

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

AUG 23 2013

S.C. Supreme Court

The Honorable G. Edward Welmaker, Trial Judge
The Honorable R. Markley Dennis, Jr., Post-Conviction Relief Judge

Appellate Case No. 2013-000426

James E. Waiters, Jr., ...Respondent,

v.

State of South Carolina, ...Petitioner.

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 06-GS-23-06230 et al
	)	
James Waiters, Jr.,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within jury trial was held March 11th & 12th, 2008, before The Honorable G. Edward Welmaker, in Courtroom 6 of the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina; attended by Counsel, as follows:

APPEARANCES:

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WITNESS	DIRECT	CROSS	REDIRECT
John Phillips	47	56	
Erica Cheeks	62	72	
Cora Griffith	80	90	
Deon Griffith	97	106	
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(Recalled)

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INDEX OF STATE'S EXHIBITS

Number	Description	Entered
1	Consent to Search	54
2	HiPoint .380 pistol Serial No. P793284	54
3	DVD of Hanson's car	128

INDEX OF DEFENDANT'S EXHIBITS

(None Entered)

INDEX OF COURT'S EXHIBITS

Number	Description	Entered
1	Question, Phillips Report	126
2	Question re description Of gun (see video)	126

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1 (STATUTORY JURY QUALIFICATION)

2 (DEFENDANT PRESENT)

3 THE COURT: Are we ready to
4 proceed with the next case?

5 MR. SULLIVAN: Yes, sir.

6 MR. WEBB: Yes, Your Honor, the
7 State versus James Waiters.

8 THE COURT: I've got indictments
9 before me, State versus James Waiters, three
10 counts of armed robbery and one count of the
11 possession of a weapon during the commission
12 of a violent crime. Is that what you're
13 ready to proceed on?

14 MR. WEBB: Yes, Your Honor.

15 THE COURT: Mr. Sullivan, do you
16 represent Mr. Waiters?

17 MR. SULLIVAN: I do, Your Honor.
18 He is present.

19 THE COURT: Are we ready to
20 strike the jury?

21 MR. SULLIVAN: The only thing
22 that I want to take up, and I've talked to
23 Mr. Webb, is that I would like to move to
24 sequester the lay witnesses once we get
25 started.

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1 THE COURT: Okay, on your witness
2 list, -- I apologize, I can't read the
3 writing.

4 MR. SULLIVAN: It's Lula Mae
5 Robinson.

6 THE COURT: I can read that one.
7 April ---

8 MR. SULLIVAN: April Woods.

9 THE COURT: Woods?

10 MR. SULLIVAN: I prepared it
11 last night. I almost forgot it because I
12 usually don't have witnesses.

13 THE COURT: April Woods. Okay,
14 the strikes will be five and ten, and we
15 probably need one alternate and that will be
16 one and two. Bring the jury pool up.

17 (JURY POOL ENTERS

18 COURTROOM @ 9:56 A.M.)

19 THE COURT: Good morning, Ladies
20 and Gentlemen. My name is Eddie Welmaker. I
21 am a Circuit Court judge from Pickens County.
22 I am here today to work in our circuit.
23 Greenville and Pickens are part of the 13th
24 Circuit. I've assigned over here this week
25 and I'm looking forward to working with you

1 on this particular case that we're about to
2 try, at least some of you.

3 You've already been qualified, on
4 Monday, to be jurors this week. We are about
5 to start the trial of the case of -- and I
6 need to ask you some additional questions to
7 make sure that you are qualified to sit on
8 this particular matter.

9 Before me are indictments charging
10 Mr. James Emmanuel Waiters, Jr. of certain
11 offenses. These indictments are merely the
12 papers by which this case comes before the
13 court. They are not in any way to be
14 considered evidence but merely the papers by
15 which it is brought before us.

16 Mr. Waiters has entered a plea of
17 not guilty to each of the charges and by
18 entering that plea of not guilty, then the
19 State has the burden of proof of each element
20 beyond a reasonable doubt.

21 Every citizen is presumed innocent
22 until the State has met its burden of proof.

23 We need to select some jurors who
24 are fair and impartial, who can make a
25 decision about this case based solely upon

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1 the facts that are presented; there will be
2 testimony, perhaps, uh, tangible evidence.
3 I will instruct you on the law and then we
4 will have a fair and just verdict that speaks
5 the truth. That is the goal of selecting the
6 jury.

7 Both the State of South Carolina and
8 the defendant are entitled to have fair and
9 impartial jurors, and that is what they
10 desire, so I need to ask you some questions
11 to determine your eligibility to serve on
12 this particular case.

13 These indictments charge Mr. Waiters
14 here in Greenville County with the offense of
15 armed robbery. The allegations state that or
16 about the 10th of June, 2006, that he was
17 either armed with a deadly weapon or made
18 allegations by actions or words that he did
19 have a weapon by representation and that he
20 took certain property by means of force and
21 intimidation, that being U.S. currency.

22 There are three counts of that armed
23 robbery on that date. One of the indictments
24 alleges that he committed armed robbery
25 against a Deon Griffith; another against a

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1 Cora Griffith; and the third against Erica
2 Cheeks; all taking place on the 10th of June,
3 2006.

4 In addition to those three charges
5 of armed robbery, there's also a charge
6 through indictment of possessing a weapon
7 during the commission of a violent crime,
8 which is against the statutory law of South
9 Carolina.

10 Now, first of all, Ladies and
11 Gentlemen, as I've explained to you, these
12 are the charging papers.

13 I need to ask you, is there any
14 member of the jury panel who has any
15 firsthand knowledge about these particular
16 incidents that are alleged by the indictment,
17 either was there at the time, or heard about
18 by media -- newspaper or television -- or
19 have heard it from other sources? Is there
20 any member of the jury panel that has any
21 independent knowledge about these particular
22 offenses that were alleged to have occurred
23 back on June 10, 2006. If so, would you
24 please stand? (No response). Thank you,
25 there is no response.

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1 Is there any member of the jury
2 panel who is related by blood or marriage
3 to Mr. James Emmanuel Waiters, Jr.? If so,
4 would you please stand. (No response).

5 Any member of the jury panel who
6 is a close personal friend, has a business
7 relationship, or knows socially Mr. James
8 Emmanuel Waiters, Jr.? Is so, would you
9 please stand? (No response).

10 Thank you, there is no response.

11 Now, there are several witnesses who
12 may be called upon to testify in this case,
13 Ladies and Gentlemen. I am going to read a
14 list of those potential witnesses and then I
15 will need to ask you some questions about
16 that:

17 Officer J. Phillips with the
18 Greenville County Sheriff's Office,

19 Officer S. Smith of the
20 Greenville Police Department,

21 Officer J. Hamilton of the
22 Greenville Police Department,

23 Erica Cheeks,

24 Deon Griffith,

25 Cora Griffith,

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11
11

1 Lula Mae Robinson, or
2 April Woods.

3 Is there any member of the jury
4 panel related by blood or marriage to any of
5 these potential witnesses? If so, would you
6 please stand? (No response). There is no
7 response.

8 Is there any member of the panel who
9 has a close business, social or personal
10 relationship with any of these potential
11 witnesses? If so, would you please stand?
12 (No response). Thank you, there is no
13 response.

14 At this time I would ask the
15 attorneys, if you would, to please stand and
16 introduce yourselves to jury. Mr. Webb?

17 MR. WEBB: Good morning. My name
18 is Doug Webb, I am a prosecutor. I represent
19 the State of South Carolina in this case. To
20 my left is Carlos Freeman, he is my
21 investigator. We thank you very much for
22 your time.

23 MR. SULLIVAN: I'm Tim Sullivan.
24 I represent Mr. James Waiters in this case.
25 I practice law here in Greenville.

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1 THE COURT: Thank you, Gentlemen.

2 Is there any member of the panel who is
3 related by blood or marriage to either of
4 these individuals or to anyone in the
5 Solicitor's Office? If so, would you please
6 stand? Thank you, there is no response.

7 Is there any member of the panel
8 who has a business, social or personal
9 relationship with either of these attorneys?
10 If so, would you please stand.

11 Yes, ma'am, your name and number?

12 JUROR NUMBER 17: Michelle
13 Biediger.

14 THE COURT: Which of the attorneys
15 do you do you know?

16 JUROR NUMBER 17: Mr. Sullivan.

17 THE COURT: Do you see him on a
18 regular basis or do you know him
19 through ---

20 JUROR NUMBER 17: I know him
21 through church.

22 THE COURT: The fact that you
23 know him and see him, would that affect your
24 ability to be a fair juror in this case if
25 you were selected?

1 JUROR NUMBER 17: I think so.

2 THE COURT: Well, could you be
3 fair to the State, the fact that you know Mr.
4 Sullivan?

5 JUROR NUMBER 17: Yes, sir.

6 THE COURT: The fact that you may
7 see him at church or other places, you would
8 still be able to do what was right as far as
9 deciding the case?

10 JUROR NUMBER 17: Yes, sir.

11 THE COURT: Thank you, ma'am, you
12 may be seated.

13 Is there any member of the jury
14 panel who has expressed or formed an opinion
15 about this case in any manner? If so, would
16 you please stand? (No response).

17 Is there any member of the jury
18 panel aware of any bias or prejudice that you
19 would have that would interfere with your
20 ability to be a fair and impartial juror in
21 this case? If so, would you please stand?
22 (No response).

23 Is there any member of the jury
24 panel who is a contributing member of any
25 group having the primary concern being the

1 promotion of law enforcement, such as MADD,
2 SADD, CAVE, or any of those organizations?
3 If so, would you please stand. (No
4 response).

5 Is there any member of the jury
6 panel, or member of your immediate family,
7 who has ever been the victim of a robbery?
8 If so, would you please stand. (No
9 response).

10 Ladies and Gentlemen, as I stated to
11 you earlier, what the State of South Carolina
12 and what Mr. Waiters desire are fair and
13 impartial jurors, what they deserve are fair
14 and impartial jurors.

15 Is there any member of the jury
16 panel who is aware of any reason whatsoever
17 that you could not be a fair and impartial
18 juror, that you could make a decision in this
19 case based upon what you hear in this
20 courtroom from the witness stand, the
21 evidence that is presented, and the law that
22 I give you; that alone? (No response).

23 If there's any reason why you
24 believe that you could not be a fair juror,
25 would you please stand? (No response)..

1 THE COURT: Thank you, there's no
2 response. Any other questions from the
3 State?

4 DOUG WEBB: Nothing from the State,
5 Your Honor.

6 MR. SULLIVAN: Relationship to law
7 enforcement.

8 THE COURT: Sorry, I meant to ask
9 that. Is there any member of the jury panel
10 who has a relative in your immediate family
11 who is in law enforcement? If you would,
12 please stand? Yes, ma'am?

13 MS. SULLIVAN: Linda Sullivan,
14 I have a son-in-law who is a police officer
15 in Manning.

16 THE COURT: In Manning?

17 MS. SULLIVAN: Yes, ma'am.

18 THE COURT: Yes, sir? If you
19 would, remain standing, please, ma'am.
20 Yes, sir?

21 MS. STRONG: Bruce Strong, I have
22 a nephew who is a police officer and a sister
23 who is a police dispatcher in Massachuset.

24 THE COURT: Your name, sir?

25 MR. STRONG: Bruce Strong.

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1 THE COURT: Thank you.

2 MR. SMITH: Eddie Smith. My
3 wife's got a nephew with the Sheriff for
4 Greenville County.

5 THE COURT: Greenville County?

6 MR. SMITH: (Affirmative nod).

7 THE COURT: All right. Let me ask
8 each of you individuals standing, the fact
9 that you have a relative in law enforcement,
10 would that affect your ability in any way to
11 be a fair juror? (Unanimous negative
12 gestures). Okay, there were all negative
13 responses.

14 You could give both the State of
15 South Carolina and the Defendant a fair
16 trial? (Unanimous affirmative responses).

17 Thank you, you may be seated.

18 Yes, sir?

19 POTENTIAL JUROR: I was thinking
20 about one of the witnesses that you were
21 talking about. Officer J. Phillips?

22 THE COURT: What is his full name?

23 MR. WEBB: He is actually -- he
24 goes by Jonathon C. Phillips.

25 THE COURT: Jonathon C. Philips.

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1 JUROR: (Negative gesture), the guy
2 that I know is Scott Phillips.

3 THE COURT: Okay.

4 JUROR: I just wanted to make sure.

5 THE COURT: Thank you. Any other
6 questions? (No response).

7 All right, let's empanel a jury.

8 CLERK: As I call your name, please
9 stand. Juror Number 60, Ildiko Everly.

10 (JUROR STANDS)

11 CLERK: What says the State?

12 MR. WEBB: Please present the
13 juror.

14 CLERK: What says the Defense?

15 MR. SULLIVAN: Swear the juror,
16 please.

17 CLERK: Please have a seat in the
18 jury box. You've been selected as a juror in
19 this case.

20 (JUROR NUMBER 60 SEATED)

21 CLERK: Juror Number 102, Elizabeth
22 I. Keith.

23 (JUROR STANDS)

24 CLERK: What says the State?

25 MR. WEBB: Please present this

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1 juror.

2 CLERK: What says the Defense?

3 MR. SULLIVAN: Excuse Ms. Keith
4 in the trial of this case.

5 CLERK: You are excused in this
6 case. Please have a seat.

7 (JUROR NUMBER 102 EXCUSED)

8 CLERK: Juror Number 243, Janet
9 Mastrobuono.

10 (JUROR STANDS)

11 CLERK: What says the State?

12 MR. WEBB: Please present this
13 juror.

14 CLERK: What says the Defense?

15 MR. SULLIVAN: Swear the juror,
16 please.

17 CLERK: Please come forward and
18 take a seat in the jury box.

19 (JUROR NUMBER 243 SEATED)

20 CLERK: Juror Number 106, Steven D.
21 Killingsworth.

22 (JUROR STANDS)

23 CLERK: What says the State?

24 MR. WEBB: Please present the
25 juror.

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1 CLERK: What says the Defense?

2 MR. SULLIVAN: Swear the juror,
3 please.

4 CLERK: Please come forward and
5 take a seat in the jury box.

6 (JUROR NUMBER 106 SEATED)

7 CLERK: Juror Number 167, Ronnie W.
8 Pennington.

9 (JUROR STANDS)

10 CLERK: What says the State?

11 MR. WEBB: Please present the
12 juror.

13 CLERK: What says the Defense?

14 MR. SULLIVAN: Swear the juror,
15 please.

16 CLERK: Please have a seat in the
17 jury box.

18 (JUROR NUMBER 167 SEATED)

19 CLERK: Juror Number 199, Bryan T.
20 Smith.

21 (JUROR STANDS)

22 CLERK: What says the State?

23 MR. WEBB: Present the juror,
24 please.

25 CLERK: What says the Defense?

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1 MR. SULLIVAN: Swear the juror,
2 please.
3 (JUROR NUMBER 199 SEATED)
4 CLERK: Juror Number 71, Kimberly
5 Goodis.
6 (JUROR STANDS)
7 CLERK: What says the State?
8 MR. WEBB: Present the juror,
9 please.
10 CLERK: What says the Defense?
11 MR. SULLIVAN: Please excuse the
12 juror.
13 CLERK: You are excused from this
14 case.
15 (JUROR NUMBER 71 EXCUSED)
16 CLERK: Juror Number 213, Faye C.
17 Thompson.
18 (JUROR STANDS)
19 CLERK: What says the State?
20 MR. WEBB: Please present this
21 juror.
22 CLERK: What says the Defense?
23 MR. SULLIVAN: Please excuse the
24 juror.
25 CLERK: Please have a seat, you're

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1 excused in this case.

2 (JUROR NUMBER 213 EXCUSED)

3 CLERK: Juror Number 240, Lakisha
4 Bowman.

5 (JUROR STANDS)

6 CLERK: What says the State?

7 MR. WEBB: Please present the
8 juror.

9 CLERK: What says the Defense?

10 MR. SULLIVAN: Swear the juror,
11 please.

12 CLERK: Please have a seat in the
13 jury box.

14 (JUROR NUMBER 240 SEATED)

15 CLERK: Juror Number 113, Darrell
16 O. Lee.

17 (JUROR STANDS)

18 CLERK: What says the State?

19 MR. WEBB: Please present this
20 juror.

21 CLERK: What says the Defense?

22 MR. SULLIVAN: Swear the juror,
23 please.

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

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1 (JUROR NUMBER 113 SEATED)

2 CLERK: Juror Number 91, Lavonda
3 Huskey.

4 (JUROR STANDS)

5 CLERK: What says the State?

6 MR. WEBB: Please present the
7 juror.

8 CLERK: What says the Defense?

9 MR. SULLIVAN: Please excuse the
10 juror.

11 CLERK: You have been excused in
12 this case.

13 (JUROR NUMBER 91 EXCUSED)

14 CLERK: Juror Number 159, Eleanor
15 Page.

16 (JUROR STANDS)

17 CLERK: What says the State?

18 MR. WEBB: Please present the
19 juror.

20 CLERK: What says the Defense?

21 MR. SULLIVAN: Please swear the
22 juror.

23 CLERK: Please come forward and
24 have a seat in the jury box.

25 (JUROR NUMBER 159 SEATED)

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1 CLERK: Juror Number 9, Tyler
2 Atkins.
3 (JUROR STANDS)
4 CLERK: What says the State?
5 MR. WEBB: Please excuse the
6 juror.
7 CLERK: You are excused in this
8 case.
9 (JUROR NUMBER 9 EXCUSED)
10 CLERK: Juror Number 145, Heather
11 Mikhail.
12 (JUROR STANDS)
13 CLERK: What says the State?
14 MR. WEBB: Please present the
15 juror.
16 CLERK: What says the Defense?
17 MR. SULLIVAN: Please swear the
18 juror.
19 CLERK: Please come forward and
20 have a seat in the jury box.
21 (JUROR NUMBER 145 SEATED)
22 CLERK: Juror Number 232, Michael
23 Watkins.
24 (JUROR STANDS)
25 CLERK: What says the State?

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1 MR. WEBB: Please excuse Mr.

2 Watkins from the trial of this case.

3 CLERK: You are excused from this
4 case.

5 (JUROR NUMBER 232 EXCUSED)

6 CLERK: Juror Number 169, Carey
7 Phelps.

8 (JUROR STANDS)

9 CLERK: What says the State?

10 MR. WEBB: Please present the
11 juror.

12 CLERK: What says the Defense?

13 MR. SULLIVAN: Please excuse
14 this juror.

15 CLERK: You're excused from this
16 case.

17 (JUROR NUMBER 169 EXCUSED)

18 CLERK: Juror Number 128, Paul
19 Maclure.

20 (JUROR STANDS)

21 THE COURT: What says the State?

22 MR. WEBB: Please present this
23 juror.

24 CLERK: What says the Defense?

25 MR. SULLIVAN: Please excuse

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1 this juror from this trial, please.

2 CLERK: You are excused in this

3 case.

4 (JUROR NUMBER 128 EXCUSED)

5 CLERK: Juror Number 162, James

6 Paradeses.

7 (WITNESS STANDS)

8 CLERK: What says the State?

9 MR. WEBB: Please excuse this

10 juror.

11 CLERK: You are excused from the

12 trial in this case.

13 (JUROR NUMBER 162 EXCUSED)

14 CLERK: Juror Number 147, Alan S.

15 Pines.

16 (JUROR STANDS)

17 CLERK: What says the State?

18 MR. WEBB: Please present the

19 juror.

20 CLERK: What says the Defense?

21

22 MR. SULLIVAN: Excuse the juror,

23 please.

24 CLERK: You are excused in this

25 case.

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1 (JUROR NUMBER 247 EXCUSED)

2 MR. WEBB: Your Honor, may we
3 approach?

4 THE COURT: Yes, sir.

5 (OFF RECORD BENCH CONFERENCE)

6 CLERK: Juror Number 104, Tracy
7 Kelly.

8 (JUROR STANDS)

9 CLERK: What says the State?

10 MR. WEBB: Please present the
11 juror.

12 CLERK: What says the Defense?

13 MR. SULLIVAN: Please swear the
14 juror.

15 CLERK: Please come forward and
16 take a seat in the jury box.

17 (JUROR NUMBER 104 SEATED)

18 CLERK: Juror Number 65, Debra
19 Gantt.

20 (JUROR STANDS)

21 CLERK: What says the State?

22 MR. WEBB: Please present this
23 juror.

24 CLERK: What says the Defense?

25 MR. SULLIVAN: Excuse the juror

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1 in this matter, please.

2 CLERK: You are excused from the
3 trial of this case.

4 (JUROR NUMBER 65 EXCUSED)

5 CLERK: Juror Number 112, Samuel
6 Laterza.

7 (JUROR STANDS)

8 CLERK: What says the State?

9 MR. WEBB: Please present the
10 juror.

11 CLERK: What says the Defense?

12 MR. SULLIVAN: Excuse the juror
13 in this case.

14 CLERK: You may be seated, you've
15 been excused from the trial of this case.

16 (JUROR NUMBER 112 EXCUSED)

17 CLERK: Juror Number 208, Derecko
18 Sullivan.

19 (JUROR STANDS)

20 CLERK: What says the State?

21 MR. WEBB: Present the juror,
22 please.

23 CLERK: What says the Defense?

24 MR. SULLIVAN: Swear the juror,
25 please.

1 CLERK: Please come forward and
2 take a seat in the jury box.

3 (JUROR NUMBER 208 SEATED)

4 CLERK: Juror Number 132, Deborah
5 B. Mann. Juror Number 132, Deborah Mann.

6 (JUROR STANDS)

7 CLERK: What says the State?

8 MR. WEBB: Please present the
9 juror.

10 CLERK: What says the Defense?

11 MR. SULLIVAN: Swear the juror,
12 please.

13 CLERK: Please come forward and
14 have a seat in the jury box.

15 (JUROR NUMBER 132 SEATED)

16 CLERK: Now picking for an
17 alternate juror. Juror Number 64, William
18 Friddle.

19 (JUROR STANDS)

20 CLERK: What says the State?

21 MR. WEBB: Please excuse the
22 juror from the trial in this case.

23 CLERK: You may be seated, you're
24 excused from the trial in this case.

25 (JUROR NUMBER 64 EXCUSED)

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1 CLERK: Juror Number 67, Don
2 Garner.
3 (JUROR STANDS)
4 CLERK: State?
5 MR. WEBB: Please present the
6 juror.
7 CLERK: What says the Defense?
8 MR. SULLIVAN: Please seat the
9 juror, please, ma'am.
10 CLERK: Please come forward and
11 take a seat in the jury box.
12 (JUROR NUMBER 67 SEATED)
13 CLERK: The jury is seated, Your
14 Honor.
15 THE COURT: Any matters that we
16 need to take care of regarding the selection
17 of the jury in this case? From the State?
18 DOUG WEBB: Nothing from the State.
19 MR. SULLIVAN: Nothing from the
20 defense, Your Honor.
21 THE COURT: All right. Ladies and
22 Gentlemen, I would ask you to return back to
23 the jury assembly room. There may be further
24 instructions for you there as to when we may
25 need you. Thank you very much for coming up.

1 (JURY PANEL OUT)

2 THE COURT: Ladies and Gentlemen,
3 let me just make just a few preliminary
4 remarks to you. We have got some matters
5 that we need to take care of for just a few
6 minutes and we will take a break before we
7 actually start with the testimony in the
8 case.

9 I am honored that I will have an
10 opportunity to work with you in this case.
11 You've been selected by these attorneys.
12 They've gone through the process that you
13 have seen to be the jurors hearing this case;
14 as the facts are presented to you, to make
15 the determination. You obviously are
16 sacrificing to be here today.

17 Of all the people in this court-
18 room, you are the only ones who are here
19 involuntarily. You've been summoned to be
20 here as a juror and now have been selected
21 for this trial. We are going to do
22 everything that we can minimize the time
23 you're away from your family. We are going
24 to try to keep this case moving in a prompt
25 manner.

1 You are going to be judges in this
2 case, you are going to be the judges of the
3 facts, you are going to determine just what
4 the facts are. I am referred to as the
5 judge, I am wearing the black robe, but let
6 me tell you that you're going to be every bit
7 as much as judge as I am because we're going
8 to be working together. I am going to be
9 judging the law, you're going to be judging
10 the facts.

11 You may have some apprehension about
12 this title that I have bestowed upon you, of
13 being a judge. You may be thinking to
14 yourself, 'well, goodness, I've never served
15 as a juror before, I've never been in the
16 court process, I've never taken a business
17 law course over the internet, I've never done
18 anything dealing with the law. How can I be
19 a judge?'

20 Let me assure you, Ladies and Gentlemen,
21 that you bring into this courtroom every
22 skill that you're going to need to be judges
23 of the facts. You bring the good common
24 sense with which you have been blessed, the
25 every day experiences that you have had in

1 your home and your work, wherever you may be
2 in society. That's what you are going to
3 utilize in deciding the facts of this case.
4 You are going to judge credibility of
5 witnesses who may testify and make a decision
6 based upon that and the law that I give you
7 at the end.

8 You've made a commitment to these
9 parties during the selection that you are
10 going to be fair and impartial, that you are
11 going to make a decision not on anything that
12 you have outside of your experiences, nothing
13 that takes place outside of this courtroom
14 but just the facts, just the evidence, just
15 the law that I give you.

16 During the course of the trial, I
17 will instruct you on the law at the end of
18 it. You're going to make a commitment that
19 you'll apply that law just as I state it to
20 you.

21 Part of my job is to conduct the
22 trial. We will take periodic breaks. We
23 would usually go for an hour or an hour and
24 fifteen minutes, an hour and a half,
25 depending on the testimony of a witness.

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1 We will try to take periodic breaks. Part
2 of my job is to conduct the trial.

3 Obviously your job is to be a good
4 listener and if we have not taken a break
5 when you need a break, please let us know.
6 Raise your hand, let the bailiffs know. Ms.
7 Sims over to your right is one of the
8 bailiffs and Mr. Thompson, who you met in the
9 back. They will certainly -- if I am looking
10 away, they will inform me that you need to
11 take a break. You can only be a good
12 listener if you're comfortable enough to
13 listen to what is taking place. Please let
14 us know that.

15 There are other folks -- the clerk
16 who called your names, Ms. Brown, she will be
17 here and can assist you. She will be working
18 with us, swearing the witnesses and so forth.

19 The young lady seated directly in
20 front of me is Ms. Garrison, Deb Garrison.
21 She is taking down everything that is said
22 during the course of the trial. She is the
23 court reporter. She will make sure the
24 exhibits are marked properly, and will keep a
25 good, sound record of what takes place during

1 the trial.

2 Seated beside me is Jennifer Breaux,
3 a recent law school graduate, admitted to the
4 Bar. She is my law clerk and you'll see her
5 coming and going, taking care of business
6 back at the office and also helping me with
7 matters up here on the bench, as well.

8 Cases take place in stages. In a
9 few minutes there will be an opportunity for
10 the attorneys to make opening statements to
11 you. That usually starts the trial of the
12 case. The statements that the lawyers make
13 to you will be insightful, I am sure. These
14 fine attorneys will perhaps give you an
15 overview of the things that you need to be
16 listening for or alerted to during the course
17 of the trial. However, what they say to you
18 is not evidence. It is merely ideas that
19 they feel are important to share with you.

20 Evidence is what the witnesses say
21 under oath from the witness stand. Even the
22 questions that the lawyers ask are not
23 evidence; the evidence is the answers to
24 those questions, given by the witness.

25 After the opening statements, there

1 will be testimony given and perhaps documents
2 presented to you.

3 Part of my job will be to rule on
4 the admissibility of evidence. We have rules
5 of evidence which we follow here in South
6 Carolina. There might be an objection to
7 evidence, by one side or the other. Some
8 cases are tried without evidence. If an
9 objection is made, frequently I can rule on
10 that objection by saying simply overruled or
11 sustained, and we can move on to the next
12 question.

13 As you have seen before, sometimes
14 it might be that a lawyer needs a conference
15 and we can huddle up here and make a decision
16 on the law that perhaps they anticipate may
17 come up.

18 Sometimes it may happen that there
19 will be a legal decision that I have to make
20 that will require you to be excused from the
21 courtroom. We can't handle it simply by
22 "overruled", "sustained" or a bench
23 conference. You may have to go back to your
24 jury room while we work out that legal matter
25 that we have before us.

1 I hope that you understand that, you
2 know, even though you may have to come in and
3 out, that we have different jobs; you as fact
4 finders and judges of the facts and I as the
5 judge of the law.

6 I want to make the very best
7 decisions that I can possibly make from my
8 end, on the legal end, and I am sure that
9 you do, as well.

10 Often it may happen that I have
11 to hear some matters that wouldn't even be
12 presented in the trial of the case in order
13 for me to make a good, sound ruling on the
14 law. That evidence that might not be
15 presented before you, I've got to make that
16 decision and it would necessitate you being
17 out of the courtroom.

18 The same principle would apply at
19 the end of the case when all the evidence is
20 in and I instruct you on the law, you will
21 then have an opportunity to deliberate and
22 make your decision. Obviously even though I
23 am a judge like you are, I won't be back in
24 your jury room helping you with your
25 deliberations because the facts are totally

1 your prerogative, yours alone, and I can't
2 have an opinion about the facts, and I don't.

3 Likewise, when I make legal rulings,
4 I need to often make those outside of your
5 presence.

6 After all the evidence is in, the
7 attorneys will again have an opportunity to
8 address you in closing. I will then instruct
9 you on what the law of the case is and you'll
10 have an opportunity to begin your
11 deliberations at that time.

12 You are going to make a commitment
13 to do justice to both parties, both the State
14 of South Carolina and to the Defendant. It
15 makes me proud that you've accepted this
16 responsibility and I certainly look forward
17 to working with you in this matter.

18 At this time we are going to take a
19 short break and we will be ready to start the
20 trial in just a few minutes.

21 As you notice, we've got thirteen
22 of you. The last juror selected is the
23 alternate. I don't anticipate anything
24 happening to one of you, but if one of you
25 were to get ill or had an emergency, then we

1 have an alternate here to step in. He's
2 every bit as much of the jury as the rest of
3 you and he will need to listen as the rest of
4 you listen. He will always occupy that seat.

5 I am going to appoint Mr. Lee as the
6 foreman of the jury. Now, that doesn't mean
7 -- the foreperson doesn't have any more vote
8 than anyone else, but often when you're back
9 in the jury room there might be a need that
10 one of you have to call and check on a child,
11 or whatever it may be, a question to ask
12 such as when will we have lunch, or whatever
13 it may be, and the foreman will be the one
14 who will communicate with the bailiff. Write
15 out whatever question or need that you have,
16 signal to the bailiff and then the bailiff
17 will share it with us and we will be able to
18 answer it. Sort of be the liaison with the
19 court, the foreperson will.

20 Also, he will occupy the seat on
21 the front row closest to the witness box
22 here. Sometimes when lawyers offer evidence
23 in, they will let the jurors see it, pass it
24 around. The foreperson would be the one who
25 would get the document and pass it around to

1 his fellow jurors.

2 The foreperson would be the
3 "presiding officer", so to speak. When you
4 begin the process of deliberation in the
5 case, then the foreperson would be the one
6 to make sure that everybody gets a chance to
7 speak, to conduct -- to be the facilitator or
8 the discussion that you have, and ultimately
9 on behalf of all of you will sign the verdict
10 forms.

11 So when you come back, I will ask
12 Mr. Lee to occupy the front row seat here.
13 The alternate will be there. As you come and
14 go, you can sit in any seat that you want to.
15 Sometimes, like church, you want to sit in
16 the same pew each time and others like to
17 move around. So you can sit in any of those
18 seats except for those two.

19 At this time I will ask you to go
20 back to your jury room. Obviously you
21 shouldn't discuss the case now. You don't
22 know anything about the case, you haven't
23 heard any evidence. We will call you back in
24 just a few minutes when we're ready to start
25 the trial. You may retire back to your jury

1 room.

2 (JURY OUT @ 10:40 A.M.)

3 THE COURT: Mr. Sullivan, I
4 understand that you would like to make a
5 motion for sequestration.

6 MR. SULLIVAN: Yes, sir, for
7 lay witnesses, both for the State and the
8 defense.

9 MR. WEBB: No objection, Your
10 Honor.

11 THE COURT: That will be granted.
12 We will have the lay witnesses -- you'all can
13 take care of that during the break, and make
14 sure they know when to come in or not. Any
15 other legal matters that we need to take care
16 of before we start?

17 MR. WEBB: Nothing from the
18 State.

19 DEFENDANT: Nothing from the
20 Defense, Your Honor.

21 THE COURT: All right. We'll take
22 a ten-minute break and be ready to start.

23 (BRIEF RECESS)

24 THE COURT: All right, bring the
25 jury in.

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1 MR. SULLIVAN: Your Honor, one
2 thing?

3 THE COURT: Hold them just a
4 minute. Yes, sir?

5 MR. SULLIVAN: I take it that
6 once the jury is sworn that he is off bond
7 and that you will hold him during the lunch
8 break and stuff?

9 THE COURT: Yes, sir.

10 MR. SULLIVAN: That's what I
11 told him but I just wanted to make sure.

12 THE COURT: Yes, sir. Bring the
13 jury in.

14 (JURY IN @ 10:55 A.M.)

15 THE COURT: Mr. Webb, you may
16 address the jury.

17 MR. WEBB: May it please the
18 court?

19 THE COURT: Yes, sir.

20 MR. WEBB: Good morning. Members
21 of the jury, we are here today because James
22 Waiters is being charged with three counts of
23 armed robbery and one count of possession of
24 a weapon during the commission of a violent
25 crime.

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1 Now, under South Carolina law armed
2 robbery is defined in a statute, 16-11-330.
3 Basically what it says is that if someone
4 robs or threatens someone with a deadly
5 weapon and take valuable items, such as
6 money, that they are guilty of armed robbery.

7 Now, the law on the gun charge, the
8 possession of a weapon during the commission
9 of a violent crime, states that if someone
10 commits a violent crime as defined by 16-160
11 in the law, and armed robbery is a violent
12 crime, that if they have a deadly weapon such
13 as a gun while they commit armed robbery,
14 then they are guilty of that charge, as well.

15 Now, the evidence will show that the
16 defendant is guilty of all four of these
17 charges.

18 On June 10th, 2006, the Defendant
19 was over playing cards with the victims.
20 They were playing cards well into the
21 morning, early morning hours up to about 8:00
22 a.m. The Defendant was playing for a while
23 but was losing a good amount of money, so he
24 left in the early morning hours around 4:00,
25 approximately 4:00 a.m. in the morning.

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1 He came back a few hours later --
2 he came back around 9:30, approximately 9:30
3 in the morning, he asked if they were playing
4 cards and the three victims said 'no', that
5 they were done. They were getting ready to
6 go shopping later on that day. He asked them
7 to go use the restroom. He went to the
8 bathroom, came back out and when he came out,
9 walked out of that door, he was holding a
10 gun. He pointed that gun at one of the
11 victims, Erica Cheeks and said, "You know
12 what this is. Nothing personal, give me all
13 your money." He asked all three of the
14 victims there -- Erica Cheeks, Deon Griffith
15 and Cora Griffith -- to give him their money.
16 Scared and not knowing what to do, they did,
17 they gave him the money, several hundred
18 dollars in cash. He took the money and a few
19 minutes later, he left.

20 They called the police immediately.
21 The Greenville County Sheriff's Office
22 arrived, met with the victims, talked to
23 them. After that happened, the victims went
24 to go back to their residence. While they
25 are driving back to their apartment, they see

1 the Defendant in front of them in an
2 apartment complex. They call the police.
3 The police come, go to that apartment
4 complex, find the Defendant, arrest him.

5 Now, today you will hear testimony.
6 You will hear from the victims. You will
7 hear from Erica Cheeks, you will hear from
8 Cora Griffith. They will get up here and
9 testify to you the exact details of what
10 happened June 10th, 2006, at 10:00 a.m. when
11 they were robbed at gunpoint.

12 Then you will also hear from three
13 officers, police officers, that were involved
14 and they will tell you about their
15 involvement and their communication with the
16 Defendant.

17 In addition to all this testimony
18 that you will hear today, you will also see a
19 video. The video is played (sic) in the back
20 of a patrol car, Officer Hamilton's patrol
21 car. When he was arrested, Officer Hamilton
22 had an in-car camera that was recording what
23 the Defendant was saying. You will be able
24 to watch and see this video and see what this
25 Defendant said on the video, talking about

1 there being a gun. Then the officers watched
2 the video, and then went and found that same
3 gun that he was talking about, the gun that
4 was used to rob the victims.

5 Now, after you hear the testimony,
6 see the gun and see this video, I ask that
7 you find the Defendant guilty of three counts
8 of armed robbery -- he robbed three different
9 people that morning, three counts of armed
10 robbery and possession of a weapon during the
11 commission of an armed (sic) crime. Thank
12 you.

13 THE COURT: Mr. Sullivan.

14 MR. SULLIVAN: May it please the
15 court, Mr. Webb. As you already know, I am
16 Tim Sullivan and I represent Mr. Waiters in
17 this case.

18 This is not going to be rocket
19 science here today. Use your common sense,
20 listen to the whole story.

21 If he was going to commit a crime,
22 it's logical, it makes sense that you've got
23 to plan it, you've got to execute it --
24 perform the robbery or whatever -- and you've
25 got to get away. Nobody is going to commit a

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1 crime for which you can go to prison for a
2 significant period of time with the idea that
3 they are going to get caught.

4 So to believe that Mr. Waiters
5 committed this crime, you have to believe
6 that he had a plan to get away.

7 Well, how do you know people for a
8 year or so, play cards with them over a
9 period of time -- in fact, one of them had
10 given him a ride from his house to that card
11 game that day, that morning -- and then walk
12 in with no plan? They know who you are, and
13 you take out a gun and say, 'give me your
14 money.' That does not make sense.

