCRPC, motion to alter or amend. Further, Respondent submits oral argument will not aid in reconsideration of the original judgment.

Accordingly, Respondent respectfully requests that this Court deny Applicant's motion to alter or amend the order.

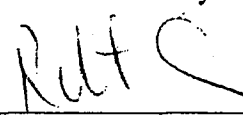
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ROBERT D. CORNEY
Assistant Attorney General

BY: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

February 27, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2010-CP-40-6562

Bruce Wilson, 192733

Applicant,

vs

State of South Carolina,

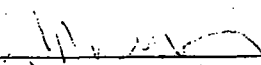
Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
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)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

C. Clifford Rollins, Esquire
Richardson Plowden & Robinson, PA
PO Drawer 7788
1900 Barnwell St.
Columbia, SC 29202

DATED this 1st day of March, 2013.



Jean R. Indriago, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2010-CP-40-06562
	)	
BRUCE WILSON,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

April 2, 2013
Columbia, South Carolina

BEFORE:

THE HONORABLE CLIFTON NEWMAN, JUDGE.

APPEARANCES:

CLIFF ROLLINS, ESQ.
Attorney for the Applicant

MEGAN HARRIGAN, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: All right. We go on the record now in
2 the case of State vs. Bruce Wilson versus the State of
3 South Carolina.

4 The Applicant has filed a motion for reconsideration
5 pursuant to Rule number 59(e). It's scheduled for
6 hearing. All parties are present.

7 Mr. Rollins.

8 MR. ROLLINS: Yes, Your Honor. Thank you. May it
9 please the Court.

10 THE COURT: Yes, sir.

11 MR. ROLLINS: Cliff Rollins for the Applicant.

12 Your Honor, just to do a brief sort of summary of the
13 procedural and historical background of the case, my
14 client, Mr. Wilson, was indicted during the April and
15 July 2005 terms of court on four counts of armed robbery.

16 On January 5th, 2006, he pled guilty to three counts
17 with the fourth being nolle-prossed. At this time, all of
18 those sentences run concurrently.

19 He filed an initial PCR action in May of 2006, and he
20 was represented by Mr. Charlie Johnson of the Richland
21 County Bar on that matter.

22 THE COURT: Just back up. Just -- he pled guilty to
23 four counts of armed robbery, did you say?

24 MR. ROLLINS: Three counts.

25 THE COURT: Three counts of armed robbery.

1 MR. ROLLINS: Yes, sir.

2 THE COURT: Okay.

3 MR. ROLLINS: His initial PCR action, he was
4 represented by Charlie Johnson. That was heard by Judge
5 Williams who -- on August 1, 2007. An Order of Dismissal
6 was entered on September 18th, 2007.

7 Mr. Wilson then filed a second PCR action on
8 September 21, 2010 based on newly discovered evidence.
9 That hearing on that matter was -- we were in front of you
10 in October of last year on that matter.

11 THE COURT: All right.

12 MR. ROLLINS: You issued your Order of Dismissal on
13 that hearing on February 19th, 2013, this year. I
14 subsequently, on February 26th, filed my motion to
15 reconsider Rule --

16 THE COURT: What's the newly discovered evidence he
17 said he had?

18 MR. ROLLINS: His newly discovered evidence pertained
19 to basically discovery, discovery materials he never saw
20 during the course of his initial pleading arrangements.

21 He discovered -- his testimony was that until he saw
22 some of this, this material in his case file, which his
23 initial counsel had not provided him with, he had not
24 realized he never had a preliminary hearing; that he had
25 requested a preliminary hearing, was never given one, and

1 so he was challenging his conviction on those grounds.

2 In your order, you dismissed that jurisdictional
3 argument -- jurisdictional argument on a finding largely
4 that regardless -- you said that it was simply a notice
5 document and the jurisdictional argument was a separate
6 issue, and the cases --

7 THE COURT: There is no right to a preliminary
8 hearing, basically.

9 MR. ROLLINS: Yes, sir. He would --

10 THE COURT: After an indictment.

11 MR. ROLLINS: You held he would have waived that by
12 pleading. At his plea hearing, he would have waived that
13 argument.

14 THE COURT: All right.

15 MR. ROLLINS: Your second ground -- the second item
16 you dealt with, your order, we also presented testimony at
17 the hearing, he complained of ineffective assistance by
18 his counsel, and that his counsel on the first PCR action
19 failed to file an appeal.

20 Mr. Johnson actually was on the stand during that
21 hearing and testified that he, in fact, did not file an
22 appeal. He testified that it was his normal practice to
23 do so, but in this case it never happened.

24 THE COURT: So he was ineffective in not filing an
25 appeal?

1 MR. ROLLINS: Yes, Your Honor. Now, you ruled in
2 your order that -- essentially, that he had failed, my
3 client had failed to exercise reasonable diligence in
4 pursuing relief because he received -- the hearing on the
5 first PCR action was in 2007. Hang on a second. I'll
6 find you the date.

7 (Pause).

8 The initial order on the initial PCR action came out
9 in September of 2007. Now, he testified that he did not
10 actually receive that order until late 2008 or early 2009
11 because his attorney, Mr. Johnson, had subsequently left
12 the firm and not left forwarding information for
13 Mr. Wilson. He was unable to contact him.

14 Now, your order says that basically he received --
15 whenever he received a copy of the order, he received it,
16 and the language at the back of the order says you've got
17 30 days to file an appeal from receipt of this notice by
18 counsel.

19 My reading of your order, Your Honor, and the reason
20 I filed this motion to reconsider is because it appears to
21 me you imputed from the language of that order, that upon
22 his receipt, he would have known he had 30 days at that
23 time to file.

24 But there is no testimony from my client on the
25 record that that was, in fact, his thought process. In

1 fact, I believe his thought process was different. He
2 would have believed at that point, well, this order was
3 promulgated over a year ago. I'm just now getting it. My
4 30 days has already run.

5 THE COURT: I'm asking -- say that again. I want to
6 find what I wrote in the order.

7 MR. ROLLINS: Okay.

8 THE COURT: All right. I referenced what I said.
9 Now, tell me what your interpretation is.

10 MR. ROLLINS: In paragraphing of the -- from your
11 order, Your Honor, it holds that --

12 THE COURT: Page what of the order?

13 MR. ROLLINS: If you'll look at the -- the second of
14 the full paragraph which begins right about the middle of
15 that page.

16 THE COURT: "In the current instance" --

17 MR. ROLLINS: Yes, Your Honor.

18 THE COURT: -- "readily concedes to receive a copy of
19 the order of dismissal in late 2008 or early 2009 which
20 contains a paragraph clearly informing the appellant that
21 he must file and serve the Notice of Appeal within 30 days
22 to secure appellate review.

23 "Specifically, directing, the appellate to Rule
24 243 -- 243 SCAR, the proper procedure to do so. With that
25 information in mind, being fully aware thereafter of his

1 right to appeal, the appellant waited until September
2 2010, more than a year after his receipt of the order in
3 early 2009 to file a current application requesting a
4 belated appeal.

5 "The Uniform Post Conviction Relief Act sets forth
6 explicit restrictions to require applicant to timely file
7 and diligently pursue relief.

8 In particular, code section sets forth a one-year
9 time limit for filing that action when the applicant
10 uncovers facts not previously known to him or her. That
11 one year time is triggered by the date of actual delivery
12 of the facts on the Applicant, or the date the facts could
13 have been ascertained by the exercise of reasonable
14 diligence.

15 This Court finds the current belated appeal cannot be
16 granted as allowing such to contradict the purpose of the
17 statutory limitations -- these statutory limitations.

18 The Applicant actually discovered he was entitled to
19 an appeal of his previous PCR in early 2009. Therefore,
20 he should have taken reasonable and diligent steps to
21 secure such an appeal within the following one-year
22 timeframe from his receipt of such information.

23 Applicant failed to do so filing the current action
24 at least several months after the one-year time frame had
25 expired. Accordingly, the current request for a belated

1 Alston appeal must be denied."

2 Okay. Yes, sir.

3 MR. ROLLINS: And what I would suggest to you, Your
4 Honor, is what he actually found out or determined when he
5 received that copy of that order filed in late 2008 or
6 early 2009 was not being aware of his rights to appeal,
7 but he was finally aware that, in fact, a judgment had
8 been rendered on his initial PCR action.

9 He was in limbo all that intervening time not able to
10 contact his attorney, not having heard anything about the
11 status of his first PCR.

12 THE COURT: Yeah, but whatever he received, did it
13 say all of these things that this order said that it said
14 that --

15 MR. ROLLINS: It did, Your Honor. You know, if
16 you'll look on the -- page ten, the conclusion of your
17 order.

18 THE COURT: Yes, sir.

19 MR. ROLLINS: It reprints, essentially, that same
20 language as being discussed on the last page of the first
21 PCR dismissal order.

22 THE COURT: All right.

23 MR. ROLLINS: The Court advised the applicant must
24 file and serve -- excuse me, serve a Notice of Appeal
25 within 30 days from the receipt by counsel.

1 From that, the Court has imputed that when he read
2 that, he understood that from the time he received that
3 document, he had 30 days to file the appeal.

4 I just don't believe that that's supported by
5 anything else on the record. I think the Court has just
6 extrapolated that, and I think just as reasonable an
7 interpretation would be that he saw that language and said
8 30 days from receipt by counsel.

9 You know, I will not -- my lawyer has long since seen
10 this thing, as far as I know. You know, I've only -- I've
11 gotten it a year now after the hearing was held and
12 thought he was already out of his -- his time to appeal
13 but in any case --

14 THE COURT: Okay. Go ahead.

15 MR. ROLLINS: -- the -- your order mentions Alston --
16 references both Alston v. State and Odom v. State and then
17 just kind of goes on to say, "Well, that -- you still
18 have -- we still have got this one-year time limit on
19 filing an appeal we have to deal with. We're going to
20 hold him to it."

21 Your Honor, Alston basically says that the right to
22 seek appellate review of a denial of PCR is expressly
23 authorized by State law and that a prisoner has the right
24 to assistance of appellate counsel in seeking the review
25 of denial of the PCR action and that a failure to seek

1 review, such review, in Alston was held to state a claim
2 for ineffective assistance.

3 Odom goes on to say -- it goes on to -- to hold that
4 Alston says under the PCR rules, an Applicant is entitled
5 to one full and final bite at the apple. He is entitled
6 to have all of his issues with regards to his conviction
7 heard.

8 THE COURT: Well, he gets that one final bite. It's
9 if he files it within a certain period of time; is that
10 right or...

11 MR. ROLLINS: Well, that's fair, but Odom says if the
12 challenge is on procedural grounds, we will not hold him
13 to that one-year time limit.

14 What has happened in this case -- because of the
15 unusual confluence of circumstances in this case, what
16 your order on the second PCR action ruled on was his
17 jurisdictional argument and his argument for ineffective
18 assistance of counsel based on Mr. Johnson's failure to
19 file an appeal.

20 What had -- what has never been ruled on at the
21 appellate level and what kind of got lost in the shuffle
22 was from his first PCR action. There was never an
23 appellate review of his original charges in that first PCR
24 action, which was ineffective assistance of counsel for
25 failure to challenge the photographic lineup and a failure

1 to file a suppression motion.

2 Alston -- Odom holds that under circumstances like
3 those, he would be entitled to a belated PCR appeal in
4 order to get his full and final bite at the apple.

5 THE COURT: Well, he is not claiming that he's not
6 guilty.

7 MR. ROLLINS: He is claiming he is entitled to
8 review.

9 THE COURT: Of all these procedures.

10 MR. ROLLINS: The procedures, full procedural review.

11 THE COURT: Whether he is guilty or not of committing
12 these crimes, he pled guilty to them?

13 MR. ROLLINS: Yes, sir.

14 THE COURT: And the order should have said what?

15 MR. ROLLINS: The order should have held that he was
16 entitled to a belated appeal under the holding of Alston
17 and Odom to have those issues from his first PCR action
18 that were never addressed by appellate review. He is
19 entitled to have an appellate review on those issues.

20 THE COURT: His appellate review of being a lawyer
21 did not make sure he had a preliminary hearing or
22 didn't --

23 MR. ROLLINS: No, sir. You dealt with the -- the
24 ones that never got heard were from the first PCR action.
25 His -- his claim that his counsel was ineffective for

1 failure to file a motion for suppression on statements
2 made by him and failure to challenge photographic lineup
3 that was used to convince him to accept -- to tender a
4 plea.

5 THE COURT: Well, okay.

6 All right.

7 MS. HARRIGAN: May it please the Court.

8 THE COURT: Yes.

9 MS. HARRIGAN: Megan Harrigan appearing from the
10 Attorney General's Office for Respondent, Rob Corney,
11 formerly of our office. He handled the evidentiary
12 hearing, and he has since left our office, and I have
13 taken over his case load.

14 THE COURT: Where did he go?

15 MS. HARRIGAN: He's up in Greenville, Your Honor.

16 THE COURT: He is a lawyer, regular lawyer now?

17 MS. HARRIGAN: Yes, Your Honor. He is in private
18 practice in Greenville now.

19 The Respondent would argue that the order makes the
20 appropriate and accurate findings based on the testimony
21 presented at the PCR hearing.

22 Applicant stated during the hearing held last year
23 that he did not receive notification of the denial of his
24 first PCR until late 2008 or early 2009, but yet, he did
25 not file the second application until September of 2010.

1 The first order of dismissal on his 2006 initial PCR
2 application clearly advised him that he must file Notice
3 of Appeal within 30 days of receipt of the order, and the
4 PCR act clearly states that applicants must timely file
5 and pursue relief.

6 THE COURT: You said counsel said that it's within 30
7 days from the receipt by the counsel.

8 MS. HARRIGAN: Yes, Your Honor. I believe the
9 language is the standard language that appears at the end
10 of all of our orders.

11 THE COURT: So it wouldn't be within 30 days of
12 receipt of the order, within 30 days of the lawyer
13 receiving it.

14 MS. HARRIGAN: Yes, Your Honor. By Applicant's
15 testimony, he received the application -- or the Order of
16 Dismissal from his first PCR application in late 2008 or
17 early 2009.

18 THE COURT: He received it from the lawyer --

19 MS. HARRIGAN: Then, Your Honor, he still --

20 THE COURT: -- more than a year before he --

21 MS. HARRIGAN: But he still waited until September of
22 2010 to file the second PCR application. The State would
23 argue that that's not timely pursuant -- timely and
24 diligently pursuing your rights under the PCR act. You
25 need to pursue your right diligently.

1 THE COURT: What about these cases Mr. Rollins talked
2 about, Alston and the others?

3 MS. HARRIGAN: Yes. The applicant is entitled to a
4 full bite at his apple, including an appellate review.
5 However, he does need to timely and diligently pursue
6 those.

7 He waited 18 months until he found out, giving him
8 the absolute last date that he stated he received his
9 Order of Dismissal in 2009. He still waited 18 months,
10 and that's not timely pursuing relief.

11 THE COURT: So you think the original order was
12 directly on point, and they're just wasting our time here
13 today?

14 MS. HARRIGAN: It makes appropriate findings of fact
15 and conclusions of law. The State has an interest the
16 timely and efficient of movement of PCR actions, including
17 the appellate actions from these cases.