15 There's a lot of reasons to accuse
16 somebody of a crime: revenge, 'there is no
17 fury like a person who has been wronged.' I
18 don't know who won money, who lost money, who
19 was mad at who. The only logical thing is
20 that these gals got angry with James for some
21 reason and accused him of this crime.

22 If you listen to the testimony, it
23 doesn't make sense. You have to believe that
24 he is a complete idiot. When you hear him
25 testify, I don't think you can find that.

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1 Then when you watch the video, he keeps
2 saying 'I was playing cards', 'what's going
3 on here?'

4 They didn't tell him that he was
5 going to be on video. He didn't know. The
6 only time you have to give somebody Miranda
7 warnings is when you're going to question
8 them. They put him in the car because they
9 were the City and they were waiting on the
10 County to come and get him, because it was a
11 county crime. They didn't tell him he was
12 on video, he doesn't know it. But the
13 statements that he was making were, 'What's
14 going on here?'

15 Listen to it, keep in mind that
16 there are three parts to a robbery: plan
17 it, do it and get away. This does not make
18 sense. On those grounds, you've got to find
19 James not guilty. Thank you.

20 THE COURT: solicitor, you may
21 call your first witness.

22 MR. WEBB: Yes, Your Honor. The
23 State calls Officer Phillips to the stand.

24 (WITNESS TAKES STAND)

25 JONATHON PHILLIPS, being duly

1 sworn to tell the truth, the whole truth and
2 nothing but the truth, testified, as follows:

3 DIRECT EXAMINATION

4 BY MR. WEBB:

5 Q. Good morning, Officer Phillips.

6 A. Good morning.

7 Q. Where do you work?

8 A. Greenville County Sheriff's Office.

9 Q. How long have you worked there?

10 A. Eight and a half years.

11 Q. What are your duties with the Greenville
12 County Sheriff's Office?

13 A. I am a field training officer, I respond
14 to calls through dispatch and I'm officially
15 a road officer.

16 Q. What is your title or rank?

17 A. Senior Master Deputy.

18 Q. Now, I want to go and talk about the
19 incident that we here about today. Were you
20 working the morning of June 10th, 2006?

21 A. I was.

22 Q. Did you respond to a call on [REDACTED]
23 Street that morning?

24 A. Yes, I did.

25 Q. What did you see when you responded to

1 that residence?

2 A. Met with three victims: Erica Cheeks,
3 Cora Griffith and Deon Griffith.

4 Q. Did you talk with the victims?

5 A. I did.

6 Q. Let me go back, why did you originally
7 respond to that residence?

8 A. We had a call of armed robbery.

9 Q. And after you spoke with the three
10 victims, met with them, did -- was there a
11 suspect in the case?

12 A. Uh, yes. They described a black male,
13 about 5'6", 5'7", 140 pounds, zigzag dread-
14 locks, white shirt, blue jeans and they knew
15 him as "Bubba" or "Short Man".

16 Q. And after you had a suspect in the case,
17 what did you do?

18 A. After I had a suspect?

19 Q. After you had a suspect, got the
20 information, what did you do?

21 A. Okay. Briefly, I started my report,
22 I notified my supervisor of the situation.

23 Q. Then did you leave the residence?

24 A. Yes, as I was leaving I received a call
25 from one of the victims, Erica Cheeks.

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1 Q. What did she say when she called?

2 A. She told me that she drove Deon back
3 home to where she lives and that the suspect
4 was standing in front of his apartment, [REDACTED].

5 Q. I want to take a minute and -- [REDACTED]
6 Street, where is it located? Is it within
7 Greenville County?

8 A. It is.

9 Q. Now, you got this phone call from Ms.
10 Cheeks, Erica, telling you about the
11 Defendant being in front of the apartment
12 complex, what did you do?

13 A. Reinformed my sergeant and he told me
14 to go ahead and go over there, he'd get some
15 units to back me up, and try to locate the
16 individual.

17 Q. What did you see when you went over
18 there?

19 A. On my arrival, I saw several City of
20 Greenville police officers and I made contact
21 with Officer Smith and Officer Hamilton.

22 Q. And after you talked with Officer Smith
23 and Officer Hamilton, what did you do?

24 A. They advised that they had the possible
25 suspect in the back of Officer Hamilton's

1 patrol car. I then went over there and
2 through the rolled down window read him his
3 *Miranda* rights and had a conversation with
4 him after he said that he was willing to talk
5 to me.

6 Q. What did he say?

7 A. Basically said that he was at an unknown
8 location playing cards with some people, he
9 couldn't really advise/give me names, and
10 that he won approximately \$400.

11 I asked him, 'do you still have the
12 money on you?' And he said no, that he'd had
13 to pay somebody -- he couldn't give me a
14 name. I informed him that his description
15 met -- excuse me, matched an individual that
16 was accused of an armed robbery with a gun.
17 He advised that he didn't have a gun, he
18 didn't rob anybody, all he did was play cards
19 with some people.

20 Q. That person you were talking to while he
21 was in the back of the patrol car, is that
22 person in the courtroom today?

23 A. Yes, sir.

24 Q. Can you identify him?

25 A. It's Mr. Waiters, there at the table.

1 Q. Having spoke with the Defendant, what
2 did you do?

3 A. I retrieved his driver's license or his
4 ID card, I can't remember which one that it
5 was, but I basically drove my patrol car
6 vehicle over to where the victims were, they
7 were just right around the corner from where
8 the Defendant was, and showed them the
9 identification to confirm that this was the
10 individual that robbed them.

11 Q. Did they say that was ---

12 A. All three agreed, yes.

13 Q. And after you did this, what did you do
14 after that?

15 A. Well, everything was recorded on the car
16 video for identification. I went back there
17 and told Mr. Waiters that he was under arrest
18 for armed robbery. I then put him from their
19 car into the rear of my patrol car.

20 Q. Did you do anything else after that?

21 A. I called Mr. Waiters' girlfriend, April
22 Woods, to come to the scene after I received
23 information from Officer Hamilton that on
24 this videotape recording of Mr. Waiters, he
25 had indicated that the gun was in her

1 apartment, her refrigerator.

2 Q. Did you speak with his girlfriend?

3 A. Yes, the girlfriend arrived, I obtained
4 a consent to search, which she signed, along
5 with Officer Hamilton, and located a .380
6 caliber HiPoint firearm which was left in the
7 refrigerator; which was loaded.

8 Q. I am going to show you what has been
9 marked as State's Exhibit 1. Can you please
10 tell the court what this is?

11 A. (Upon review), this is the consent to
12 search form that was signed by the girl-
13 friend, April Woods; witnessed by myself and
14 Officer Hamilton with the City; indicating
15 the seizure of the HiPoint firearm.

16 Q. Was there a serial number that you wrote
17 down on that firearm?

18 A. Yes, sir, it is "P", as in papa, 793284
19 (P793284).

20 Q. Now, Officer Phillips, I am going to
21 show you what has been marked as State's
22 Exhibit 2. Without taking this out of the
23 envelope, can you tell me what that is?

24 A. This is the weapon placed into evidence
25 after receiving it from Ms. Woods' apartment.

1 Q. Is that the same weapon that you found
2 in the refrigerator by the Icehouse beer?

3 A. Absolutely.

4 Q. And can you please tell me the serial
5 number on that gun?

6 A. (Upon review), P7932B(sic)4.

7 Q. Is that the same gun that you examined
8 on that consent to search form?

9 A. Actually it should be 8-4, not B-4.

10 Yes, it is.

11 Q. Is that gun in the same condition or
12 substantially the same or similar condition
13 today as it was June 10th, 2006?

14 A. Yes, it is.

15 MR. WEBB: Your Honor, at this
16 time the State moves Exhibits 1 and 2 into
17 evidence?

18 THE COURT: Any objection?

19 MR. SULLIVAN: As to Exhibit 1,
20 I don't have any objection. As to number 2,
21 I would like to conduct a chain at this
22 point.

23 THE COURT: Excuse me?

24 MR. SULLIVAN: Chain. Where
25 it'd been and ---

1 THE COURT: Okay. You got a
2 foundation for the chain of custody?

3 MR. WEBB: Yes, sir. Your Honor,
4 since it is a nonfungible item with the
5 serial number matching the serial number that
6 he wrote that morning and placed into
7 Property & Evidence, the chain does not have
8 to be shown such as a drug would be, where
9 that would be fungible. The officer
10 testified that this gun has the same serial
11 number as the gun that he found June 10th,
12 2006. The chain does not need to be
13 established.

14 MR. SULLIVAN: I will withdraw
15 my objection.

16 THE COURT: All right. Without
17 objection, Exhibits 1 and 2 are in evidence.

18 (SO ENTERED AS STATE'S EXHIBIT 1)

19 (SO ENTERED AS STATE'S EXHIBIT 2)

20 THE COURT: Officer, have you
21 examined that weapon to make sure that it is
22 nonfunctioning and it is not loaded?

23 MR. WEBB: That's correct.

24 THE COURT: It is disabled in all
25 ways?

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1 MR. WEBB: Yes, sir.

2 DIRECT EXAMINATION CONTINUED

3 BY MR. WEBB:

4 Q. And after you retrieved this gun from
5 the refrigerator, what did you do?

6 A. I placed it in the back of my patrol
7 car, in the trunk, until I delivered it to
8 Property at the Sheriff's Office.

9 Q. What did you do with the Defendant that
10 was in the back of your patrol car?

11 A. The Defendant was taken to the Green-
12 ville County Detention Center, where I
13 obtained a list of warrants and placed him
14 in detention.

15 Q. I want to talk real quickly, where you
16 responded to, [REDACTED], is that in
17 Greenville County?

18 A. It is.

19 MR. WEBB: No further questions
20 at this time, Judge.

21 MR. SULLIVAN: Just a few,
22 Officer Phillips.

23 CROSS EXAMINATION

24 BY MR. SULLIVAN:

25 Q. You've been with the force eight years

1 or so?

2 A. I've been on the force eight and a half
3 years.

4 Q. And the boring part of that is the
5 paperwork, right?

6 A. Paperwork, yes.

7 Q. As part of your investigation you wrote
8 -- does this look like what you wrote?

9 A. Yes.

10 Q. I am just going to ask you some
11 questions about it. I don't know if you
12 need one to ---

13 MR. SULLIVAN: Do you have a
14 copy, Doug?

15 MR. WEBB: (Tenders)

16 MR. SULLIVAN: (Tenders to
17 witness).

18 CROSS EXAMINATION CONTINUED

19 BY MR. SULLIVAN:

20 Q. This is not any trick or anything, I
21 just want to get some information.

22 A. Thank you.

23 Q. On the -- most of this information would
24 be information furnished to you by the
25 victims in this case?

1 A. That's correct.

2 Q. On here, I believe that you have that
3 Deon Griffith -- on page two -- that her
4 address was [REDACTED] [REDACTED]?

5 A. Yes, sir.

6 Q. And I believe the Defendant was [REDACTED]
7 [REDACTED]; is that correct?

8 A. [REDACTED], I believe it was.

9 Q. Basically the same area, on [REDACTED]
10 [REDACTED]?

11 A. Yes.

12 Q. Different building but all right there
13 together?

14 A. Correct.

15 Q. When you got there that morning, you did
16 not see the Defendant, just the three girls?

17 A. That's correct.

18 Q. And they told you -- Ms. Cheeks, Ms.
19 Griffith/Ms. Cora, and Deon Griffith -- that
20 they were going to Charleston when you got
21 there?

22 A. (Affirmative nod), they were going
23 shopping.

24 Q. Did you see any suitcases or anything in
25 the ---

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- 1 A. Pardon me?
- 2 Q. Did you see any suitcases or anything in
- 3 the apartment?
- 4 A. (No response).
- 5 Q. Any suitcases?
- 6 A. No.
- 7 Q. And in your report, they claim that they
- 8 were getting ready to leave and it was like
- 9 9:30 or so in the morning, about 9:15, and
- 10 that he showed up and asked for a drink.
- 11 A. That's correct.
- 12 Q. And they gave him a glass of tequila?
- 13 A. A shot of tequila, yes.
- 14 Q. And he drank that, took out a gun and
- 15 pointed it at them?
- 16 A. He went to the restroom and came out
- 17 with a gun.
- 18 Q. He had on a tee-shirt and jeans;
- 19 basically, correct?
- 20 A. Yes.
- 21 Q. Then Erica said that he took a thousand
- 22 dollars from her? Bottom line on the second
- 23 page?
- 24 A. (Upon review), yes, sir.
- 25 Q. And three seventy-five from ---

1 A. Cora.

2 Q. And two fifty from the other gal?

3 A. Yes, sir.

4 Q. Now, also, this is important, you were
5 told that a red beam of light, a laser, come
6 out of the weapon?

7 A. Yes, one of them did mention that.

8 Q. Did you know what they were talking
9 about?

10 A. Yes.

11 Q. Would you explain to the jury what a
12 laser beam of light is on a weapon?

13 A. It is -- a beam of red light, a laser,
14 basically will target where the bullet will
15 travel. If it is right here, it will -- the
16 bullet should shoot right there. It is a way
17 of targeting or sighting-in a target.

18 Q. This is better to ---

19 A. Right.

20 Q. Okay. So this information came from
21 these three ---

22 A. That's correct.

23 Q. Now, on the weapon that you found that
24 morning, I hate to touch this thing. There
25 is not a laser on this gun, is there?

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- 1 A. No, there is no laser on that.
- 2 Q. This is in the condition that you found
3 it?
- 4 A. It is.
- 5 Q. Do you have on your report about what
6 time you got to the ---
- 7 A. It was 11:00, I know that.
- 8 Q. So an hour and a half, or so, within two
9 hours of the crime?
- 10 A. Yes, sir.
- 11 Q. Okay. Now, in your report they said
12 that they didn't know how he got there;
13 correct? They said that he had a blue
14 Suburban that he drove sometimes but that
15 they didn't see it that morning.
- 16 A. Yes, said they didn't know how he got
17 there, that he just showed up on foot.
- 18 Q. And don't know really how he left,
19 correct?
- 20 A. Correct.
- 21 Q. You weren't there when he was taken into
22 custody, were you?
- 23 A. By the City, no.
- 24 Q. But you were around, he was cooperative
25 and answered your questions?

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1 A. Yes.

2 Q. Now, when you asked him about a gun, did
3 you ask him, 'Where is the gun that you used
4 in the robbery?' Or, 'Do you have a gun?'

5 A. I believe I just asked him if he had a
6 gun and he advised that he didn't have a gun
7 or own a gun.

8 Q. This gun has no laser on it, does it?

9 A. No, it does not.

10 MR. SULLIVAN: No further
11 questions, Your Honor.

12 THE COURT: Any redirect?

13 MR. WEBB: Nothing from the
14 State, Your Honor.

15 THE COURT: All right. Thank you,
16 officer. You may step down.

17 (WITNESS STEPS DOWN)

18 THE COURT: You may call your next
19 witness.

20 MR. WEBB: Your Honor, the State
21 calls Erica Cheeks to the stand.

22 (WITNESS TAKES STAND)

23 ERICA LYNETTE CHEEKS, being
24 duly sworn to tell the truth, the whole truth
25 and nothing but the truth, testified, as

1 follows:

2 DIRECT EXAMINATION

3 BY MR. WEBB:

4 Q. Good morning, Ms. Cheeks. How are you
5 doing?

6 A. Fine.

7 Q. I want to talk to you about what we're
8 here today for, the case against this
9 defendant. I want to talk to you about what
10 you were doing the night of June 9th, 2006,
11 into the morning of June 10th, 2006. What
12 were you doing that night into the morning?

13 A. We were playing cards.

14 Q. Who were you playing cards with?

15 A. Myself, Deon, Cora and James.

16 Q. Anyone in the house, that you remember?

17 A. My mother was there, a couple more
18 people were there.

19 Q. How long were you playing cards?

20 A. We played probably about eight or nine
21 hours.

22 Q. What time did you start playing cards
23 that night?

24 A. We started between 9:00 and 10:00
25 o'clock that night.

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- 1 Q. Then went to what time in the morning?
- 2 A. About 6:00, I think.
- 3 Q. And what kind of cards were you playing?
- 4 A. A card game called Tunk.
- 5 Q. Were you playing for money?
- 6 A. We were.
- 7 Q. How long was the defendant there playing
- 8 cards with you?
- 9 A. From the time we started, uh, when he
- 10 left -- I don't know when he left.
- 11 Q. But he wasn't there when you finished
- 12 playing cards?
- 13 A. No.
- 14 Q. Do you remember how the Defendant did
- 15 that night as far as the playing of cards?
- 16 A. He was losing.
- 17 Q. When you say losing, losing money?
- 18 A. Uh-huh, (affirmative nod).
- 19 Q. So when you guys wrapped up playing
- 20 cards, what happened then?
- 21 A. Me, my mom, Cora and Deon were out on
- 22 the porch, we were getting ready to leave.
- 23 Q. Where were you going to go?
- 24 A. I was going to Charleston.
- 25 Q. To do what?

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1 A. Shop. Taking Deon and Cora home.
2 Q. Then what happened?
3 A. James walked up and asked were we still
4 going to play.
5 Q. "Play", meaning ---
6 A. Play cards.
7 Q. Then what did you say?
8 A. Yeah, I told him that we'd play some
9 more if he wanted to.
10 Q. Then what happened?
11 A. We walked back into my mom's house, he
12 walked into her bathroom, came out with a
13 gun.
14 Q. Did he say anything when he came out
15 with a gun?
16 A. He say, "you know what this is."
17 Q. And -- I want you to show the court, and
18 you can get up and walk on down here, I want
19 to see how far away from you he was when he
20 came out pointing that gun. Who was he
21 pointing the gun at?
22 A. He had the gun on me the whole time.
23 Q. Okay. I am going to be you and you be
24 the Defendant and you come out of the
25 bathroom and you show me how far he was from

1 you.

2 A. Right here.

3 THE COURT: Ms. Cheeks, hang on
4 just a minute. You don't have a microphone
5 down there with you. I need to make sure
6 that your testimony is projected. The jury
7 needs to hear what you have to say and the
8 court reporter needs to, as well. Make sure
9 that you speak loudly so that the jury can
10 hear you. Okay?

11 THE WITNESS: (Affirmative
12 nod).

13 DIRECT EXAMINATION CONTINUED

14 BY MR. WEBB:

15 Q. Again, where was he pointing that gun?

16 A. He was about right here.

17 Q. Just a few feet?

18 A. Yeah, about right here.

19 Q. Did he keep that gun in that position
20 the whole time?

21 A. Yeah, right -- right at maybe my waist,
22 because I was turned sideways.

23 Q. How did that make you feel when he was
24 pointing the gun at you?

25 A. I was nervous.

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1 Q. Thank you, you can go back to your seat.

2 A. (Returns to witness stand).

3 Q. Why were you nervous, Ms. Cheeks?

4 A. Because he had a gun on me.

5 Q. And what happened after that? Did he
6 ask for anything?

7 A. He told me to give him my money.

8 Q. Did you give him some money?

9 A. I did.

10 Q. Approximately how much money did you
11 have that day?

12 A. I had a thousand dollars.

13 Q. Who else was in the room when you had
14 that gun pointed at you?

15 A. Cora and Deon.

16 Q. When you say Cora and Deon, Cora and Don
17 Griffith?

18 A. Uh-huh.

19 COURT REPORTER: Was that a "yes"?

20 THE WITNESS: Yes.

21 COURT REPORTER: Thank you.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. WEBB:

24 Q. And did he get any money from them?

25 A. He did.

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1 Q. Do you know how much, approximately,
2 that he got from them?

3 A. I'm -- I'm not sure.

4 Q. And, Erica, you talked about this gun
5 being pointed down towards your waist area.

6 A. (Affirmative nod).

7 Q. Do you remember what this gun looked
8 like?

9 A. I never looked at the gun, I was looking
10 at him the whole time.

11 Q. How long was he there pointing the gun
12 at you?

13 A. Maybe five or ten minutes.

14 Q. Then after he pointed the gun on you for
15 approximately five minutes or so, what did he
16 do next?

17 A. He walked to the door and he asked me to
18 come to the door with him, so I did. I got
19 to the door with him and he told me to go
20 back into the kitchen to get him a drink. I
21 said, 'Why can't you go get your own drink?'
22 He said, 'just go get the drink.' So I
23 backed up towards the kitchen and by the time
24 I got back in the kitchen, he ran in the
25 kitchen and grabbed the -- I had a bottle of

1 liquor on the kitchen table and he grabbed
2 that.

3 Q. Did he take it with him or did he just
4 take a drink?

5 A. I'm not sure.

6 Q. After he grabbed that bottle, what did
7 he do then?

8 A. He had the gun on me, still. He was
9 walking back towards me, telling me that it
10 was nothing personal, uh, he -- he just left
11 out the door. I didn't know when he was gone
12 because I couldn't see the door from the
13 kitchen.

14 Q. And the Defendant, how did you know him
15 before this incident? Before June the 10th,
16 2006, did you know him before playing cards
17 with him?

18 A. I knew him before that night. I'd met
19 him at another card game.

20 Q. Approximately how long before the June
21 10th, 2006 incident did you know the
22 Defendant?

23 A. For about six months.

24 Q. How many times, approximately, had you
25 -- I know that it is hard to say but how many

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1 times did you play cards with him?

2 A. We played cards every Friday night, so
3 from the time that I met him from six months
4 we played every Friday night.

5 Q. Now, you testified that he left the
6 house with the gun still pointed at you?

7 A. (Affirmative nod).

8 Q. What did you do after he left the house?

9 A. I called the police.

10 Q. And did they come?

11 A. They came.

12 Q. And what did you tell the police?

13 A. That I had been robbed.

14 Q. By whom?

15 A. James.

16 Q. How long did you meet with the police,
17 approximately?

18 A. Maybe they were out there fifteen,
19 twenty minutes. I'm not sure.

20 Q. And was -- Cora and Deon were still with
21 you at that time?

22 A. They were.

23 Q. And after the police left, what did you
24 do?

25 A. Took Cora and Deon home.

1 Q. Where did they live? .

2 A. They stayed in the Jesse Jackson
3 Apartments.

4 Q. What happened when you took the victims
5 home?

6 A. When I took them home, we were riding
7 and right before we pulled up to their
8 apartment they yelled out, 'There he is. ,
9 Right there.'

10 Q. Did you look over to see what they were
11 talking about?

12 A. Yeah, I did.

13 Q. And what did you see?

14 A. I seen James.

15 Q. And what was he doing?

16 A. He was just standing there. We was a
17 distance apart and he was just standing there
18 when I seen him.

19 Q. After you saw the Defendant, what did
20 you do?

21 A. I called the officer back that'd came
22 out to the house and told him that "he's at
23 home".

24 Q. What did you do after you called the
25 officer?

1 A. Deon and Cora got out and I went back to
2 my mom's house.

3 Q. Erica, we've been talking about the
4 Defendant, James. Could you just please
5 identify him in the court today?

6 A. That's him sitting right there at the
7 table -- (indicating Defendant).

8 MR. WEBB: Thank you. No further
9 questions.

10 THE COURT: Mr. Sullivan, you may
11 cross examine.

12 MR. SULLIVAN: Just a few, Your
13 Honor.

14 CROSS EXAMINATION

15 BY MR. SULLIVAN:

16 Q. That night you'all had been playing
17 cards, Ms. Cheeks?

18 A. Yes, sir.

19 Q. Had you been playing earlier that
20 evening at James' house?

21 A. (No response).

22 Q. [REDACTED]?

23 A. Earlier that night?

24 Q. Yes.

25 A. Yes sir.

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1 Q. So you three girls had been in a game at
2 his house?

3 A. I was at his house. I am sure that they
4 were but I was at his house.

5 Q. Then you'all were talking about going to
6 a game at your mom's house, is that correct?

7 A. Yes, sir, I had the game at my mom's
8 house.

9 Q. How did James get to your mom's house?

10 A. He rode with me.

11 Q. So he rode from his house with you to
12 your mom's house?

13 A. Yes, sir.

14 Q. Do you recall a Lula Mae Robinson? Do
15 you know her?

16 A. Yes.

17 Q. Did she ride with you and James to your
18 house?

19 A. She did.

20 Q. And she played cards for a period of
21 time and then she left?

22 A. Yes, sir.

23 Q. Then sometime after James left, and you
24 -- you don't know exactly when?

25 A. I don't.

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- 1 Q. Then he came back?
- 2 A. He did.
- 3 Q. And when you'all got ready to leave
- 4 about 9:15, he -- you say that you were going
- 5 to take them home and then you were going to
- 6 Charleston?
- 7 A. Yes, sir.
- 8 Q. Had you planned to spend the night?
- 9 A. In Charleston?
- 10 Q. (Affirmative nod).
- 11 A. I don't know for sure.
- 12 Q. Did you have any luggage with you?
- 13 A. No, sir.
- 14 Q. Did you have a reservation anywhere?
- 15 A. No, sir.
- 16 Q. How often do you go to Charleston to do
- 17 your shopping?
- 18 A. I don't go there to do shopping often.
- 19 I go -- I have a friend that lives in
- 20 Charleston.
- 21 Q. And that night, where were you working
- 22 when this happened?
- 23 A. Where was I working?
- 24 Q. Um-humm.
- 25 A. At a bingo parlor.

- 1 Q. Which one? I'm just curious.
- 2 A. Augusta Road Bingo.
- 3 Q. And you had -- that morning you had a
4 thousand dollars in cash?
- 5 A. Yes, sir.
- 6 Q. And he was holding a gun -- the whole
7 time?
- 8 A. Yes, sir.
- 9 Q. Where was your money? How did he get
10 your money?
- 11 A. He told me to give him my money, I gave
12 him my money out of my pocket.
- 13 Q. You had it in your pocket?
- 14 A. Uh-huh.
- 15 Q. Not in your purse, but in your pocket?
- 16 A. Yes, sir.
- 17 Q. Did it have a rubberband around it?
- 18 A. No, sir
- 19 Q. Just loose?
- 20 A. (Affirmative nod).
- 21 Q. Then I think that you said that he took
22 money from one of them's purse. From Cora's
23 purse, that he took \$375. Where was her
24 purse? How big was the room?
- 25 A. I can't really say how big the room was,

1 but ---

2 Q. Okay. He have the gun on you, walk
3 around you and go to her purse or how did he
4 get to her purse or how did he get the money
5 from her purse?

6 A. He got money from them. I didn't say
7 that he took it from her purse.

8 Q. Then \$250 from Deon's purse, how did he
9 get that money?

10 A. He reached and got their money. I don't
11 know how he got their money.

12 Q. Well, you were there looking at him. He
13 had this gun, and you kept your eyes on him
14 the whole time. How did he get the money
15 from Deon's purse? Where was the purse?

16 A. They were sitting on the table, it was
17 a purse on the table. I -- me and him were
18 standing at the table and he reached over to
19 them. Now, I don't know how he got it
20 because I was watching his face, trying to
21 talk to him.

22 Q. Did he have to move away from you at all
23 or make you move?

24 A. He didn't move away from me at all.

25 Q. When he got there, did he ask you for --

1 when he walked in, did he say to give him a
2 drink before you go to Charleston? Or did he
3 just say that it was a robbery?

4 A. The same as I said first, he said 'you
5 know what this is.' Pointed it at me and
6 said, 'you know what this is.'

7 Q. After he got the money from you and from
8 the other two girls, then ---

9 A. He walked ---

10 Q. --- he said "I want a drink" and you and
11 he went back in the kitchen?

12 A. No, sir. He walked to the door and
13 asked me to walk with him. When we got to
14 the door, he asked me to go back in the
15 kitchen and get him a drink. I asked him why
16 couldn't he go get it. I backed up to go get
17 the drink and once I got in the kitchen, he
18 ran in the kitchen and got the bottle.

19 Q. So he fixed himself a drink?

20 A. He drunk the drink out of the bottle.

21 Q. He didn't put it in a shot glass?
22 You didn't put it in a glass, and he drank
23 out of the glass?

24 A. Not at that time he didn't, no.

25 Q. Well, wait a minute. Did he drink out

- 1 of a glass?
- 2 A. He did drink out of a glass that night.
- 3 Q. During the night?
- 4 A. Um-humm.
- 5 Q. Where was that glass when the robbery
- 6 was going on?
- 7 A. It was on the table.
- 8 Q. Where was the other people's glasses?
- 9 A. (No response).
- 10 Q. Did the other people have drinks that
- 11 night?
- 12 A. They may have drunk a beer or a soda.
- 13 Q. Where were those cans, bottles or
- 14 whatever?
- 15 A. In the trash can.
- 16 Q. So his glass -- but you know that his
- 17 glass was still on the table?
- 18 A. There was a shot glass, anybody could
- 19 drink out of the shot glass.
- 20 Q. When did he drink out of it?
- 21 A. He drank out of it that night.
- 22 Q. The night before he'd left and then came
- 23 back?
- 24 A. Yes, sir.
- 25 Q. Did the police take that glass, do you

1 know?

2 A. I think that they took it for finger-
3 prints.

4 Q. You knew where James lived because you'd
5 been at his house playing cards the night
6 before, hadn't you?

7 A. Yes, sir.

8 Q. And he lives in the Jesse Jackson
9 Townhouses; correct?

10 A. Um-humm. Yes, sir.

11 Q. That's [REDACTED] and his is, I
12 think, [REDACTED]; is that correct?

13 A. I am not familiar with the numbers of
14 the ---

15 Q. And one of the girls that you were
16 taking home lives in like [REDACTED], right?

17 A. (No response).

18 Q. Aren't they right there together?

19 A. Well, not close from his apartment, no.

20 Q. Now, when James had this gun on you, who
21 told the officer that there was -- or did
22 anybody, do you know -- did you see a red
23 laser beam? Like when they point a gun in
24 the movies, did you see one of those guns
25 pointed at you?

1 A. I didn't see it. He didn't have it on
2 my face, he had it on my waistline the whole
3 time.

4 Q. Did you see a red beam?

5 A. I didn't really see the gun. I was
6 looking at him the whole time.

7 Q. So you don't know if that's the gun or
8 not?

9 A. I couldn't describe the gun to you.

10 MR. SULLIVAN: Nothing further,
11 Your Honor.

12 THE COURT: Any redirect?

13 MR. WEBB: No, Your Honor.

14 THE COURT: Thank you, ma'am. You
15 may step down.

16 (WITNESS STEPS DOWN)

17 THE COURT: You may call your next
18 witness, Solicitor.

19 MR. WEBB: Your Honor, the State
20 calls Cora Griffith to the stand.

21 THE COURT: All right.

22 (WITNESS TAKES STAND)

23 CORA GRIFFITH, being duly
24 sworn to tell the truth, the whole truth and
25 nothing but the truth, testified, as follows:

1 DIRECT EXAMINATION

2 BY MR. WEBB:

3 Q. Good morning, Ms. Griffith.

4 A. Good morning.

5 Q. Ms. Griffith, were you playing cards on
6 the night of June 9th, 2006, into the morning
7 of June 10th, 2006?

8 A. I was.

9 Q. Where were you playing cards?

10 A. I was playing at a friend of mine's
11 house, Erica Cheeks.

12 Q. Do you remember what time that you went
13 over there to play cards?

14 A. I want to think that it was sometime
15 like about -- I went about 11:30.

16 Q. I know this is hard for you but I'm
17 going to ask that you speak up a little
18 better.

19 A. Okay.

20 Q. Speak into the microphone.

21 A. I went, I think it was about 11:30.

22 Q. 11:30 at night?

23 A. 11:30 p.m., yes.

24 Q. How long did you play cards?

25 A. We were there until 9:00, 9:30.

1 Q. Do you remember who you were playing
2 cards with?

3 A. When I played, I played with Erica's
4 mother, a lady named Nancy, 'Nita, there was
5 five but I don't know all their names. I
6 know that there were five women, me making
7 the fifth.

8 Q. Did you ever see the Defendant at that
9 residence that night?

10 A. Yes.

11 Q. What was he doing there?

12 A. When I got there, he was sitting on the
13 side drinking.

14 Q. Did you ever see him play cards that
15 night?

16 A. Yes.

17 Q. Do you remember how he did that night
18 playing cards?

19 A. He lost money, because I remember him
20 trying to borrow money.

21 Q. Did he try to borrow money from you?

22 A. No, but he tried to borrow money from
23 others that were at the game.

24 Q. Was the Defendant there the whole time
25 that you were there?

1 A. He was there for I'd say a couple of
2 hours after I got there, and then he left.

3 Q. What time approximately did he come
4 back?

5 A. About 8:00 maybe, -- no, about 8:30.
6 About 8:30.

7 Q. Were you still playing cards at that
8 time?

9 A. No, we wasn't playing cards then. We
10 were getting ready to go, we was supposed to
11 have been going out of town.

12 Q. What happened when the Defendant came
13 back to the residence?

14 A. He came back and said that he wanted to
15 play cards again and we told him that we were
16 getting ready to go. So he asked if he could
17 use her bathroom.

18 Everybody went back inside, you know, to
19 wait for him to use the bathroom so everybody
20 else was -- decided that they better use the
21 bathroom before we go. Everyone went to the
22 bathroom and then he went to the bathroom.

23 Then he came back out and when he came
24 back out, he had a pistol down to his side.
25 We always played cards with him and every-

1 thing, so I asked him, "What are you doing
2 with that big 'ole gun?" That's when he
3 raised the gun into Erica's face and told
4 her that it was nothing personal but she knew
5 what time it was.

6 Q. What do you think that meant?

7 A. He said, "give it up", so she started
8 taking her money out and giving it to him.
9 He said, "it's nothing personal."

10 Q. When he brought up the gun and raised it
11 to Erica, how did you feel when he was doing
12 that?

13 A. I felt like he was going to shoot us.
14 Then he turned to my daughter and asked her
15 to give him her money, and she laid the money
16 out on the table. Then he turned to me and
17 he asked, he said 'You got yours in your
18 purse?' And I said, 'No, I don't have it.'
19 And he said, 'yes, you do have yours in your
20 purse.' I told him no, I unzipped my purse
21 and looked in. Then he said, "In that case,
22 I got to have all the cheese." Then he got
23 the ---

24 Q. "The cheese" being what?

25 A. Money.

1 Q. Then what happened?

2 A. Then he took my money.

3 Q. Approximately how much money did he take
4 from you?

5 A. I know that I had three hundred-plus,
6 but I am not sure how much over three.

7 Q. Before this incident, you stated in your
8 testimony that you had been playing cards
9 with the defendant for a while.

10 A. (Affirmative nod).

11 Q. You knew him?

12 A. Yes.

13 Q. How long had you known him at this time?

14 A. I'd met him at another lady's house
15 where we'd been playing cards, back in
16 February. The reason that I remember it was
17 February was because the lady whose house we
18 were playing at, she made baskets for
19 Valentine's and I know that she was making
20 baskets one night when we were down there
21 playing cards.

22 Q. Now, you said that the Defendant was
23 pointing the gun at Erica.

24 A. (Affirmative nod).

25 Q. Did he keep the gun on Erica the whole

1 time or did he point it at you?

2 A. Well, he didn't exactly point it at me.
3 He said, 'You got yours?' And I said no,
4 that I didn't any. He had the gun -- you
5 know it wasn't like it was directly at me but
6 he'd taken it off of Erica and was letting me
7 know ---

8 Q. And that's when he got the money from
9 you?

10 A. Yes.

11 Q. Now I want to talk to you about State's
12 Exhibit 2. Can you please tell me what this
13 is?

14 A. That's the gun that he had. I remember
15 it because of that little red dot there. I
16 thought that it was a laser.

17 Q. The red dot on top of this is what
18 you're referring to?

19 A. Yes.

20 Q. You thought that was a laser?

21 A. Yes, I thought it was a laser.

22 Q. But this is the same gun that the
23 Defendant used June 10th, 2006?

24 A. (Affirmative nod), it's the same gun.

25 Q. Now, Cora, what did you do after the

1 Defendant left the residence?

2 A. We sat there at the table for a few
3 minutes to make sure that he was gone. Then
4 Erica jumped up, ran and locked the door,
5 then called the police.

6 Q. Did the police come?

7 A. The police came and we told them what
8 had happened and all. Then Erica's mother
9 came back and we decided not to go on the
10 trip and she was taking us home, my daughter
11 and me home. And when we got to where my
12 daughter lives, he was out -- he lived in the
13 same community and he was out there in the
14 street. Oh, he was wow'ing out.

15 Q. When you say wow'ing out, what do you
16 mean?

17 A. Cursing loud out there, swinging, just
18 wow'ing out.

19 Q. After you saw him doing this, what did
20 you do?

21 A. I said, "look at him." I went into the
22 house and I called the police and I told them
23 that he was out there in the street, what he
24 was doing, and they told me not to go near
25 him, just to wait there at our residence for

1 them. That is what we did.

2 Q. And your residence -- how far is your
3 residence away from where you saw the
4 Defendant at that point?

5 A. It was like -- here my daughter's
6 apartment building and, so, straight down
7 this way is his. So they were like the same
8 -- they just went out like this, same
9 apartment.

10 Q. And after you called the police, what
11 did you do?

12 A. The police came and he -- he had to have
13 seen the police coming and it was like he
14 ran, and he ran into the house.

15 So at that time, I went out and told the
16 police he just ran into the house.

17 Then he ran -- we went back into the
18 house, they told us to go back in the house.
19 We went back in, looked out and he was
20 running out of his back door. That is when
21 my daughter started hollering, "he went out
22 of the back door". He took the police on a
23 chase out through the woods, all around
24 through the woods, down around the rental
25 office and everything and then he ran back

1 into his house.