18 He waited 18 months knowing that his first PCR was
19 denied before he filed. He didn't timely file within a
20 year or a reasonably diligent time. He waited 18 months,
21 giving him the benefit of the doubt that he received his
22 application in early 2009.

23 THE COURT: Well, do they have any valid points or no
24 valid points?

25 MS. HARRIGAN: Applicants are entitled to a review of

1 their PCR actions. However, he did not timely pursue
2 that, and I think when you don't timely pursue your
3 rights, they're foreclosed upon you.

4 THE COURT: So you have no valid points?

5 MS. HARRIGAN: Not in regards to his Alston claim,
6 Your Honor.

7 THE COURT: And this order is airtight?

8 MS. HARRIGAN: Yes. The State would contend that it
9 makes the appropriate findings of fact and conclusions of
10 law.

11 THE COURT: All right. Thank you.

12 MS. HARRIGAN: Thank you, Your Honor.

13 THE COURT: All right.

14 Mr. Rollins?

15 MR. ROLLINS: Yes, Your Honor. If I could just
16 respond briefly to one thing in particular. I understood
17 counsel to -- in your question to her to indicate that he,
18 in fact, received the Order of Dismissal on the first PCR
19 action from his lawyer. That is not the case.

20 After his sentencing hearing, he never spoke to
21 Charlie Johnson, his lawyer, again until October of
22 last -- 2012 when he was in your courtroom to testify on
23 our hearing.

24 So he got that. When he eventually got that order --

25 THE COURT: He got it from --

1 MR. ROLLINS: He got it through his own efforts by
2 contacting the Clerk of Court saying, "Please tell me
3 what's going on with my case. Nobody is talking to me."

4 THE COURT: So he did --

5 MR. ROLLINS: So he did not get it through counsel.

6 THE COURT: So he got an order from the clerk, and
7 then waited a year or so after getting it from the clerk
8 to file?

9 MR. ROLLINS: He -- he -- yeah. He didn't file an
10 appeal. No. He did not file an appeal. What he ended up
11 doing was filing a second PCR action based on a belief
12 that hey, you know, according to plain language of the
13 order, as far as his laymen's understanding, I had 30 days
14 from the time that my lawyer got this order to appeal.

15 Well, I didn't get it until well over a year after
16 the order was published, so I'm sure that time has gone
17 by. Let me see if I can self-help. Let me see if I can
18 find some grounds to bring another PCR action.

19 THE COURT: All right. We're here in 2013. He was
20 convicted in what year? These cases have 2005 numbers on
21 them.

22 MR. ROLLINS: Yes, Your Honor.

23 THE COURT: The 2000 --

24 MS. HARRIGAN: Your Honor, he pled guilty on
25 January 5th, 2006.

1 THE COURT: These robberies occurred in what year?

2 MS. HARRIGAN: 2005, I believe, Your Honor.

3 MR. ROLLINS: I believe it was 2004 that the
4 actual --

5 THE COURT: So we're nine years down the road still
6 dealing with this issue of whether he is -- whether he is
7 validly incarcerated or not.

8 Yes, sir.

9 THE DEFENDANT: If it's possible, can I speak?

10 THE COURT: That suits me fine.

11 THE DEFENDANT: Okay.

12 THE COURT: Just stand up when you talk to me.

13 THE DEFENDANT: Yes, sir.

14 The reason why I'm still fighting this case is
15 because of the simple fact when I went to trial for this
16 case, you know what I mean, when I first met with
17 Ms. Huggins when she came to Alvin S. Glenn Detention
18 Center.

19 THE COURT: Ms. Huggins, is she the PCR lawyer or who
20 is she?

21 THE DEFENDANT: She is my original attorney.

22 THE COURT: Okay. Original lawyer.

23 THE DEFENDANT: When I spoke with her, she came to
24 see me, she had asked me -- the first thing she asked me,
25 do I want to plead. I told her no because the charges was

1 -- of being -- of what she they accused me of, I did not
2 commit.

3 I admitted -- I admitted to her, I said, but there
4 was a crime committed, but the charges -- what they
5 charged me with is not the charges that had happened.

6 So okay. Five months down the line, she came -- they
7 brought me down, down here, to see videotapes or whatever.
8 So once -- you can see the videotapes. I'm sitting here,
9 show her. You can see right here, there is no weapon
10 presented, period.

11 These videotapes, so I -- the Solicitor was there.
12 So I asked the Solicitor, I said --

13 THE COURT: Of course, you know, they changed the law
14 that if you make a person believe you have a gun, it's
15 still armed robbery.

16 THE DEFENDANT: I understand.

17 THE COURT: A representation of a gun.

18 THE DEFENDANT: I understand that.

19 THE COURT: Go ahead.

20 THE DEFENDANT: I understand that, and during the
21 whole -- if I would have known about it, I would have
22 brought the letters that my lawyer even wrote me stating
23 -- saying what I'm saying now; that, you know, no weapon
24 was present or anything. You know what I mean.

25 THE COURT: But you knew you had a right to have a

1 trial and let the jury decide.

2 THE DEFENDANT: I had a trial.

3 THE COURT: You had a trial.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You finally pled guilty or not guilty?

6 Oh, you pled guilty during the trial.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Okay.

9 THE DEFENDANT: And then see, that's -- that's
10 another issue why I went to my preliminary -- on that
11 about the preliminary hearing, because the reason why I
12 pled guilty was because my lawyer told me if I didn't
13 plead guilty, I would get a life sentence.

14 So at the time, I'm thinking --

15 THE COURT: How much time did you end up giving?

16 THE DEFENDANT: I pled. She told me to plead to this
17 23 years.

18 THE COURT: All right.

19 THE DEFENDANT: When all -- I couldn't get more.

20 THE COURT: Well, if you're charged with -- how many
21 counts of armed robbery?

22 THE DEFENDANT: I was charged with four counts.

23 THE COURT: Well, that's 120 years. You can get up
24 to 30 years on each one, so that's -- that's pretty much a
25 life sentence according to how long people live in this

1 current time.

2 THE DEFENDANT: True, indeed. True, indeed, but at
3 the point in time, you know, my understanding is -- it was
4 put to me that if I could plead guilty to this charge
5 right here, I'm getting a life sentence. You know, she
6 never -- she never said --

7 THE COURT: Did you have prior convictions?

8 THE DEFENDANT: No, sir. You know, I mean, so at the
9 time they had my fiancée in the courtroom with me. They
10 let me speak to her, and she was saying what the Solicitor
11 said, the same thing, because that's what my lawyer told
12 her.

13 I'm like nah, because I kept saying that I didn't
14 want to plead. They was like well, you know, they might
15 want you to have thinking that this and this and that.

16 So I'm like -- I'm like, you know, you're seeing the
17 same thing I'm seeing. You know what I mean? I was
18 there. I know what's happening, and then you're seeing
19 the same thing, what I'm telling you on the videotape.

20 You know, I'm showing her. She was like, "Yeah, but
21 she might think it looked like on videotape that this" --
22 I said, "Well" --

23 THE COURT: You're talking about --

24 THE DEFENDANT: She had --

25 THE COURT: You're talking about a conversation

1 between you and your girlfriend?

2 THE DEFENDANT: No. Me and my attorney.

3 THE COURT: You and your attorney?

4 THE DEFENDANT: Yes.

5 THE COURT: All right.

6 THE DEFENDANT: She was like, "I think, you know,
7 your best interest is to just go ahead and plead guilty.
8 You know what I mean. Instead of getting a life sentence,
9 at least you'll be able to get out, you know, to be with
10 your kid."