2 They asked some of the people down
3 there at his house if he was home and they
4 said 'no'. But my daughter insisted, 'he's
5 in that house, I just saw him go in that
6 house, he's in that house.' Finally they
7 went in the house and he was in the house.

8 Q. He was there in the house?

9 A. (Affirmative nod), he was in the house.

10 Q. And -- I want to take a couple of steps
11 back, to go back to the location of the
12 robbery. Who else was in that room that
13 morning with you?

14 A. In the room that I was in there was
15 Deon, Erica and me and Bubba.

16 Q. "Bubba" being the Defendant?

17 A. Yes, sir.

18 Q. And during your testimony, you mentioned
19 your daughter. Who is your daughter?

20 A. Deon Griffith.

21 Q. And she was present during the robbery,
22 as well?

23 A. Yes, she also got robbed.

24 Q. Do you remember how much money got taken
25 from her?

1 A. I think that he took a little more from
2 Deon than me.

3 Q. Do you know where Deon is this morning?

4 A. She's -- her daughter went to school and
5 they called from school to come pick her
6 daughter up, she was sick. So she went to
7 take her to the hospital. But I called her
8 house a minute ago and I think she's on her
9 way up here.

10 MR. WEBB: Thank you, Ms.

11 Griffith. No further questions at this time.

12 THE COURT: Cross-examination?

13 MR. SULLIVAN: Just a few.

14 CROSS EXAMINATION

15 BY MR. SULLIVAN:

16 Q. Ms. Griffith, before all this happened,
17 you knew Bubba, as you'all call him?

18 A. Yes.

19 Q. Or James Waiters?

20 A. Yes.

21 Q. That night you had been at his house
22 playing cards, had you not?

23 A. No.

24 Q. You had not played cards over at his
25 house that night?

1 A. That night, no.

2 Q Do you know Lula Mae Robinson?

3 A. Yes.

4 Q. Was she playing cards at his house that
5 night?

6 A. At his house?

7 Q. Yes.

8 A. I don't know because I didn't go to his
9 house. When I left, I left -- when I got to
10 Erica's house, I had just left bingo.

11 Q. Do you know how James got to the house
12 to play cards that night with you'all?

13 A. No.

14 Q. Do you know if he rode with Erica?

15 A. I don't know, but he was there when I
16 came.

17 Q. And that morning you'all stopped playing
18 cards and you say that James came to the
19 door?

20 A. Yes, he left and he came back.

21 Q. What did he say when he came to the
22 door?

23 A. He said, 'Oh, you'all fixing to go? I
24 wanted to play some more. I went and got
25 some more money, I wanted to play some more.'

- 1 Q. Then what happened?
- 2 A. Then we told him that we were getting
3 ready to go. But then he wanted to use the
4 bathroom, so we went back in to let him use
5 the bathroom.
- 6 Q. Where were you going that morning?
- 7 A. Where were we going to go?
- 8 Q. Um-humm.
- 9 A. We were going to go shopping.
- 10 Q. Where were you going to go shopping?
- 11 A. Charleston.
- 12 Q. You were going with Erica to Charleston?
- 13 A. Yes.
- 14 Q. You weren't going home?
- 15 A. At first I was ---
- 16 Q. She wasn't going to Charleston by
17 herself?
- 18 A. Wasn't going by herself?
- 19 Q. (Affirmative nod).
- 20 A. No, we all were going to go.
- 21 Q. Okay. So you and Deon were going to go
22 with Erica and go to Charleston?
- 23 A. Yes. Deon was going along for the ride
24 to Charleston but I was going to shop.
- 25 Q. Were you'all going to spend the night?

1 A. Were we going to spend the night?
2 Q. (Affirmative nod).
3 A. No.
4 Q. You didn't have any luggage and didn't
5 have a room, correct?
6 A. No.
7 Q. Okay. Now, where was the gun -- how did
8 he display the gun during the robbery?
9 A. He came from the bathroom with the gun,
10 holding it down to his side; like your hand,
11 he was holding it down to the side. I was
12 standing right beside him and I -- I asked
13 him what was he doing with that big 'ole gun.
14 At that time, he raised it to Erica and said,
15 "You know what time it is."
16 Q. Where did he put it on Erica, did he put
17 it on her face or ---
18 A. Maybe about even with -- (gesturing).
19 Q. And he -- what happened then?
20 A. Then she started pulling out money. And
21 he said, "this is nothing personal."
22 Q. Where did she get the money from?
23 A. Her pocket.
24 Q. Where did he get the money that he got
25 from you from?

- 1 A. My purse.
- 2 Q. Where was it in relation to where you
3 and Erica was?
- 4 A. I was sitting there by the table, at the
5 table -- she is standing in front of the
6 table and so was he, and my purse was on the
7 table.
- 8 Q. Did he have to reach over or move to get
9 it?
- 10 A. (No response).
- 11 Q. Did he have to move around to get it?
- 12 A. No.
- 13 Q. Did he ---
- 14 A. He asked me did I have -- he asked me if
15 I had, he said 'You got yours?' Meaning my
16 gun. I said, 'No, I don't have it.' He
17 said, 'Yes, you do.' I said, 'No, I don't.'
18 So he unzipped it to see if I had it and it
19 wasn't in there. He said, "In that case I
20 gotta have all the cheese."
- 21 Q. That's when he took the \$375 from you?
- 22 A. I am not sure how -- three, I know.
- 23 Q. Okay. And then somebody told the
24 officer that they saw a red beam of light,
25 not a red dot but a red beam of light. Did

1 you ---

2 A. I seen the red dot on the gun. I
3 thought that it was a laser.

4 Q. Did you see a beam of light anywhere?

5 A. I saw that red dot, I thought it was a
6 laser.

7 Q. After he got the money from the three
8 of you'all, what did he do then?

9 A. Then he asked us for a drink and he --
10 he had moved on to the living room. He asked
11 for a drink. And he said, he said 'I want a
12 drink.' Then he came back into the kitchen
13 where we were and took our whole bottle and
14 he ---

15 Q. Whoa, whoa, whoa. Who was in the
16 kitchen?

17 A. Erica and I. He had the gun on Erica,
18 taking her through the living room so that he
19 could leave out. Then he asked her for a
20 drink. She told him to get his own drink.
21 He turned around, came back into the kitchen
22 and ---

23 Q. Did he bring Erica with him or did he
24 just come in ---

25 A. Yes.

1 Q. Okay.

2 A. She told him to get his own drink. He
3 took the whole bottle of liquor. Then he
4 told us, he said we knew where he was. He
5 said, "You all know where I'm at", and he
6 gave us the address, "[REDACTED]", and he said,
7 "you all know where I'm at." Then he left,
8 he went through the living room and went on
9 out the door.

10 Q. You don't know how ---

11 A. We just sat there.

12 Q. You don't know how he got there or how
13 he left, correct?

14 A. No, he came up walking.

15 Q. Now, when you got back to your house,
16 you say that he ran from the police and they
17 were chasing him?

18 A. Yes.

19 Q. How long did the chase last?

20 A. It was about five to seven minutes.

21 Q. Where did he run to?

22 A. All down through the woods behind the
23 apartments.

24 Q. Then you saw him run back to his house?

25 A. Yes.

1 Q. Then the officer went there?

2 A. Yes.

3 Q. Were they chasing him?

4 A. Yes.

5 Q. Did they have their guns out, chasing
6 him?

7 A. I didn't see any guns out, no.

8 Q. But they were chasing him?

9 A. (Affirmative nod).

10 Q. Were they hollering to him?

11 A. Yes.

12 MR. SULLIVAN: I have nothing
13 further, Your Honor.

14 THE COURT: Any redirect?

15 MR. WEBB: Nothing from the
16 State, Your Honor.

17 THE COURT: Thank you, ma'am, you
18 may step down.

19 (WITNESS STEPS DOWN)

20 MR. WEBB: Your Honor, the State
21 calls Deon Griffith to the stand.

22 (WITNESS TAKES STAND)

23 DEON GRIFFITH, being duly
24 sworn to tell the truth, the whole truth and
25 nothing but the truth, testified, as follows:

1 DIRECT EXAMINATION

2 BY MR. WEBB:

3 Q. Good morning, Ms. Griffith.

4 A. Good morning.

5 Q. How are you doing?

6 A. (Affirmative nod).

7 Q. Ms. Griffith, I want to talk to you
8 about the incident on June 9th, 2006, going
9 over into June 10th, 2006. What were you
10 doing the night of June 9th?

11 A. Playing cards.

12 Q. What kind of card game were you playing?

13 A. Tunk.

14 Q. I'm sorry, you have to speak up?

15 A. Tunk.

16 Q. And who were you playing cards with?

17 A. My mother, Lynette, Erica.

18 MR. SULLIVAN: I'm sorry, could
19 you speak up just a little bit. You've got a
20 real soft voice and I can't hear you. Could
21 you speak up just a little bit?

22 THE WITNESS: Erica, and Bubba
23 and, uh, -- who else? I can't remember who
24 else but it was quite a few of us.

25 DIRECT EXAMINATION CONTINUED

State of South Carolina v. James Waiters
Case No. 06-GS-23-06230 et al
Jury Trial of March 11th & 12th, 2008
before The Honorable G. Edward Welmaker

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1 BY MR. WEBB:
2 Q. Who is Bubba?
3 A. (No response).
4 Q. Is Bubba in the courtroom today?
5 A. Yes, sir.
6 Q. Can you identify Bubba?
7 A. Right there in the white -- (indicating
8 Defendant).
9 Q. Thank you. What time did you -- where
10 was this card game?
11 A. It was at Lynette's mother's house.
12 Q. When you say Lynette, you mean Erica?
13 A. Erica.
14 Q. Was that a nickname for her?
15 A. Yes.
16 Q. What time did you go to that house?
17 A. About, maybe 10:00. 10:00 or 11:00,
18 sometime around there.
19 Q. 10:00 at night?
20 A. Yes, at night.
21 Q. How long did you stay?
22 A. Until the next morning.
23 Q. You say the Defendant was there playing
24 cards that night?
25 A. (Affirmative nod).

- 1 Q. Did he stay the whole time?
- 2 A. No, he left.
- 3 Q. While he was there playing cards, do you
- 4 know how he did playing cards?
- 5 A. He lost.
- 6 Q. You said that he left?
- 7 A. (Affirmative nod).
- 8 Q. Do you know what time that he left?
- 9 A. No, not really.
- 10 Q. So what time did you quit playing cards?
- 11 A. Oh, it was about between 6:00-something
- 12 in the morning.
- 13 Q. When you stopped playing cards, can you
- 14 tell me what happened?
- 15 A. We were getting ready -- well, we had
- 16 initially planned to go out of town, go
- 17 shopping but we started playing cards. Then
- 18 we stopped playing and got ready to go. As
- 19 we were going out the door, Bubba met us at
- 20 the door.
- 21 Q. And what did the Defendant want?
- 22 A. He said that he had some more money,
- 23 that he wanted to play some more cards.
- 24 He wanted to use the restroom.
- 25 Q. What happened then?

1 A. Well, Erica told him that he could go
2 use the restroom. And when he went to the
3 bathroom, he came out with a gun.

4 Q. Can you give us the details of where he
5 was pointing the gun and how he came out?

6 A. When he came out, he was like, "You all
7 know what time this is. It's not personal."

8 Q. Do you remember where he was pointing
9 the gun?

10 A. At Erica.

11 Q. At Erica?

12 A. At Erica.

13 Q. Do you remember what the gun looks like?

14 A. Yes.

15 Q. I am going to hand you what has been
16 marked as State's Exhibit 2.

17 A. I don't want ---

18 Q. You don't have to touch it, but was this
19 the same gun that was used June 10th, 2006?

20 A. Yes, it is.

21 Q. When he was pointing the gun at Erica
22 and saying "you know what time it is", how
23 did you feel when he was doing that?

24 A. Threatened.

25 Q. Tell me what happened after he pointed

1 the gun at Erica.

2 A. He said, that everybody needed to give
3 him their money. She started giving him her
4 money.

5 Then he went to my mom and told her to
6 give him her money. And he asked, 'You know
7 you got your gun on you.' She was, like,
8 'No, I don't have it.' He was like, 'yeah,
9 you got it.' He was looking in her pocket-
10 book.

11 Q. Did he get any money from your mom?

12 A. Yes.

13 Q. Then after he got money from your mom,
14 what happened?

15 A. He got in mine.

16 Q. Do you know how much he gave (sic) you?

17 A. (No response).

18 Q. I know that it has been a while but how
19 much money did he get from you?

20 A. Approximately \$300.

21 Q. And after he got money from Erica, your
22 mom Cora, and you, what did he do?

23 A. He asked for a drink.

24 Q. What happened then?

25 A. Erica said he could have a drink. The

1 bottle was sitting on the table and she told
2 him to get a cup. He didn't want a cup, he
3 wanted the whole bottle.

4 Q. And did he drink out of the bottle.

5 A. He took the whole bottle.

6 Q. What happened after he took the bottle?

7 A. He asked Erica if that is all that she
8 had and she told him yeah.

9 Q. Do you know where he had the gun at this
10 time?

11 A. He had the gun on her at all times.

12 Q. You were saying that he got the bottle,
13 then what was he doing?

14 A. He told her to walk him out. She was
15 walking him out, but he never took the gun
16 off of her. When he was walking out, he told
17 her to go open the door. She was leading hm.

18 Q. Did he leave the residence at that time?

19 A. (No verbal response).

20 Q. You said that he was walking through the
21 door?

22 A. Yes.

23 Q. What did you do after he left the house?

24 A. Well, for a few minutes everybody was in
25 -- just stunned, then she went and shut the

1 door, locked it and called the police.

2 Q. Did the police come to the house?

3 A. Yes.

4 Q. Did you tell them what happened?

5 A. Yes.

6 Q. Then after the police left, what did you
7 do?

8 A. We went home. Erica and her mom were
9 taking us home.

10 Q. Where is home, where was home at that
11 time?

12 A. [REDACTED].

13 Q. And what happened once you got home?

14 A. When we got there, he was out there
15 wild'ing like he hadn't done anything.

16 Q. You said "out there", where was out
17 there?

18 A. Outside his girlfriend's apartment in
19 the back of my apartment.

20 Q. How far away was his girlfriend's
21 apartment from your apartment?

22 A. About as far as you are standing from
23 me.

24 Q. Once you saw the Defendant, what did you
25 do?

1 A. I got on my phone and I called the
2 police.

3 Q. What did you do after you called the
4 police?

5 A. What did I do?

6 Q. Yes.

7 A. They told us to stay -- to stay at my
8 apartment until they got there. When they
9 came, we walked to the corner to meet them.

10 Q. What happened when you met them?

11 A. He took off running, when he see the
12 police coming.

13 Q. Where did he run to?

14 A. He ran in the house, out the back door,
15 around the house, through the cut and up
16 through another part of the apartments and
17 then back to the apartment.

18 Q. Back to his girlfriend's apartment,
19 where he had originally started out?

20 A. Yes.

21 Q. Do you remember what happened after
22 that?

23 A. I told the police that he was in there.
24 He wouldn't answer the door, and they told
25 them that he wasn't; so they got Greenville

1 Housing Authority to open the door and they
2 found him in there.

3 MR. WEBB: Thank you, Deon. No
4 further questions.

5 THE COURT: Cross examine?

6 MR. SULLIVAN: Just a few.

7 CROSS EXAMINATION

8 BY MR. SULLIVAN:

9 Q. Ms. Griffith, this is not a trick
10 question, but have you seen this gun -- you
11 saw it the morning this happened?

12 A. Yes, sir.

13 Q. Then didn't you meet with the Solicitor
14 and saw it again?

15 A. Yes, sir.

16 Q. You've seen this gun that morning and
17 then got a good look at it when the solicitor
18 showed it to you a few weeks ago? Is that
19 correct?

20 A. Yes. I got a good look at it that
21 morning.

22 Q. Had you ever played cards at Bubba's
23 house, James' house?

24 A. Yes.

25 Q. Did you play cards that night at James?

- 1 A. No, sir.
- 2 Q. So the first time that you saw James was
- 3 at ---
- 4 A. At Erica's.
- 5 Q. Was at Erica's house?
- 6 A. (Affirmative nod).
- 7 Q. Do you know how he got there?
- 8 A. No, he was there when I got there.
- 9 Q. Now, during -- he came to the door and
- 10 you'all were getting ready to -- you said
- 11 that you all were going to Charleston?
- 12 A. Yes.
- 13 Q. You'all had stayed up all night long
- 14 playing cards?
- 15 A. Yes, sir.
- 16 Q. Were you going to spend the night or
- 17 just come home?
- 18 A. Going shopping.
- 19 Q. Then what?
- 20 A. We were coming back.
- 21 Q. How often do you'all make that trip?
- 22 A. Not often. We had once.
- 23 Q. Where did you get that money?
- 24 A. I work.
- 25 Q. Where were you working then?

- 1 A. Gregory's Community Care.
- 2 Q. Tell us what that Care is?
- 3 A. Sir?
- 4 Q. What is that?
- 5 A. That's a nursing home for mentally
- 6 challenged people.
- 7 Q. That morning that you'all were getting
- 8 ready to leave, what happened?
- 9 A. What do you mean?
- 10 Q. You say that James walked up.
- 11 A. (Affirmative nod).
- 12 Q. What happened then?
- 13 A. He said that he wanted to play some more
- 14 cards and that he needed to use the restroom.
- 15 Q. Then we went back and came out with the
- 16 gun then?
- 17 A. No, he went to the restroom and came out
- 18 with the gun.
- 19 Q. Now, how did he -- where did he point
- 20 the gun during the robbery?
- 21 A. At Erica.
- 22 Q. Where was he pointing it?
- 23 A. At her head and her chest.
- 24 Q. So he was pointing it here and here
- 25 (gesturing to head and chest)?

- 1 A. Yes.
- 2 Q. Were they looking at each other kind of
3 like this?
- 4 A. (No response).
- 5 Q. How were they standing?
- 6 A. Well, he was standing like this and she
7 was standing kind of ---
- 8 Q. So he was standing there, holding the
9 gun to her head and her chest?
- 10 A. Yes, sir.
- 11 Q. Like this?
- 12 A. Yes, sir.
- 13 Q. He never pointed the gun at you or your
14 mom?
- 15 A. No.
- 16 Q. What did he do with the gun when he was
17 going into your purse, how did he do
18 that?
- 19 A. ~~He wasn't~~ He wasn't going into mine, he was going
20 into my mom's.
- 21 Q. What did he do with the gun when he was
22 going ---
- 23 A. He had it on Erica.
- 24 Q. He was fiddling around -- did he look
25 down at the purse?

- 1 A. I can't remember.
- 2 Q. How did he get the money from your
3 purse?
- 4 A. He didn't get it from my purse. I
5 handed it to him.
- 6 Q. You handed him the money?
- 7 A. Yes.
- 8 Q. That morning when the policeman got
9 there, did you and your mom and Erica tell
10 him what happened?
- 11 A. Yes, we did.
- 12 Q. Did you'all tell him to the best of your
13 ability the sequence of what happened; is
14 that correct?
- 15 A. Yes.
- 16 Q. When James got there? You told them
17 what had happened. Right?
- 18 A. Yes.
- 19 Q. Who told the officer that there was a
20 red light coming from the gun?
- 21 A. Everyone, because everyone seen it.
- 22 Q. A red light coming from the gun?
- 23 A. (Affirmative nod).
- 24 Q. Like a laser light?
- 25 A. Yes.

1 Q. Like he was pointing a laser gun?

2 A. Yes.

3 Q. So everybody saw it? Erica saw it, your
4 mom saw it, you saw it?

5 A. Yes.

6 Q. Now, on the chase, were the officers in
7 pursuit of him, were they chasing him?

8 A. (No response).

9 Q. You said that he must have seen them
10 coming when you'all went back to [REDACTED]
11 [REDACTED], Jesse Jackson, you'all were outside
12 and he took off running; is that correct?

13 A. Yes.

14 Q. Did the officers chase him?

15 A. Yes.

16 Q. How many chased him?

17 A. I can't remember, but I remember them
18 chasing him.

19 Q. Did they have their guns out?

20 A. No.

21 Q. Were they hollering at him?

22 A. They were asking him to stop.

23 Q. So they were running. How far behind
24 him were they?

25 A. Well, he had a pretty decent start.

1 Q. Did they follow him all the way back
2 around to his house or did they lose him?

3 A. (No verbal response).

4 Q. Did they follow him continuously from
5 24, where he lived, ---

6 A. They stopped after he got out of sight.

7 Q. Then he came back?

8 A. They went back to the apartment then.
9 I mean, you know, after he'd went in to the
10 apartment, they came back.

11 Q. Okay. Then he wouldn't come out?

12 A. No.

13 Q. And did somebody from the Housing
14 Authority let them in?

15 A. Yes.

16 Q. Was it a male or a female that let them
17 in? Was it a male or female that let them
18 in?

19 A. I don't know. I don't know who worked
20 for Housing. I just remember seeing a
21 Housing Authority truck down there.

22 Q. Did you see somebody go up with the
23 police to the door?

24 A. Yes, I did.

25 Q. So somebody got out of the truck, met

1 the officers, went up to the door?

2 A. (Affirmative nod), and I don't know if
3 it was a man or a woman because there was two
4 of them, there was a man and a woman, and I
5 can't tell you which one opened the door.

6 Q. But one of them, as far as you could
7 tell, was opening the door for the officers?

8 A. (No verbal response).

9 MR. SULLIVAN: Nothing further,
10 Your Honor.

11 THE COURT: Redirect?

12 MR. WEBB: Nothing else from the
13 State, Your Honor.

14 THE COURT: Thank you, ma'am, you
15 may step down.

16 (WITNESS STEPS DOWN)

17 THE COURT: Call your next
18 witness:

19 MR. WEBB: At this time the State
20 calls Officer Smith to the stand.

21 MR. SULLIVAN: Judge, the
22 defendant just realized that he has his phone
23 in his pocket. Could we get someone to take
24 it out? We don't want to interrupt the
25 court.

1 THE COURT: Yes, sir.

2 MR. SULLIVAN: He just
3 remembered that he has it.

4 THE COURT: That's fine.

5 MR. SULLIVAN: I apologize,
6 (tenders phone to deputy).

7 DEPUTY: (Takes phone out of
8 courtroom to holding cell area.)

9 THE COURT: All right.

10 (WITNESS TAKES STAND)

11 CRAIG SMITH, being duly
12 sworn to tell the truth, the whole truth and
13 nothing but the truth, testified, as follows:

14 DIRECT EXAMINATION

15 BY MR. WEBB:

16 Q. Good afternoon, officer, how are you
17 doing?

18 A. Fine.

19 Q. Where do you work?

20 A. City of Greenville Police Department.

21 Q. How long have you worked there?

22 A. Almost five years.

23 Q. And what are your duties with the
24 Greenville Police Department?

25 A. I am a patrolman. I respond to wrecks,

1 back up other officers, just your common
2 police duties.

3 Q. Did you respond to [REDACTED] on June
4 10th, 2006?

5 A. Yes, sir, I did.

6 Q. Why did you respond there?

7 A. I was dispatched to the area of [REDACTED]
8 [REDACTED] as a deputy because that's in my area,
9 I work that area.

10 A call came in that an armed robbery
11 victim had seen the suspect in that area and
12 pretty much our entire platoon went there
13 because of the nature of the call.

14 Q. And what did you do when you got to
15 [REDACTED]?

16 A. As I pulled up, I entered from the main
17 drag, as we call it, around the [REDACTED]
18 and I met with the victim. I met with Deon
19 Griffith and another lady. The only one that
20 I can identify is Deon Griffith. That is the
21 only one that I spoke with.

22 Q. After you spoke with her, what did you
23 do?

24 A. I gave out the description of the
25 subject to the units in the area. We set up

1 pretty much a perimeter. I can't recall if
2 -- I know that the victim stated that he was
3 in [REDACTED], which was not too far away from her
4 apartment.

5 Myself and another officer went to
6 Apartment [REDACTED], met with a subject who was
7 outside who identified himself as Taurus
8 Robinson. I asked him for his identification
9 and where he lived at. He stated that he
10 lived in [REDACTED].

11 At this time, I knew that the subject
12 went by Bubba. That is who we were looking
13 for, after speaking with Deon Griffith. I
14 asked him if he was Bubba and he said 'no.'
15 I said, is Bubba in the apartment next --
16 [REDACTED]? He said 'yes.'

17 At that point in time, I went back to
18 dispatch with that information and confirmed
19 that the person that I was looking for was
20 Bubba.

21 Q. What did you do after you talked with
22 dispatch?

23 A. I knocked on the door of [REDACTED] a brief
24 moment, and I could hear someone inside. The
25 Defendant, Mr. Waiters, came to the door. He

1 stepped outside and right when he stepped
2 outside, Deon Griffith -- who wasn't too far
3 away, she actually had followed us down to
4 [REDACTED], she started yelling, "that's the man
5 who robbed me, that's the man who robbed me."

6 At that point in time, I placed him in
7 handcuffs. I took everything out of his
8 pocket to make sure that he wasn't armed.
9 I told him that he was under investigative
10 detention, that Greenville City had no
11 charges but that the County was probably
12 going to have charges on him. At that time,
13 I put him in Corporal Hamilton's patrol
14 vehicle.

15 Q. Did you have any other involvement in
16 the incident?

17 A. None at all.

18 Q. Were you the first officer to arrive on
19 scene?

20 A. I can't say if I was first, second or
21 whatever. It was my area and when they gave
22 out that call, our supervisor cleared
23 everyone to go to the scene, so -- we have
24 had numerous problems in Jesse Jackson to
25 where we do not go alone. I'd say probably

1 twelve units went.

2 MR. WEBB: Thank you, no further
3 questions at this time.

4 THE COURT: You may cross-examine
5 the witness, Mr. Sullivan.

6 MR. SULLIVAN: Just a couple of
7 questions, Officer Smith.

8 CROSS EXAMINATION

9 BY MR. SULLIVAN:

10 Q. You met with the young lady who said
11 they had been robbed; correct?

12 A. (Affirmative nod), she identified her-
13 self as Deon Griffith and stated that she had
14 been robbed.

15 Q. And told you that Bubba, James Waiters,
16 who lived down in [REDACTED] was the one who had
17 done it?

18 A. Said that he did, [REDACTED]. I was reading a
19 lot of this off of my computer and everything
20 that she told me confirmed what was on my
21 computer screen.

22 Q. All right. You left her and went to
23 that unit. There was a guy sitting outside
24 and he said that he wasn't Bubba, that he was
25 somebody else, but that Bubba was inside, as

1 far as he knew?

2 A. Yes. I asked him numerous questions,
3 just to make sure that if he was the guy that
4 robbed them -- that's what I needed to get.
5 But in my speaking to him, he wasn't the
6 person. But he stated that Bubba, who I was
7 hunting, was in Apartment [REDACTED].

8 Q. So first you knocked on the door?

9 A. (Affirmative nod).

10 Q. Heard some noise?

11 A. (Affirmative nod).

12 Q. Then James/Bubba came out?

13 A. He was the one that answered the door.

14 Q. And he said that we are -- you said,
15 'I'm going to place you in investigative
16 detention. I am not arresting you' -- but
17 cuffed him?

18 A. I wasn't walking up to him to see if he
19 was armed, especially when they said he'd
20 committed the crime. Right when he walked
21 out to me, Miss Deon started yelling, "that's
22 the man that robbed me, that's the man that
23 robbed me." That's when I put him in
24 investigative detention.

25 Q. Okay. No problems with him, though;

1 correct?

2 A. Oh, no. No.

3 MR. SULLIVAN: No further
4 questions, Your Honor.

5 MR. WEBB: Nothing from the
6 State.

7 THE COURT: All right. Thank you,
8 officer. You may step down.

9 (WITNESS STEPS DOWN)

10 MR. WEBB: Your Honor, the State
11 calls Officer Hamilton to the stand.

12 (WITNESS TAKES STAND)

13 JONATHON HAMILTON, being
14 duly sworn to tell the truth, the whole truth
15 and nothing but the truth, testified, as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. WEBB:

19 Q. Officer Hamilton, good afternoon. How
20 are you doing?

21 A. I'm good.

22 Q. Who do you work for, Mr. Hamilton?

23 A. I currently work for Greenville County
24 Public Safety, the forensic division.

25 Q. How long have you worked there?

1 A. Right at a year, actually. One year.

2 Q. What did you do before that?

3 A. I was a corporal for the Greenville City
4 Police Department.

5 Q. How long were you a corporal for the
6 Greenville city Police Department?

7 A. Seven years.

8 Q. And at the time of June 10th, 2006, what
9 were you doing then?

10 A. I was on routine patrol. My beat was
11 adjoining the beat [REDACTED] was in.

12 We got a call for a possible robbery
13 suspect at [REDACTED], near [REDACTED], I
14 believe.

15 Q. After you got this call, what did you
16 do?

17 A. I responded to the location, as well as
18 did many others.

19 Q. And what did you see when you responded
20 to [REDACTED]?

21 A. When I got on the scene, they had
22 already detained the Defendant, Mr. Waiters.
23 They had handcuffed him and were bringing him
24 out to the roadway.

25 Q. And what happened when they were taking

1 him to the roadway? Did anything happen
2 after that?

3 A. Since he was detained, we contacted the
4 Greenville Sheriff's Office to try to get a
5 deputy, or deputies, to come out and handle
6 the situation. It was not a City case, but a
7 County case. My patrol car was the closest,
8 I guess, and we decided to put him in our
9 vehicle -- my vehicle.

10 Q. How long, approximately, was he in your
11 vehicle?

12 A. Twenty-five minutes thereabouts,
13 approximately.

14 Q. Your patrol vehicle, did that have an
15 in-car camera?

16 A. Yes, it did.

17 Q. And was it working properly that day,
18 June 10th, 2006?

19 A. Yes, it was.

20 Q. I am going to hand you what has been
21 marked as State's Exhibit 3. Can you tell
22 me what that is?

23 A. That is the video recording from my
24 patrol car's mobile vision camera.

25 Q. Have you reviewed this?

1 A. Yes, I have.

2 Q. Is this a fair and accurate repre-

3 sentation of what you saw June 10th, 2006?

4 A. Yes, sir.

5 Q. How do you know that?

6 A. I initialed it to show that I did watch

7 it.

8 Q. Now, I want to talk to you about -- you

9 said that the Defendant was in your patrol

10 car for twenty-five minutes?

11 A. Yeah -- approximately.

12 Q. Then where was he taken?

13 A. A deputy took him back out of the back

14 of my patrol vehicle and put him into his.

15 Q. And after he was taken to another

16 vehicle, what did you do?

17 A. I went back to my patrol vehicle and

18 watched the mobile vision camera, the audio,

19 we listened to it, at which time the

20 Defendant said some things on there.

21 Q. Can you tell me what he says on this

22 DVD?

23 A. There are a multitude of things that he

24 did say. Once he was questioned there, he

25 did -- Officer Smith notified him that he was

1 being detained once again, and this time it
2 was on record, that he was being detained but
3 that the City did not have any charges on
4 him. I told him myself that I was not asking
5 him questions, that that wasn't my job at
6 that point in time. We were just waiting for
7 the County deputies to get on the scene to
8 handle the County's problems.

9 The next thing I heard, and you're going
10 to have to excuse me because some of this is
11 vulgar language -- so I apologize about that.

12 He said, "you called the police, you
13 snitching-ass bitches."

14 Q. Where on the video, if you recall, did
15 he say that?

16 A. I believe that it was a mark number,
17 06390. I didn't write down the time.

18 Q. Was that towards the beginning, middle
19 or end of that ---

20 A. That was more in the beginning of the
21 taping.

22 Q. Now, did he say anything else in the
23 video?

24 A. Yes, sir. Amongst other things,
25 swearing and being upset, he said, uh, he

1 started whispering "refrigerator",
2 "refrigerator", "refrigerator",
3 "refrigerator". At first you can't hardly
4 even hear it but he gets louder, and he makes
5 comments about a refrigerator and "under the
6 Icehouse" or "where the Icehouse is at,
7 that's where it is at."

8 Q. On that day, June the 10th, 2006, do you
9 remember if this was a warm day?

10 A. Oh, yeah.

11 Q. And you had placed him in the back of
12 your patrol car?

13 A. (Affirmative nod).

14 Q. Do you remember if the windows were up
15 or down?

16 A. I believe my air-conditioning was going.
17 I usually leave the air-conditioner going.

18 Q. And you said that he said, starting
19 talking about Icehouse, refrigerator, things
20 like that.

21 A. Yes.

22 Q. And after you placed -- what did you do
23 after that?

24 A. Once I reviewed the video and he said
25 that the gun is in the refrigerator where the

1 Icehouse is at, he kept saying that, then --
2 trying to tell Lula this. He kept say "Lula"
3 the whole entire time, or sporadically.

4 I notified the deputy that we did not
5 ask him any questions and that he had uttered
6 in the back of my patrol vehicle the gun was
7 in the refrigerator where the Icehouse was
8 at.

9 Q. What did you do after that?

10 A. At which time the deputy, he -- uh, he
11 filled out a consent to search form, at which
12 time I went in with him and ---

13 Q. What did you find?

14 A. We found a gun in the refrigerator,
15 where the Icehouse was at.

16 MR. WEBB: Thank you, Officer
17 Hamilton. No further questions. One thing,
18 Your Honor, I do want to place State's
19 Exhibit 3 into evidence.

20 THE COURT: All right.

21 MR. SULLIVAN: No objection,
22 Your Honor. I've got a copy of it.

23 (SO ENTERED AS STATE'S EXHIBIT 3)

24 THE COURT: Is that tape twenty
25 minutes or so?

1 MR. WEBB: Twenty-five, if you
2 want to take a break.

3 THE COURT: Let's take a short
4 break. Ladies and Gentlemen, I will let you
5 go back to your jury room. Then when we come
6 back, we will be able to play the tape for
7 you.

8 Let me remind you, don't discuss the
9 case with each other. This is not the time
10 to do that. You will have an opportunity to
11 discuss the case when all the evidence is in.
12 During the course of the trial is not the
13 time.

14 Take a short break and we'll call
15 you back in just a few minutes.

16 (JURY OUT @ 12:21 P.M.)

17 THE COURT: Officer, you can step
18 down. Of course, do not discuss your
19 testimony with anybody during the break.

20 THE WITNESS: Yes, sir.

21 MR. WEBB: Yes, Your Honor.

22 THE COURT: Planning-wise, are you
23 going to have any other witnesses?

24 MR. WEBB: No, sir, this is my
25 last one.

1 MR. SULLIVAN: Run the video.

2 MR. WEBB: (Affirmative nod), run
3 the video and then rest.

4 THE COURT: Your cross-examination
5 of him?

6 MR. SULLIVAN: It will be short.

7 THE COURT: Probably be time to
8 take a lunch break then and then you'll be
9 ready to go. Let's take a short break.

10 (BRIEF RECESS)

11 MR. WEBB: Your Honor, one last
12 thing. Can the officers be excused, except
13 for Officer Hamilton?

14 THE COURT: An objection to
15 all the officers being excused, Mr.
16 Sullivan?

17 MR. SULLIVAN: The first
18 officer, Officer Phillips, I may want him.

19 THE COURT: Officer Phillips, if
20 you will remain.

21 OFFICER PHILLIPS: Yes, sir.

22 THE COURT: Have you got every-
23 thing set up?

24 MR. WEBB: Yes, sir.

25 THE COURT: All right. Bring in

1 the jury.

2 (JURY IN @ 12:24 P.M.)

3 THE COURT: Thank you, Ladies
4 and Gentlemen. Mr. Webb, you may continue.

5 MR. WEBB: Your Honor, at this
6 time the State would like to publish State's
7 Exhibit 3 to the jury.

8 THE COURT: Without objection.

9 MR. WEBB: If at any time you
10 can't hear, please raise your hand -- (video
11 tape, State's Exhibit 3, being played before
12 the jury).

13 (VIDEO, COURT'S EXHIBIT 3)

14 MR. WEBB: Your Honor, I have no
15 further questions at this time.

16 THE COURT: Cross?

17 MR. SULLIVAN: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. SULLIVAN:

20 Q. Officer, this is a technique that you'-
21 all use. When he was placed in the car, he
22 was under investigative detention, not under
23 arrest; is that correct?

24 A. That's correct.

25 Q. Then when you activate the audio, he

1 doesn't know that; does he?

2 A. If he looks up at the front of my
3 vehicle, yes, sir, he does know that.

4 Q. Does the average person know to do that?

5 A. (No response).

6 Q. Did you tell him that you were going to
7 activate the video and that he would be, the
8 sound and all?

9 A. No, sir.

10 Q. Now, in your experience in cases, is
11 fleeing away from the officer an indication
12 of possible guilt?

13 A. Fleeing is someone who is fleeing. It
14 can be considered "guilt", I guess you could
15 say, if that's what you want to call it.