11 So I'm like --

12 THE COURT: Well, that is -- well, is that right or
13 wrong? I mean, you got 23 years as opposed to the
14 possibility of 120. How do you --

15 THE DEFENDANT: Well --

16 THE COURT: I mean, you're saying --

17 THE DEFENDANT: I understand what she was saying
18 but...

19 THE COURT: All right.

20 THE DEFENDANT: I wasn't guilty of armed robbery, but
21 I -- you know what I mean, by her and my -- my lady
22 telling me. So I went ahead and plead, but after I did, I
23 was --

24 THE COURT: But first you had to go through the judge
25 and convince the judge that your decision was free and

1 voluntary and that you didn't want to go through the jury
2 trial.

3 You wanted -- the jury was already selected and
4 waiting to finish your case, and not having read through
5 this transcript, I'm sure you told that judge --

6 THE DEFENDANT: He asked me -- he asked me -- he
7 asked me was it a voluntary plea, yes.

8 THE COURT: All right.

9 THE DEFENDANT: And I said yes. You know what I
10 mean, I said yes.

11 THE COURT: Why are we still talking about it nine
12 years later?

13 THE DEFENDANT: That's what my attorney told me to
14 do, so I followed the direction of my attorney.

15 Okay. So then I filed for my PCR plan. So when I
16 went for my PCR again, I raised the issue of why didn't
17 she put in a motion to suppress.

18 She was saying that they were going to use my
19 statement against me. I said, "Well" -- I asked her why
20 did she never introduce a motion of suppression of the
21 statement.

22 You know, she never did, you know what I mean, or
23 suppress the photo lineup. When she tried to raise the
24 issue of the photo lineup, she never -- she only -- the
25 only photo lineup she raised was me and my co-defendant.

1 All right. I mean, the photo lineup is six different
2 individuals. You know what I mean, and everyone in that
3 photo lineup is in the same position as number six.

4 THE COURT: You don't think the lineup was right,
5 huh?

6 THE DEFENDANT: It wasn't.

7 THE COURT: This says Bruce Germane -- Gerane Wilson
8 with armed robbery of a -- with a knife from Fred Hill, a
9 clerk in the store.

10 THE DEFENDANT: Well --

11 THE COURT: That's one charge and then Pantry
12 Express. That was Pantry Express. Another one says you
13 robbed a person at knifepoint at another -- another Pantry
14 Express, Farrow Road.

15 THE DEFENDANT: Well, they said all this was supposed
16 to have occurred at the same place.

17 THE COURT: Well, I guess -- well, let's put
18 different clerks at the same store. It's just a different
19 named clerk.

20 THE DEFENDANT: Gloria Norman, Frederick Hill.

21 THE COURT: Gloria Norman, yes. Fred Hill, Gloria
22 Norman has been positively identified by a photo lineup by
23 a witness.

24 THE DEFENDANT: And see, that -- that's the question.
25 See, that is the issue right there because she had

1 initially said my codefendant was the -- was the man who
2 they got -- they arrested my codefendant first. Once they
3 arrested him --

4 THE COURT: Well, we don't -- we don't have him here.

5 THE DEFENDANT: He's home. He went home yesterday.

6 THE COURT: I mean, he went to prison, too?

7 THE DEFENDANT: Yes.

8 THE COURT: What does he plead guilty to?

9 THE DEFENDANT: He testified against me at my trial.

10 THE COURT: And he said that you were part of the
11 robbery, too?

12 THE DEFENDANT: Yes.

13 THE COURT: So you don't need a photo lineup with a
14 fellow who said he was with you who said you did it.

15 THE DEFENDANT: But see, the reason -- see, this is
16 the thing, and that's another thing, the issue I was
17 raising also on the suppressing of the statement is
18 because -- all right. When --

19 THE COURT: Was he younger than you?

20 THE DEFENDANT: No. He's older than me.

21 THE COURT: Older than you. How much older?

22 THE DEFENDANT: Franklin should be 50 -- like 52, 53.

23 THE COURT: How old are you?

24 THE DEFENDANT: I'm 38.

25 When he got arrested, he was under the influence of

1 an uncontrolled substance [sic]. When they arrested him,
2 they never --

3 THE COURT: Under the influence of an uncontrolled
4 substance?

5 THE DEFENDANT: Yes.

6 THE COURT: Controlled substance.

7 THE DEFENDANT: Controlled substance.

8 THE COURT: Okay.

9 THE DEFENDANT: What I'm saying is they never took
10 him to the county jail. They took him straight to the
11 headquarters and took the statement from him. It stated,
12 you know --

13 THE COURT: So was a person at the scene or the
14 store?

15 THE DEFENDANT: No.

16 THE COURT: This was months later?

17 THE DEFENDANT: It was months later.

18 Once they took his statement, he was under the
19 influence of drugs. So you know, his statement is null
20 and void at that point in time when they asked him --

21 THE COURT: Why is it null and void? Because he was
22 on drugs?

23 THE DEFENDANT: Because he admitted that. He
24 admitted that he was -- he had just got through doing
25 drugs before they arrested him.

1 THE COURT: Well, I mean, he's on drugs and he
2 confessed. That doesn't mean his confession is
3 involuntary.

4 THE DEFENDANT: No. It's on his statement.

5 THE COURT: It's not null and void. It may be a
6 factor as to whether or not a jury should believe it.

7 THE DEFENDANT: Okay. But if I have -- if I have --
8 well, if I had my case file, I have cases stating that if
9 you are under the influence of drugs here, you know, he
10 was supposed wait at least 72 hours until it's out of your
11 system.

12 THE COURT: Whether they -- maybe they want to get
13 the confession while you're under the influence of the
14 drugs. You might change your mind about confessing if
15 they wait 72 hours.

16 I mean, you know, I don't know. I'm just saying --

17 THE DEFENDANT: Like I'm saying, I had read cases
18 stating that if -- the statement will be no good when
19 you're under the influence of drugs.

20 THE COURT: So what are you trying to get done here?

21 THE DEFENDANT: The only thing -- what I'm trying to
22 do is have my appeal of my first PCR because -- you know,
23 all right.

24 When I received -- when I received the disposition, I
25 really truly believed that, you know, the 30 days was over

1 with so --

2 THE COURT: So which lawyer messed up, the Charlie
3 Johnson, or the Hudgins lady?

4 THE DEFENDANT: Well --

5 THE COURT: Huggins? What's her name?

6 THE DEFENDANT: Ms. Huggins. Ms. Huggins did --

7 THE COURT: Is that Katherine Hudgins?

8 THE DEFENDANT: Yes. Katherine Huggins didn't put in
9 for the suppression when like I asked her to, and when I
10 went to --

11 THE COURT: To suppress to say that the people in the
12 store --

13 THE DEFENDANT: No.

14 THE COURT: -- who said they could recognize you
15 couldn't recognize you?

16 THE DEFENDANT: That all --

17 THE COURT: Or that the police --

18 THE DEFENDANT: That all --

19 THE COURT: The police directed them to pick you?

20 THE DEFENDANT: No, no, no, no. It's more like this.
21 Your Honor, I don't know if you have the file up there.

22 THE COURT: Yeah, I have the file.

23 THE DEFENDANT: You have the file, the photo lineup
24 and all of that?

25 THE COURT: No. I don't have that. No.

1 THE DEFENDANT: If I could hand it and show it to
2 you, you will see exactly what I'm speaking of. Okay.

3 THE COURT: I've had a lot of cases involving photo
4 lineups.

5 THE DEFENDANT: This -- this -- this is how it went.

6 THE COURT: Uh-huh.

7 THE DEFENDANT: Okay. They arrested two people.
8 They arrested...

9 What's his name?

10 (Pause).

11 Green.

12 (Pause).

13 Okay. They arrested two people. All right. This is
14 how it had come [sic] about: They had some lottery
15 tickets. Lottery tickets was taken [sic] at the time of
16 the robbery.

17 THE COURT: All right.

18 THE DEFENDANT: Okay. The two people who got the
19 lottery tickets, they arrested them. So they implicated
20 them, so they ended up getting --

21 THE COURT: Now, that would be logical if someone
22 robbed a store and stole some lottery tickets and they --
23 and they caught someone with the stolen lottery tickets,
24 they might figure that person either had something to do
25 with the robbery or knew something about it.

1 THE DEFENDANT: Okay. Okay. They arrested two on
2 that, them two, okay. Then they turned around. They
3 implicated Cookie. So when they implicated Cookie, they
4 went in the database, and they come up with Goins and
5 Franklin.

6 So they -- they -- when they have -- when they took
7 them, they took them two photo lineups. Now, once -- once
8 they went through, then they arrested Cookie. Then Cookie
9 put me in. So they took me --

10 THE COURT: Cookie is your codefendant, or who is
11 that?

12 THE DEFENDANT: My codefendant.

13 THE COURT: Codefendant.

14 THE DEFENDANT: Franklin Dixon, so once they did --
15 every photo lineup, they took the -- two of the people,
16 everybody who is implicated in the whole thing was as
17 number six, okay.

18 You know, they never -- they say it's random, but how
19 can it be random if everybody is number six? It's not --

20 THE COURT: Who is --

21 THE DEFENDANT: It's not -- then during the trial,
22 they said it was a coincidence. How is it possible that
23 could be a coincidence for five different people to be
24 number six?

25 THE COURT: Five different people being number six.

1 Every time they picked the person out of the line up, they
2 picked number six?

3 THE DEFENDANT: Number six.

4 THE COURT: And it happened to be you?

5 THE DEFENDANT: Everybody -- everybody who --

6 THE COURT: Every number six was you?

7 THE DEFENDANT: No. Every -- not only me but
8 everybody who they took who they had involved with the
9 crime was number six.

10 THE COURT: Okay. So they would always put the
11 suspect as number six?

12 THE DEFENDANT: Number six, every time.

13 THE COURT: And you think that -- you believe that's
14 unconstitutional?

15 THE DEFENDANT: I don't really believe that it's --

16 THE COURT: Suggestive?

17 THE DEFENDANT: Exactly.

18 THE COURT: So whenever you look at this lineup, you
19 don't have to look at the first five. Just go to number
20 six.

21 THE DEFENDANT: I'm saying -- I'm saying you can go
22 out the first time and look at it. If she picked number
23 six all the way down, you know what I mean, or he picked
24 number six all the way down, it -- why would you put
25 everybody who was involved with it in the photo lineup in

1 the same position?

2 THE COURT: Well, you know, if you have a jury here,
3 you can -- that's the kind of thing you can argue to a
4 jury, as well.

5 THE DEFENDANT: True, indeed, and then --

6 THE COURT: Then you wouldn't plead guilty. You
7 would say, "They should -- the jury shouldn't believe this
8 person who is picking me out of this lineup. So let's
9 have a jury trial, and let's not plead guilty."

10 THE DEFENDANT: I -- I did.

11 THE COURT: But you pled guilty, and now eight years
12 later, or how ever many years later, we still are here in
13 the same courtroom talking about that same trial.

14 THE DEFENDANT: No.

15 THE COURT: That same robbery on Farrow Road. The
16 Pantry has been gone how many years now? It's been how
17 many years now?

18 THE DEFENDANT: Uh --

19 THE COURT: Probably as long as you've been gone.

20 THE DEFENDANT: Oh, I doubt it still, but you know,
21 the issue I'm here about is my belated appeal.

22 THE COURT: All right. I got you.

23 THE DEFENDANT: But when I got -- like I say, when I
24 got that disposition, I'm thinking that, you know what I
25 mean, my time is over with because it said 30 days.

1 You know, I couldn't get in contact with my lawyer.
2 I didn't see my lawyer since that day at the PCR
3 attorney -- hearing, and he -- he admitted on -- when we
4 was in front of you, he admitted that.

5 THE COURT: All right.

6 THE DEFENDANT: Before --

7 THE COURT: He pretty much admitted that he didn't
8 follow through and didn't --

9 THE DEFENDANT: Well, before the hearing --

10 THE COURT: -- he was -- he was through with you.
11 You were moving on. He was moving on. He switched jobs.
12 All kinds of things happened, so therefore, he seemingly
13 confessed that he didn't do a good job of keeping you
14 informed about this appeal.

15 THE DEFENDANT: No. What it is, he had done left
16 Tara Dawn Shurling's office at the time he was
17 representing me. I didn't even know that. So it's not
18 like he left after my hearing. He left prior.

19 THE COURT: Well, he could leave her office and still
20 keep you as a client. That's not a problem.

21 THE DEFENDANT: I understand, but I didn't have no --
22 the only contact I had for him at -- was Tara Dawn
23 Shurling's office.

24 THE COURT: All right.

25 THE DEFENDANT: And after -- after my disposition --

1 THE COURT: So you finally found out that your appeal
2 had been dismissed by writing the clerk of courts and all
3 of that, and they sent you notice in 2008 and 2009.

4 It said you had 30 days and a day notice to your
5 lawyer to file an appeal of that being -- of the appeal
6 being dismissed and the other occurred. You waited a year
7 or so before you did it.

8 THE DEFENDANT: No. When I got that, they said I had
9 30 days. I -- from the time I could have my hearing, I
10 thought it was over with. I couldn't appeal it because
11 the 30 days was over with.

12 THE COURT: Yeah.

13 THE DEFENDANT: That's what --

14 THE COURT: So you just put it into your PCR as an
15 extra claim in the PCR?

16 THE DEFENDANT: No, I put in. I put in ineffective
17 on him because he didn't file it in my 30 days.

18 THE COURT: I understand. All right. I think I got
19 your story. I think I do. Anything else you want to tell
20 me?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Well, I appreciate it.

23 All right. So Mr. Rollins, what do you make of all
24 of it?

25 MR. ROLLINS: Sir?

1 THE COURT: What do you make of all of this?

2 MR. ROLLINS: Well, I appreciate your taking the time
3 to listen to my client. What you heard from him is -- you
4 heard a lot of different facts from him, but what comes
5 through those facts is his insistence that this is,
6 essentially, a procedural challenge in nature; that under
7 Alston he -- and Odom, he is entitled to a full review at
8 the appellate level of his PCR issues, and he has not had
9 that, that review of the PCR issues relating to his
10 initial PCR application.

11 THE COURT: Well, it's not his fault, but it's whose
12 fault?

13 MR. ROLLINS: Well, Your Honor, I'll tell you the
14 testimony directly from the first hearing where his
15 attorney said he did not file the appeal.

16 He admitted that he was not in contact with his
17 client to tell him what was going on, and that's what --
18 that's what the attorney is for. That's the service he is
19 to fulfill to his client.

20 THE COURT: All right. I understand. All right.

21 Final words, Madam Attorney General.

22 MS. HARRIGAN: It -- it's the Applicant's duty to
23 pursue his rights. He received -- based on his own
24 testimony giving him the benefit of the doubt, he received
25 this order in early 2009, and he sat on his rights for 18

1 months and didn't file a second application until
2 September 2010.

3 The PCR Act makes it very clear that applicants have
4 a duty to diligently pursue these rights, and he
5 foreclosed upon these rights by waiting at least 18 months
6 to file a second application.

7 The State has that interest in diligently moving
8 forward with our application, and 18 months is way too
9 long to wait for -- since he had this order. He waited 18
10 months. It's way too long.