16 Q. When you got there, Officer Smith had
17 him in cuffs?

18 A. Yes, sir.

19 Q. How did he appear to you? Was he
20 struggling, fighting?

21 A. No, sir, he was not struggling until I
22 arrived on the scene.

23 Q. Did you see what he was doing?

24 Did he seem out of breath?

25 Did he seem drunk to you or anything?

1 A. I can't recall if he was intoxicated or
2 not. Out of breath? Maybe.

3 Q. Upset about being arrested, though,
4 obviously?

5 A. Uh, -- like I said, I can't recall.

6 Q. But you would say that he was obviously
7 a ---

8 A. Upset, yeah.

9 Q. --- little upset that he was being
10 arrested for a robbery?

11 A. Yes, sir. The vulgarity and, I guess,
12 that's how you could describe it.

13 Q. Now, you've dealt with on-the-street
14 type stuff?

15 A. (No response).

16 Q. You've worked the street before?

17 A. (No response).

18 Q. This kind of call is not unusual, is it?

19 MR. WEBB: Objection, Your Honor.
20 I think that's speculation..

21 THE COURT: I will overrule the
22 objection and allow him to answer it, if he
23 can.

24 THE WITNESS: (No verbal
25 response).

1 CROSS EXAMINATION CONTINUED

2 BY MR. SULLIVAN:

3 Q. The language that you heard on the tape
4 is not unusual on the street, out in the
5 community, is that correct?

6 A. Well, when I walk downtown I don't hear
7 that kind of language.

8 Q. You get that kind of regular exposure at
9 the mall.

10 A. At the mall?

11 Q. Yes.

12 A. I would be quite offended if I heard it
13 at the mall, but it -- it depends. I don't
14 understand what you're trying to get at. I'm
15 sorry.

16 Q. Okay.

17 MR. SULLIVAN: I have nothing
18 further, Your Honor.

19 THE COURT: Any redirect?

20 MR. WEBB: Nothing from the
21 State, Your Honor.

22 THE COURT: Thank you, Officer.
23 You may step down.

24 (WITNESS STEPS DOWN)

25 MR. WEBB: Your Honor, at this

1 time the State rests.

2 THE COURT: Ladies and Gentlemen,
3 I think we have reached a good time to take a
4 lunch break. I believe that we are overdue
5 for a lunch break. So we will take a break
6 now. I am going to ask you to be back at
7 2:30. That will give you a little over an
8 hour to find a bite to eat.

9 You may choose to have lunch with
10 some of your fellow jurors, you may meet some
11 business associates or family members. It
12 would be inappropriate for you to discuss
13 this case with any of those individuals.

14 You've made a commitment to the
15 court and to these parties, particularly, to
16 make a decision from what you hear on the
17 witness stand, the evidence, the law and
18 nothing else. So it would not be appropriate
19 for you to discuss this with any of your
20 family members or your fellow jurors. You
21 are only to discuss it with all the jurors
22 when you're back in the jury room after the
23 case is completed.

24 I wouldn't suspect that while you
25 are out and about that anyone would approach

1 you about discussing the case, asking you
2 questions or want to get information from
3 you. If that were to happen, please explain
4 that you can't talk about the case, that
5 you've been instructed by me not to do that.

6 If a person were to persist in
7 wanting to share information with you or to
8 ask you questions, please excuse yourself as
9 quickly as you can. If you have the name of
10 that individual, please report it back to us
11 and we will certainly take care of that
12 matter.

13 Have a good lunch, Ladies and
14 Gentlemen, and we will see you back at 2:30.

15 (JURY OUT @ 1:15 P.M.)

16 THE COURT: Is there anything that
17 we need to take care of before we ---

18 MR. SULLIVAN: Do you want me to
19 make the Motion now or after lunch?

20 THE COURT: You can do it now if
21 you'd like.

22 MR. SULLIVAN: Judge, I move
23 for a directed verdict or acquittal on the
24 State's case. The only people that know or
25 who claim what happened would be the three

1 ladies who testified and their testimony is
2 all out of whack.

3 I mean, you have some of them seeing
4 laser beams. One of them said they all saw
5 it. Another one said that they never saw a
6 beam.

7 One has him holding the pistol down
8 by his side the whole time and another girl
9 has it in her face and her chest.

10 One girl says that they are -- that
11 she is going to take them and then she was
12 going to Charleston. Others say they were
13 all going to Charleston.

14 Then two of the girls testified
15 about a chase. There's not an officer who
16 has appeared in this courtroom, any of the
17 officers that have been called, who has
18 talked about this man running from anybody.

19 I think if you look at it all that
20 it is overwhelming that this is a fabricated
21 story. I move for a directed verdict.

22 THE COURT: All right. Thank you,
23 Mr. Sullivan. As you are well aware, the
24 standard that I have to look at is whether
25 there is any evidence, direct evidence or

1 circumstantial evidence, as to whether or not
2 guilt tends to be proved. I believe it to be
3 a jury issue, that they will have to make
4 that determination. I respectfully deny your
5 Motion.

6 MR. SULLIVAN: Thank you, Your
7 Honor.

8 THE COURT: Any other Motions be
9 made?

10 MR. SULLIVAN: Nothing from the
11 Defense, Your Honor.

12 MR. WEBB: Your Honor, just one
13 thing from the State that we will reserve
14 until after lunch. It's not a Motion but a
15 clarification that the victims can sit in the
16 courtroom after lunch?

17 MR. SULLIVAN: That's fine with
18 me as long as they're not going to be called
19 back on rebuttal.

20 THE COURT: Yes, if you are not
21 going to call them back, they can -- do you
22 anticipate any of them being called back on
23 rebuttal? If so, they need to remain
24 sequestered. I know it's hard for you to
25 make that decision now.

1 MR. WEBB: Even if there is the
2 slightest possibility, we will keep them
3 outside.

4 THE COURT: Okay. Perhaps now --
5 I realize that you need a little longer to
6 talk to your client, but this might be a good
7 time to -- is there any issues as far as
8 record of the Defendant that ---

9 MR. SULLIVAN: He has one charge
10 of beer buying and a conviction several years
11 ago for the possession of heroin.

12 THE COURT: All right.

13 MR. SULLIVAN: If they want to
14 use that, that's no problem. It's not close
15 enough to this type situation to be highly
16 prejudicial.

17 THE COURT: Mr. Waiters, if you
18 would, please come forward. I want to make
19 sure that you understand your rights about
20 testifying.

21 DEFENDANT: (Complies)

22 THE COURT: You will have an
23 opportunity over the lunch break to talk your
24 counsel. If you would, please raise your
25 right hand. Do you swear or affirm that the

1 testimony that you're about to give will be
2 the truth, and nothing but the truth, so help
3 you God?

4 DEFENDANT: Yes, sir.

5 THE COURT: Mr. Waiters, I need to
6 make sure that you understand certain rights.
7 I am sure that you've gone over this with
8 your attorney, but I want to be satisfied in
9 my own mind and on the record that you
10 understand these rights.

11 We've reached the stage of the case
12 where you have the right to present a defense
13 if you chose to. You also have a right under
14 our Constitution, particularly the United
15 States Constitution, the Fifth Amendment,
16 that says no person can be compelled in a
17 criminal case to be a witness against
18 himself.

19 Of course, this means that you can't
20 be required to testify. You can testify on
21 your own behalf if you want to, but nobody
22 can make you testify. You have that personal
23 right to make that decision and you can waive
24 if you want to or you could claim the
25 protection of that right to not testify.

1 If you do decide to testify, Mr.
2 Waiters, you would be subject to the same
3 rules that govern other witnesses who
4 testify. You would be examined, cross-
5 examined on any relevant issues in the case.
6 If you have a conviction involving dishonesty
7 or false statement or a crime punishable by
8 imprisonment for more than one year and the
9 court determines that the probative value of
10 admitting this evidence outweighs any
11 prejudicial effect to you, the solicitor
12 would be able to attack your credibility by
13 introducing your record.

14 If you decide to testify, Mr.
15 Waiters, that will have to be a decision that
16 you voluntarily, knowingly, intelligently and
17 freely make with the knowledge of the
18 protections that you have under the Fifth
19 Amendment to the Constitution and of the
20 consequences that may happen if you choose to
21 testify.

22 Now, you may choose not to testify.
23 If you were to do that, I would instruct the
24 jury that they couldn't give the fact that
25 you did not testify any consideration

1 whatsoever, and that there would be no
2 prejudice to you because you did or did not
3 testify.

4 The decision whether to testify or
5 not is left entirely up to you. You can talk
6 with your friends, family, associates, your
7 attorney, all those people, but the final
8 decision will have to be yours and yours
9 alone to decide whether you want to testify
10 or not.

11 If you -- do you understood what
12 I've explained to you, Mr. Waiters?

13 DEFENDANT: Yes, sir.

14 THE COURT: Do you have any
15 questions of me about those rights as I have
16 explained them to you?

17 DEFENDANT: No, sir

18 THE COURT: You have discussed
19 this matter with your lawyer already?

20 DEFENDANT: Yes.

21 THE COURT: You certainly will
22 have more time to talk with your lawyer over
23 the lunch break. I want to make sure that
24 you understand those rights and when we get
25 ready to start back this afternoon, you can

1 let us know what you wish to do.

2 DEFENDANT: Yes, sir.

3 THE COURT: All right. Thank you
4 very much, Mr. Waiters.

5 MR. SULLIVAN: Thank you, Your
6 Honor.

7 THE COURT: All right, we will be
8 at-ease until 2:30.

9 (LUNCH RECESS 1:20 - 2:30 P.M.)

10 THE COURT: Are we ready to
11 proceed?

12 MR. SULLIVAN: Defense is ready,
13 Your Honor.

14 THE COURT: Are you going to put
15 up a defense?

16 MR. SULLIVAN: Yes, sir, I am.
17 If you want to talk to him now, right quick,
18 he plans to take the stand.

19 THE COURT: All right. Mr.
20 Waiters, again you understand the discussion
21 that we had before the break?

22 DEFENDANT: Yes, sir.

23 THE COURT: And you decided that
24 you do want to testify; is that right?

25 DEFENDANT: Yes, sir.

1 THE COURT: All right. You didn't
2 have any other questions about what we went
3 over before the lunch break?

4 DEFENDANT: No, sir.

5 THE COURT: All right, bring the
6 jury in.

7 (JURY IN @ 2:39 P.M.)

8 THE COURT: Mr. Foreman, Ladies
9 and Gentlemen, we are ready to proceed with
10 the case. Mr. Sullivan, ---

11 MR. SULLIVAN: Thank you, Your
12 Honor. Defense calls Lula Mae Robinson.

13 (WITNESS TAKES STAND)

14 LULA MAE ROBINSON, being
15 duly sworn to tell the truth, the whole truth
16 and nothing but the truth, testified, as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. SULLIVAN:

20 Q. Speak up, Lula, so that the last person
21 over here can hear you. Okay?

22 A. Lula Mae Robinson.

23 Q. Where do you reside, Ms. Robinson?

24 A. [REDACTED] (phonetic) Street.

25 Q. In Greenville?

1 A. Greenville, South Carolina.

2 Q. Lula, you have not been in the courtroom
3 but we've talked, you and I talked about this
4 the other day, haven't we?

5 A. Yes.

6 Q. And I subpoenaed you to be here?

7 A. Yes.

8 Q. So you had to be here or the sheriff
9 would have come got you?

10 A. Yes.

11 Q. Now, this involves a card game.
12 Basically the people involved were Cora
13 Griffith, Deon Griffith, and Erica Cheeks.
14 Do you know these people, those three girls?

15 A. Yes, I know them but mostly by nick-
16 names.

17 Q. Whose nickname is whose?

18 A. The darkest one is Lynette, that's the
19 only thing I know. And Cora, and I know her
20 name is Deon.

21 Q. All right. So Erica is Lynette?

22 A. Okay.

23 Q. Do you know the Defendant, James?

24 A. Yes.

25 Q. James Waiters?

1 A. (Affirmative nod).

2 Q. How do you know this group of people?

3 A. I was introduced to them through a
4 friend of mine, we all used to have card
5 games and they used to have -- I didn't
6 really care much about going to these games
7 but ours always be different because they
8 didn't play for money. They just had a tip
9 book and they'd run them and whoever get the
10 book, that's who would get the money. You
11 just got tips when you won, you didn't get no
12 money at that particular time.

13 Q. But this card game was a game called
14 Tunk?

15 A. Yeah.

16 Q. And it would be at different people's
17 houses?

18 A. Yes.

19 Q. Going back, I think it would have been a
20 Friday, June the 9th of 2006, into Saturday,
21 which was June 10th, do you remember the
22 events around that day when James got
23 arrested and all?

24 A. (Affirmative nod).

25 Q. Where had you'all been the night before?

1 A. We started at James' house.

2 Q. Who is "we"?

3 A. It was my daughter, my grandson, James,
4 Lynette she came over -- it was in the
5 morning when she came, and Cora and them came
6 in and I think they played a few hands
7 because we was playing two-two and they play
8 five-five.

9 Q. How long -- this was in the Jesse
10 Jackson Townhouses, Apartment [REDACTED]?

11 A. Yes.

12 Q. Okay, what happened then?

13 A. When Lynette got ready to go, she was
14 backing up about playing -- as a matter of
15 fact, she had called -- we called her that we
16 was playing cards over there, so she came
17 over.

18 She played and then she asked us about
19 coming to her game. So I was telling her
20 that I didn't have no money and, you know,
21 I really don't like to play for them books
22 anyway.

23 So later on, I borrowed some money from
24 my grandson, we went over to her house.

25 Q. Now, when you ---

1 A. She came and picked us up.

2 Q. --- say "we" went over, who is "we"?

3 A. Me and James.

4 Q. You and James were at James' house?

5 A. We was at his house.

6 Q. Then Cora, -- I mean Erica, who you know

7 as Lynette, came and got you'all?

8 A. Yes.

9 Q. Okay. Then what happened?

10 A. She took us over there to they (sic)

11 house; her mother's house rather, that's who

12 they say it was. So we went over there and

13 we ---

14 Q. What part of town -- you were at the

15 Jesse Jackson town homes off of Laurens.

16 Where was the game, the new game that you'all

17 went to, where was that?

18 A. This was over there -- all I know is

19 Kingston Court, they stay over there, all by

20 Kingston Court and Lee Street Apartments.

21 Q. Is it more Watkins Street or Hampton, or

22 what part of town is it generally in?

23 A. No, from over there you would go, uh,

24 you would hit Cedar Lane coming out from over

25 there. All I know is that it is called "in

1 the creek."

2 Q. Okay. So Jesse Jackson is over here and
3 then you'all were over for this other card
4 game?

5 A. Across town.

6 Q. What happened then?

7 A. Okay, so we was in there playing cards
8 and everything. Normally when they come to
9 pick you up, they either -- you know, they
10 take you back home when you go to lay down.
11 So we go over there, played five, I lost my
12 little bit of money, so I got out and went in
13 the front room and went to sleep.

14 Another girl that was with us, a friend
15 of mine named Denise, she was with us ---

16 Q. Don't say what she said, because we
17 can't go into hearsay.

18 A. Okay, I know. See, I am just saying
19 that she was with us.

20 Q. Okay.

21 A. So we said -- she got out and she came
22 in the front room. So we woke up in awhile
23 and went outside. Afterwards, James came out
24 there and was talking to us, later on. I was
25 trying to get home because I got to take my

1 insulin, I'm a diabetic.

2 So James said, 'I'm going back in here,
3 try to win me some more money', you know,
4 like that. And I said, 'Well, I'm going to
5 have to go.'

6 So, okay, I got a ride with a friend of
7 mine over there on Lee Street, they was
8 coming down the street and we got a ride.

9 Q. What time of morning would you have left
10 there?

11 A. That was about -- I don't know the exact
12 time but we'd left from over there about 2:00
13 o'clock, so it had to be about 8:00 or 9:00
14 or somewhere along in there. I went to the
15 bus terminal and I caught a bus home. Denise
16 said that she caught a cab, I don't know what
17 she did but I caught the bus, so I was at
18 home.

19 Q. You got a ride from the game to the bus
20 station downtown and then you rode the bus
21 out to Jesse Jackson?

22 A. Yes.

23 Q. Okay. What happened then?

24 A. When I got home, later on James called
25 and he said, 'I need a ride.' And I said,

1 'Where you at?' He said, 'walking up
2 Washington Street.' So my daughter had came
3 down from Easley and I asked her would she
4 take me to pick him up and she said, why,
5 sure, we picked him up.

6 So when we took him home, he got out of
7 the car. We went across the street to a
8 friend's house and then I walked him (sic)
9 over to the friend's house, to his house.

10 So the police had some guy or something,
11 running after him. So I looked out the front
12 door and I said, 'the police out there', I
13 said, 'they got somebody', like that. Well,
14 the next thing I know, the police, one of
15 them walked around to the back. I say,
16 'Bubba, I feel the police coming in here, one
17 of them went around to the back door', like
18 that. He say, 'What?', you know like that.
19 So the next thing we know, one of them
20 knocked on the back and the other one knocked
21 on the front door.

22 Q. Whose door were they knocking on?

23 A. They was knocking on James' door.

24 Q. Okay.

25 A. So James walked out on the porch and

1 commenced to ask them what was going on.

2 They handcuffed him, asked him his name.

3 Then later on they came in the house,
4 and I was in there cleaning up the table
5 where a mess was left there.

6 So they asked me if there was anybody
7 else in the house. I told them that I didn't
8 know. So they went upstairs and a little
9 girl that they call Fats, and I don't know
10 what her real name is. She had went
11 upstairs and laid down on the bed.

12 Q. We don't need to stick around nothing --
13 she wasn't involved in this?

14 A. No.

15 Q. Okay. After James was placed in the
16 police car, did you have any conversations
17 with him?

18 A. Yes.

19 Q. Okay.

20 A. He was telling me "in there where the
21 Icehouse is", right? So I told him, I say,
22 'What? I can't go in there and get nothing
23 'cause the police is in there.' He was
24 talking about his gun, that's what he was
25 talking about. But I say, 'I can't go in

1 because the police is in there and they ain't
2 going to let me go in no house', because they
3 had the door like blocked, you know.

4 Q. Did you know that James had a gun?

5 A. Yes, he been having the gun.

6 Q. On the ride over to the game at
7 Lynette's and her mom's, did you notice James
8 having a gun then?

9 A. No, uh-uh, (negative gesture).

10 Q. When you picked him up the next morning,
11 how did he seem to you?

12 A. He was intoxicated.

13 Q. He was intoxicated?

14 A. Yes.

15 Q. Did you see evidence of a gun?

16 A. No.

17 Q. Did you see any money?

18 A. No.

19 Q. Did he show you any money?

20 A. No.

21 Q. And you'all, through these games, had
22 known these people before?

23 A. Yes. I have went to them a couple of
24 times, went over there and played with them
25 but -- and one time we went to a game.

1 Q. But you knew them, right?

2 A. Yeah. I know them. I mean, you know, I
3 don't "know them" know them, but I know them.

4 Q. And one of them stayed out there in
5 Jesse Jackson, near James?

6 A. Yes, right down the main drag.

7 MR. SULLIVAN: Please answer any
8 questions that Mr. Webb may have.

9 THE COURT: Cross?

10 CROSS EXAMINATION

11 BY MR. WEBB:

12 Q. Good afternoon, Ms. Robinson?

13 A. How you doing?

14 Q. Doing well. I want to take you through
15 this story again and ask you some questions,
16 just to clarify things.

17 A. Okay.

18 Q. So you started off at which residence,
19 playing cards?

20 A. At James'.

21 Q. At James' residence?

22 A. (Affirmative nod).

23 Q. How long did you play cards?

24 A. I think I only played, because we
25 started during the day we might have played

1 up into the morning. So that's when Lynette
2 has called and said they was playing cards --
3 it was in the morning then and she said she
4 was coming over. So when she got over there,
5 she asked us about she was having a game and
6 was she going to come. So when she left, she
7 called us. Right? And asked us was we
8 coming. So that's when ---

9 Q. That's when the two of you went over to
10 Lynette's, or Erica's, house?

11 A. Well, we didn't go right then, not right
12 then. She left and came back. She left and
13 came back and picked us up, that's what she
14 did.

15 Q. You went to Erica's house?

16 A. (Affirmative nod).

17 Q. Sat around?

18 A. (Affirmative nod).

19 Q. You didn't play any cards, though?

20 A. Her mother's house.

21 Q. You didn't play any cards?

22 A. Yes.

23 Q. Oh, you did play cards?

24 A. (Affirmative nod).

25 Q. How long did you play cards for?

1 A. Oh, I played -- I guess I was in there
2 about an hour or two. Wasn't long.

3 Q. And you said that you left at
4 approximately 8:00 or 9:00, is that right?

5 A. It was over in the morning. I am not
6 positive of what time it was.

7 Q. Was it dark outside?

8 A. No, it was daylight.

9 Q. It was daylight?

10 A. (Affirmative nod)..

11 Q. And when you went out, you saw James
12 coming back in the house; right?

13 A. Coming back? No.

14 Q. I thought you testified that he said
15 that he wanted to go back there and win some
16 money.

17 A. Yes, but I didn't say that he was coming
18 back into the house. He came out of the
19 house.

20 Q. Out of the house?

21 A. Yes. We was standing outside trying to
22 get a ride. Right? Because I had to go. So
23 James walked outside where we were -- right?
24 And that's when I said, 'well, I am going to
25 go home.' 'Well, I am going to go back in

1 here and see if I can win me some more
2 money.'

3 Q. So he went back into the house at that
4 time?

5 A. Yes.

6 Q. And you went to go home?

7 A. Yes.

8 Q. So you never saw him again until you
9 came back and picked him up; is that right?

10 A. Yes.

11 Q. How much time passed between the time
12 that you took the bus back to your house and
13 the time that you went to pick them up?

14 A. Okay, it was more like -- let's see
15 (mumbling to self) -- it wasn't that long,
16 might have been about an hour, probably.

17 Q. So for that hour, you were not over at
18 Erica mother's house, you were back over at
19 your house?

20 A. Yes.

21 Q. And that hour -- you said that you left
22 about 8:00 or 9:00 a.m., ---

23 A. Um-humm, (affirmative nod).

24 Q. --- so that hour would probably be from
25 9:00 to 10:00 a.m. that you were not there?

1 A. Um-humm.

2 COURT REPORTER: Was that a "yes"?

3 THE WITNESS: Um-humm,

4 (affirmative nod).

5 MR. WEBB: You need to speak up.

6 CROSS EXAMINATION CONTINUED

7 BY MR. WEBB:

8 Q. Now, just to clarify. When you left to
9 go on the bus, James said 'I am going back
10 in' to get some money?

11 A. No.

12 Q. To win money?

13 A. Um-humm -- yes.

14 Q. Then you went back home?

15 A. (Affirmative nod).

16 Q. An hour passed and you got a phone call?

17 A. Um-humm.

18 Q. You got the phone call, and how long did
19 it take you after you got the phone call to
20 go pick him up?

21 A. It didn't take no time because where we
22 staying at -- where I stay at is on [REDACTED]
23 Street in Nicholtown, at the time, and he was
24 right down below us at the old folks home or
25 something right there on Washington Street.

- 1 Q. Okay.
- 2 A. He was walking up Washington.
- 3 Q. Okay. So then you drove him home?
- 4 A. No, I didn't drive him, my daughter did.
- 5 Q. Your daughter drove him home?
- 6 A. (Affirmative nod).
- 7 Q. And you said that he appeared intoxicat-
- 8 ed, is that right?
- 9 A. Yes.
- 10 Q. What were the signs of intoxication?
- 11 Did you smell ---
- 12 A. You could smell it.
- 13 Q. Was he acting irrational, not himself?
- 14 A. No.
- 15 Q. But you could tell that he was
- 16 intoxicated?
- 17 A. Sure.
- 18 Q. Okay. So your daughter, you and James
- 19 went back to [REDACTED] in the Jesse
- 20 Jackson town homes?
- 21 A. Yeah.
- 22 Q. Okay. Then you dropped James off, the
- 23 Defendant off; right?
- 24 A. Um-humm.
- 25 Q. Then where did you go?

1 A. It's a friend of mine that lives across
2 the street, named Juanita. We sat on the
3 porch. I got up and walked over there to
4 James' house, and I said 'this house is
5 messed up'. It had beer cans and stuff,
6 needed cleaned up. That's where we had been
7 playing cards at, and it hadn't been cleaned
8 up. So that's when I had looked out the door
9 and the police was out there and they was
10 running at some guys.

11 Q. Let me stop you right there.

12 A. Okay.

13 Q. You said that they were running at some
14 guys.

15 A. Some more guys.

16 Q. Some more guys, not the Defendant?

17 A. No, not James.

18 Q. But other people, they were chasing
19 other individuals?

20 A. Yeah. Somebody had called them and -- I
21 forget what they said he had doné, but anyway
22 they was trying to catch him.

23 Q. Okay. So you saw police officers chase
24 after some people around [REDACTED] in the
25 Jesse Jackson Townhouses.

1 A. Yeah.

2 Q. Then after that you saw the police go
3 up to James' girlfriend's apartment?

4 A. No, they went around to the back. One
5 walked around to the back. That's when I
6 tell James, I say, 'the police out there.'
7 I say, 'I believe they coming in here'
8 because one of them had went to the back
9 door. Later on, one knocked at the back and
10 one of them knocked at the front.

11 He went to open the door and when he
12 stepped out onto the porch, they handcuffed
13 him and asked him what his name was. So he
14 told them.

15 Q. Then you saw the officers take James to
16 the patrol car, right?

17 A. Um-humm.

18 Q. Put him in the back seat?

19 A. Yes.

20 Q. Then you walked over to the patrol car,
21 is that right?

22 A. Yeah, I was standing on the sidewalk and
23 the car was right here.

24 Q. How far away from the car were you on
25 the side?

1 A. About like this right here -- like here
2 is the sidewalk right there and I'm standing
3 on the sidewalk.

4 Q. It was a hot day that day, wasn't it?

5 A. Hummm.

6 Q. Do you remember?

7 A. It wasn't that hot.

8 Q. Now, you were just a few feet away from
9 the car, is that what you just said?

10 A. Um-humm.

11 Q. And you were talking with the Defendant?

12 A. He was telling me about the Icehouse,
13 that it was in there where the Icehouse is.

14 Q. Now, what you're saying is that the
15 Defendant just got put in custody, he's in
16 handcuffs.

17 A. Um-humm.

18 Q. And he is asking you to get Icehouse?

19 A. No. No, he didn't ask me to get no
20 Icehouse. He was telling me that the gun was
21 in there where the Icehouse was, that's what
22 he was saying.

23 Q. He was saying that the gun was in ---

24 A. Where the Icehouse is.

25 Q. In the refrigerator?

1 A. I guess so.

2 Q. Did you ever go and look?

3 A. No.

4 Q. You said 'no', because the police were

5 already looking in the apartment. Right?

6 A. No, they ---

7 Q. They weren't ---

8 A. --- wasn't in the apartment then. They

9 had came out of the apartment. They were

10 just standing at the door.

11 Q. But later they went into the apartment,

12 right?

13 A. When April came.

14 Q. Yes. They had been in, the City had

15 been in first because that's who put him in

16 the police car until the County came. He was

17 already in the police car.

18 Q. Didn't you think that it was odd that

19 the Defendant didn't talk to you about

20 anything at all but to tell you that his gun

21 was in the Icehouse?

22 A. (No response).

23 Q. Didn't you think that was odd or

24 strange?

25 A. That he said it was in there where the

1 Icehouse was?

2 Q. Yes.

3 A. Strange?

4 Q. Yeah.

5 A. What's strange about it?

6 Q. Why would he say that to you and not
7 other -- anything else, normal conversation.
8 Why would he tell you about the gun in the
9 Icehouse?

10 A. Well, he probably didn't want to get
11 caught with the gun, if it is not registered.

12 MR. WEBB: No further questions.

13 THE COURT: Redirect?

14 MR. SULLIVAN: Just one.

15 REDIRECT EXAMINATION

16 BY MR. SULLIVAN:

17 Q. When you say that they were chasing
18 somebody, this was not James that they were
19 chasing?

20 A. No. No, it was some other guys,
21 something that they had did and they was
22 after them, and they flagged them down up on
23 the corner, that's what my daughter was
24 telling me, that the they flagged the police
25 down and told them that -- that's when they

1 came ---
2 Q. But no one was chasing James, right?
3 A. No. James went out the door on his own.
4 MR. SULLIVAN: Nothing further,
5 Your Honor.
6 THE COURT: Thank you, ma'am. You
7 may step down.
8 (WITNESS STEPS DOWN)
9 THE COURT: Call your next
10 witness.
11 MR. SULLIVAN: We call Mr. James
12 Waiters.
13 (WITNESS TAKES STAND)
14 JAMES E. WAITERS, JR., being
15 duly sworn to tell the truth, the whole truth
16 and nothing but the truth, testified, as
17 follows:
18 DIRECT EXAMINATION
19 BY MR. SULLIVAN:
20 Q. Speak up, James, when I ask you the
21 questions so that we can hear you.
22 A. James Waiters.
23 Q. How old are you, James?
24 A. Sir?
25 Q. How old are you?

- 1 A. Thirty-four years old, sir.
- 2 Q. How old?
- 3 A. Thirty-four.
- 4 Q. Where do you live?
- 5 A. Right now I am staying with my girl-
- 6 friend at [REDACTED].
- 7 Q. That is April Woods?
- 8 A. April Woods.
- 9 Q. Is that the same April Woods, whose
- 10 apartment you'all were at when the card game
- 11 happened and all?
- 12 A. Same girl but a different apartment.
- 13 Q. Apartment [REDACTED].
- 14 A. Yes.
- 15 Q. Are you employed?
- 16 A. Sir?
- 17 Q. Are you employed?
- 18 A. Yes, sir.
- 19 Q. Where do you work?
- 20 A. I work at the Carolina First Center.
- 21 Q. Carolina First Center?
- 22 A. (Affirmative nod).
- 23 Q. Do you have any children?
- 24 A. Yes, sir, I have five kids.
- 25 Q. Now, you've been in the courtroom and

1 heard the testimony.

2 A. (Affirmative nod).

3 Q. As best as you can remember, tell us
4 about the relationship with Erica, Cora, Deon
5 and this card game.

6 A. It's just a card game, just a card game
7 relationship. Every Friday we get together
8 and play cards. Gamble. That's what we do,
9 what we used to do.

10 Q. At different houses?

11 A. Yeah, at different houses. We have, you
12 know, wherever they decide to have a game,
13 that's where we play cards.

14 Q. Now, on this particular night, just go
15 through it from the time that you hooked up
16 with these people. What happened?

17 A. Well, basically it started -- it started
18 at my girlfriend's apartment where I was
19 staying at the time. We -- it wasn't even
20 like a game, you know. We just started
21 playing, you know, people started showing up
22 and we started playing. So we sat there and
23 played, played, played. People came, more
24 people came.

25 Erica came, and she sat and played for a

1 while. Then she informed us that she had a
2 game and that if we wanted to go to the game
3 to let her know.

4 We played, I want to say for about
5 three or four hours before she decided that
6 it was time for her to go and start her own
7 game. She asked us if we wanted to come and
8 we wasn't sure right then whether we was
9 going to go. So when we talked to her again
10 we told her that we didn't have a ride.

11 Q. So you talked with her -- she had left?

12 A. Yes, she left. As a matter of fact, she
13 called me back. She called me and asked me
14 if we would still come to her game.

15 Q. Who is "we"?

16 A. Me and Lula.

17 Q. Okay.

18 A. She asked me and Lula if we were going
19 to come to her game. So at that time we
20 didn't have a ride to go and so we asked her
21 if she was going to come get us, then we
22 would go. She came to my apartment, picked
23 me and Lula up and took us someplace. I
24 don't even know an area like that. I don't
25 know the areas like that.

1 Q. You're not familiar with that part of
2 town?

3 A. No, sir.

4 Q. So you got there and then what happened,
5 from then on?

6 A. From then on it was more people, started
7 all over. More people, new people came to
8 play cards. We all sat down, there probably
9 was about fifteen to twenty people in the
10 house at the time. We sat down and played
11 cards throughout the night, and basically
12 that's what happened.

13 When it was time to go, Lula was leaving
14 -- they still was playing cards. You know,
15 we still was playing cards. I walked Lula
16 out because Lula said that she was gone. I
17 sit and talked to her a minute on the porch
18 and then I came back in. They was still
19 playing.

20 I mean, I can't get into why they made
21 up the story that they made up but ---

22 Q. Don't get into that. So Lula left, went
23 on home and you stayed?

24 A. Yes.

25 Q. At this point, did -- Lula talked about

1 cleaning up beer cans and all this kind of
2 thing. Do you'all drink at these things?

3 A. Oh, yes, sir.

4 Q. So you'all were drinking and gambling?

5 A. Drinking, gambling. Like a card party,
6 a normal card party.

7 Q. Okay. So how did you leave?

8 A. I walked.

9 Q. Where was your car?

10 A. My car was in the shop. I didn't have
11 transportation. I was brought to the
12 residence by Lynette.

13 Q. How did you know which way to go?

14 A. I just started walking.

15 Q. And how did you get home eventually?

16 A. Lula. I called Lula when I got to
17 Washington Street, and she picked me up.

18 Q. Is that down near the train station, in
19 those senior apartments down there near the
20 Post Office?

21 A. Yes, sir.

22 Q. What happened after you got home?

23 A. After I got home, we was in the house
24 for a minute and I -- I was about to start
25 cleaning up before Lula said that, said

1 something about cleaning up. But she got to
2 it first. I got in there and was trying to
3 straighten up the place a little bit.

4 That's when the whole police incident
5 happened, them coming to the door and I'm
6 walking out like, you know, 'What's
7 happening?' They ask me my name, put me in
8 the police car. From there, I was in the
9 blind about everything.

10 Q. You heard some testimony that you ran
11 from them, that they hollered at you. Did
12 you run from the police out there that
13 morning?

14 A. No, sir.

15 Q. You were in the house when they got
16 there and knocked on the door?

17 A. Yes, sir, I was in the house.

18 Q. Now, when you were in the police car,
19 did you know that you were being -- that the
20 audio was running?

21 A. No. I could see the camera but I didn't
22 know the audio was on.

23 Q. You didn't know what you were saying was
24 being heard -- when you were cussing, you
25 didn't think anybody would hear it?

- 1 A. Right. I was upset.
- 2 Q. You were upset?
- 3 A. Yes, sir.
- 4 Q. Now, about the gun, there is testimony
- 5 that you told Lulu about the gun in your
- 6 refrigerator.
- 7 A. Yes, sir.
- 8 Q. Whose gun was that?
- 9 A. That was my gun.
- 10 Q. Was that the gun that they brought in
- 11 today? They said they found it in the
- 12 refrigerator. Is this it?
- 13 A. Yes, that is my gun.
- 14 Q. How long had you had that gun?
- 15 A. I'd had that gun for about two years.
- 16 Q. Did you have a permit to carry it?
- 17 A. No, sir.
- 18 Q. You are over 21, though, aren't you?
- 19 A. Yes, sir.
- 20 Q. Now, why did you want somebody to get
- 21 the gun out of the apartment?
- 22 A. Well, it was my girl's apartment, it
- 23 wasn't mine.
- 24 Q. You say your girl, whose name was on the
- 25 lease?

- 1 A. April Woods. My name was not on the
2 lease. You know, I just stayed there from
3 time to time. Which it was her apartment and
4 I didn't want her to be in trouble by the gun
5 being in there, not that I was hiding the gun
6 because of any robbery.
- 7 Q. So if they found a gun in there, they
8 could evict her?
- 9 A. Yes, sir.
- 10 Q. It'd be a violation of the lease?
- 11 A. Yes, sir.
- 12 Q. Did you have the gun during the night at
13 your house, playing cards?
- 14 A. At my house?
- 15 Q. Yes.
- 16 A. It was there.
- 17 Q. In the refrigerator?
- 18 A. Yeah, it was there the whole time in the
19 refrigerator.
- 20 Q. When you rode with Lynette/Erica, did
21 you take the gun with you to their house?
- 22 A. No, sir.
- 23 Q. Did you ever leave your place and come
24 back for the gun?
- 25 A. No.

1 Q. And in the video, you had on a loose
2 white tee-shirt that night? Is that what you
3 were wearing?

4 A. Yes, I had on a white shirt, a white
5 collared shirt.

6 MR. SULLIVAN: Answer any
7 questions that Mr. Webb might have.

8 CROSS EXAMINATION

9 BY MR. WEBB:

10 Q. Mr. Waiters, I just want to ask you a
11 few questions. All right, I am going to go
12 through the story here. You were playing
13 cards at your house, right?

14 A. Yes, sir.

15 Q. For a couple of hours?

16 A. Maybe three or four hours.

17 Q. Then you decided to go along with Ms.
18 Robinson, to go over to Erica's mother's
19 house and play cards, as well?

20 A. Right.

21 Q. What time did you get over there?

22 A. What time did I get?

23 Q. To Erica's mother's house?

24 A. It was probably, I want to say about
25 2:00 in the morning.

- 1 Q. And how long did you stay over there?
- 2 A. I stayed until everything was over,
- 3 maybe -- probably about 8:00 or 9:00 in the
- 4 morning.
- 5 Q. So you stayed there and Ms. Robinson
- 6 left about an hour before you left; is that
- 7 right?
- 8 A. I want to say about an hour.
- 9 Q. About an hour?
- 10 A. About an hour, (affirmative nod).
- 11 Q. So for that hour's time period, it was
- 12 you, Cora Griffith, Deon Griffith, Erica
- 13 Cheeks, is that correct?
- 14 A. And some more people.
- 15 Q. There were more people?
- 16 A. Yes, there was more people in the house.
- 17 Q. At 9:00 a.m., there were more people
- 18 than just ---
- 19 A. Yeah, there was.
- 20 Q. Okay. So for that hour you were there
- 21 with the three victims and possibly more
- 22 people?
- 23 A. (Affirmative nod).
- 24 Q. Then you left the house, right?
- 25 A. (Affirmative nod).

1 Q. About 9:00 or 10:00, is that right?

2 A. Yeah.

3 Q. You start walking?

4 A. (Affirmative nod).

5 Q. You walked for how long before you got
6 picked up?

7 A. I am going to say about thirty-five,
8 forty minutes.

9 Q. And you didn't have this gun on you at
10 the time that you went over to Erica's
11 mother's house?

12 A. No, sir.

13 Q. Not anywhere on you?

14 A. Nowhere.

15 Q. And you got picked up by Ms. Robinson
16 and taken to the Jesse Jackson Townhouses
17 where your girlfriend lived?

18 A. Yes.

19 Q. You were dropped off?

20 A. Right.

21 Q. How much time passed before you saw the
22 police?

23 A. It wasn't long, it would probably have
24 been around -- I want to say ten or fifteen
25 minutes.

1 Q. Okay. Were you out in front of your
2 apartment?

3 A. No, I was in the apartment.

4 Q. Your girlfriend's apartment?

5 A. Yeah, I was in the apartment. I never
6 was outside. When I got there, I went inside
7 the apartment.

8 Q. So ten or fifteen minutes and then the
9 police came?

10 A. Right.

11 Q. Started looking for you?

12 A. (No verbal response).

13 Q. Went to your girlfriend's apartment,
14 right?

15 A. Right.

16 Q. You answered the door?

17 A. I stepped out the door.

18 Q. Came out?

19 A. Yes.

20 Q. They told you that you were being placed
21 in investigative detention, right?

22 A. Right.

23 Q. Took you to the patrol car?

24 A. Right.

25 Q. Placed you in the back seat, right?

1 A. Right.

2 Q. You see a camera towards the front of
3 the car, right?

4 A. Right.

5 Q. And you didn't think that you were being
6 recorded, correct?

7 A. At that time it didn't matter, I was
8 upset about being detained.

9 Q. But you didn't think that you were being
10 recorded, correct?

11 A. It didn't matter to me.

12 Q. Just please answer the question. Did
13 you believe that you were being recorded?

14 A. No, I didn't believe.

15 Q. So you sat in the back of the patrol car
16 and you were here and watched the video,
17 heard the video that was played in court
18 today?

19 A. Right.

20 Q. On that video, in addition to other
21 choice words you called the victims
22 "snitching ass bitches"; correct?

23 A. Right.

24 Q. Snitching. In order for someone to
25 snitch, something has to have gone down.

1 Something has to -- some crime occurred for
2 them to be snitching, right?
3 A. Right.
4 Q. So that's why you called them "snitching
5 ass bitches"?
6 A. No, sir.
7 Q. So then later in the video, a few
8 minutes pass and you are still sitting there,
9 then you start talking to -- I guess Ms.
10 Robinson, who is out on the right side of the
11 car. Right?
12 A. Right.
13 Q. And you tell her to tell April, your
14 girlfriend, not to come home; right?
15 A. Right.
16 Q. Because you are afraid that they are
17 going to find the gun that they robbed the
18 victims with?
19 A. No.
20 Q. So you were trying for her not to come
21 home, is that right?
22 A. No, that wasn't my intention, for her
23 not to come home.
24 Q. You didn't tell Ms. Robinson -- you
25 didn't her to tell April not to come home,

1 so that they couldn't get a search warrant?

2 A. The officers were asking questions, I
3 was answering questions.

4 Q. But at this time on the video ---

5 A. I was being asked questions, too.

6 Q. Yeah, we heard the officer speak to you
7 on the video. We also heard you talking to
8 Ms. Robinson outside of the door. On the
9 video, isn't it correct that on the video you
10 said, 'Lula', or 'Ms. Robinson', whatever you
11 said, 'tell April not to come home, because
12 then they cannot get a search warrant.'

13 A. No.

14 Q. You didn't say that on the video?

15 A. Not in the words that you are saying.

16 Q. What did you say then?

17 A. I didn't say it like that.

18 Q. Well, tell me what you said.

19 A. I was being asked a question at that
20 time.

21 Q. By Ms. Robinson?

22 A. Yeah.

23 Q. So what did you tell Ms. Robinson?

24 A. She said, 'do you want me to call April'
25 and I said 'no.' The police already had the

1 information to call her.

2 Q. And you never said you don't want her
3 coming home so that they can't get a search
4 warrant? You never said that on the video?

5 A. They can't get a search warrant?

6 MR. SULLIVAN: Judge, the video
7 speaks for itself.

8 THE COURT: I will allow him to
9 ask the question, but just let him answer the
10 question before you ---

11 MR. WEBB: Oh, by all means.

12 THE COURT: Don't -- let him give
13 the answer and then you can answer a followup
14 question.

15 CROSS EXAMINATION CONTINUED

16 BY MR. WEBB:

17 Q. Did you say, 'Don't call April because
18 they can't get a search warrant'?

19 A. (No verbal response).

20 Q. A few minutes later, Ms. Robinson is
21 still on the side of the car; is that right?

22 A. Correct.

23 Q. Was she there pretty much the whole time
24 you were in that patrol car?

25 A. Pretty much.

1 Q. And you were still talking to her and
2 you talked about, and we've heard, "gun",
3 "Icehouse", "refrigerator".

4 A. Right.

5 Q. Again you're talking about the gun that
6 was later found by the deputies, in the
7 refrigerator, by the Icehouse?

8 A. (Affirmative nod), in the apartment.

9 Q. That the victims today identified as the
10 gun that you robbed them with?

11 A. They also identified a gun that had a
12 laser sight; right?

13 Q. That is not my question. So I -- I do
14 want to point out, Mr. Waiters, a bright
15 orange dot right there (indicating) on top
16 of the gun?

17 A. On top of the gun, yes, sir.

18 Q. Thank you. Now, Mr. Waiters, you've
19 been convicted of possession of heroin, is
20 that right?

21 A. Yes, sir.

22 MR. WEBB: That's all that I
23 have, Your Honor.

24 MR. SULLIVAN: No further
25 questions, Your Honor.

1 THE COURT: Thank you, sir. You
2 may come down.

3 (WITNESS STEPS DOWN)

4 MR. SULLIVAN: A very short
5 witness, Your Honor. I would like to call
6 back to the stand Deputy Phillips.

7 THE COURT: Officer Phillips, I
8 remind you that you are still under oath.

9 THE WITNESS: Yes, sir.

10 (WITNESS TAKES STAND)

11 JONATHON PHILLIPS, having
12 been previously sworn, testified as follows:

13 EXAMINATION

14 BY MR. SULLIVAN:

15 Q. Officer, earlier we referred to your
16 report, how it is important that you write
17 down what people tell you; is that correct?

18 A. Yes, sir.

19 Q. This is your report, a report that you
20 made of that first conversation with ---

21 A. Yes, sir.

22 Q. If you would look right here, and read
23 down that paragraph?

24 A. (Reading): They advised that they knew
25 the suspect for about a year and knew him by

1 the nicknames of "Bubba" and "Short Man".
2 They further advised me that the suspect
3 drives a blue Suburban and lives at [REDACTED]
4 [REDACTED] They are not sure how the
5 subject got there, said they didn't see any
6 vehicles. Suspect asked him if he could get
7 a drink before they left, suspect was invited
8 inside and was given tequila in a shot glass.
9 Suspect took a drink, then went to a bedroom
10 (sic) and witness Carrie Banks (phonetic) was
11 also inside the residence at this time."

12 Q. Then go ahead with the next part.

13 A. (Reading): "Suspect came out of the
14 bathroom with a black-in-color semiautomatic
15 handgun. Suspect was waving..." ---

16 Q. That's fine.

17 A. Okay.

18 Q. Then the reference to "I was told"-- if
19 you would read that part.

20 A. Okay, (reading): "I was told that a red
21 stream of light/laser came out of the
22 weapon."

23 Q. And this is a report that you based on
24 what they told you that morning?

25 A. That's correct.

1 Q. And you've been trained to take it down
2 the best you can remember, right on the spot;
3 right?

4 A. Yes.

5 MR. SULLIVAN: No further
6 questions.

7 MR. WEBB: Nothing, Your Honor.

8 THE COURT: Thank you, Officer
9 Phillips. You may step down.

10 (WITNESS STEPS DOWN)

11 MR. SULLIVAN: If he needs to
12 be excused, Your Honor, the Defense has no
13 objection.

14 THE COURT: Without objection,
15 you may be excused if you wish.

16 MR. SULLIVAN: The Defense
17 rests.

18 THE COURT: Anything in reply?

19 MR. WEBB: Nothing from the
20 State, Your Honor.

21 THE COURT: All right. Ladies and
22 Gentlemen, I am going to ask you to go back
23 to your jury room just briefly. We will now
24 be ready for the closing statements of the
25 attorneys and the instruction on the law.

1 There are a couple of matters that we need to
2 take care of before then. If you will, take
3 a short break and we will be ready to proceed
4 with the case. Don't discuss it at this
5 time. ,

6 (JURY OUT @ 3:16 P.M.)

7 THE COURT: Anything that we need
8 to take care of before we start our arguments
9 and the charge?

10 MR. SULLIVAN: Nothing from the
11 Defense. I would like about five or ten
12 minutes to get my thoughts together. Are you
13 going to waive opening?

14 MR. WEBB: Yes, I will waive
15 opening. That'll be fine.

16 THE COURT: We've got the verdict
17 form, which I will let both of you look at it
18 to see if we have anything on there that
19 might be offensive.

20 MR. WEBB: Judge, I do have one
21 request for charges. That ---

22 THE COURT: Let's look at this
23 just a minute and then we will talk about
24 charges.

25 MR. SULLIVAN: (Upon review),

1 we have no problem with the verdict form,
2 Your Honor.

3 THE COURT: All right.

4 MR. WEBB: (Upon review), that's
5 fine.

6 THE COURT: Mr. Webb, be glad to
7 hear from you on your request to charge.

8 MR. WEBB: Your Honor, due to the
9 testimony that the Defendant was intoxicated
10 when he left the residence of the victims, I
11 would request straightforward that intoxi-
12 cation is not a defense to criminal conduct,
13 the normal intoxication charge. I don't have
14 one before me because I didn't know that was
15 going to take place, but ---

16 MR. SULLIVAN: I am not going to
17 argue that, Your Honor.

18 THE COURT: Okay.

19 MR. SULLIVAN: I am not even
20 going to refer to it.

21 THE COURT: I might have a one-
22 line something along that line. If he is not
23 going to argue it; I may have it in there or
24 I may not. I may mention it.

25 Any other charge requests? I

1 certainly will instruct them on the statement
2 of prior crime, impeachment, burden of proof,
3 those matters. I think everything will be
4 covered.

5 MR. SULLIVAN: Yes, sir.

6 MR. WEBB: Yes, Your Honor.

7 THE COURT: All right. Let's take
8 a short break and we will ---

9 (BRIEF RECESS 3:20 to 3:30 P.M.)

10 THE COURT: Bring in the jury.

11 (JURY IN @ 3:30 P.M.)

12 THE COURT: Mr. Foreman, Ladies
13 and Gentlemen, we are now ready to proceed.
14 We are at that stage of the trial where the
15 attorneys will have an opportunity to address
16 you in their closing statements. Once again,
17 let me remind you that this is not evidence.
18 You've heard all the evidence that is going
19 to be presented in the case. But, by the
20 same token, I urge that you listen carefully
21 as these attorneys address you and give them
22 your attention because I am sure that they
23 have things to say to you that perhaps can be
24 of benefit to you in your deliberations.
25 Mr. Sullivan.

1 MR. SULLIVAN: May it please the
2 Court, Mr. Webb, Ladies and Gentlemen.

3 I will be brief. You'all have heard
4 the case. I think that there is not a whole
5 lot of things that I need to explain but
6 there are a few things that I'd like to talk
7 about.

8 We can agree on certain things. We
9 know that these people all knew each other.
10 They'd known each other for about six months
11 to a year. They played a game called Tunk, a
12 gambling game that -- entertainment. Like we
13 might play Bridge, they played Tunk.

14 Matter of fact, some of them lived
15 near each other, so these people were not
16 strangers. They played cards together, they
17 lived near each other.

18 That particular night, or day, the
19 game was at April's house, where James lived
20 at the time. There were a lot of people that
21 showed up and after a while Erica was there,
22 Lynette. She played a while and then she
23 left.

24 Before she left, she asked, 'do
25 you'all want to come to a game at my mom's

1 house?' They said that they might would but
2 they didn't have a way, so Erica/Lynette
3 comes back to Jesse Jackson, picked up Lula
4 and James and gave them a ride back over to
5 her mom's house. That game went on pretty
6 much all night. It's not really agreed what
7 time they got there, 2:00, 2:15 but in the
8 night into daylight.

9 Then this is where things get
10 squirrely. Probably one of two things
11 happened. I don't know. It's up to you'all
12 to determine what happened.

13 You have this story where James lost
14 money and wanted to get it back, I guess.
15 His story is that he won the money and they
16 were mad at him.

17 What we have, we are not out here
18 without some guideposts. First of all, the
19 officer gets there and he takes the report.
20 He has been an officer for many years and he
21 is trained to take down what people say.
22 The victims tell him that James was there,
23 they had been playing cards, all they knew
24 him as was "Bubba" or "Short Man".

25 They tell him that they were getting

1 ready to go to Charleston, at 9:15 to about
2 9:30 in the morning and he shows up and says,
3 'Will you'all give me a drink before you go?'
4 This is in the report. They go in and they
5 give him a shot of tequila in a shot glass.
6 It says in the report that he goes in the
7 bedroom and that he comes out of the bathroom
8 with a gun.

9 Then in the report it says that,
10 you know, that he kept the gun on Erica
11 pretty much most of the time. They didn't
12 mention in the report a gun with a red dot on
13 it. It says specifically that "a red beam of
14 light came out of the gun." That is a laser
15 light. I've guess we've all seen movies
16 where there's a laser beam of light that
17 comes from a gun. But in the report, it's
18 not a red dot, it's a "red beam of light
19 comes out of the gun."

20 Erica said that it was down by his
21 side all the time and she couldn't see it.

22 Dion says that he had it up to her
23 face, on her chest, waving it around like
24 this.

25 But, anyway, they see this "red beam

1 of light".

2 Then he leaves. They say that they
3 don't know how he got there, don't know how
4 he left.

5 Then they claim that when they go
6 back home, to Jesse Jackson right there in
7 the neighborhood where he lives, they see him
8 and say "that's the man that robbed us."
9 Then two of them say he's out in the yard
10 acting wild and crazy, saw the police and
11 took off running. Big chase. They didn't
12 see a weapon but they were hollering at him
13 to stop. Stop. Halt. Cora and Deon
14 testified that that is what happened.

15 Nobody else mentions this flight.
16 When I asked the officers, they didn't know
17 anything about anyone running. There was
18 nothing in any officer's testimony in this
19 courtroom or in any report that they gave me
20 that said this man ran. You did not hear
21 from any officer anything other than they
22 went to -- they knew he lived at [REDACTED]. They
23 saw a fellow out on the porch and they went
24 up and asked if he lived there and he said,
25 'Yeah, I live in [REDACTED]' And he said, 'Bubba

1 lives there.' They sent an officer around to
2 the back, they knocked on the door and James
3 comes out, they cuff him. There is nothing
4 about any kind of chase.

5 We've got laser beams.

6 We've got chases.

7 We've got him back at the house,
8 pulling a gun that has a laser beam on it and
9 then he says, 'Oh, by the way, I'm through
10 with this robbery now. Let's have a drink.'
11 They go back in the kitchen and one says that
12 he had a paper cup and another one said, no,
13 he picked the bottle up and took a drink out
14 of the bottle, and another said that he had
15 a glass that was on the table.

16 It doesn't make sense that you go in
17 and rob people who you know, who you've been
18 with all night and nothing happened, and then
19 after you complete the robbery you go in and
20 have a drink.

21 That is what the police report says,
22 that he went in the bedroom, came out of the
23 bathroom, pulled a gun and took their money
24 and then had a drink.

25 The first lady, Erica/Lynette,

1 testified that she was ready to take Cora
2 and Deon home and that she was going to
3 Charleston. No luggage, no reservations.
4 They've been up all night.

5 The other two said they were all
6 going to Charleston. They'd been up all
7 night long, then they were going to get in
8 the car and ride four hours to Charleston,
9 shop all day, drive home. That's a long day.

10 Then we have them saying 'he got a
11 thousand from me'; one said 'three seventy
12 five' and then Deon says 'two fifty.' That's
13 over \$1,500. That's what they were going to
14 go shopping with.

15 Then we get to the interesting thing
16 when they get to the gun. Here it is, it
17 does have a red dot on it. In the police
18 report there is nothing said about it having
19 a gun having a red dot. The witnesses, after
20 this happened, told the officer that -- well,
21 Lynette said that she couldn't describe the
22 gun but the other two said that it had a red
23 beam of light.

24 James was arrested and put into the
25 back of a car. He did not know the audio was

1 on. He was upset. He used language that
2 some of you didn't like hearing. There is
3 some element of that when they are together
4 out in the streets, and I've sure you've seen
5 some of that on TV interviews. He was upset
6 and mad.

7 Then he remembered the gun in the
8 refrigerator. He'd actually owned the gun
9 for a couple of years. You heard the officer
10 say that Jesse Jackson can be a rough place.
11 He kept the gun there, he stayed there a lot
12 of the time with his girlfriend and children,
13 and he had it for protection.

14 He has the gun, he knows that he has
15 been charged with armed robbery. He also
16 knows that he has the gun and, also, he knows
17 that since this is April Woods' apartment
18 that she would be thrown out on the Lease,
19 that if he didn't get the gun out of there
20 that it could be a problem.

21 Officers, as they often do, went
22 back and looked at the tape and say 'this guy
23 has got a gun.' They go get it. No problem.

24 So, let's see. I've committed a
25 robbery of people that I know, with a laser

1 gun, I have a drink with them after the
2 robbery, go home, I don't get rid of the gun,
3 I put it in the refrigerator.

4 I also take over \$1,500 from these
5 people. Where is the money? Anybody seen
6 any money on the table here? We've got the
7 video, the search, the gun, is there fifteen
8 hundred bucks here. If you are going to hide
9 stuff from the robbery, you put the gun in
10 the refrigerator, you'd put the money in the
11 refrigerator. Let it cool off, so to speak.

12 So where is the money? It wasn't in
13 his pocket. He hadn't been anywhere, they
14 came and saw him right away almost. He
15 didn't go around on the street. There is no
16 money there. If you are going to hide things
17 from the robbery it'd make sense you'd hide
18 the gun and the money.

19 There was no robbery.

20 There was no money.

21 The gun was there before he went to.
22 that card game, it was there when he got
23 back. He didn't take it with him. You saw
24 the video, you saw his shirt. This gun is
25 heavy, bulky, something like that somebody

1 would have seen it. He's sitting down,
2 standing up, walking around, somebody would
3 have seen the gun. 'Hey, what are you doing
4 with the gun, Buster? We don't allow them at
5 these games.'

6 Now, there is some evidence that
7 Cora was known to carry a gun. If you
8 believe their story, where was her gun.
9 'I don't have it today.'

10 So if you look at the story, listen
11 to the police, Officer Phillips, who inter-
12 viewed him, and how that ties into that, it
13 is different.

14 There is no laser on this gun. If
15 you had a laser beam coming out of it, if
16 there was a laser on it, do you throw the
17 laser away and keep the gun? That doesn't
18 make sense. And if you look at the gun
19 there is no way that a laser sight could be
20 mounted on this gun.

21 You have to think about why this
22 really happened. They'd lost their money,
23 they were angry, they made this story up.
24 They got together and got it pretty
25 consistent but they forgot to tell the

1 officer the sequence of events: his coming
2 in, having a gun, committing a robbery,
3 having a drink.

4 It just doesn't make sense to rob
5 three people that you know, they know you,
6 know where you live, and expect nothing to
7 happen. Look at it with your common sense,
8 the logical point of view, this does not make
9 sense. That translates into reasonable
10 doubt. If you think about it, there's a
11 doubt that a lot of this even happened.
12 Thank you.

13 THE COURT: Mr. Webb.

14 MR. WEBB: May it please, the
15 court. Members of the jury, I want to thank
16 you for your time today. Pretty soon you can
17 go back to your normal lives outside this
18 courthouse but before you do that you're
19 going to hear a closing argument from the
20 State, you're going to hear the instructions
21 of the court, then you are going to go back
22 and you are going to deliberate on the
23 evidence.

24 Now, I want to talk to you about
25 that evidence today in my closing argument.

1 Before I do that, I want to talk about the
2 burden that Mr. Sullivan alluded to, beyond
3 a reasonable doubt. The State in this case
4 does have the burden of proof. The State
5 must prove beyond a reasonable doubt that the
6 Defendant committed the armed robberies while
7 in possession of a deadly weapon in the
8 commission of a violent crime on June 10th,
9 2006.

10 Now, there are very few things in
11 this world that we know with absolute
12 certainty, and this case is one of them.
13 The burden here is reasonable, reasonable
14 doubt. Not all doubt, but reasonable.

15 If you are firmly convinced that the
16 Defendant committed this crime, you must find
17 him guilty.

18 Now I want to talk to you about the
19 evidence. The best way to talk to you about
20 the evidence is take each crime. There are
21 three armed robberies and a possession of a
22 weapon charge. I'll kind of break them up
23 and talk about the evidence under each
24 charge.

25 I want to talk to you about the

1 robbed robberies. Today you heard from three
2 victims: Cora Griffith, Deon Griffith, and
3 Erica Cheeks. They all three got up there
4 and testified to you what happened June 10th,
5 2006, all the same, all consistent, that's
6 what happened.

7 Now, Mr. Sullivan referred to the
8 police report. That occurred after the
9 incident, so to bring up inconsistencies,
10 while there may be some inconsistencies
11 they've been explained today.

12 First of all, let me explain why
13 there could be inconsistencies. It's a
14 traumatic event. They were scared, nervous.
15 That's what they testified to today, that
16 they were scared, that they had a gun pointed
17 at them. This was a surreal experience.

18 One of them said that there was a
19 laser pointer, to the police officer when he
20 came. Today Cora and Deon explained that
21 this -- what they thought was a laser was
22 actually this dot (indicating). It didn't
23 have a laser, it had a dot. That's the
24 explanation for that.

25 Now, all three talked to you today

1 about what actually happened on June 10th,
2 2006. Every story is the same. They were
3 playing cards, he came back, he'd lost money,
4 wanted to get his money back -- wanted to get
5 their money back. He came in, asked to play
6 cards, they were done. He asked to use the
7 bathroom, went to the bathroom, came out with
8 the gun, pointed it at Erica -- pointed it at
9 Erica, all three victims said that it was
10 pointed at Erica, either at her waist or a
11 little bit above her waist. That's what they
12 said, at Erica. Again, a traumatic event, a
13 surreal experience, but all three testified
14 that that gun was pointed at Erica.

15 Then the Defendant got roughly a
16 thousand dollars from Erica, a couple of
17 hundred from Cora, and a couple hundred from
18 Deon.

19 He talked to them about having a
20 drink, got a drink, then left.

21 That was the testimony that you
22 heard today, from all three.

23 When he left, they called the
24 police. The police came, they told them what
25 happened. Then they drove home, they saw the

1 Defendant standing in front of the apartment
2 complex. They call the police again, and
3 both City and County police officers respond.

4 They go looking for the Defendant.
5 Now, Mr. Sullivan talks about a chase that
6 takes place. Deon and Cora talk about a
7 case. They were in their apartment waiting
8 on the police, looking out their window,
9 looking at what was going on. They saw the
10 police offices arrive, show up. They knew
11 that they were looking for the Defendant
12 because they'd called in the armed robberies.

13 You heard from Lula, Ms. Robinson,
14 today that there was a chase, that another
15 person ran and they were chasing him. So the
16 victims saw the police arrive, saw them
17 looking for the Defendant, and saw them
18 running. That's a chase. That explains it,
19 it's an explanation that is consistent.

20 The testimony from all three victims
21 is that the Defendant was at his girlfriend's
22 apartment, that he left, came back and that
23 is where the police officers found him. That
24 is where Officer Smith says that he knocked
25 on the door and he came out. Consistent.

1 Then they take him to a police car.
2 They put him in the back of the car. Mr.
3 Sullivan talked about how he didn't know that
4 he was being recorded. Well, obviously he
5 didn't know that he was being recorded,
6 because he wouldn't have called them
7 "snitches."

8 Now, calling someone a snitch, that
9 means that a crime took place. He admits
10 this, that without something happening you
11 can't snitch about something. He called them
12 snitches because what happened is that he
13 went there, robbed them, they knew each other
14 and he didn't think that they were going to
15 call the police. He didn't think that they
16 were going to call the police, they knew each
17 other. There's an unwritten code --
18 unfortunately.

19 But the victims did, they came in
20 here today and testified. They have no horse
21 in this race, they are scared to be here,
22 they don't want to be here. You can tell
23 that they acted nervous, they were nervous
24 and scared about this incident, they were
25 nervous and scared about coming into the

1 courtroom. But they came in here to tell the
2 truth about what happened on June 10th, 2006.

3 Going back to the video, in addition
4 to the snitches comment, you heard the
5 Defendant tell Ms. Robinson, who was standing
6 on the sidewalk beside the patrol car, not to
7 call his girlfriend -- to tell the girlfriend
8 not to come, because they can't get a search
9 warrant for the apartment. He knew the gun
10 was in there.

11 Then a few minutes later he was
12 saying "Icehouse" and "refrigerator"
13 repeatedly, over and over again.

14 Officer Hamilton looked at that,
15 then went in the girlfriend's apartment after
16 getting a consent to search form and found
17 the gun right with the Icehouse in the
18 refrigerator.

19 Now, the testimony of the defendant
20 today was that the gun was in the
21 refrigerator for a while, before he went to
22 play cards that night. Why would someone
23 leave a gun next to the Icehouse beer in the
24 refrigerator? It's not a dresser, it's not a
25 holster, some sort of case, but in the

1 refrigerator by the Icehouse?

2 What happened is that he saw the
3 police pull up, he was inside the apartment,
4 and he threw the gun in the refrigerator.
5 Then they got him, took him to the patrol car
6 and he started talking about the gun in the
7 refrigerator that he didn't want the officers
8 to find. That's what happened. That is what
9 makes sense in this case.

10 Now, Mr. Sullivan referred to things
11 not adding up, things don't make sense, even
12 though what I just told you make sense he
13 talks about the whole point of robbing people
14 that you know doesn't make sense. Well,
15 first of all, I don't think that the
16 Defendant thought that they would call the
17 police. But criminal acts, robbery, they
18 don't make sense. Criminals don't always
19 think about what the ramifications are before
20 they commit crimes such as robbery. It
21 doesn't have to make sense, it's a crime.

22 So the question for armed robbery,
23 under the statute as I explained to you
24 earlier is that the Defendant had a deadly
25 weapon, threatened and robbed victims of

1 value. The testimony is that he had the gun
2 at the time on him. This is a deadly weapon
3 that could cause serious bodily injury or
4 death, it could have caused the victims'
5 deaths that morning, June 10th. So it is a
6 deadly weapon, so it meets that element of
7 armed robbery.

8 Then the next question is, did it --
9 did the Defendant take valuable evidence
10 (sic) from the victim. Yes. The testimony
11 is that he took money, that he took a
12 thousand from Erica and a few hundred from
13 Deon and Cora.

14 Now, Mr. Sullivan talked about where
15 is the money. That's a good question. Where
16 is the money. You heard on the video that
17 during the course of the recording that the
18 officers asked the Defendant where is the
19 money that you won? The Defendant told the
20 officer that he had won \$400. The Defendant
21 said that he gave it to a friend that he owed
22 money to. That's where the money is, that's
23 why it is not here. He told a friend -- he
24 told the officer that the money was given to
25 someone else.

1 So that is the armed robbery case.

2 The next question is possession of a
3 weapon during the commission of a violent
4 crime. As I told you in the opening
5 statement there is a law, Section 16-160 that
6 defines violent crimes in South Carolina.
7 Armed robbery is one of them. So if the
8 Defendant committed an armed robbery and had
9 a gun with him, threatened the Defendant
10 (sic) -- the victim, then he is guilty of
11 possessing a weapon during the commission of
12 a violent crime.

13 Three counts of armed robbery, three
14 different victims that he took money from,
15 and the gun charge. Now, you've seen (sic)
16 the testimony today of the three victims, the
17 three officers, and they are all consistent,
18 they all make sense.

19 We can fight about whether this has
20 a laser or if it is a red dot. It was a
21 traumatic event, a scarey event, and they got
22 up there and testified truthfully to what
23 happened.

24 Now, I have a duty as a prosecutor
25 to prosecute these types of violent crimes.

1 You have a duty as a juror, large jury, to
2 carry out justice. Justice in this case is
3 to hold the Defendant accountable for his
4 actions. He robbed the victims, didn't think
5 that they would call the police, but the
6 evidence, beyond a reasonable doubt, shows
7 that the Defendant committed those acts.
8 He robbed the victims. The testimony, the
9 video, the gun, all match up. I ask that you
10 find the defendant guilty of three counts of
11 armed robbery and the possession of a weapon
12 during the commission of a violent crime.
13 Thank you.

14 THE COURT: Mr. Foreman, Ladies
15 and Gentlemen, it is now my responsibility to
16 instruct you on the law of the case.

17 As I stated to you, the indictments
18 that are before us today charge the Defendant
19 with armed robbery, three instances, and
20 possession of a deadly weapon in the
21 commission of a violent crime.

22 Let me remind you again, as I stated
23 this morning, that the fact that the
24 Defendant has been arrested, charged and
25 indicted is not evidence in the case. It

1 cannot be considered by you as evidence in
2 the case towards his guilt. It doesn't
3 create any presumption of guilt, any
4 inference of guilt. It is merely the papers
5 by which the case is brought formally before
6 this court. That's the only meaning of the
7 indictment. It is not evidence at all.

8 Now, in this particular case there
9 are multiple indictments, multiple charges,
10 three different counts of armed robbery along
11 with possession of a weapon. Each of these
12 indictments is a separate and distinct
13 offense and must be decided by you separately
14 based on the evidence and the law applicable
15 to the case. Your decision on one should not
16 be influenced by your decision on another.

17 A defendant can be convicted or
18 acquitted of one or all offenses. It is up
19 to you to decide what evidence is there as to
20 each of the particular charges, and you will
21 be writing a verdict for each of them
22 individually.

23 The Defendant in this case has
24 entered a plea of not guilty to each of the
25 indictments. That plea puts the burden of

1 proof on the State of South Carolina.

2 A person charged with committing a
3 criminal offense in South Carolina is never
4 required to prove himself innocent. I charge.
5 you that is an important rule of law, that a
6 defendant in a criminal case, no matter how
7 serious an offense may be, will always to be
8 presumed innocent of the charge for which the
9 indictment was issued, unless that guilt has
10 been proven by evidence satisfying you of his
11 guilt beyond a reasonable doubt.

12 Presumption of innocence doesn't end
13 when you begin your deliberations. It
14 accompanies the defendant throughout the
15 trial until you, the jury, has reached a
16 verdict of guilt based upon evidence
17 satisfying you of that guilt beyond any
18 reasonable doubt.

19 Presumption of innocence, Ladies and
20 Gentlemen, has been described as a robe of
21 righteousness placed about the shoulders of a
22 defendant and remains with that defendant
23 until it has been stripped from him by
24 evidence satisfying you of his guilt beyond a
25 reasonable doubt.

1 Presumption of innocence is not a
2 mere legal theory, it is not just a legal
3 phrase that is used, it's a substantial right
4 to which every defendant is entitled until
5 and unless you, the jury, are satisfied from
6 the evidence that the defendant is guilty --
7 of his guilt beyond a reasonable doubt.

8 You may ask, what is a reasonable
9 doubt in the law? Reasonable doubt is the
10 kind of doubt that would cause a reasonable
11 person to hesitate to act. The State has
12 the burden of proving guilt beyond a
13 reasonable doubt.

14 Some of you may have served as
15 jurors in the past on civil cases in which
16 you were told that the burden of proof was by
17 a standard called the preponderance of the
18 evidence or the greater weight of the
19 evidence. In criminal cases, the State's
20 proof must be more powerful than that, it
21 must be beyond a reasonable doubt.

22 Proof beyond a reasonable doubt is
23 proof that leaves you firmly convinced that
24 the Defendant is guilty, that -- and there
25 are very few things in this world, Ladies and

1 Gentlemen, that we know with absolute
2 certainty. In criminals cases, the law
3 doesn't require proof that overcomes every
4 possible doubt.

5 If based on your consideration of
6 the evidence you're firmly convinced that the
7 Defendant is guilty of the crime charged,
8 then you must find the Defendant guilty.

9 If, on the other hand, you think
10 that there is a real possibility that the
11 Defendant is not guilty, then you must give
12 the Defendant the benefit of that doubt and
13 find him not guilty.

14 I stated to you when we began that
15 each of us have different duties to perform
16 during the course of the trial. As the trial
17 judge, it has been my responsibility to
18 preside over the conduct of the trial, to
19 rule on the admissibility of evidence.

20 You are to consider only the
21 competent evidence that is before you that
22 has been offered and accepted during the
23 trial. You are to consider only the evidence
24 that has been offered from the witness stand,
25 the exhibits that have made a part of the

1 record in the case, and that alone.

2 My job is also to charge you as to
3 the law applicable to the case. As the
4 presiding judge, I am the sole judge of the
5 law in the case and it is your duty as jurors
6 to accept and apply that law as I now state
7 it to you. If you already have a idea of
8 what the law is in a case such as this or
9 even an idea of what the law ought to be in a
10 case like this and if it doesn't agree with
11 what I now tell you the law is, then you must
12 abandon those ideas because you have sworn to
13 accept the law and apply the law as I state
14 it to you now.

15 Every case that is tried in this
16 courtroom before a jury, you become the sole
17 and exclusive judges of the facts in the
18 case. A trial judge, under our law and under
19 our Constitution, cannot intimate, state,
20 comment or make any statement whatsoever to
21 a trial jury about the facts in the case.
22 Since you, the jury, are the sole judges of
23 the facts, you're not to infer from what I've
24 said during the progress of the trial or any
25 rulings that I've made on the admissibility

1 of evidence, anything that I say even during
2 the course of this instruction to you, that I
3 have an opinion about the facts of the case.
4 I don't have an opinion. That decision is
5 totally and exclusively up to you. You are
6 to determine the effect, the value, the
7 weight and the truth of the evidence
8 presented during the course of the rial.

9 There are two types of evidence
10 which are generally presented, direct
11 evidence and circumstantial evidence.

12 Direct evidence is the testimony of
13 a person who claims to have actual knowledge
14 of the facts, such as an eyewitness, evidence
15 which would immediately establish the main
16 fact to be proved.

17 Circumstantial evidence is proof of
18 a chain of facts and circumstances that
19 indicate the existence of a fact. It is
20 evidence which immediately establishes
21 collateral facts from which the main fact may
22 be inferred. Circumstantial evidence is
23 based on inference and not on personal
24 knowledge or observation.

25 The law makes absolutely no

1 distinction between the weight or value to
2 be given either direct or circumstantial
3 evidence. Neither is a greater degree of
4 certainty required for circumstantial
5 evidence than for direct evidence.

6 You are to weigh all the evidence
7 in the case and after weighing the evidence
8 if you're not convinced of the guilt of the
9 Defendant beyond a reasonable doubt, you must
10 find the Defendant not guilty.

11 Ladies and Gentlemen, necessarily
12 you must determine the credibility of
13 witnesses who testified in the case.
14 Credibility simply means believability.

15 It is your duty as jurors to analyze
16 and evaluate the evidence, determine which
17 evidence convinces you of its truth. In
18 determining the believability of witnesses
19 who testified in the case, you have the right
20 to believe one witness over several
21 witnesses, you can believe several witnesses
22 over one witness. You can believe part of
23 the testimony of a witness and reject the
24 remaining part of the testimony of that very
25 same witness. You can believe the testimony

1 of a witness in its entirety or you can
2 reject the testimony of a witness in its
3 entirety.

4 You can consider where a witness
5 has exhibited to you any interest or bias or
6 prejudice or other motive in the case.

7 You can consider the appearance and
8 the manner of the witness while on the
9 witness stand.

10 You can ask yourself was the witness
11 straightforward or hesitant in answering?

12 Was the testimony of that witness
13 consistent or inconsistent?

14 How did the witness come to know the
15 facts to which he or she testified? What was
16 their ability to know those facts?

17 Was the testimony of a witness
18 strengthened or weakened by other testimony
19 or other evidence.

20 All of these factors, you make the
21 determination, Ladies and Gentlemen, to
22 determine the credibility of the witnesses
23 who have testified in the case.

24 Now, you have heard evidence that
25 the Defendant had been convicted of a crime

1 other than the ones for which he is now on
2 trial. This evidence may be considered by
3 you if you conclude it to be true, only in
4 deciding whether the Defendant's testimony is
5 believable and for no other purposes. You
6 must not, of course, consider the Defendant's
7 prior record as any evidence of the
8 Defendant's guilt of the charges that we are
9 here on today.

10 Now, in order to establish criminal
11 liability, criminal intent is required.
12 Criminal intent must be proven by the State
13 beyond a reasonable doubt. Criminal intent
14 is always a matter that must be determined by
15 the jury from the circumstances surrounding
16 the situation.

17 There is no way to prove intent to a
18 mathematical certainty, there is no way that
19 medical science can dissect a person's brain
20 and determine what the person had in mind.

21 The law says that criminal intent
22 may be inferred from the circumstances shown
23 to have existed. It is not necessary to
24 establish intent by direct and positive
25 evidence but can be established by inference

1 in the same way as other facts, taking into
2 consideration the acts of the parties and all
3 the facts and circumstances of the case.

4 Criminal intent is a mental state of
5 conscious wrongdoing. It is up to you to
6 determine what the Defendant intended to do
7 based on the circumstance to have existed.