11 The order signed by Your Honor earlier this year
12 correctly states the law; that he should not be entitled
13 to an Alston review on his first PCR.

14 THE COURT: Well, I certainly understand all sides of
15 this controversy. I know the State has a legitimate
16 interest in the rules and regulations and timelines being
17 complied with and making certain that things are timely
18 filed.

19 I understand from Mr. Wilson's perspective that he is
20 counting on his lawyer to help him keep those timelines,
21 and Mr. Johnson didn't do that.

22 He dropped the ball in this case, but when Mr. Wilson
23 found out about it, then the question is he still -- can
24 he still blame it all on the lawyer not doing the lawyer's
25 job, or does it then become his responsibility to pick up

1 the ball and pursue it himself and whether -- since he
2 waited over a year or so to pursue it after finding out
3 about the problem, then believed that was too late.

4 Meanwhile, we're dealing with -- in 2013, crimes that
5 occurred in 2004. The case that went to court in 2005,
6 2006, and we're still talking about it here these years
7 later.

8 Of course, I guess Mr. Wilson's perspective, as long
9 as he is doing the time, the case is on his mind, and the
10 book shouldn't be closed on it.

11 I thought I had handled all of this when we -- when I
12 ruled the first time. Mr. Rollins raised some good issues
13 in the motion for reconsideration.

14 So -- and I have no problem at all reconsidering
15 anything, any decisions I made, because ultimately, you
16 want the decision to be the correct decision. So I will
17 reconsider it and re-rule.

18 The ruling may, in fact, be the same ruling, or it
19 may be a different ruling, but I'm not going to rule at
20 the moment. I'm going to think about it just a little bit
21 and review these papers just a little more, and I'll let
22 you all know.

23 MR. ROLLINS: Your Honor, would you like to entertain
24 competing respective orders from each side?

25 THE COURT: If you'd like to, suits me. I have the

1 Attorney General's. I have all kinds of...

2 MS. HARRIGAN: I believe, Your Honor, Rob, before he
3 left our office, did submit a proposed order.

4 THE COURT: Yeah. He didn't do a response, just a
5 proposed order.

6 MS. HARRIGAN: I believe, Your Honor, he did a return
7 as well as a proposed order. I can certainly send another
8 one.

9 THE COURT: Well, we just got the proposed order.
10 The return was put in the file. We just received it.

11 I thought it was mighty presumptuous of him. I just
12 got a proposed order denying the reconsideration, and I
13 didn't see a return.

14 MS. HARRIGAN: I apologize, Your Honor, a return was
15 filed. I can certainly give you a hard copy or an
16 electronic copy.

17 THE COURT: I'll have to see that.

18 MS. HARRIGAN: Thank you.

19 THE COURT: That's fine.

20 Mr. Rollins, when are you going to do it?

21 MR. ROLLINS: Will a week from today be sufficient,
22 Your Honor?

23 THE COURT: Fine. Okay.

24 MR. ROLLINS: And, Your Honor, my -- just for the
25 record, my understanding -- I'm going to put it on the

1 record.

2 My understanding is his -- my client's opportunity to
3 file an appeal on this, his second PCR action, remains in
4 abeyance during the pendency of your considering of this
5 Rule 59?

6 THE COURT: Yeah, until there is a final ruling on
7 that.

8 MR. ROLLINS: All right. Thank you, sir.

9 THE COURT: All right. That's not my advice, but
10 it's on the record. You understand that. All right.
11 Very good.

12

13 (Whereupon, the proceedings were concluded.)

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

RECEIVED

MAY 28 2013

CASE NUMBER: 2010CP4006562

Bruce #192733 Wilson

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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.
- ☐ 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
		\$
		\$
		\$
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 _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 21st day of May, 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

Bruce #192733 Wilson C. Clifford Rollins

ATTORNEY(S) FOR THE PLAINTIFF(S)

Robert Daniel Corney

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Bruce Wilson, #192733,
Applicant,

2010-CP-40-06562

ORDER DENYING APPLICANT'S
MOTION TO RECONSIDER UNDER
RULE 59(e), SCRCP

vs.

State of South Carolina,
Respondent.

2013 MAY 20 AM 9:33
JENNIFER W. HIGDON
CLERK P. & G.S.
RICHLAND COUNTY
FILED

This matter comes before this Court by way of Applicant's "Motion to Reconsider Under Rule 59(e), SCRCP," submitted by counsel for Applicant on February 26, 2013.

I. Procedural History

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Richland County Clerk. Applicant was true bill indicted during the April and July 2005 terms of the Richland Grand Jury for four counts of Armed Robbery (2005-GS-40-0024, -0025, -0026, -0056). He was represented by Katherine Hudgins, Esquire, on the charges. On January 5, 2006, Applicant pled guilty to three counts of Armed Robbery as indicted before the Honorable James W. Johnson, Jr., and was sentenced to twenty-three years imprisonment on each charge, all to run concurrently. The remaining charge (-0025) was dismissed by the State subsequent to the plea. No direct appeal was filed.

Applicant thereafter filed his first application for post-conviction relief on May 23, 2006 (2006-CP-40-2981). Charlie J. Johnson, Jr., Esquire, represented Applicant on this action. An evidentiary hearing into the matter was convened August 1, 2007, before the Honorable James C. Williams. Applicant was present and testified at the hearing. By order filed September 18, 2007,

WILSON Bruce #192733 – ORDER DENYING RULE 59(e) MOTION (2010-CP-40-06562)

Judge Williams denied and dismissed the action with prejudice. Applicant did not appeal the denial or dismissal of this post-conviction relief action.

Applicant filed a second application, which is the subject of this action, on September 21, 2010. Respondent filed a Return and Motion to Dismiss the application on September 30, 2011, requesting the action be summarily dismissed as successive and beyond the statute of limitations. Pursuant to this motion, the Honorable James R. Barber, III, issued a Conditional Order of Dismissal provisionally dismissing the action while giving Applicant thirty days to submit his objections to the dismissal in writing. Upon receipt of Applicant's responses, Judge Barber requested the matter be set for hearing on Applicant's claim on newly-discovered evidence.

A hearing was convened into the matter before this Court on Thursday, October 18, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, C. Cliff Rollins, Esquire. The Respondent was represented by Assistant Attorney General Robert D. Corney of the South Carolina Attorney General's Office. At the hearing, Applicant testified on his own behalf. Also testifying were Applicant's former trial counsel, Katherine Hudgins, Esquire, and former post-conviction relief counsel, Charlie J. Johnson, Jr., Esquire. By order filed February 19, 2013, this Court denied Applicant's request for relief with prejudice.

Applicant, by way of his counsel, filed a "Motion to Reconsider Under Rule 59(e), SCRPC," on February 26, 2013. By written Return filed on March 7, 2013, Respondent requested that Applicant's motion be dismissed. A hearing on this motion convened on April 2, 2013, at the Richland County Courthouse. Applicant was present and represented by counsel C. Cliff Rollins, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's office.

II. Findings of Fact and Conclusions of Law

In his motion to reconsider, Applicant asserted that this Court incorrectly denied Applicant a belated appeal of his initial post-conviction relief action (2006-CP-40-2981) pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (S.C. 1991). Applicant asserted that he did not make a “knowing and voluntary waiver of his right to such appellate review” and this Court incorrectly denied him a belated appellate review of his initial post-conviction relief action. See Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (S.C. 1999). At the hearing on this motion, Applicant testified in support of his motion. He testified that he did commit the armed robberies and that he pled guilty to avoid a harsher punishment he^u could have received if convicted at trial. Applicant testified that he received notification that his prior post-conviction relief action was dismissed in “late 2008 or early 2009” and that he filed this application on September 21, 2010, seeking appellate review of his first action, amongst other claims.