8 Criminal responsibility is not, of
9 course, affected by voluntary intoxication.

10 Now, Ladies and Gentlemen, as I have
11 stated to you, the charges brought against
12 the Defendant in this case relate to armed
13 robbery; that is, the section of our Code of
14 Laws for South Carolina. In order to prove
15 this offense, the State of South Carolina
16 must prove beyond a reasonable doubt that the
17 Defendant took personal property from the
18 person or the presence of another individual.

19 Property is in the presence of a
20 person when it is within a person's reach,
21 inspection, observation or control so that
22 the person could, if not overcome by violence
23 or prevented by fear, keep possession of the
24 property.

25 The State must also prove beyond a

1 reasonable doubt that the Defendant carried
2 the property away, intending to permanently
3 , deprive the owner of the property and to keep
4 the property for the Defendant's own use.
5 The slightest removal of the property or the
6 complete possession of the property, even for
7 an instant, by the Defendant is sufficient to
8 show a taking and carrying away of the
9 property. The taking and carrying away of
10 the property must have been done by violence
11 or by putting the owner of the property in
12 fear of violence.

13 Finally, the State must prove beyond
14 a reasonable doubt that the Defendant was
15 armed with a deadly weapon during the
16 robbery.

17 A deadly weapon is any article,
18 instruments or substance which is likely to
19 cause death or great bodily harm. Whether an
20 instrument has been used as a deadly weapon
21 depends upon the facts and the circumstances
22 of each case. A pistol is an example of an
23 instruments that may be considered a deadly
24 weapon.

25 Now, the Defendant is also charged

1 with the possession of a weapon during the
2 commission of or attempt to commit a violent
3 crime. The State must prove beyond a
4 reasonable doubt that the Defendant was in
5 possession of a firearm or visibly displayed
6 what appeared to be a firearm during the
7 commission of a violent crime.

8 A "firearm" means any revolver,
9 pistol or other weapons which will be
10 designed to or can be readily converted to
11 expel a projectile. In order to find the
12 Defendant guilty of the possession of a
13 weapon during the commission of a violent
14 crime, you must first find the Defendant
15 guilty of either committing the violent crime
16 or attempting to commit the violent crime.

17 Under our statutory authority, armed
18 robbery is considered a violent crime.

19 Now, obviously on each of these
20 charges there are two possible verdicts that
21 you may reach. You can either find the State
22 hasn't met its burden of proof beyond a
23 reasonable doubt or that the Defendant has
24 been shown to be guilty of the charges, again
25 considering each of the charges individually,

1 separate from each other.

2 Or you may find that the State has
3 not met its burden of proof and the defendant
4 should be found not guilty.

5 I have prepared a verdict form for
6 all these charges, Mr. Foreman. Obviously
7 there is no significance by the order in
8 which the choices are made, one has to be
9 listed first and one second -- obviously.

10 Your verdict must be a unanimous
11 one. You all must agree on the verdict.

12 The verdict cannot be based on bias
13 or prejudice, sympathy or any other
14 consideration that is not in evidence in this
15 case.

16 Once you have unanimously agreed
17 upon a verdict on each of the four charges,
18 you should notify the bailiff that you have
19 reached that verdict and we will then receive
20 your verdicts back here in the courtroom.

21 Now, of course, Ladies and
22 Gentlemen, you are the sole judges of the
23 facts. I can answer any questions on the law
24 that you have but it is impermissible for me
25 to make any comment whatsoever on the facts.

State of South Carolina v. James Waiters
Case No. 06-GS-23-06230 et al
Jury Trial of March 11th & 12th, 2008
before The Honorable G. Edward Welmaker

1 The lawyers have presented the facts to you,
2 you have all the facts and the evidence and
3 that is what you will consider in making your
4 determination.

5 I am going to ask you now, if you
6 would, to retire back to your jury room.
7 Again I instruct you not to start
8 deliberating just yet. There is one final
9 matter of law that I need to take care of
10 with the attorneys. In just a few moments,
11 hopefully we will be able to send you the
12 verdict forms back, the evidence and let you
13 begin your deliberations. Don't start
14 deliberating just yet, don't discuss the
15 case. We will call you back or send these
16 items back in just a few minutes. You may
17 retire to your jury room.

18 (JURY OUT @ 4:15 P.M.)

19 THE COURT: Any objections or
20 exceptions from the charge from the State?

21 MR. WEBB: Nothing from the
22 State.

23 THE COURT: From the Defense?

24 MR. SULLIVAN: No, ~~sir~~.

25 THE COURT: All right. As far

1 as the verdict forms that you looked at, I
2 just wanted to let you know that Ms. Brown
3 astutely noticed that we did not have all the
4 indictments listed, so we have added the
5 indictments at the top.

6 All right, make sure that all the
7 evidence is in order and we can send it back.

8 (JURY IN DELIBERATION AT 4:17 P.M.)

9 (COURT IN RECESS)

10 (NOTIFIED OF JURY QUESTION

11 SO ENTERED AS COURT'S EXHIBIT 1)

12 (DEFENDANT PRESENT)

13 THE COURT: The jury has sent out
14 a question, "May we review the statement
15 (police statement)?"

16 I don't know if they are referring
17 to the incident report, to the testimony of a
18 police officer or something else. If it is
19 the incident report, I guess that they are
20 talking about a written statement. The
21 easiest thing would be to respond to that in
22 writing but I am not sure what they want. I
23 guess the best thing is to call them back.

24 If they want to have any testimony
25 played back, they can tell us what it is and

1 we will make arrangements to play it back.
2 Otherwise I will instruct them that their
3 decision has to be made based on the evidence
4 in the record and applicable law.

5 Okay, bring our jury back.

6 (JURY IN 4:35 P.M.)

7 THE COURT: Mr. Foreman, I have
8 received an inquiry from you which asks
9 whether you may review the statement, the
10 police statement.

11 I didn't know whether you meant you
12 wanted to review the testimony. We can
13 certainly play back any testimony of any
14 witness that you need.

15 Or, whether you were talking about a
16 written statement that a police officer
17 filled out in his investigation. If it is
18 the latter, of course your decision will have
19 to be made based upon the evidence in the
20 record and the law that I have given you.

21 If you need any testimony played
22 back, we will be glad to accommodate you if
23 you'll just write out what testimony you
24 need, from which officer, and we will be glad
25 to play that.

1 As far as other evidence, whatever
2 is in the record that has been presented --
3 testimony and documents that have been
4 presented to you, tangible evidence, that's
5 what you will base your decision on.

6 I hope that this is some guidance
7 for you. If you have additional questions, I
8 will try to answer them if they relate to the
9 law. If you would, go back now and continue
10 your deliberations.

11 If you wish to deliberate further
12 and need anything to eat, we will be glad to
13 do that. If you feel like you've reached a
14 point where it would be good for you to take
15 a break, go home tonight and come back
16 tomorrow, we can. We're willing to work with
17 you any way that we can on that.

18 But if you would, continue to
19 deliberate for now. Just let the bailiffs
20 know if a break would do you good. Thank you
21 very much, please go back to your jury room.

22 (JURY OUT @ 4:38 P.M.)

23 THE COURT: Any objections to the
24 instruction?

25 MR. WEBB: None from the State.

1 MR. SULLIVAN: Your Honor, I
2 am not sure that they were clear that they
3 couldn't read the statement but they could
4 hear what he testified to from it.

5 THE COURT: Well, ---

6 MR. SULLIVAN: I am not sure it
7 was clear on that.

8 MR. WEBB: I don't ---

9 THE COURT: --- I might not have
10 been clear. I tried to tell them that we'd
11 play any testimony of anybody that they
12 wanted to hear but that they couldn't have
13 the written statement. They can write me
14 another question if I was not clear on that.
15 We will be at-ease until we hear from the
16 jury.

17 (DELIBERATIONS CONTINUED)

18 (NOTIFIED OF JURY QUESTION

19 SO ENTERED AS COURT'S EXHIBIT 2)

20 (DEFENDANT PRESENT)

21 THE COURT: Okay, we have another
22 question from the jury foreman. It says,
23 "Please provide the testimony of the officer
24 that read the portion of the police report
25 that gave the full description of the gun."

1 The court reporter tells me that she has
2 located that testimony -- and that's from
3 Officer who?

4 COURT REPORTER: Officer Phillips.

5 THE COURT: We will play that and
6 I will let the jury indicate to me, by the
7 foreperson, if they've heard enough at that
8 time.

9 They also asked, "the group would
10 like to review the video". I guess we need
11 to set the video up. If you could, get that
12 ready for them and we've give them an
13 opportunity to view it out here. Then,
14 again, I will let them watch it as much as
15 they want to.

16 MR. SULLIVAN: Do they want --
17 excuse me, do they want a description of the
18 gun?

19 THE COURT: A full description of
20 the gun. I don't know what -- whether the
21 officer was reading from a report or if there
22 was any description of the gun.

23 MR. SULLIVAN: One officer, it
24 maybe have been -- one officer went in the
25 house, testified that he found the gun, a

1 .38, model-such-and-such, serial number such-
2 and-such.

3 MR. WEBB: That was Officer
4 Phillips. Then when you called Officer
5 Phillips up again, you had him read out of
6 the police report maybe a paragraph and a
7 half.

8 MR. SULLIVAN: On my direct, the
9 first time, he read about the laser affect.
10 One time he did go into the detail about
11 where he found it, what kind of gun that it
12 was and the serial number.

13 THE COURT: Okay.

14 MR. SULLIVAN: I don't know what
15 description that they want.

16 THE COURT: Is the video ready?

17 BAILIFF: Yes, sir.

18 THE COURT: Bring the jury in.

19 Please. Is this Court's Exhibit ---

20 COURT REPORTER: It is Court's
21 Exhibit 2.

22 (JURY IN @ 5:50 P.M.)

23 THE COURT: Mr. Foreman, the
24 additional question that I've received from
25 you asked to provide the testimony of the

1 officer that read the portion of the police
2 report that gave the description of the gun.
3 The court reporter has found that testimony
4 and she will play that back. We determined
5 that it was Officer Phillips that addressed
6 that and we will play his testimony.

7 If at any time we are playing the
8 testimony and then later you ask that -- and
9 you asked also if you could review the video.
10 Any time, Mr. Foreman, that you believe
11 whatever issue that you had you've resolved
12 it by what you're heard, please let us know
13 and we can stop it. You can listen to it all
14 if you need to, but by the same token you
15 don't have to listen to all of it if you
16 don't want to. Just let me know when you've
17 heard enough of the testimony or if you've
18 seen enough of the video -- just let me know
19 that and we will let you go back and continue
20 your deliberations. We are here to play it
21 all for you if you want to hear it all, both
22 the video and the testimony. All right, Ms.
23 Garrison.

24 COURT REPORTER: Testimony of
25 Jonathon Phillips, Direct Examination by Mr.

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1 Webb:

2 Q. Good morning, Officer Phillips.

3 A. Good morning.

4 Q. Where do you work?

5 A. Greenville County Sheriff's Office.

6 Q. How long have you worked there?

7 A. Eight and a half years.

8 Q. What are your duties with the
9 Greenville County Sheriff's Office?

10 A. I am a field training officer, I
11 respond to calls through dispatch and I'm
12 officially a road officer.

13 Q. What is your title or rank?

14 A. Senior Master Deputy.

15 Q. Now, I want to go and talk about the
16 incident that we here about today. Were you
17 working the morning of June 10th, 2006?

18 A. I was.

19 Q. Did you respond to a call on [REDACTED]
20 Street that morning?

21 A. Yes, I did.

22 Q. What did you see when you responded
23 to that residence?

24 A. Met with three victims: Erica
25 Cheeks, Cora Griffith and Deon Griffith.

1 Q. Did you talk with the victims?

2 A. I did.

3 Q. Let me go back, why did you
4 originally respond to that residence?

5 A. We had a call of armed robbery.

6 Q. And after you spoke with the three
7 victims, met with them, did -- was there a
8 suspect in the case?

9 A. Uh, yes. They described a black
10 male, about 5'6", 5'7", 140 pounds, zigzag
11 dread-locks, white shirt, blue jeans and they
12 knew him as "Bubba" or "Short Man".

13 Q. And after you had a suspect in the
14 case, what did you do?

15 A. After I had a suspect?

16 Q. After you had a suspect, got the
17 information, what did you do?

18 A. Okay. Briefly, I started my
19 report, I notified my supervisor of the
20 situation.

21 Q. Then did you leave the residence?

22 A. Yes, as I was leaving I received a
23 call from one of the victims, Erica Cheeks.

24 Q. What did she say when she called?

25 A. She told me that she drove Deon back

1 home to where she lives and that the suspect
2 was standing in front of his apartment, [REDACTED].

3 Q. I want to take a minute and --
4 [REDACTED] Street, where is it located? Is it
5 within Greenville County?

6 A. It is.

7 Q. Now, you got this phone call from
8 Ms. Cheeks, Erica, telling you about the
9 Defendant being in front of the apartment
10 complex, what did you do?

11 A. Reinformed my sergeant and he told
12 me to go ahead and go over there, he'd get
13 some units to back me up and try to locate
14 the individual.

15 Q. What did you see when you went over
16 there?

17 A. On my arrival, I saw several City of
18 Greenville police officers and I made contact
19 with Officer Smith and Officer Hamilton.

20 Q. And after you talked with Officer
21 Smith and Officer Hamilton, what did you do?

22 A. They advised that they had the
23 possible suspect in the back of Officer
24 Hamilton's patrol car. I then went over
25 there and through the rolled down window read

1 him his *Miranda* rights and had a conversation
2 with him after he said that he was willing to
3 talk to me.

4 Q. What did he say?

5 A. Basically said that he was at an
6 unknown location playing cards with some
7 people, he couldn't really advise/give me
8 names, and that he won approximately \$400.
9 I asked him, 'do you still have the money on
10 you?' And he said no, that he'd had to pay
11 somebody -- he couldn't give me a name. I
12 informed him that his description met --
13 excuse me, matched an individual that accused
14 of an armed robbery with a gun. He advised
15 that he didn't have a gun, he didn't rob
16 anybody, all he did was play cards with some
17 people.

18 Q. That person you were talking to
19 while he was in the back of the patrol car,
20 is that person in the courtroom today?

21 A. Yes, sir.

22 Q. Can you identify him?

23 A. It's Mr. Waiters, there at the
24 table.

25 Q. Having spoke with the Defendant,

1 what did you do?

2 A. I retrieved his driver's license or
3 his ID card, I can't remember which one that
4 it was, but I basically drove my patrol car
5 vehicle over to where the victims were, they
6 were just right around the corner from where
7 the Defendant was, and showed them the
8 identification to confirm that this was the
9 individual that robbed them.

10 Q. Did they say that was ---

11 A. All three agreed, yes.

12 Q. And after you did this, what did you
13 do after that?

14 A. Well, everything was recorded on the
15 car video for identification. I went back
16 there and told Mr. Waiters that he was under
17 arrest for armed robbery. I then put him
18 from their car into the rear of my patrol
19 car.

20 Q. Did you do anything else after that?

21 A. I called Mr. Waiters' girlfriend,
22 April Woods, to come to the scene after I
23 received information from Officer Hamilton
24 that this videotape recording of Mr. Waiters,
25 he had indicated that the gun was in her

1 apartment, her refrigerator.

2 Q. Did you speak with his girlfriend?

3 A. Yes, the girlfriend arrived, I
4 obtained a consent to search, which she
5 signed, along with Officer Hamilton, and
6 located a .380 caliber HiPoint firearm which
7 was left in the refrigerator; which was
8 loaded.

9 Q. I am going to show you what has been
10 marked as State's Exhibit 1. Can you please
11 tell the court what this is?

12 A. (Upon review), this is my consent to
13 search form that was signed by the girl-
14 friend, April Woods; witnessed by myself and
15 Officer Hamilton with the City; indicating
16 the seizure of the HiPoint firearm.

17 Q. Was there a serial number that you
18 wrote down on that firearm?

19 A. Yes, sir, it is "P", as in papa,
20 793284 (P793284).

21 Q. Now, Officer Phillips, I am going to
22 show you what has been marked as State's
23 Exhibit 2. Without taking this out of the
24 envelope, can you tell me what that is?

25 A. This is the weapon placed into

1 evidence after receiving it from Ms. Woods'
2 apartment.

3 Q. Is that the same weapon that you
4 found in the refrigerator by the Icehouse
5 beer?

6 A. Absolutely.

7 Q. And can you please tell me the
8 serial number on that gun?

9 A. (Upon review), P7932B(sic)4.

10 Q. Is that the same gun that you
11 examined on that consent to search form?

12 A. Actually it should be 8-4, not B-4.
13 Yes, it is.

14 Q. Is that gun in the same condition or
15 substantially the same or similar condition
16 today as it was June 10th, 2006?

17 A. Yes, it is.

18 FOREMAN: That's good.

19 THE COURT: Okay.

20 COURT REPORTER: Testimony of
21 Officer Phillips as recalled, examination by
22 Mr. Sullivan:

23 Q. Officer, earlier we referred to your
24 report, how it is important that you write
25 down what people tell you; is that correct?

1 A. Yes, sir.

2 Q. This is your report, a report that
3 you made of that first conversation with ---

4 A. Yes, sir.

5 Q. If you would look right here, and
6 read down that paragraph?

7 A. (Reading): They advised that they
8 knew the suspect for about a year and knew
9 him by the nicknames of "Bubba" and "Short
10 Man". They further advised me that the
11 suspect drives a blue Suburban and lives at
12 [REDACTED]. They are not sure how
13 the subject got there, said they didn't see
14 any vehicles. Suspect asked him if he could
15 get a drink before they left, suspect was
16 invited inside and was given tequila in a
17 shot glass. Suspect took a drink, then went
18 to a bedroom (sic) and witness Carrie Banks
19 (phonetic) was also inside the residence at
20 this time."

21 Q. Then go ahead with the next part.

22 A. (Reading): "Suspect came out of
23 the bathroom with a black-in-color semi-
24 automatic handgun. Suspect was waving..." --

25 Q. That's fine.

1 A. Okay.

2 Q. Then the reference to "I was told"--
3 if you would read that part.

4 A. Okay, (reading): "I was told that a
5 red stream of light/laser came out of the
6 weapon."

7 Q. And this is a report that you based
8 on what they told you that morning?

9 A. That's correct.

10 Q. And you've been trained to take it
11 down the best you can remember, right on the
12 spot; right?

13 A. Yes.

14 FOREMAN: Thank you.

15 THE COURT: Now we will play the
16 video for you. If you get to a point you've
17 seen enough, just let me know.

18 (WHEREUPON VIDEO REPLAYED

19 IN ITS ENTIRETY)

20 THE COURT: If you need anything
21 else, please let us know. Please retire to
22 your jury room and I ask that you continue
23 your deliberations.

24 (JURY OUT @ 6:36 P.M.)

25 THE COURT: All right. We will be

1 at-ease until we hear from the jury.

2 (DELIBERATIONS CONTINUED)

3 THE COURT: It'S 7:00, I am
4 inclined to let the jury go for today and ask
5 them to return in the morning. Bring the
6 jury in.

7 (JURY IN @ 7:00 P.M.)

8 THE COURT: Mr. Foreman, Ladies
9 and Gentlemen, I appreciate your hard work on
10 this case. I am going to let us break for
11 the evening, though. I think we're probably
12 at a point where it would be good to take an
13 overnight break.

14 So I'll ask you to be back at 9:00
15 o'clock in the morning.

16 Of course, as you come in you
17 shouldn't start deliberating until every
18 juror is here. Then I will give you word to
19 continue your deliberation.

20 Please be back at 9:00 and we will
21 start at that time. This might be the first
22 trial you've served on this week. I don't
23 know if you had another one yesterday, I
24 don't believe that you did.

25 You are going to go home tonight and

1 you're going to have loved ones who want to
2 know all about your day, 'did you get picked
3 for a jury', 'what's the case about', 'is the
4 trial interesting'. Ladies and Gentlemen,
5 let me remind you that you made a commitment
6 to these parties that you're going to make a
7 decision that the twelve of you are going to
8 decide this case, not on what anybody else
9 says, just on what is in this record, the
10 evidence that these fine lawyers have
11 presented to you and that alone, along with
12 the law. It would improper for you to talk
13 to anyone about the case, family members or
14 other people.

15 I say this not by way of temptation
16 but by way of instruction. A lot of times we
17 are curious by nature and we wan tot ride by
18 a scene or check something on the internet
19 about the -- that you heard. That would be
20 improper also. You're not to make any
21 decision on this case except from what you
22 hear in this courtroom and that alone.

23 So you'll have an opportunity to
24 share with your loved ones about your
25 experience on the trial, the facts that were

1 presented and what took place, but during the
2 course of the trial that is not the time to
3 do that, that would be improper. So I give
4 you that instruction. You can go home, get a
5 good night's sleep and be back in your jury
6 room at 9:00. You can then continue in your
7 deliberations at that time. Have a good
8 evening, Ladies and Gentlemen.

9 (JURY OUT @ 7:04 P.M.)

10 THE COURT: Okay, we will be at-
11 ease until 9:00 in the morning.

12 (COURT IN RECESS)

13 (TRANSCRIPT CONTINUED NEXT PAGE)

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1 MARCH 12, 2008 9:00 A.M.

2

3 (DEFENDANT PRESENT)

4 (JURY IN DELIBERATION @ 9:12 A.M.)

5 (NOTIFIED OF VERDICT @ 10:15 A.M.)

6 THE COURT: I understand that we
7 have a verdict. Bring the jury in.

8 (JURY IN @ 10:17 A.M.)

9 THE COURT: Mr. Foreman, I under-
10 stand the jury has reached their verdict; is
11 that correct?

12 FOREMAN: Yes, sir.

13 THE COURT: Is it a unanimous
14 verdict?

15 FOREMAN: Yes.

16 THE COURT: If you would please
17 hand the verdict forms to the bailiff for me.

18 FOREMAN: (Complies).

19 BAILIFF: (Tenders to bench).

20 THE COURT: Thank you. (Upon
21 review), Madame Clerk, you may publish the
22 verdicts.

23 CLERK: On Indictments 06-GS-23-
24 6030, 6231, 6232 the State versus James
25 Emanuel Waiters, Jr., (reading):

1 "We, the jury, by unanimous consent
2 find the Defendant, James Waiters, Jr., as
3 to the charge of armed robbery as to Erica
4 Cheeks, Guilty.

5 We, the jury, by unanimous consent
6 find the Defendant, James Waiters, Jr., as
7 to the charge of armed robbery as to Cora
8 Griffith, Guilty.

9 We, the jury, by unanimous consent
10 find the Defendant, James Waiters, Jr., as
11 to the charge of armed robbery as to Deon
12 Griffith, Not Guilty."

13 Signed by the Foreman, Darrell O.
14 Lee, and dated March 12th, 2008.

15 On Indictment 06-GS-23-6233,
16 (reading):

17 "We, the jury, by unanimous consent
18 find the Defendant, James Waiters, Jr., as to
19 the charge of possession of a weapon during
20 the commission of a violent offense, Guilty."

21 Signed by Darrell O. Lee, dated March 12th,
22 2008.

23 If you all agree with this verdict,
24 please signify by raising your right hand.

25 (Unanimous response by jurors).

1 THE COURT: Is there anything that
2 we need to take care of with the jury before
3 they are discharged in this case?

4 MR. WEBB: Nothing from the
5 State, Your Honor.

6 MR. SULLIVAN: Nothing from the
7 Defense, Your Honor.

8 THE COURT: Ladies and Gentlemen,
9 thank you very much for serving on this jury.
10 Understand that you will just need to call
11 back tonight after 6:00. We've got another
12 group of jurors here today to start another
13 trial later today.

14 If you will, call back after 6:00
15 and they will give you instructions as to
16 when you need to report back tomorrow, if at
17 all.

18 It's been a real pleasure for me to
19 get to work with you, to be a fellow judge
20 with you. You've been a very conscientious
21 group, you've deliberated long and hard and
22 I'm grateful for the opportunity that I've
23 had to work with you in this case.

24 Certainly I've emphasized so much
25 not to discuss the case, but now you are free

1 to discuss it with whomever you want. There
2 might be folks that want to ask you about the
3 case, and certainly the lawyers are free to
4 do that. You can talk about what you did and
5 you can talk about the facts of the case but
6 you are absolutely free to not talk about it
7 either. So if you don't want to talk about
8 it and someone persists in wanting to talk to
9 you about it, you just let me know and I'll
10 take care of that matter.

11 I don't know if there will be other
12 trials for you to take care of this week, but
13 I've enjoyed so much getting to work with
14 you. You've done a tremendous service to
15 your community. Not everybody gets to serve
16 on a jury, you've been very conscientious and
17 I'm grateful for the service you have done.

18 You are dismissed at this time. If
19 you will, call the number tonight after 6:00
20 and there will be further instructions for
21 you.

22 (JURY EXCUSED)

23 THE COURT: Any legal matters that
24 we need to take care of before sentencing the
25 Defendant?

1 MR. SULLIVAN: Yes, Judge, I
2 noticed some of the jurors when they came
3 back in, no disrespect to them but did I
4 understand that the charge on Deon Griffith,
5 was "not guilty"?

6 THE COURT: That's correct.

7 MR. SULLIVAN: So -- and the
8 facts, as I understand, you have three people
9 in the room and he's with a gun, they all
10 testified that he took money from them, they
11 found two armed robberies guilty and one not
12 guilty. That is inconsistent. I would like
13 to make a Motion to set aside as inconsistent
14 and evidence that the jury might have been
15 compromised. I don't understand it. Under
16 the facts, he either robbed them all or he
17 didn't rob anybody. So I move for a new
18 trial.

19 THE COURT: Solicitor, I will be
20 glad to hear from you.

21 MR. WEBB: Yes, Your Honor. It
22 is impossible to tell what they were thinking
23 back there. However, Deon was the third in
24 the room, so it's possible and reasonable to
25 think that they did not think that she felt

1 threatened -- as threatened by the gun, as
2 the other two that were closer to the
3 Defendant and therefore was not a victim of
4 the armed robbery itself. She was just more
5 present in the room whereas Erica and Cora
6 were -- therefore it would not be
7 inconsistent.

8 And, Your Honor, if I may add one
9 thing?

10 THE COURT: Yes.

11 MR. WEBB: The testimony of Erica
12 Cheeks was that the gun was pointed on her,
13 Cora Griffith's testimony was that the gun --
14 when he went to ask her about her money, the
15 gun was moved ever so slightly towards Cora
16 Griffith. Deon Griffith never said that the
17 gun was ever pointed towards her. I believe
18 that is the reasoning of the jury.

19 MR. SULLIVAN: Just a quick
20 response to that?

21 THE COURT: Yes.

22 MR. SULLIVAN: I don't think
23 Deon Griffith would have given up her money
24 unless she felt like she had to, if there was
25 an armed robbery.

1 THE COURT: I believe the jury had
2 an opportunity to weigh the facts as to each
3 individual. I told them in my charge that
4 they could certainly view the evidence as to
5 each one of those. We had three possible
6 verdicts, one for each of them rather than a
7 conglomerate. I believe that the verdicts
8 are consistent. They could have found, based
9 on the facts as I recall them, Mr. Sullivan,
10 they could have found that the third member
11 of the trio was not under the fear of threat.
12 I believe the gun, as I recall the testimony
13 it was similar to the solicitor says, as to
14 how the gun was moved around.

15 I believe that the verdicts should
16 stand, and I deny your Motion.

17 Anything else?

18 MR. WEBB: Nothing from the
19 State, Your Honor.

20 MR. SULLIVAN: No, sir, not ---

21 THE COURT: If you would, bring
22 the defendant forward. Mr. Sullivan, I will
23 be glad to hear from you.

24 MR. SULLIVAN: It was a hard
25 case. I think the jury wrestled with it,

1 took a long time, was very serious about it.
2 You have a wide range here -- from the way
3 that the verdicts fell, you've got anywhere
4 from ten years to sixty-five; two armed
5 robberies could be thirty each, and you have
6 the pistol that you could tack onto the end
7 of it. You have an extreme range here.

8 James has no significant record like
9 a lot of people that come in front of you,
10 one charge of drug possession.

11 He was working, has a family that he
12 was supporting.

13 He knew this people. I really don't
14 understand what happened that night, never
15 will, but I'd ask you to go the low end if
16 you could. Thank goodness nobody was hurt.
17 I think that would satisfy the sense of
18 justice in this case. Like I said, you have
19 a wide range. It's totally up to you.

20 He has good family support. I will
21 say that. They've been here the whole time,
22 came from Charleston and spent the time, so
23 he's not like a lot of these people that we
24 bring before you, no family and a long record
25 and things like that. He is a fairly stable

1 individual. You saw him on the stand, he was
2 very respectful to Mr. Webb.

3 In the car, he was upset. He didn't
4 know he was being filmed. Some of the
5 language was a little rough but -- I'd hate
6 to have a camera on me every minute of my
7 life, I am sure that there might be some
8 things that I would say or do that I wouldn't
9 want broadcasted to the general public. So I
10 think some of that was due to the
11 circumstances.

12 THE COURT: Thank you, Mr.
13 Sullivan.

14 MR. SULLIVAN: The other thing,
15 Judge, he's told me that he wants me to file
16 the appeal. I plan to do that today or
17 tomorrow. If something happens to me, I want
18 it on the record that he does -- that he's
19 told me that he wants the appeal filed. I
20 hope that nothing will happen to me but --
21 you never know.

22 THE COURT: Mr. Waiters, anything
23 that you want to say to me before I impose
24 sentence?

25 DEFENDANT: Your Honor, they found

1 me guilty on two of the cases out of three.
2 I mean, I understand the whole nature of the
3 situation. You know, I didn't -- I didn't
4 commit the crime but I was found guilty of
5 the crime, I guess that's -- that's justice?
6 I don't know.

7 THE COURT: Anything from the
8 State?

9 MR. WEBB: Just his prior record,
10 Your Honor, if you would like to hear that.

11 THE COURT: What was that?

12 MR. WEBB: 1993, assault and
13 battery; 1996, possession with intent to
14 distribute heroin; 1998, possession of
15 heroin.

16 MR. SULLIVAN: (Sidebar with
17 Defendant).

18 THE COURT: Do the victims want
19 to address the court? I will be glad to hear
20 from them if they want to be heard, but I am
21 not asking them to say anything.

22 MR. WEBB: They would not like to
23 speak, Your Honor.

24 THE COURT: These cases are always
25 tragic events when folks do things that they

1 shouldn't do, makes it difficult to try to
2 measure out justice for a loving family and
3 for folks that placed in a terrible, terrible
4 position with a gun staring at them.

5 I know that there is a lot of
6 potential for Mr. Waiters and opportunities
7 that he had and I am certainly sorry that
8 this event took place -- for the victims, for
9 all the victims and the family.

10 On 06-GS-23-6230, the sentence of
11 the court is that the defendant be committed
12 to the State Department of Corrections for a
13 period of seventeen years.

14 On 06-GS-23-6231, the sentence of
15 the court is that the defendant be committed
16 to the State Department of Corrections for a
17 period of seventeen years.

18 On 06-GS-23-6233, the sentence of
19 the court is that the defendant be committed
20 to the State Department of Corrections for a
21 period of five years.

22 That last two being concurrent to
23 the previously imposed sentence.

24 I wish you the best, Mr. Waiters.

25 (CONCLUDED)

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9TH Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the jury
trial held before The Honorable G. Edward
Welmaker on March 11th & 12th, 2008;

I do further certify that I am neither
kin nor counsel to any of the parties and
have no interest in the outcome of this
action.

Deborah Garrison

Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

Charleston, South Carolina
October 1, 2008

The State of South Carolina
In the Court of Appeals

Appeal from Greenville County
Court of General Sessions

G. Edward Welmaker, Circuit Court Judge

Case No.: 2006-GS-23-2630; 6231; 6232

State of South Carolina, ... Respondent,

v.

James Waiters, Jr., ... Appellant.

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in denying the Appellant's motion to set aside inconsistent and confusing verdicts and grant a new trial?
2. Does S.C. Const. art. 1, § 14; see also S.C. Const. art. 1, § 3 require reversal where the unique facts of this case establish true inconsistent verdicts?
3. Should application of Alexander be reversed, modified or limited in its application where uniquely inconsistent verdicts are so unreconcilable and so confusing that jury error is apparent?

STATEMENT OF THE CASE

Appellant was indicted in Greenville County in a three count indictment alleging armed robbery of three individuals. By separate indictment the Appellant was charged with possession of a weapon during the commission of a violent crime relating to the armed robberies. A jury trial was had on March 11th and 12th, 2008, the Honorable Edward G. Welmaker, presiding. The Appellant was represented at trial by Timothy Sullivan, Greenville and the State by Douglas Webb, Assistant Solicitor, Thirteenth Circuit. The jury returned a verdict of guilty on two of the armed robberies. The Appellant was found not guilty on one of the armed robberies and guilty of possession of a weapon during the commission of a violent crime. Appeal was timely filed and this brief follows.

TABLE OF AUTHORITIES

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Durst v. Southern Ry. Co., 161 S.C. 498, 159 S.E. 844 (1931)	7
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S.C. Const. art. 1, § 14	10
S.C. Const. art. 1 § 23	11

STATEMENT OF THE FACTS

The Appellant, James Waiters, is thirty-four years old and the father of five children. At the time of the trial he was employed at the Carolina First Center in Greenville, South Carolina. The present case involves charges of armed robbery of three individuals, Eirca Lynette Cheeks, Deon Griffith and Cora Griffith. All three of the alleged victims were playing cards with the defendant throughout the evening of June 9, 2006. R. 63. Early the next morning the defendant left the game and went back to his home. R. 168-170. The Defendant testified that he was at home when the police showed up at his house and arrested him later that morning. R. 170.

According to the victims, the defendant left the residence but returned shortly thereafter and asked to use the bathroom. R. 64-65; Erica, Deon and Cora each testified that they were in the same room when the defendant came out of the bathroom with a gun and robbed them. R. 65, l. 16; R. 67, l. 15; 83, l.18-22; 101. According to each of them the defendant then left the residence. The defendant was tried for the armed robbery of each of the three individuals in the room, and despite all three charges being based on the exact same incident, the defendant was found not guilty of one armed robbery charge, and guilty of the other two.

242. Based on the inconsistent and confusing nature of the verdicts, the defense moved to set aside the verdicts and be granted a new trial. 251. The court denied the defendant's motion and sentenced the defendant to consecutive sentences of seventeen years on each of the two armed robberies. 251.

ARGUMENT

I. THE TRIAL COURT ERRED IN REFUSING TO SET ASIDE THE APPELLANT'S CONVICTIONS AND GRANT A NEW TRIAL.

The court erred by denying the defendant's motion to set aside the verdicts in his case and grant a him new trial. In the present case defense counsel properly raised a timely objection to the jury's verdict. All three charges being based on identical facts, the defense moved to have the verdicts set aside as inconsistent and confusing. R. 244, 7-18; R. 246.

It is "the duty of the trial judge to decide what the verdict meant, and, in reaching his conclusion thereabout, it [is] his duty to take into consideration not only the language of the verdict, but all the matters that occurred in the course of the trial." Wertz v. State, 349 S.C. 291, 562 S.E.2d 654 (2002) *quoting* Howard v. Kirton, 144 S.C. 89, 142 S.E. 39 (1928); *See also* Durst v. Southern Ry. Co., 161 S.C. 498, 159 S.E. 844 (1931) (to determine what jury intended to find construction of verdict can and should depend upon language used by jury and other things occurring in trial).

Unquestionably, State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991) relying on Georgia's precedent, abolished the general rule prohibiting inconsistent verdicts. Representing truly inconsistent verdicts, the present case is

distinguishable from Alexander. In Alexander, and all but one of its related cases, verdicts were found to be consistent: “This Court has heretofore rejected a great number of arguments invoking the rule against inconsistent verdicts by holding that the verdicts were, in the particular circumstances of those cases, actually consistent.” *Id.* at 383. As recognized in Alexander, only one case ever presented verdicts that were actually inconsistent. In that case the court denied relief because on a lack of prejudice shown. *See State v. Hall*, 268 S.C. 524, 235 S.E.2d 112 (1977). Unlike prior cases, the Appellant was charged in a single indictment with the same offense (armed robbery) against three victims. The offenses are alleged to have all occurred at the same time, in the same house, in same room, using the same weapon. The jury found the Appellant guilty of two and not guilty of one. As in no other case the present record fails to support any logical explanation for the inconsistent verdicts. The mix of not guilty and guilty verdicts for the three charges based on identical facts is confusing in a way that is beyond Alexander’s contemplation in its reversal of the general prohibition of inconsistent verdicts.

Even in states where the prohibition has been abolished, most as with Georgia, still have exceptions where inconsistent verdicts may not stand. Turner v. State, 283 Ga. 17 (2008). An exception to Alexander’s blanket coverage is appropriate in the present case based on the uniqueness of its facts. In the present

case, with the charges being identical, continued application of Alexander would only serve to deteriorate due process under S.C. Const. art. 1, § 3.

Even after its ruling in Alexander the court has granted relief where a verdict was unclear. “A verdict should be certain and import a definite meaning free from ambiguity.” Lorick & Lowrance v. Julius H. Walker & Co., 153 S.C. 309, 319, 150 S.E. 789, 792 (1929) (citation omitted). Wertz v. State, 349 S.C. 291, 562 S.E.2d 654 (2002). If a party believes there is confusion in the wording of a jury's verdict, that party should call it to the attention of the trial court at the time the verdict is rendered so that any confusion in the verdict's language can be easily cleared up. Howard v. Kirton, 144 S.C. 89, 142 S.E. 39 (1928). Wertz v. State, 349 S.C. 291, 562 S.E.2d 654 (2002). In this case the trial court failed to make any further inquiry of the jury.