Respondent, through its written Return and at the motion hearing, argued that this Court’s Order of Dismissal contains all of the required findings of facts and conclusions of law required by S.C. Code § 17-27-80 and Rule 52(a), SCRCP. See also Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). Additionally, Respondent argued that Applicant’s delay of at least a year and a half before filing his second application for post-conviction relief to seek appellate review of his initial application constitutes a waiver of his appellate rights. Respondent argued that this applicant should not be considered timely under S.C. Code Ann. §17-27-45(C). S.C. Code Ann. §17-27-45(C) states:

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or *after the date when the facts could have been ascertained by the exercise of reasonable diligence.*

(Emphasis added.) Respondent argues that the more than eighteen month delay between hearing of the denial of his first post-conviction relief action and the filing of this action exceeds the exercise of reasonable diligence and that this application must be dismissed as untimely.

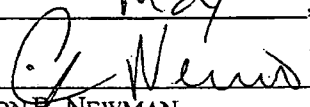
Based upon careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and supporting documents, this Court is not persuaded to alter or amend the judgment. This Court further finds that its Order of Dismissal, entered on February 13, 2013 and filed on February 20, 2013, contains all of the required findings of facts and conclusions of law required by S.C. Code § 17-27-80 and Rule 52(a), SCRCP. See also Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007). After a full review of the case, this Court finds the current order of dismissal makes accurate, complete and appropriate findings based upon the testimony and arguments presented at the post-conviction relief hearing. Therefore, Applicant's "Motion to Reconsider Under Rule 59(e), SCRCP" is **DENIED**.

This Court notes that if the Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. Applicant's Rule 59(e), SCRCP, motion to alter or amend judgment is denied and dismissed.

AND IT IS SO ORDERED this 9th day of May, 2013.


CLIFTON B. NEWMAN
Presiding Judge, Fifth Judicial Circuit

Columbia, South Carolina.

WITNESSES

(S) SCOTT MCDONALD RCSD

ARREST WARRANT NUMBER

H709187

ACTION OF GRAND JURY

TRUE BILL

Scott K. McDonald
Foreperson of Grand Jury

Date:

APR 20 2005

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2005-GS-40-24

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2005

67

THE STATE

vs.

BRUCE J WILSON

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

Bruce Wilson

hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 12 2005
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

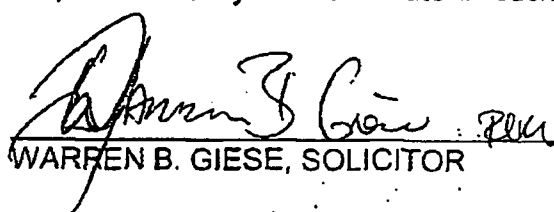
INDICTMENT

At a Court of General Sessions, convened on April 16, 2005, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Bruce J. Wilson did in Richland County on or about August 20, 2004, commit robbery by feloniously taking from the person or presence of Gloria Norman by means of force or intimidation goods or monies of Pantry Express, such goods or monies being described as money, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that 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. All in violation of SC Code of Laws § 16-11-330(A).

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


WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichland

VS.

Bruce Wilson

AKA:

Race:

B

Sex:

M

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

05

-GS-

4024

A/W#:

H-709187

Date of Offense:

8.20.04

S.C. Code §:

16-11-330 (M)

CDR Code #:

0 1 1 1 3 1 9☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO:

Armed Robberyin violation of § 16-11-330 (A) of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 3 1 9☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Manoel J. Test
SolicitorBruce Wilson
DefendantFranklin B. Williams
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 23 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: 1/5/06☒ 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114(BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Barbara A. Scott / PF

Clerk of Court/Deputy Clerk

Court Reporter:

J. Williams

PTUP

_____ 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: ATU treatment☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2 CERTIFIED TRUE COPY

OF ORIGINAL FILED

Janette Williams
C.C.C.P.&G.S.

RICHLAND COUNTY

SOUTH CAROLINA (2003)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

ENTERED NOV. 16 2004

ARREST WARRANT

H=709187

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
RICHLAND COUNTY

THE STATE 04082000-20
against

BRUCE J WILSON

Address: COLUMBIA SC 29203 - 0000

Phone: SSN: M Race: B Height: 6 Weight: 150

DL State: DOB: Agency ORI#:

Prosecuting Agency: RICHLAND COUNTY SHERIFF O

Prosecuting Officer: SCOTT MCDONALD

Offense: ARMED ROBBERY

Offense Code: 0139
Code/Ordinance Sec. 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of
The accused
is to be arrested and brought before me to
be dealt with according to law.

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant BRUCE J WILSON
on 12-20-04

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
UPPER TOWNSHIP MAGISTRATE
4919 RHETT STREET
COLUMBIA SC 29203 - 0000

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
RICHLAND COUNTY

AFFIDAVIT

Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on 8/20/04
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of
in the following particulars:
DESCRIPTION OF OFFENSE: ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above
the crime set forth and that probable cause is based on the following facts:
THAT ON OR ABOUT AUGUST 20, 2004, WHILE AT 8550 FARROW ROAD
(PANTRY EXPRESS), IN THE UPPER TOWNSHIP MAGISTERIAL DISTRICT OF
RICHLAND COUNTY, ONE BRUCE WILSON, DID COMMIT THE CRIME OF ARMED
ROBBERY, IN THAT HE DID, WHILE ARMED WITH A KNIFE, DEMAND AND
TAKE U.S. CURRENCY FROM GLORIA NORMAN, A CLERK AT THE INCIDENT
LOCATION. THE DEFENDANT HAS BEEN POSITIVELY IDENTIFIED IN A PHOTO
LINE-UP BY A WITNESS. AFFIANT AND OTHERS ARE WITNESS TO PROVE THE
SAME. RCSD CASE NUMBER: 04082000-20.

Signature of Affiant

RCSD - 5623 TWO NOTCH ROAD
Affiant's Address COLUMBIA SC 29223 - 0000
Affiant's Telephone 803-576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 8/20/04 defendant BRUCE J WILSON
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: ARMED ROBBERY

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

on 11/04/04
Signature of Issuing Judge (L.S.)
Judge Code: 464

Judge's Address UPPER TOWNSHIP MAGISTRATE
COLUMBIA SC 29203 - 0000
Judge's Telephone 803-754-2250
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

Form Approved by
SC Attorney General
April 21, 2004
SCA 118
CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 11 2005
C.C.C. # 83
RICHLAND COUNTY
SOUTH CAROLINA

BAIL set by

Judge

Seidler

on

12/21/04

Type and Amount:

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defense Attorney:

Decision:

DISPOSITION before

Judge

on

by

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

WITNESSES

(S) SCOTT McDONALD RCSD

ARREST WARRANT NUMBER

H709185

ACTION OF GRAND JURY

TRUE BILL

John K. McClure
Foreperson of Grand Jury
Date: APR 20 2005

VERDICT

414 Foreperson of Petit Jury
Date:

DOCKET NO. 2005-GS-40-26

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2005

67

THE STATE
vs.

BRUCE J WILSON

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury.

Bruce J. Wilson
Defendant

Bruce J. Wilson
hereby appear in my own proper person and plead
guilty to the within indictment or

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED
ORIGINAL
C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

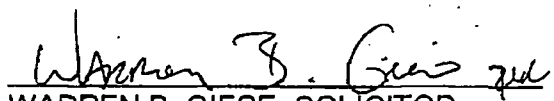
INDICTMENT

At a Court of General Sessions, convened on April 16, 2005, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Bruce J. Wilson did in Richland County on or about March 29, 2004, commit robbery by feloniously taking from the person or presence of Gloria Norman by means of force or intimidation goods or monies of Pantry Express, such goods or monies being described as money, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that 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. All in violation of SC Code of Laws § 16-11-330(A).

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


WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

VS.

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Armed Robberyin violation of § 16-1-330(A) of the S.C. Code of Laws, bearing CDR Code # 0111319☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Margaret Jett
SolicitorBruce Wilson
DefendantHeather M. Hedges
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 23 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: 1/5/06☒ 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. since 12/20/04

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

Buckner A. Scott JPF
Clerk of Court/Deputy Clerk

Court Reporter: J. Williams

PTUP

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, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2 01/05/05 15
CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Heather M. Hedges
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA (2/2003)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

417

ENTERED NOV 16 2004

ARREST WARRANT

H=709185

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 RICHLAND COUNTY

 THE STATE 04033043-29
 against

BRUCE J WILSON

Address: COLUMBIA SC 29203 - 0000

Phone: SSN:

Sex: M Race: B Height: 6 Weight: 150

DL State: RI #

DOB: Agency ORI#:

Prosecuting Agency: RICHLAND COUNTY SHERIFF O

Prosecuting Officer: SCOTT McDONALD

Offense: ARMED ROBBERY

 Offense Code: 0139
 Code/Ordinance Sec. 16-11-0330(A)

 This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant BRUCE J WILSON

on 12-20-04

Signature of Constable/Law Enforcement Officer

 RETURN WARRANT TO:
 UPPER TOWNSHIP MAGISTRATE
 4919 RHETT STREET
 COLUMBIA SC 29203 - 0000

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 RICHLAND COUNTY

AFFIDAVIT

 Personally appeared before me the affiant INVESTIGATOR SCOTT McDONALD
 being duly sworn deposes and says that defendant BRUCE J WILSON
 did within this county and state on 3/29/04 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
 in the following particulars:
 DESCRIPTION OF OFFENSE: ARMED ROBBERY

 I further state that there is probable cause to believe that the defendant named above did
 the crime set forth and that probable cause is based on the following facts:
 THAT ON OR ABOUT MARCH 29, 2004, WHILE AT 8550 FARROW ROAD
 (PANTRY EXPRESS), IN THE UPPER TOWNSHIP MAGISTERIAL DISTRICT OF
 RICHLAND COUNTY, ONE BRUCE WILSON, DID COMMIT THE CRIME OF ARMED
 ROBBERY, IN THAT HE DID, WHILE ARMED WITH A KNIFE, DEMAND AND
 TAKE U.S. CURRENCY FROM GLORIA NORMAN, A CLERK AT THE INCIDENT
 LOCATION. THE DEFENDANT HAS BEEN POSITIVELY IDENTIFIED IN A PHOTO
 LINE-UP BY A WITNESS. AFFIANT AND OTHERS ARE WITNESS TO PROVE THE
 SAME. RCSD CASE NUMBER: 04033043-29.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 RICHLAND COUNTY

 Affiant's Address RCSD - 5623 TWO NOTCH ROAD
 COLUMBIA SC 29223 - 0000
 Affiant's Telephone 803-576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 3/29/04 defendant BRUCE J WILSON
 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☐ Municipality of) as set forth below.

DESCRIPTION OF OFFENSE: ARMED ROBBERY

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

 Sworn to and subscribed before me
 on 11/04/04

Signature of Issuing Judge (L.S.)

Judge Code: 464

 Judge's Address UPPER TOWNSHIP MAGISTRATE
 COLUMBIA SC 29203 - 0000

Judge's Telephone 803-754-2250

 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

 Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 818

 CERTIFIED TRUE COPY
 OF ORIGINAL
 FILED
 11/17/04
 C.C.C. # 235
 RICHLAND COUNTY
 SOUTH CAROLINA

BAIL set by

Judge Sunder
on 12/21/04
Type and Amount: _____
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Use Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)
Disposition: _____
Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

WITNESSES

(S) Scott McDonald, RCSD

ARREST WARRANT NUMBER

1895008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *Dandra Pherigo* JUL 20 2005

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2005-GS-40-56

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JULY TERM 2005

42

THE STATE
vs.

BRUCE WILSON

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury.*Bruce Wilson*
Defendant*Bruce Wilson*
hereby appear in my own proper person and plead
guilty to the within Indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
ORIGINAL FILED
JUL 20 2005
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on July 20, 2005, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That BRUCE WILSON did in Richland County on or about October 25, 2004, commit robbery by feloniously taking from the person or presence of Fred Hill by means of force or intimidation goods or monies of Pantry Express, such goods or monies described as U.S. Currency with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that 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. All in violation of SC Code of Laws § 16-11-330(A).

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

VS.

INDICTMENT/CASE#:

AKA:

Race: BSex: MAge: 30

DOB:

S#:

Address:

City, State, Zip

DL#

SID#

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO:

in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0111319☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State,

ATTEST:

Barbara A. Scott
SolicitorBruce Wilson
DefendantRobert D. Hudson
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 23 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: 11/5/06☒ 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. since 12/20/04

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$35.13 (Public Def/Prob)	\$500
\$73.3, 1B TP (Law Enforce. Funding)	\$25
\$33.7, 1B TP (Drug Court Surcharge)	\$100
\$50-21-114(BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

Barbara A. Scott, PF

Clerk of Court/Deputy Clerk

Court Reporter:

J. Williams

PTUP

_____ 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, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2005 -GS- 40 - 56
1895008
10/25/04
16-11-330
6111319
☐ CASE RESTORED
 SENTENCE
☒ PLEA ☐ TRIAL
Barbara A. Scott
Robert D. Hudson
 C.C.C.P.&G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA (2003)

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

ARREST WARRANT

1-895008

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

THE STATE

04102533-25

against

Bruce Juraine Wilson

Address:

Columbia, SC 29203-3241

Phone: _____ SSN: _____

Sex: M Race: B Height: 6 Weight: 150DL State: SC DL #: _____DOB: _____ Agency ORI #: 04000Prosecuting Agency: Richland County Sheriff DeptProsecuting Officer: Scott McDonaldOffense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weOffense Code: 0139Code/Ordinance Sec: 16-11-0330(A)This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Bruce Juraine Wilson
on 12-23-07

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Lykesland Magistrate
1403 Caroline Road
Columbia, SC 29209

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Personally appeared before me the affiant Scott McDonaldbeing duly sworn deposes and says that defendant Bruce Juraine Wilsondid within this county and state on 10/25/2004State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

in the following particulars:

DESCRIPTION OF OFFENSE:

Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly v

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:That on October 25, 2004 while at 8550 Farrow Road (Pantry Express) in the Upper Township Magisterial District of
Richland County, one Bruce Juraine Wilson did commit the crime of Armed Robbery in that he did while armed with a
knife, demand and take US currency from Fred Hill, a clerk at the incident location. The defendant has been
implicated at a co-defendant.

RCSD Case #04102533-25

Affiant and others are witness to prove the same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland / Lykesland Magistrate

Affiant's Address 5623 Two Notch RoadColumbia, SC 29223-Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 10/25/2004 defendant Bruce Juraine Wilson

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland / Lykesland Magistrate

) as set forth below:

DESCRIPTION OF OFFENSE:

Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly v

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 12/23/2004

Signature of Issuing Judge

Michael R Davis

Judge Code: 5458Judge's Address 1403 Caroline RoadColumbia, SC 29209-2609Judge's Telephone (803)576-2500Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

Forth Approved by
S.C. Attorney General
April 21, 2003
SCCA 518ORIGINAL
FILED
RICHLAND COUNTY
SOUTH CAROLINA

Judge McDuffie
 on 12-23-41
 Type and Amount: \$75,000 SB
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
 Sentence: _____

JURORS

WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Name: _____
 Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