Despite the lack of any significant difference in the facts as they related to the three different alleged victims, the jury found the Defendant guilty of two and not guilty of one. Unlike Alexander and prior cases, when taken as a whole the present case involves verdicts that actually are inconsistent. As a result they are completely irreconcilable and confusing. To the extent that the verdicts are confusing when considered in light of the entire record, the court erred in refusing to make further inquiry or, to set aside the verdicts and grant the Defendant a new

trial.

To the extent that the prior decision in Alexander is construed to apply, then that portion of Alexander should be reversed, modified or limited so that truly inconsistent verdicts be subject to reversal where the record fails to support any logical basis for such inconsistency. While the supreme court abolished the general prohibition against inconsistent verdicts, it did so based on consideration of cases like Alexander in which the verdicts were not actually inconsistent. In the present case each robbery having occurred at exactly the same time, place and in the same manner as the others, the verdicts are nothing short of confusing. Unlike Alexander and many other cases before it, the present case presents a unique situation where, with the exception of the identity of the three different victims, the facts in each of the charges are identical. Therefore, unlike the case in Alexander, the Appellant's verdicts are truly inconsistent and simply can not be reconciled.

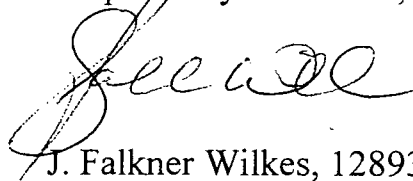
Inconsistent verdicts on charges with identical facts clearly present a situation where error most certainly has occurred. While the Powell court held that the Federal Constitution failed to protect against such errors, this Court is not limited by Powell in its interpretation of S.C. Const. art. 1, § 3 and S.C. Const. art. 1, § 14. Although it may be difficult to tell whether inconsistent verdicts are based

on the jury having not followed the court's instructions or assuming a power which it was not given, or some other improper basis, our courts should seek to protect individual rights and enforce the jury's obligation to follow its instructions faithfully. Since the provisions of our State Constitution are deemed mandatory pursuant to S.C. Const. art. 1 § 23 our courts should not overlook jury error that has no clear rationale or logical explanation. Alexander's continued application in general, and especially in this case, serves only to erode due process under Const. art. 1, § 3. As a result Applicant respectfully submits that the holding in Alexander should be reversed, modified, or limited accordingly.

CONCLUSION

Based on the foregoing, the convictions and sentences of the Appellant should be reversed and set aside and a new trial granted.

Respectfully submitted,



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April 17, 2009.

The State of South Carolina
In the Court of Appeals

Appeal from Greenville County
Court of General Sessions

G. Edward Welmaker, Circuit Court Judge

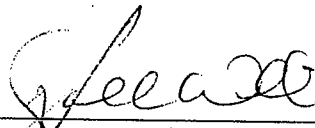
Case No.: 2006-GS-23-2630; 6231; 6232

State of South Carolina, ... Respondent,
v.
James Waiters, Jr., ... Appellant.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all of the matter designated by the Parties and no other matter.

I further certify that the Appellant's Final Brief and the Record on Appeal have been redacted in accordance with the Supreme Court's Order on private data and personal identifiers.



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable G. Edward Welmaker, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

JAMES WAITERS, JR.,

APPELLANT.

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AUTHORITIES CITED**Cases:**

<u>Creach v. Sara Lee Corp.</u> , 331 S.C. 461, 502 S.E.2d 923 (Ct. App. 1998) ...	7
<u>Hoard v. Roper Hosp., Inc.</u> , 377 S.C. 503, 661 S.E.2d 113 (Ct. App. 2008) .	9
<u>State v. Adams</u> , 332 S.C. 139, 504 S.E.2d 124 (Ct. App. 1998)	8
<u>State v. Alexander</u> , 303 S.C. 377, 401 S.E.2d 146 (1991)	6, 8, 11
<u>State v. Benton</u> , 338 S.C. 151, 526 S.E.2d 228 (2000)	7
<u>State v. Caldwell</u> , 378 S.C. 268, 662 S.E.2d 474 (Ct. App. 2008)	8
<u>State v. Hall</u> , 268 S.C. 524, 235 S.E.2d 112 (1977)	8, 12
<u>State v. Lynn</u> , 277 S.C. 222, 284 S.E.2d 786 (1981)	8
<u>State v. Mayfield</u> , 235 S.C. 11, 109 S.E.2d 716 (1959)	7
<u>State v. Mercado</u> , 263 S.C. 304, 210 S.E.2d 459 (1974)	9
<u>State v. Rogers</u> , 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004)	8
<u>State v. Williams</u> , 303 S.C. 410, 401 S.E.2d 168 (1991)	7
<u>State v. Zeigler</u> , 364 S.C. 94, 610 S.E.2d 859 (Ct. App. 2005)	11
<u>U.S. v. Powell</u> , 469 U.S. 57 (1984)	11
<u>Wertz v. State</u> , 349 S.C. 291, 562 S.E.2d 654 (2002)	10

Other Authority:

S.C. Const. Art. I, § 3	6, 8
S.C. Const. Art. I, § 14	6, 8

STATEMENT OF ISSUES ON APPEAL

- I. The issues raised on appeal are not preserved for review.
- II. The trial court properly denied the motion for new trial where the verdicts were not “inconsistent” because each separate indictment involved a different victim.
- III. Even if the verdicts could be considered “inconsistent,” inconsistent verdicts are permissible under South Carolina law, and, furthermore, Appellant cannot show prejudice from the purported inconsistency.

STATEMENT OF THE CASE

Appellant was indicted in Greenville County in July 2006 for armed robbery of Victim "Erica," armed robbery of Victim "Cora," armed robbery of Victim "Deon," and for possession of a weapon during the commission of a violent crime (R. p. 252-62). Appellant proceeded to trial on March 11-12, 2008, and the jury found him guilty of the weapon charge, of armed robbery against Victim Erica, and of armed robbery against Victim Cora, but found him not guilty of armed robbery against Victim Deon. (R. p. 240, line 23 – p. 241, line 22). The Honorable G. Edward Welmaker sentenced Appellant to seventeen years for each armed robbery, and five years for the weapon charge, with all sentences to run concurrently. (R. p. 250, lines 10-23). A Notice of Appeal was timely served and filed.

ARGUMENT**Overview of Facts**

On June 9-10, 2006, Appellant, the three victims, and several other individuals engaged in a card game beginning in the late evening hours and ending in the early morning hours. (R. p. 187-88; p. 199). The victims said Appellant was losing money, while Appellant testified he was winning. (R. p. 188, lines 13-16). The State contended that Appellant left at some point during the night, but later returned with a gun and took a sum of money from each of the three victims. (R. p. 199-200). The victims called police and reported what happened. (R. p. 199). Shortly thereafter, they spotted Appellant at an apartment complex where both Appellant and one of the victims lived. (R. p. 199-200). They called police again to advise that they had located the suspect. (R. p. 200). Police responded and found Appellant inside an apartment that he and his girlfriend shared. (R. p. 200). Appellant was detained in a patrol car, and ultimately a gun was located in his apartment. (R. p. 201). One of the victims later identified this gun at trial. (R. p. 86, lines 11-24). Appellant's theory of the case was that the victims made up the story because they were mad at him for winning money in the card game. (R. p. 188, lines 15-16).

New Trial Motion

Following a verdict of "not guilty" as to Victim Deon, and "guilty" as to the other two victims, Appellant made a motion for a new trial, arguing that the facts showed that he either robbed all of the victims or none of them. (R. p. 244, lines 7-18). The State responded that the testimony from Victim Deon regarding the pointing of the gun was different from that of the other two victims. (R. p. 244, line 21 – p. 245, line 18). The

trial court stated that, “the jury had the opportunity to weigh the facts as to each individual.” (R. p. 246, lines 1-3). The court further pointed out that the jury was told in the charge that it could view the evidence as to each victim, and that the jury could return three possible verdicts, one regarding each of the victims, rather than a “conglomerate.” (R. p. 246, lines 3-7). The court found that the verdicts were consistent, because the jury could have found that the third victim was “not under fear of threat” based upon the testimony regarding how the gun was moved around. (R. p. 246, lines 7-11). Thus, the court denied Appellant’s motion for new trial. (R. p. 246, lines 15-16).

I. The issues raised on appeal are not preserved for review.

Appellant argues on appeal that the trial court erred in denying his motion for new trial, contending that the jury verdicts were inconsistent and confusing, such that jury error is apparent. He also argues that reversal of the verdicts is required pursuant to Article I, § 3 and § 14 of the South Carolina Constitution, and that the holding in State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991) should be reversed or limited. Respondent submits that these issues are not preserved for review.

As the trial court noted when it denied Appellant’s new trial motion, the jury was charged that, “a defendant can be convicted or acquitted of one or all offenses. It is up to you to decide what evidence is there as to each of the particular charges, and you will be writing a verdict for each of them individually.” (R. p 207, lines 17-22). The jury was also instructed that, “in determining the believability of the witnesses who testified in the case, you have the right to believe one witness over several witnesses, or you can believe several witnesses over one witness. You can believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness.” (R. p. 213, lines 17-

25). Later, the court added that, “on each of these charges there are two possible verdicts that you may reach . . . considering each of the charges individually, separate from each other.” (R. p 218, line 19 – p. 219, line 1). A verdict form was then presented to the jury, listing each charge separately. (R. p. 219, lines 5-9). Following the jury charge, the court asked if there were any objections or exceptions to the charge from the defense. (R. p. 220, lines 19-23). Appellant’s counsel responded, “No, sir.” (R. p. 220, line 24).

Appellant cannot now complain about “inconsistent” verdicts where he failed to object when the judge told the jury it was *permissible* to return different verdicts on each charge. See State v. Williams, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) (defendant must object at his first opportunity in order to preserve an issue for review); State v. Benton, 338 S.C. 151, 156-57, 526 S.E.2d 228, 231 (2000) (issues conceded in the lower court cannot be argued on appeal); State v. Mayfield, 235 S.C. 11, 109 S.E.2d 716, 724 (1959) (“One may not take his chance of a favorable verdict and, after an unfavorable one, raise an objection that should have been made before the verdict was rendered.”) (citations omitted); Creach v. Sara Lee Corp., 331 S.C. 461, 464, 502 S.E.2d 923, 924 (Ct. App. 1998) (failure to object to either jury instructions or verdict form precludes review of trial court’s failure to reform the verdict). Therefore, this Court should find that no issue was preserved for review.

In addition, Appellant’s argument in support of a new trial was limited to the fact that the one verdict of not guilty was inconsistent with the facts presented at trial, in that Appellant was either guilty of all three armed robberies, or not guilty of all three. (R. p. 244, lines 7-18). Counsel stated that the one not guilty verdict was evidence that “the jury might have been compromised.” (R. p 244, lines 14-15). However, he made no

argument that reversal of the verdicts was required pursuant to Article I, § 3 and § 14 of the South Carolina Constitution, nor did he make an argument for reversal or limitation of the holding in State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). Therefore, the trial court never had the opportunity to rule on these arguments. See State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-913 (Ct. App. 2004) (to preserve an issue for review, appellant must timely raise the issue to the trial court, with sufficient specificity, and receive a ruling from the trial court on that issue) (*citing* Jean Hoefer Toal et al, *Appellate Practice in South Carolina* 57 (2d ed. 2002); State v. Adams, 332 S.C. 139, 144-145, 504 S.E.2d 124, 126-27 (Ct. App. 1998) (argument not preserved for appeal where precise issue not presented to the trial court) (citations omitted); State v. Caldwell, 378 S.C. 268, 283, 662 S.E.2d 474, 482 (Ct. App. 2008) (a party may not argue one ground at trial and another ground on appeal). Accordingly, these arguments are not preserved for review.

II. The trial court properly denied the motion for new trial where the verdicts were not “inconsistent” because each separate indictment involved a different victim.

The South Carolina Supreme Court has stated that, “[m]ultiple verdicts are inconsistent if the essential elements of the count of which the defendant is acquitted are *identical and necessary* to prove the count of which the defendant is convicted.” State v. Hall, 268 S.C. 524, 528, 235 S.E.2d 112, 114 (1977) (*citing* State v. Amerson, 244 S.C. 374, 137 S.E.2d 284 (1964)) (emphasis added). If the essential elements of the crimes at issue are not identical, verdicts acquitting on one and convicting on the other are not inconsistent. State v. Lynn, 277 S.C. 222, 229, 284 S.E.2d 786, 790 (1981). In addition, if a jury could acquit on one count and convict on the other by believing parts of the

evidence and disbelieving other parts, there is no inconsistency. State v. Mercado, 263 S.C. 304, 308, 210 S.E.2d 459, 460 (1974).

Appellant claims the verdicts are inconsistent due to “identical” facts. However, the verdicts cannot be inconsistent because each charge involved an element the other did not – an entirely different victim. Appellant cites no authority supporting the proposition that verdicts involving different victims could be inconsistent. Furthermore, each victim testified at trial, and each was subject to the jury’s evaluation of credibility. Even if the victims’ testimony had been exactly the same, it was still within the province of the jury to find one victim not credible, while finding the other two victims credible. See Hoard v. Roper Hosp., Inc., 377 S.C. 503, 510, 661 S.E.2d 113, 117 (Ct. App. 2008) (credibility of witnesses, including the inherent probability of testimony, is a matter for the jury to decide; jury may believe all, some, or none of the testimony, even if uncontradicted).

In this case, the record supports a logical explanation for two guilty verdicts and one not guilty verdict. Victim Deon’s testimony was distinguishable from that of the other two victims in several significant respects, all of which support that the jury could have found her less credible than the other victims.¹ First, the testimony reflected that Victim Deon was the only one of the three victims who lived in the same apartment complex as Appellant. (See R. p. 58, lines 2-14; p. 104, lines 10-23). In addition, Victim Deon’s testimony was contrary to that of the other victims when she insisted that a “red laser beam” came out of the gun. (R. p. 79-80; p. 86; p. 110-111). Meanwhile, the evidence showed that there was no laser device on the gun. (See R. p. 60, line 4 – p. 61, line 4). Finally, Victim Deon was the only one who testified that Housing Authority

¹ Appellant’s counsel remarked on the differences in the victims’ testimony in his directed verdict motion, stating, “their testimony is all out of whack.” (See R. p. 134-35). Clearly, he recognized that the facts elicited from each victim were not “identical.”

personnel let police into Appellant's apartment. (See R. p. 105-106; 112-113; p. 71-72; p. 88-89; p. 115-116; p. 163, lines 2-3). These differences in Victim Deon's testimony could reasonably have led the jury to find that her testimony was not credible.

Credibility was important in this case because in order to find armed robbery, the jury had to find that property was taken from a person by violence or by putting the person "in fear of violence." (See R. p. 216-17). Since none of the victims testified that Appellant actually used overt violence, the jury would have had to make a determination regarding each victim's subjective beliefs about whether she was in "fear of violence." If the jury found Victim Deon not credible, it could have properly rejected her testimony that she felt "threatened." (R. p. 101, line 24). Such a finding would be particularly reasonable in light of the fact that Victim Deon was also the *only* victim who stated that the gun was never pointed at her at any time. (See R p. 65-66; p. 76; p. 84-86; p. 103, lines 9-11; p. 108, line 19 – p. 109, line 15). Accordingly, the jury could reasonably have found that the State failed to prove, beyond a reasonable doubt, each element of armed robbery as to Victim Deon.

Therefore, a verdict of not guilty as to Victim Deon was not inconsistent or irreconcilable with the guilty verdicts as to the other two victims. Nor was the verdict confusing in its meaning or unclear in any way. See Wertz v. State, 349 S.C. 291, 296, 562 S.E.2d 654, 657 (2002) (clarification of jury verdict warranted where verdict was ambiguous as to the degree of burglary). Contrary to Appellant's argument, there is no reason to suspect jury error, and the trial court had no basis to make further inquiry to the jury - particularly where Appellant failed to request that the court do so while the jury was still present. (R. p. 242, lines 1-7). Thus, the judge was correct in finding that the

verdicts were consistent and not improper, and the denial of Appellant's new trial motion should be upheld. See, e.g., State v. Zeigler, 364 S.C. 94, 108, 610 S.E.2d 859, 866 (Ct. App. 2005) ("On appeal, the denial of a new trial motion will be disturbed only upon a showing of an abuse of discretion.").

III. Even if the verdicts could be considered "inconsistent," inconsistent verdicts are permissible under South Carolina law, and, furthermore, Appellant cannot show prejudice from the purported inconsistency.

As discussed above, the verdicts were not actually inconsistent. However, even if they had been, inconsistency in jury verdicts is not a proper basis for a new trial. In State v. Alexander, the South Carolina Supreme Court abolished the rule prohibiting inconsistent verdicts. State v. Alexander, 303 S.C. 377, 383, 401 S.E.2d 146, 150 (1991). Thus, a criminal defendant convicted by a jury on one count cannot attack that conviction because it is inconsistent with the jury's verdict of acquittal on another count. See id.; U.S. v. Powell, 469 U.S. 57 (1984). Vacation of a conviction is not warranted "merely because the verdicts cannot rationally be reconciled." U.S. v. Powell, 469 U.S. 57, 69 (1984). It is inappropriate to speculate that a jury committed some type of error, when in fact the jury might have simply been lenient towards a defendant by not convicting him on all counts. Alexander, supra., Powell, supra.

In that vein, because a defendant receives the benefit of acquittal on the counts for which he is not convicted, he cannot show prejudice warranting a new trial. The Court in Alexander recognized this and noted that the rule against inconsistent verdicts had "seldom, if ever," been used to grant a new trial, because a defendant cannot show prejudice from a jury's acquitting him on a charge for which he could have been convicted. See Alexander, supra. Therefore, in this case, Appellant's claim is

unavailing, because where there was sufficient evidence to surpass directed verdict on each of the charges, Appellant could not possibly show that he has suffered prejudice from an acquittal on one charge. See Hall, supra. For these reasons, Appellant is not entitled to a new trial.

CONCLUSION

The issues raised on appeal are not preserved for review, but, in any event, a new trial is not warranted because the verdicts were not inconsistent, and because one “not guilty” verdict was not prejudicial to Appellant. Accordingly, Respondent requests that this Court affirm the convictions and sentences.

Respectfully submitted,

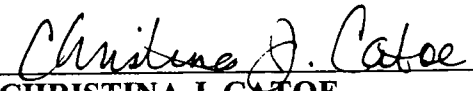
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

ROBERT M. ARIAIL
Solicitor, Thirteenth Judicial Circuit


CHRISTINA J. CATOE

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ATTORNEYS FOR RESPONDENT

April 15, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable G. Edward Welmaker, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

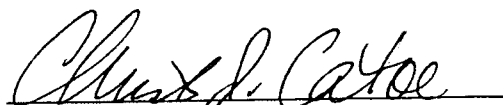
v.

JAMES WAITERS, JR.,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.


CHRISTINA G. CATOE

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR RESPONDENT

April 15, 2009

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable G. Edward Welmaker, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

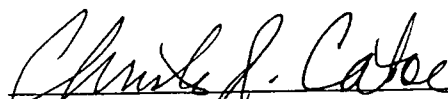
v.

JAMES WAITERS, JR.,

APPELLANT.

AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **J. FALKNER WILKES, ESQUIRE**, 638 East Washington Street, Greenville, SC, 29601, this **15th** day of **April, 2009**.


CHRISTINA J. CATOE

Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

SWORN to before me this 15th day of April, 2009.
Notary Public for South Carolina.My Commission Expires: 12.13.12

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

James Waiters, Jr.,

Appellant.

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

Unpublished Opinion No. 2010-UP-296
Submitted May 3, 2010 – Filed May 27, 2010

AFFIRMED

J. Falkner Wilkes, of Greenville, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Assistant Attorney General Christina J. Catoe, all of
Columbia; and Solicitor Robert M. Ariail, of
Greenville, for Respondent.

PER CURIAM: James Waiters, Jr., appeals his convictions for two counts of armed robbery and possession of a firearm, arguing the trial court erred in denying his new trial motion. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities: State v. Alexander, 303 S.C. 377, 383, 401 S.E.2d 146, 150 (1991) (abolishing the rule prohibiting inconsistent verdicts in criminal cases and finding a defendant suffers no prejudice from inconsistent verdicts in a criminal case); State v. Nichols, 325 S.C. 111, 123, 481 S.E.2d 118, 124 (1997) (finding the appeal of the denial of a new trial motion based on inconsistent verdicts lacked merit because the rule prohibiting inconsistent verdicts was abolished).

AFFIRMED.

HUFF, SHORT, and WILLIAMS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of GREENVILLE)JAMES E. WALTERS JR. # 235965)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2010-CP-23-10380

APPLICATION FOR
POST-CONVICTION RELIEFFILED
CLERK OF COURT
GREENVILLE, S.C.
NOV 11 2010

2010 DEC 21 P 12:34

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention BROAD RIVER CORR. INST., CONGARREE-229
4460 BROAD RIVER ROAD, COLUMBIA, S.C. 29210
2. Name and location of Court which imposed sentence COURT OF GENERAL
SESSIONS, IN GREENVILLE COUNTY
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-GS-23-2630; 6231; 6232- POSSESSION
 - (b) OF A WEAPON DURING CRIME; ARMED ROBBERY

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MARCH 12, 2008, CONCURRENT SENTENCE OF 17 YEARS
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty YES
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. CONVICTION AND SENTENCE WAS AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MAY 27, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE "INITIAL BRIEF" IN SUPPORT OF APPLICATION
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No

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

(a) which grounds have been presented:

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

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

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

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

(a) IAOC - First Time Challenged
 (b) DENIED - Fundamentally Fair Trial First Time
 (c) Challenged

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

(a) your arraignment and plea? No
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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

(a) the name and address of each attorney who represented you:
 i. Timothy Sullivan, Greenville County Public
DEFENDERS OFFICE, Greenville County BAR
 ii. J. FALKNER WILKES, of Greenville, S.C. 29601
Greenville County BAR
 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. TRIAL AND SENTENCING
 ii. APPEAL
 iii. _____

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

VACATED OR REVERSED FOR NEW TRIAL

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

No

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

VERIFICATION

I, JAMES E. WAITERS JR., 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.

James E. Waiters #235465

SWORN to and subscribed before me this 21
day of Dec 2010.

Eugene Keith (L.S.)
Notary Public

My Commission Expires: April 4, 2016

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

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

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

James E. Waiters Jr. #235965
Applicant

SWORN or affirmed to and subscribed before me this
21 day of Dec, 2010.

Eugene K. [Signature]
Notary Public

My Commission Expires: My Commission Expires April 4, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2010-CP-23-10380
COUNTY OF GREENVILLE	)	
	)	
James Emanuel Waiters, Jr.,	)	
S.C.D.C. No. 235965,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed December 23, 2010, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the July 2006 term of General Sessions for three (3) counts of armed robbery (2006-GS-23-6230, -6231, -6232) and possession of a weapon during commission of a violent crime (2006-GS-23-6233). C. Timothy Sullivan, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty of two (2) counts of armed robbery (2006-GS-23-6230, -6231) and possession of a weapon during commission of a violent crime. On March 12, 2008, the Honorable G. Edward Welmaker sentenced the Applicant to seventeen (17) years for each count of armed robbery and five (5) years for possession of a weapon during commission of a violent crime.

A notice of appeal was filed at the South Carolina Court of Appeals. J. Falkner Wilkes,

Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Waiters, Op. No. 2010-UP-296 (S.C. Ct. App. filed May 27, 2010).

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to move to dismiss the armed robbery indictments.
 - b. Failed to move for a new trial when the armed robbery indictments were constructively amended.
 - c. Failed to argue violation of procedural due process and double jeopardy.
 - d. Failed to move to suppress the evidence due to illegal arrest, search, and seizure and in violation of Miranda and rules of evidence.
 - e. Failed to object to the State's prejudicial use of the Applicant's prior conviction.
 - f. Failed to object to the State's prejudicial closing argument.
 - g. Failed to object to the erroneous jury instructions.
 - h. Failed to properly investigate case, interview witnesses, or prepare for trial.
 - i. Failed to use a prior inconsistent statement against the State's witnesses.
 - j. Failed to argue a double jeopardy violation by the armed robbery indictments and the possession of a weapon during commission of a violent crime indictment.
2. Ineffective assistance of appellate counsel:
 - a. Failed to argue directed verdict issue.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance

well within the standard of “reasonableness within professional norms” for a criminal defense attorney.

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 on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v.

Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

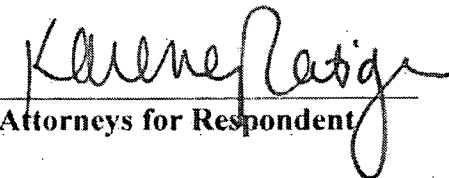
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

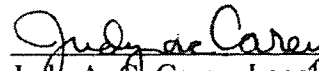
April 12, 2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2010-CP-23-10380
	)	
JAMES EMANUEL WAITERS, JR., 235965	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**James Emanuel Waiters, Jr., 235965
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29210**

DATED this 12th day of April, 2011.


Judy A. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2010-CP-23-7981
	)	
COUNTY OF GREENVILLE	)	
	)	
	)	
	)	TRANSCRIPT RECORD
James Waiters	)	
	)	
	)	
-vs-	)	
	)	
State of South Carolina	)	

November 1, 2012

Greenville, South Carolina

B E F O R E:

THE HONORABLE MARKLEY DENNIS, Judge.

A P P E A R A N C E S

R. Mills Ariail, Jr., Esquire
Attorney for the Plaintiff

Karen C. Ratigan, Esquire
Assistant Attorney General
Attorney for the State

CAROLINE HISKELL
Thirteenth Circuit Court Reporter

I N D E X

WITNESSES

DIR

CROSS

RED

James Waiters

5

12

Tim Sullivan

15

22

25

E X H I B I T S

(No Exhibits)

James Waiters - Direct Examination

P R O C E E D I N G S

MS. RATIGAN: Your Honor, last case today is James Waiters versus the State of South Carolina, Docket No. 2010-CP-23-10380. Mr. Waiters was indicted for three counts of armed robbery and one count of possession of a weapon during the commission of a violent crime. He was represented on these charges by Mr. Sullivan seated to my right.

The case was brought to trial before Judge Welmaker in March of 2008. Applicant was found guilty of two out of the three counts of armed robbery. He was also found guilty of the weapons charge.

On March 12, 2008, Judge Welmaker sentenced him to 17 years on each count of armed robbery and five years on the weapons charge. Notice of appeal was filed and perfected in the Court of Appeals. That Court affirmed his convictions and sentences in May of 2010 and the State is ready to proceed.

THE COURT: Thank you. Mr. Waiters, you can remain seated or you can stand or whatever you want to do. You've talked with your lawyer about what the outcome could be and basically I can return you to the two remaining charges because you were found not guilty on one and that would take care of that one. But you would go back to trial again on the two armed robberies, do you

James Waiters - Direct Examination

1 understand that?

2 MR. WAITERS: Yes, sir.

3 THE COURT: And your lawyer has explained to
4 you that that would expose you to the weapons charge which
5 is five years as well as -- was the weapons charge on each
6 armed robbery?

7 MR. ARIAL: Just on the one the commission of
8 a weapon.

9 THE COURT: That could be run consecutive to
10 your armed robbery and there's a potential that you could
11 get up to about 65 years. Of course you would only have
12 to serve 85 percent and they use to and they may give you
13 credit for it and I don't know how that's going to come,
14 but it could be consecutive and you could end up doing 85
15 percent on each one, do you understand that, sir?

16 MR. WAITERS: Yes, sir.

17 THE COURT: And you could get 17 concurrent?

18 MR. WAITERS: Yes, sir.

19 THE COURT: So you want to expose yourself to
20 another 30 something years?

21 MR. WAITERS: Yes, sir.

22 THE COURT: Okay. Thank you, sir.

23 You may proceed.

24 MR. ARIAL: We call Mr. Waiters to the stand.

25 THE COURT: Okay.

James Waiters - Direct Examination

1 THE CLERK: Mr. Waiters, please place your
2 left hand on the Bible and raise your right hand.

3 JAMES WAITERS, JR., having been duly sworn,
4 testified as follows:

5 Thank you. You may be seated. Please state
6 your full name for the record.

7 THE WITNESS: James E. Waiters.

8 MR. ARIAL: Your Honor, just for the record
9 before we begin, one of the issues he has asked me to
10 address and I want to draw to the attention of the Court
11 because I tried to find the transcript and there is not
12 but apparently there is no record that the jury was sworn
13 in this case prior to the trial beginning. I can not find
14 it anywhere in the record and he filed a supplemental
15 brief in regards to it and I filed it yesterday and let
16 Ms. Ratigan know that we were going to raise that issue.

17 THE COURT: Do you have any objection,
18 Ms. Ratigan?

19 MS. RATIGAN: I am on notice, Your Honor.

20 THE COURT: Thank you. It is supplemented to
21 include that additionally.

22 MR. ARIAL: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. ARIAL:

25 Q. Mr. Waiters, let me go back a little bit and get

James Walters - Direct Examination

1 the understanding of this case. First of all you were
2 charged with three armed robberies; is that correct?

3 A. Yes, sir.

4 Q. And you had one possession of a weapon during a
5 violent crime; is that correct?

6 A. Yes, sir.

7 Q. You went to trial and were found guilty of two of
8 the armed robberies, correct?

9 A. Yes, sir.

10 Q. And of the possession of a weapon during a
11 violent crime.

12 A. Yes, sir.

13 Q. You got 17 years for each of the armed robberies
14 and five years for the possession of a weapon during a
15 violent crime.

16 A. Yes, sir.

17 Q. Now, you had one armed robbery that you did --
18 the jury came back and said you were not guilty for,
19 correct?

20 A. Correct.

21 Q. Now, your appealing and you filed a lengthy
22 application and then we filed supplemental brief in
23 regards to that; is that correct?

24 THE COURT: Hold on for one second. We're
25 going to have to have quiet. If you can't, you need to

James Waiters - Direct Examination

1 exit the courtroom.

2 BY MR. ARIAL:

3 Q. And you were represented by Mr. Sullivan at this
4 trial, correct?

5 A. Yes, sir.

6 Q. How long did he represent you?

7 A. During the trial.

8 Q. What I want to understand a little bit is how
9 long was he your attorney. When did he file his notice of
10 appearance?

11 A. I would say year and a half, two years.

12 Q. Were you in jail during this time?

13 A. No, I was on the street.

14 Q. He was appointed for you; is that correct?

15 A. Yes.

16 Q. During this time, how many times do you think you
17 saw him during the pendency of your case?

18 A. Two times.

19 Q. Do you remember when those times were, how close
20 to trial?

21 A. Both of them were within a week of each other
22 within a week of the trial.

23 Q. Both of them were within the week before the
24 trial?

25 A. Yes.

James Waiters - Direct Examination

1 Q. Did you ever get a copy of discovery?

2 A. No.

3 Q. Did you ever get to review any of the
4 documentation that was filed?

5 A. No.

6 Q. Did you review the video tape?

7 A. I never saw the video tape.

8 Q. In this case it really, and I'm going to try to
9 summarize what the evidence was, there were three
10 witnesses, three individuals and there was an allegation
11 that you were playing cards and basically came back again
12 and tried to rob them at gun point for money that you had
13 lost during this card game; is that correct? That's what
14 the solicitor was arguing?

15 A. Yes.

16 Q. The facts of one of the issues you had when they
17 arrested you or put you in -- located you -- they put you
18 in back of a police car and they had a video tape; is that
19 right?

20 A. Correct.

21 Q. And part of that video tape is some of the
22 statements that you just uttered during that time or
23 basically what you were saying outside one of the windows,
24 correct?

25 A. Yes, what I was saying because I never seen this

James Waiters - Direct Examination

1 tape prior to trial.

2 Q. Did you know a video tape existed that basically
3 got your comments and statements while you were sitting in
4 the back of that car?

5 A. No, not until the date of trial.

6 Q. You weren't Mirandized until after that video was
7 taken; is that correct? You were just sitting in the back
8 of the car?

9 A. Well, according to the officer's testimony, there
10 is nothing saying that they actually Mirandized me or
11 whatever.

12 Q. But this video took place in the back of the car
13 and it was put into evidence at trial, correct?

14 A. Correct.

15 Q. And did you ever sit down and watch that and
16 discuss it or have any conversations with Mr. Sullivan
17 before trial?

18 A. No. I never seen it. To this day I haven't seen
19 it.

20 Q. And when you say you haven't seen it, you clearly
21 were at trial and you told me you couldn't see it because
22 I guess the way the screen was placed at trial; is that
23 right?

24 A. Right. I could only hear it. I never seen it
25 before that day.

James Waiters - Direct Examination

1 Q. Now, prior to trial, did you receive an offer or
2 have any discussions with Mr. Sullivan about an offer?

3 A. Yes, that one week before trial. I can to meet
4 Mr. Sullivan at this courthouse.

5 Q. I'm trying to understand this. There was a
6 little different approach. You never received an offer
7 prior to coming to the courthouse?

8 A. When I came to the courthouse, he told me it was
9 a 10 year offer.

10 Q. Your case was in 2010, right?

11 A. Yes.

12 Q. I think the process at that time was the
13 Solicitor's Office would extend and offer and then if you
14 did not accept the offer within a set amount of time, you
15 case could then be placed on the trial docket and the plea
16 offer expired. What I'm getting at is, did you get an
17 offer before you were placed on that trial docket?

18 A. I don't really know when I was on the trial
19 docket because right after I talked to Mr. Sullivan about
20 the 10 years, I had not received any discovery information
21 or we hadn't talked about anything and that was like a one
22 time thing that we talked about the 10 year deal.

23 Q. Now, if you had known and what I'm getting too is
24 this video that you saw at trial ---

25 A. I never saw it.

James Waiters - Direct Examination

1 Q. You've never seen it but you heard what was said
2 on it. It included information that was certainly against
3 you and not in your favor; is that right?

4 A. Right.

5 Q. What kind of information did you have on it, do
6 you recall?

7 A. It talked about a gun.

8 Q. Now, did you talk to Mr. Sullivan about any type
9 of motion to suppress or any issue with regards to that
10 video or the gun that was involved in it?

11 A. I asked him why -- what was on the video I asked
12 him that a number of times at trial what was actually on
13 the video since I never saw it. His response was there
14 was nothing incriminating on the video.

15 Q. Did you give him a list of witnesses or provided
16 him with any information that he needed to investigate or
17 contact?

18 A. Witnesses, yes, he had witnesses which was my
19 girlfriend that was in the house. It was her apartment.
20 She was on the witness list and he never called her.

21 Q. Is that April Woods?

22 A. Yes.

23 Q. So you didn't have any conversation until a week
24 before trial?

25 A. A week, two weeks.

James Waiters - Cross Examination

1 Q. Did you give him this information then about who
2 to investigate?

3 A. Who to subpoena, all that information was given.

4 MR. ARIAL: I have no further questions.

5 THE COURT: Cross-examine.

6 CROSS-EXAMINATION

7 BY MS. RATIGAN:

8 Q. From the time you were arrested and you bonded
9 out, how long was that?

10 A. From 2006 to the trial 2012.

11 Q. So about two years -- let me start all over
12 again. When did you get arrested?

13 A. 2006. 2006 to 2008.

14 Q. But you were released on bond?

15 A. Yes, ma'am.

16 Q. How long were you at the Detention Center before
17 you got released on bond?

18 A. Maybe a few months, three months at the most.

19 Q. Mr. Sullivan never met with you while you were at
20 the Detention Center?

21 A. No.

22 Q. You testified you only had two meeting with him
23 after that?

24 A. Two.

25 Q. Did you try and go by his office after you had

James Waiters - Cross Examination

1 bonded out to talk with him about your case?

2 A. Yes.

3 Q. And what happened?

4 A. He wasn't there. I tried to contact him over the
5 phone and stopping pass his office. He just ain't never
6 been there.

7 Q. So you had no contact with him at all until a
8 couple of weeks before your trial in 2008?

9 A. Yeah, a couple of weeks.

10 Q. And your testimony is you never went over the
11 State's evidence with him?

12 A. Never.

13 Q. Did you tell Mr. Sullivan your version of what
14 had happened that night at the card game?

15 A. Yes.

16 Q. And you stated you gave him witness names, your
17 girlfriend April. Was there another name?

18 A. (Inaudible) Robinson.

19 Q. And she testified for you at trial, correct?

20 A. Correct.

21 Q. Any other names?

22 A. No.

23 Q. The video tape was of you muttering something to
24 Lulu Robinson while you were in the back of the police
25 car?

James Waiters - Cross Examination

1 A. Supposedly.

2 Q. That's what you heard at trial.

3 A. Something to that degree.

4 Q. But that you and Mr. Sullivan never talked about
5 that video?

6 A. No.

7 Q. You never talked about what you allegedly said on
8 the video?

9 A. No.

10 Q. And you testified in your own defense at trial,
11 correct?

12 A. Correct.

13 Q. So you ever given an opportunity to explain to
14 the jury your version of what had happened at the card
15 game that night?

16 A. Right.

17 MS. RATIGAN: That's all I have, Your Honor.

18 MR. ARIAL: Nothing further.

19 THE COURT: You may step down. Thank you,
20 sir.

21 (Witness leaves the witness stand.)

22 Call your next witness.

23 MR. ARIAL: I would call Mr. Tim Sullivan.

24 THE CLERK: Mr. Sullivan, place your left
25 hand on the Bible and raise your right.

Tim Sullivan - Direct Examination

1 TIM SULLIVAN, having been duly sworn,
2 testified as follows:

3 You may be seated. State your name for the
4 record.

5 THE WITNESS: C. Timothy Sullivan.

6 DIRECT EXAMINATION

7 BY MR. ARIAL:

8 Q. Tim, I'm going to ask you first of all how you're
9 doing today?

10 A. Good.

11 Q. Thank you for showing up and I'm going to try to
12 make this as straight forward as I can. I have a few
13 questions in regards to your representation. Initially,
14 do you know when you were appointed for this case because
15 you got it under contact, correct?

16 A. He was arrested on June 10th of '06 and usually
17 we get it within two weeks and we have to see them within
18 72 hours. I saw him at the Detention Center. He may not
19 remember but I saw him at the Detention Center before he
20 made bond.

21 Q. At that time, you got the facts from him but you
22 didn't have any discovery at that time, did you?

23 A. We just went over it briefly. I'll ask them,
24 what did they say you did and give me a brief description
25 of that, and then I'm sure we had a bond hearing and he

Tim Sullivan - Direct Examination

1 made bond. It took a while and I got discovery made a
2 copy and James had the discovery.

3 Q. Do you remember or recall how you gave me a copy
4 of the discovery? Did you send it to him in the mail or
5 did he come in?

6 A. I would leave it at the Public Defender's Office.

7 Q. Do you have anything in your file showing when he
8 got a copy of the discovery?

9 A. I don't have the file.

10 Q. But the standard procedure is you would leave it
11 at the Public Defender's Office and they would come and
12 pick it up.

13 A. Back then I had a contract with John Mauldin and
14 they would make copies down there and they would pick it
15 up there.

16 Q. And you can't say today he didn't get a copy.
17 You heard him say he didn't discuss it prior to or got a
18 copy at any time?

19 A. I had discovery and he had it because that's I
20 knew about Lulu Mae Robinson.

21 Q. And Lulu Mae I guess was the individual who at
22 the first part of the card game at one of the residents;
23 is that right?

24 A. I think they started the card game at James's and
25 then they went from there over the Cora later.

Tim Sullivan - Direct Examination

1 Q. Lulu Mae was the driver?

2 A. She drove with somebody and then she was diabetic
3 and she had went home and left them there. He called her
4 later to come pick him up.

5 Q. Going back to what you talked to him about, he
6 indicated that y'all didn't talk until a week before
7 trial?

8 A. No, we talked before that because they made a
9 offer and I think it was like dismiss one and 10 years on
10 everything or something like that.

11 Q. You remember a 10-year offer which would be the
12 mandatory minimum for that, I guess; is that correct?

13 A. Ten to thirty.

14 Q. Did you have a discussion with him in regards to
15 that offer?

16 A. He said he did not do it and he wanted a trial.

17 Q. So you got on the trial docket and went to try
18 this. There is a video, from what I understand the case,
19 there's three victims, three victims, their testimony
20 against him whether or not it was fabrication by them to
21 get money back or whether he really robbed them and the
22 next piece of evidence and it looked like it was a big
23 piece was a video of him in the back of a police car; is
24 that correct?

25 A. That's correct.

Tim Sullivan - Direct Examination

1 Q. The video from my understanding and I hadn't
2 looked at it, but it appears he was clearly saying there's
3 a gun, it's in a refrigerator somewhere.

4 A. Ice house.

5 Q. Ice house. And trying to get somebody to go get
6 it looks like the scenario right there.

7 A. What happened is the gun was in the refrigerator
8 at this girlfriend April Woods. He had stated it was at
9 her apartment and he had the gun for two years and he
10 couldn't legally possess it, and he wanted Lulu Mae to get
11 the gun so April would not get in trouble and lose her
12 lease for having a gun. That would be against the policy.
13 That was his reasoning for telling Lulu Mae and he was on
14 audio. I admit I don't recall he and I looking at the
15 video. I don't remember seeing it until the court date.
16 I did have a transcript and a statement of what was said
17 and was overheard and I talked to Lulu Mae. I asked her
18 the day of trial because I went and picked her up and
19 talked to her before the trial. I went and picked her up
20 because she didn't have a trial.

21 Q. This was probably one of the damning things in
22 the case for him. Did he know about that prior to the
23 expiration of his offer?

24 A. He knew that as soon as we got discovery. The
25 window was partly rolled down and the audio was on. I

Tim Sullivan - Direct Examination

1 don't remember about the video but the audio was on and he
2 was heard saying where the gun was, in the ice house, in
3 the refrigerator. And April Woods came and she signed a
4 consent to search. She didn't know nothing about anything
5 but the police were there and she signed a consent to
6 search. They went in the refrigerator and find the gun in
7 the ice house.

8 Q. This video, one of his issues was filing some
9 motion to suppress it based upon being in custody without
10 Miranda. Do you remember you didn't do a motion to
11 suppress under that? Do you know your reasoning behind
12 that what you thought in that situation?

13 A. As I recall he was talking voluntarily not
14 talking to the police. He didn't know the audio was on.
15 He wasn't even questioned by the police. He was talking
16 to Lulu Mae Robinson. This is a conversation between two
17 individuals and they weren't asking him anything at that
18 point so there's no reason for them to Mirandized him.
19 After they got that information they Mirandized him and
20 charged him with the armed robbery.

21 Q. They do that in a lot of cases.

22 A. Oh, yeah, people don't know that. People don't
23 know those things are on.

24 Q. But there was no questioning that you saw or any
25 type of questions being asked of him which would have

Tim Sullivan - Direct Examination

1 helped you file any type motion to suppress or anything
2 like that?

3 A. What happened is one of the girls in the card
4 game lived near him and another girl was taking her home.
5 She saw him standing outside and said there's Bubba, that
6 was his nickname or short man, and they called the police
7 and he said he called for back up. They were actually
8 chasing another person and they knocked on the front door
9 and James came out and they said we need to talk to you.
10 There was a city case and they put them in the county car
11 until the police could get there and that's when the
12 conversation took place between he and Lulu Mae. When the
13 City got there, they made the formal charges because the
14 girl said he's the one that robbed us.

15 Q. Now, investigation in regards to this case, did
16 he provide you with a list of witnesses or anything who
17 you should contact?

18 A. I talked to Lulu Mae. I went to her house two or
19 three weeks before the trial and she told me pretty much
20 the same thing that she testified to. At the day of trial
21 I went to pick her up. I never did talk to April because
22 I didn't think she had any information because the only
23 thing she did and it was sign a consent to search. She
24 wasn't involved in any of the card games. She never
25 called me. She could have called me.

Tim Sullivan - Direct Examination

1 Q. Do you remember providing you information about
2 why the gun was in the ice house?

3 A. April?

4 Q. Yeah.

5 A. I don't even know if she knew it was there or
6 not.

7 Q. Those are the only witnesses you pretty much knew
8 were involved.

9 A. Lulu Mae and April and the other witness was
10 involved in the card game.

11 Q. The other issue was he testified and they
12 utilized a heroin charge against him.

13 A. I don't think they did that on cross. I think we
14 did that ---

15 Q. You brought it up.

16 A. On sentencing. Prior to sentencing, Judge
17 Welmaker wanted to know his record.

18 Q. That did not come out during trial?

19 A. His record was not mentioned during his
20 testimony.

21 Q. He appealed this matter so there's no issue in
22 regard to that. Do you remember and I'm going through the
23 jury being sworn?

24 A. I hadn't even thought about that. I just looked
25 through it just now when it was first mentioned and I

Tim Sullivan - Cross Examination

1 don't see it anywhere in here. I never looked at the
2 transcript to see if it's on there.

3 Q. I hadn't either and I don't know if you recalled
4 anything about -- recollect anything about a jury not
5 being sworn in this case.

6 A. I don't recall. I went back through the record
7 where he appointed a foreman and Doug Webb started making
8 opening statement.

9 Q. I don't have anything in the record saying, man,
10 I thought I missed it too until ---

11 A. I don't recall anything. I'll tell you what was
12 strange about it and inconsistent. The girl's testimony
13 was not all consistent and he was charged with robbing all
14 three of them and he was found not guilty on one. I made
15 a motion for inconsistent verdict and new trial and Judge
16 Welmaker turned it down and then gave him the sentence. I
17 was actually shocked knowing that and he got 17 years.

18 Q. I agree with your motion.

19 A. It was inconsistent. Either you robbed three
20 people or not. He's only got one gun and they found him
21 not guilty on one and I'm thinking something weird.

22 MR. ARIAL: I got no further questions.

23 CROSS-EXAMINATION

24 BY MS. RATIGAN:

25 Q. Just a couple quick ones, Mr. Sullivan. The

Tim Sullivan - Cross Examination

1 trial was March of 2008. Do you remember when the State
2 made that plea offer?

3 A. I don't have that. Either they do it about six
4 months or four months before a trial and they give us time
5 and they give us anywhere from two to three months to
6 accept it.

7 Q. And your recollection is that you talked to
8 Mr. Waiters about it and he rejected it?

9 A. He told me from day one that he wanted a trial
10 that he did not rob these ladies.

11 Q. And what did you determine your trial strategy
12 would be just that he didn't do it, he was innocent?

13 A. There were inconsistencies in there. For
14 example, one of them talked about when he would pull the
15 gun out that there was a laser like a red light.

16 Q. Like a laser sight.

17 A. Yes, and that was pointed at her. He gun has no
18 laser on it. It had a little red dot at the end of the
19 barrel. One girl said he pointed it at her waist, the
20 other said he kept it at her face the whole time. They
21 said after they robbed her, he went back and got a drink
22 of Tequila. They had no fingerprints from the glass that
23 he supposed to have taken a shot of.

24 Q. And you brought all these kind of inconsistencies
25 up during your cross-examination?

Tim Sullivan - Cross Examination

1 A. Yes. I had to offer to the jury what a laser
2 sight was. I asked him if he said a laser sight on them
3 and he said no. I also asked him if they were going to
4 Charleston for shopping and spend the night and I asked
5 the officer when he got there were there any suitcases.
6 They had nothing packed. I don't know how much money was
7 involved in this thing.

8 Q. So it would be fair to say that your trial
9 strategy was just to try and maybe impeach the credibility
10 of the victims?

11 A. The three victims because of the inconsistency of
12 the testimony and then try and use finding the gun was to
13 protect his girlfriend -- and also Lulu Mae said when he
14 picked him up, he was highly intoxicated and the ladies at
15 the robbery said he was not intoxicated. The officer said
16 he did not appear intoxicated when he arrested him so I
17 had an inconsistency there. Either he was drunk or he
18 wasn't.

19 Q. Mr. Waiters testified at trial and was able to
20 explain his rationale behind the gun in the refrigerator?

21 A. It would have been a violation of his
22 girlfriend's lease and she would have been evicted because
23 it was rent subsidized and there were no guns allowed on
24 the property and he was trying to let her get it out of
25 there so she wouldn't get into trouble.

Tim Sullivan - Redirect Examination

1 MS. RATIGAN: That's all I have, Your Honor.

2 THE COURT: Redirect.

3 MR. ARIAL: Just one quick question.

4 REDIRECT EXAMINATION

5 BY MR. ARIAL:

6 Q. There was an objection by you in regards to the
7 chain of custody in regards to the gun. I don't remember
8 if you remember that.

9 A. I don't recall.

10 Q. What I'm trying to figure out is there was an
11 argument and you withdrew your objection to the gun. Do
12 you remember why you did that?

13 A. No, I can't say why.

14 Q. I guess I cite your attention to Page 54 and 55
15 in the transcript. My client is asking me ---

16 A. It could be they satisfied my curiosity. The top
17 of Page 55, Doug had written the serial number of the gun
18 when they got it out of the refrigerator and it was the
19 same serial number as the gun they had introduced into
20 evidence. It was not a fudgable item like the drugs as
21 being tampered with or destroyed. The gun had the same
22 serial number on June 10th that it did on March 8th.

23 Q. Since it was the same serial number that came out
24 of the refrigerator is the one they were putting in and
25 you didn't feel it was any need to object to that.

Tim Sullivan - Redirect Examination

1 A. Correct.

2 THE COURT: Any additional questions,
3 Ms. Ratigan?

4 MS. RATIGAN: No, Your Honor.

5 THE COURT: You may come down. Any
6 additional witnesses.

7 MS. RATIGAN: The State has nothing further
8 to present.

9 THE COURT: Any argument?

10 MR. ARIAL: Yes, Your Honor. The main issue
11 will be the jury being sworn issue. I don't know how we
12 get past that issue first and foremost.

13 THE COURT: I don't either and I happen to
14 know the court reporter. She worked with Judge Welmaker
15 for a little while but she's been my court reporter for
16 nine years. I would suggest it never happened. That the
17 swearing was not accomplished. We have not found any
18 South Carolina cases on point. We found a Tennessee case
19 and an Ohio case but those cases really state what I
20 believe is correct. It's a nullity and while the Ohio
21 case has said if it's not raised in appeal then it is
22 deemed to be correct and waived, which is logical, but at
23 this point and I'm a trial judge and I'm doing the same
24 thing but it's ineffective if it's not raised, if it's not
25 objected to because it can be corrected. That's the

1 problem.

2 So basically if you read this, it's almost as
3 though defense counsel and wait for the verdict and if
4 it's bad, say, Your Honor, I move as a nullity because he
5 jury was never sworn and that seems to be a travesty and
6 injustice. If you read these cases literally it's there
7 because how else would you object to it and how else would
8 you raise it to the appellate court to look at. If you
9 didn't know it and you just sat and wait.

10 It's interesting if it's done in a civil
11 cases, it's deemed to be waived. What's the State's
12 position?

13 MS. RATIGAN: Your Honor, I received notice
14 of the amendment yesterday afternoon. Unfortunately I am
15 at the Holiday Express and have no access to West Law.

16 THE COURT: We're going to do this, I'm going
17 to take this under advisement and I'm going to let you
18 both brief that issue and submit it to me.

19 Unfortunately, I think there's a logical
20 connection.

21 THE WITNESS: I did not raise the objection.
22 I was just going with the flow.

23 THE COURT: Mr. Sullivan, the first prong is
24 that you fell below the standard and I don't know that the
25 first prong could ever be met because I bet you that could

Tim Sullivan - Redirect Examination

1 have happened to any lawyer I know. But you asked the
2 question in there after the jury is sworn, could he be off
3 bond and it says to me that at least by that statement you
4 were aware that the jury had not been sworn yet and then
5 the next thing in the transcript is may proceed with
6 opening statements.

7 And as a trial judge I know the most
8 important person in the courtroom here today and no
9 respect to any of you but it's that lady sitting in front
10 of me, Ms. Carol. We can go forward but if she's not
11 here, we've wasted everybody's time.

12 THE WITNESS: I asked that question because
13 normally down here if there's a lunch break or overnight,
14 they let them out.

15 THE COURT: That was a normal question.

16 THE WITNESS: I did not raise it about being
17 sworn.

18 THE COURT: But knowing this court reporter,
19 knowing all court reporters, they typically something that
20 proceeds it, witness sworn, jury duly sworn, I believe
21 that's normal. I would ask my court reporter, is that not
22 correct?

23 THE COURT REPORTER: That's correct, sir.

24 THE COURT: That's what normally done.
25 They're not going to put it there and say jury not sworn,

Tim Sullivan - Redirect Examination

1 they going to quote what's taking place. I think there's
2 an issue but I'll let you all give me the law on that and
3 then I'll make a decision. So I'll take it under
4 advisement.

5 Let me say this, other than issue, I don't
6 find anything that either prong has been met. I think
7 Mr. Sullivan did a marvelous job, an incredible job, and I
8 agree with -- I don't mean this with any disrespect to
9 Judge Welmaker -- a 17 year sentence. What I was looking
10 at was quite an amazing feat, but for the standpoint of
11 the trial and his approach, he was obviously prepared and
12 did a great job in presenting the case and representing
13 his client.

14 I think we have an issue that's a pure legal
15 issue and we need to address it.

16 MS. RATIGAN: Do you have a time frame? I
17 want to make sure I get it to you in a timely fashion.

18 THE COURT: I have 30 days without having to
19 report it under advisement so I'd like to have it within
20 60 days. Mr. Arial, what I would ask Ms. Ratigan to do is
21 when she forwards it to me, she forwards it to you, and
22 you can have -- how much do you need to respond to her
23 memorandum?

24 MR. ARIAL: I'm going to talk to my client
25 but I'm going to clearly let him know and I think he

Tim Sullivan - Redirect Examination

1 relayed it to the Court that he understands that if he's
2 successful with this, he's going back to square one and
3 now he's got 17 years but he's acknowledged that he wants
4 to forward with this understanding that.

5 THE COURT: If he goes to trial on this, he
6 can rest assured a jury -- what was testified to and I
7 don't know what a jury is going to do and I'm sure we can
8 all try cases over in front of 12 other people and maybe
9 the results will be different but given what I've read and
10 what I've reviewed, I don't know what the probability is
11 on that but that's your call nevertheless, but there's no
12 question that this jury will be sworn and that's the only
13 reason it's going back. So you need to understand that.

14 MR. ARIAL: Based on his responses earlier
15 I'm going to do what he requested.

16 THE COURT: Very well, Mr. Arial, and I
17 understand that may not be what a lawyer would advised him
18 to do and I don't fault you for that, sir. I commend you
19 for that professionalism as well.

20 MR. ARIAL: Thank you, Your Honor.

21 THE COURT: I'll give you 15 days, Mr. Arial
22 to respond to her memorandum.

23 MS. RATIGAN: You'll have it before the end
24 of the month.

25 THE COURT: Thank you.

Tim Sullivan - Redirect Examination

1 MS. RATIGAN: Thank you, Your Honor.

2 MR. ARIAL: Thank you, Your Honor.

3 ---END OF TRANSCRIPT RECORD---

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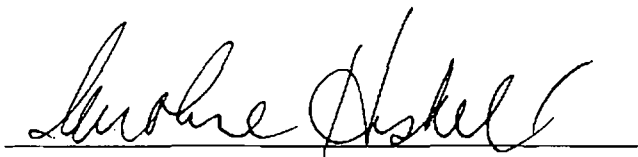
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Tim Sullivan - Redirect Examination

1
2 I, the undersigned, Caroline Hiskell, the
3 Official Court Reporter for the Thirteenth Judicial
4 Circuit of the State of South Carolina, do hereby certify
5 that the foregoing is a true, accurate, and complete
6 transcript of record of all the proceedings had and
7 evidence introduced in the trial of the captioned case,
8 relative to appeal, in the Court of Common Pleas Court,
9 South Carolina, November of 2012.

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

12
13
14 

15 Caroline Hiskell
16
17
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24
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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

James E. Waiters, Jr.,
SCDC #235965,

Plaintiff,

vs.

State of South Carolina,

Defendant,

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-23-10380

**ORDER GRANTING APPLICANT'S
PETITION FOR POST-
CONVICTION RELIEF**

2013 FEB 18 A 11:31

FILED
CLERK OF COURT
PAUL B. WICKENS JR.**STATEMENT OF THE CASE**

Applicant James E. Waiters, Jr. ("Applicant") was indicted in Greenville County, South Carolina in a three-count indictment alleging the armed robbery of three individuals. By separate indictment, Applicant was charged with possession of a weapon during the commission of a violent crime related to the alleged armed robberies. Applicant was tried before a jury on March 11 - 12, 2008, the Honorable Edward G. Welmaker presiding. Applicant was represented at trial by Timothy Sullivan, Esquire. The jury returned a verdict of guilty on two of the armed robbery charges. Applicant was found not guilty on one of the armed robberies, but the jury returned guilty verdict on the possession of a weapon during the commission of a violent crime charge. Applicant was sentenced to seventeen years imprisonment.

Applicant filed a timely notice of appeal, which was perfected by J. Falkner Wilkes, Esquire of Greenville, South Carolina. Applicant's convictions and sentences were affirmed and the appeal dismissed in an unpublished opinion. State v. Waiters, Op. No. 2010-UP-296 (S.C. Ct. App. filed May 27, 2010). Applicant filed an application for post-conviction relief (PCR) on

Rmd 7/11

December 23, 2010. This Court heard the PCR application at a hearing on October 31, 2012.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Failure to Swear the Jury

Based upon Applicant's PCR application, statements of counsel, and the record as a whole, this Court makes the following findings. On March 12, 2008, Applicant was convicted of two counts of armed robbery and one count of possession of a weapon during the commission of a violent crime by a jury verdict. Following jury selection for Applicant's trial, the trial judge made some brief, opening remarks to the jurors before excusing the jury to the jury room. After hearing a motion from Applicant's trial counsel, the trial judge then called for a ten-minute break. Following the break, counsel for the State addressed the jury with its opening statement. The record contains no notation or any other evidence that the jury was sworn under oath or affirmation prior to the State's opening statements or at any other point during the trial.

South Carolina Code of Laws § 14-7-1100 requires a jury in every criminal case to take an oath or affirmation. Based on the absence of notation or comparable evidence in the record, Applicant has demonstrated that Applicant's trial failed to comport with the South Carolina Code of Laws § 14-7-1100 jury oath requirement. The South Carolina Constitution guarantees all criminal defendants the right to trial by an impartial jury. See S.C. Const. art 1, § 14. Based on the absence of notation or comparable evidence in the record, Applicant has demonstrated a violation of his constitutional right to trial by an impartial jury as provided by the South Carolina Constitution.

All Other Issues

The Applicant argued he had two meetings with trial counsel and they never reviewed the discovery materials (including the videotape). The Applicant argued he gave a list of witnesses

to trial counsel that included Lula Mae Robinson and his girlfriend, April. The Applicant argued trial counsel told him one week before the plea hearing that the State made a ten year plea offer. The Applicant argued he did not know his case was placed on the trial docket.

Trial counsel testified he met with the Applicant and provided him with a copy of the discovery materials. Trial counsel testified he did not recall if he watched the videotape with the Applicant but that they had a transcript of that tape. Trial counsel testified he spoke to Lula Mae Robinson but not to April (because she was not present at the scene). Trial counsel testified they discussed the State's ten year offer and that the Applicant rejected it six months before the trial.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). This Court finds the Applicant failed to meet his burden of proving trial counsel was ineffective. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) ("The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence."). This Court finds trial counsel's testimony – that he met with the Applicant and reviewed the discovery materials – to be credible. This Court finds trial counsel spoke to Lula Mae Robinson before trial and notes counsel's testimony that she gave consistent testimony at trial. This Court cannot speculate about April's potential as a witness, however, because she did not testify at the PCR hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR

2007/13

applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original). This Court finds trial counsel fulfilled his obligations regarding the ten year offer. This Court finds counsel conveyed the plea offer, the Applicant rejected it, and the case was placed on the trial roster well in advance of trial. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance).

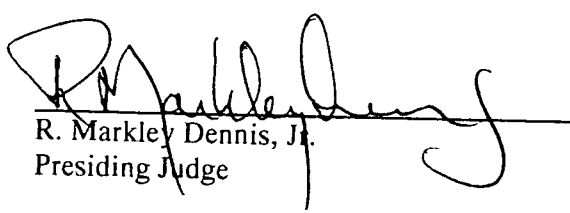
CONCLUSION AND REMEDY

Based upon Applicant's PCR application, statements of counsel, relevant South Carolina law, and the record as a whole, this Court finds as follows:

1. This Court finds Applicant has demonstrated a violation of his constitutional right to trial by an impartial jury as provided by the South Carolina Constitution.
2. This Court finds the Applicant failed to meet his burden of proving any other issues raised in his PCR application or at the PCR hearing.
3. Applicant's PCR application is hereby **GRANTED** based on the failure to swear the jury before trial.
4. Applicant's convictions for the two of armed robbery indictments and the one possession of a weapon during the commission of a violent crime indictment are hereby **VACATED** and the matter remanded for a new trial.

It is so **ORDERED**.

February 8, 2013


R. Markley Dennis, Jr.
Presiding Judge

Rmp07/14

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2310380

2013 FEB 18 A 11:3

OFFICE OF THE CLERK OF COURT
GREENVILLE COUNTY
PAUL B. WICKENSIMER

James E Waiters Jr vs. South Carolina State Of

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; ☐ Statement of Judgment by the Court:
 Dated at Greenville, South Carolina, this 18th day of February, 2013.

Court Reporter: _____

PRESIDING JUDGE - R Markley Dennis Jr

This judgment was entered on the 18th day of February, 2013, and a copy mailed first class this 18th day of February, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

~~James E Waiters Jr Broad River Corr Instit 4460~~
~~Broad River Rd Columbia, SC 29210~~
 ✓ R. Mills Ariail Jr. 11 North Irvine St., Ste., 11
 Greenville, SC 29601

✓ Karen Christine Ratigan PO Box 11549 Columbia,
 SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
 - Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE

VS.

James Waiters JrINDICTMENT/CASE#: 2006GS2306230A/W#: 1427209Date of Offense: 6/10/2006S.C. Code § : 16-11-0330(A)CDR Code #: 0139

AKA:

Race: B Sex: M Age: 34DOB: 12-27-1973 SS#: [REDACTED]Address: [REDACTED]GREENVILLE, SC 29607DL#: 007416502 SID#: [REDACTED]

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: ARMED ROBBERYin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 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 \$ 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 \$ _____

_____ 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 [Signature]Judge Code: 21-1-13-17Sentence Date: 3-12-08

SCCA/217 (10/2007)

Paul B. Wickersome
Clerk of Court/ Deputy ClerkCourt Reporter: Garrison

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on

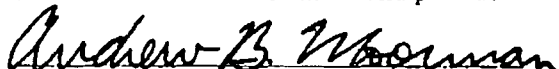
July 25, 2006

the Grand Jurors of Greenville

County present upon their oath:

That JAMES EMANUEL WAITERS JR did in Greenville County, on or about the 10th day of June, 2006, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon, that Erica Cheeks reasonably believed to be a deadly weapon, attempted to and/or did take by means of force or intimidation, goods or monies described as U.S. Currency. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

3-3-12-08

DOCKET NO. 2006-GS-23-

ABM

000230

WITNESSES

J Phillips

Miller S

Greenville County Sheriffs Office

6/10/2006

ARREST WARRANT NUMBER

1427209

ACTION OF GRAND JURY

TRUE BILL

Buddy J. Reynolds

Foreperson of GRAND JURY

VERDICT

(Guilty) Dorrell D. Lee

Foreperson of Petit Jury

Date:

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JULY TERM 2006

GUILTY

THE STATE

vs.

JAMES EMANUEL WAITERS JR

NOTED
FILED

Indictment for

✓ 0139

ARMED ROBBERY

VIOLATION § 16-11-0330

612

333

ARREST WARRANT

1-427209

5531

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

06-074723

against

James Emanuel Waiters Jr

Address:

GREENVILLE, SC 29607-

Phone:

SSN:

Sex: M Race: B Height: 5 5 Weight: 157DL State: SC DL #: 007416502DOB: 12/27/1973 Agency ORI #: SC0230000Prosecuting Agency: Greenville County Sheriffs OfficeProsecuting Officer: J Phillips *ASL B2*Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponOffense Code: 0139Code/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 the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant James Emanuel Waiters Jr on 6/10/06

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant J Phillipsbeing duly sworn deposes and says that defendant James Emanuel Waiters Jrdid within this county and state on or about 06/10/2006State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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:

THE DEFENDANT DID TAKE WITH INTENT TO DEPRIVE MONEY FROM ERICA CHEEKS WHILE ARMED WITH A SEMI-AUTO HANDGUN, BEING A DEADLY WEAPON. THE AFFIANT HAS WITNESSES TO PROVE THE SAME. THIS DID OCCUR IN GREENVILLE COUNTY, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 McGee Street
Greenville, SC 29601-Affiant's Telephone (864)271-5210

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 or about 6/10/2006defendant James Emanuel Waiters Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below.

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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 06/10/2006Signature of Issuing Judge
Vilvin GarrisonJudge Code: 5946

(L.S.)

Judge's Address

Judge's Telephone

Issuing Court:

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Adopted by
S.C. Attorney General
April 21, 2003
SCCA 318

AFFIDAVIT

who

violate the criminal laws of the

)

*JP PL ASL B2*4 McGee Street
Greenville, SC 29601-

(864)271-5210

COMPUTER ENTERED

JUN 12 2006

GREENVILLE COUNTY
SHERIFFS OFFICE

Municipal

☐ Circuit

ORIGINAL

334

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville

STATE

VS.

James Waiters Jr

INDICTMENT/CASE#: 2006GS2306231

A/W#: 1427208

Date of Offense: 6/10/2006

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

AKA:

Race: B Sex: M Age: 33

DOB: 12-27-1973 SS#: [REDACTED]

Address: [REDACTED]
GREENVILLE, SC 29607

DL#: 007416502 SID#: [REDACTED]

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: ARMED ROBBERY

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

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

ATTEST:

Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 17 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: 2006 GS 236230☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 156-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 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 \$ _____

_____ 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: 21 1 1 3 12Sentence Date: 3-12-08

SCCA/217 (10/2007)

Paul B. Wickensimer
Clerk of Court/ Deputy ClerkCourt Reporter: Garrison

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

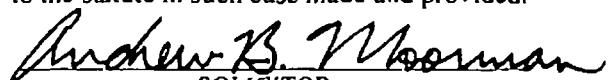
INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on July 25, 2006 the Grand Jurors of Greenville

County present upon their oath:

That JAMES EMANUEL WAITERS JR did in Greenville County, on or about the 10th day of June, 2006, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon, that Cora Griffith reasonably believed to be a deadly weapon, attempted to and/or did take by means of force or intimidation, goods or monies described as U.S. Currency. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

J Phillips

Miller S

Greenville County Sheriffs Office

6/10/2006

ARREST WARRANT NUMBER

1427208

ACTION OF GRAND JURY

TRUE BILL

Foreperson of GRAND JURY

VERDICT

Guilty Donnell Ozer

Foreperson of Petit Jury

Date:

5.3-12-08

DOCKET NO. 2006-GS-23-

ABM

000231

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JULY TERM 2006

GUILTY

THE STATE

VS.

JAMES EMANUEL WAITERS JR

FILED

FILED

Indictment for

6139

ARMED ROBBERY

VIOLATION § 16-11-0330

613

337

ARREST WARRANT

1-427209

5531

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

THE STATE

06-074723

against

James Emanuel Waiters Jr

Address:

GREENVILLE, SC 29607-

Phone: SSN:
 Sex: M Race: B Height: 5 5 Weight: 157

DL State: SC DL #: 007416502

DOB: 12/27/1973 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: J Phillips *JSR BW

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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 the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

M.D. Jones M...
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

West Greenville Summary Court
6247 White Horse Road
Greenville, SC 29611

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Personally appeared before me the affiant J Phillips

being duly sworn deposes and says that defendant James Emanuel Waiters Jr

did within this county and state on or about 06/10/2006

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville

In the following particulars:

DESCRIPTION OF OFFENSE Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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:

THE DEFENDANT DID TAKE WITH INTENT TO DEPRIVE MONEY FROM ERICA CHEEKS WHILE ARMED WITH A SEMI-AUTO HANDGUN, BEING A DEADLY WEAPON. THE AFFIANT HAS WITNESSES TO PROVE THE SAME. THIS DID OCCUR IN GREENVILLE COUNTY, SC.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Greenville

Affiant's Address 4 Mcgee Street
Greenville, SC 29601-

Affiant's Telephone (864)271-5210

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 or about 6/10/2006

defendant James Emanuel Waiters Jr

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenville

) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

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 is to 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 06/10/2006

Signature of Issuing Judge

Vilvin Garrison

Judge Code: 5946

(L.S.)

Judge's Address

Judge's Telephone

Issuing Court:

☒ Municipal☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 918

AFFIDAVIT

who

violate the criminal laws of the

JP PL *JSR BW

COMPUTER ENTERED

JUN 12 2006

GREENVILLE COUNTY
SHERIFF'S OFFICE

338

5-3-12-08

DOCKET NO. 2006-GS-23-
ABM

006232

WITNESSES

J Phillips

Miller-S

Greenville County Sheriffs Office

6/10/2006

ARREST WARRANT NUMBER

1427206

ACTION OF GRAND JURY

TRUE BILL

Buddy J. Reynolds

Foreperson of Grand Jury

VERDICT

Donald D. (Not Guilty)

Foreperson of Petit Jury

Date:

NOT GUILTY

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

JULY TERM 2006

THE STATE

vs.

JAMES EMANUEL WAITERS JR

[Signature]

[Signature]

Indictment for

✓0139

ARMED ROBBERY

VIOLATION § 16-11-0330

614

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on

July 25, 2006

the Grand Jurors of Greenville

County present upon their oath:

That JAMES EMANUEL WAITERS JR did in Greenville County, on or about the 10th day of June, 2006, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon, that Dionne Griffith reasonably believed to be a deadly weapon, attempted to and/or did take by means of force or intimidation, goods or monies described as U.S. Currency. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 02/03/1
OMCOMITA RELEASE DATE SCREEN C048593
SCDC# > 9235965 LOC: BROAD RIVER
WAITERS, JAMES - SCDC CLASSIFICATION... VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... N
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
CURRENT SENTENCE: 017-00-000 CONSECUTIVE SENTENCE ...: N
017-00-000 CURRENT SENT START DATE: 02/12/2008
PROJECTED COMPLETION DATES
MAXOUT DATE ...: 07/21/2022 CURRENT EWC ...: 2 F 5
YOA SIX YEAR DATE: / / CURRENT EEC ...: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED ...: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000382 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ...: 000000 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ...: 000
TOTAL SERVICE TIME EARNED ...: 001071

PFKEYS: 5: HISTORY OF DATE CHANGES

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD SUMMARY REPORT DATED 02/03/11

C0485

WATTERS, JAMES - FBI # 939765TA3 SID# SC00920229 SCDC # 235965

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... BROAD RIVER CORR. INST.

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 17 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: [REDACTED]

DORM.....: C0229A

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

PROJ MAXOUT DATE: 07/21/2022

PROJ PAROLE DATE: 00/00/0000

FWC JOB...: WARDKEEPER ASSISTANT

EDUC PGM.: NO CURR EDUC PROGRAM

FWC LEVEL: 2F5 EEC LEVEL:

ASSIGNMENT...: WARD HELPER

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 37 DATE OF BIRTH...: 12/27/73

PREVIOUS NUMBERS:

Y00235965

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			V/NV	CATEGORY
	YRS	MOS	DYS		START				
ARMED ROBBERY	17	0	0	GREENVILLE	2/12/20	8	V		4
FIREARMS PROVISION	5	0	0	GREENVILLE	2/12/20	8	N		3
HEROIN POSSESS	2	0	0	CHARLESTON	8/ 4/1998		N		2

PRIOR COMMITMENTS OVER 90 DAYS:

NO PRIOR COMMITMENTS OVER 90 DAYS

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
6/ 3/ 8	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
3/17/ 8	KIRKLAND	INCARCERATED	R&E PROCESSING
3/17/ 8	PERRY	INCARCERATED	NEW SENT W/O PR/CS/SF REL
9/ 4/99	CHARLESTON CO	PROBATION	RELEASED TO PROBATION
8/13/99	KIRKLAND	INCARCERATED	YOA CONVERSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER ASSISTANT	03/10/09	0/ 0/ 0		F5
WARDKEEPER ASSISTANT	03/05/09	3/ 9/ 9	INMATE REQUEST	F5
HORTICULTURIST (GRND)	08/28/08	3/ 4/ 9	INMATE REQUEST	F5
LITTER CONTROL PROGR	03/31/99	8/13/99	INSTIT TRANSFER	F5
CUSTODIAN HELPER	11/24/98	3/ 9/99	INSTIT TRANSFER	F5

HISTORY OF EARNED EDUCATION CREDITS:

DESCRIPTION	START DATE	END DATE	TERMINATION REASON
NO SCHOOL ASSIGNMENTS			

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

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville

STATE

VS.

James Waiters Jr

AKA:

Race: B Sex: M Age: 34

DOB: 12-27-1973

SS#

Address:

GREENVILLE, SC 29607

DL#: 007416502

SID#:

INDICTMENT/CASE#: 2006GS2306230

A/W#: 1427209

Date of Offense: 6/10/2006

S.C. Code § 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: ARMED ROBBERY

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC § 17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 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 \$ 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 \$

_____ 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:

Court Reporter:

Clerk of Court/ Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

James Waiters Jr

AKA:

Race: B Sex: M Age: 33

DOB: 12-27-1973 SS#: [REDACTED]

Address: [REDACTED]

GREENVILLE, SC 29607

DL#: 007416502 SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2006GS2306231

A/W#: 1427208

Date of Offense: 6/10/2006

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: ARMED ROBBERY

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

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

ATTEST:


Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 17 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: 2006 GS 236230☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 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 \$ 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 \$ _____

_____ 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

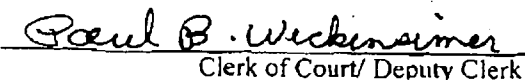
Other:

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2111317Sentence Date: 3-12-08

SCCA/217 (10/2007)


Clerk of Court/ Deputy ClerkCourt Reporter: Garrison

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.

INDICTMENT/CASE#: 2006GS2306233

James Waiters Jr

A/W#: 1427211

AKA:

Date of Offense: 6/10/2006

Race: B Sex: M Age: 33

S.C. Code §: 16-23-0490

DOB: 12-27-1973

SS#: [REDACTED]

CDR Code #: 0549

Address:

GREENVILLE, SC 29607

DL#: 007416502

SID#: [REDACTED]

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

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

ATTEST:



Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2006GS2306230☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, IB TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, IB 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 \$ _____

_____ 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: 21 1 13 17

Sentence Date: 5-12-08

SCCA/217 (10/2007)

Paul B. Wickensmeyer
Clerk of Court/ Deputy Clerk

Reporter: Garrison