

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Alison Renee Lee, Circuit Court Judge

RECEIVED

JAN 25 2011

S.C Supreme Court

ORIGINAL

DEMETRIO SEARS,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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1 Q He had So as you're reaching back, he fired at you?

2 A No When I reached and grabbed the gun he fired at
3 me?

4 Q He waited for you to get the gun and come back out
5 and point it at him before he fired?

6 A Pretty much.

7 Q And then you said he fired a bunch of times?

8 A Pretty much

9 Q Well, with all due respect, sir, yes or no? Did he
10 fire at you a bunch of times? You said you thought
11 you might have fired

12 A Yeah But, you know what I'm saying, the guns been
13 real loud.

14 Q Well, you got hit at least four According to
15 earlier testimony by you, up to eight?

16 A Yeah But he had a laser So --

17 Q Well, he was there How far did you get from the
18 van?

19 A I just stepped out You know, like you just step out
20 a car and you close the door, it was not that far
21 away.

22 Q A foot or two?

23 A Yeah

24 Q Tashim still behind you?

25 A I had already been on the edge of the seat. I had

1 just like jumped out of the van And, you know what
2 I'm saying I looked up I looked down at myself
3 then

4 Q To see if you were presentable?

5 A Well, yeah

6 Q I mean, that's what you said?

7 A Yeah

8 Q You saw Mr Patterson?

9 A Yeah

10 Q Reached for the gun?

11 A Yeah

12 Q Tashim coming out at this point?

13 A When I reached for the gun, he had already been
14 standing up He'd been like on his way out the door
15 But when I got shot, he been close enough to the door
16 to be like -- to move like to -- excuse me -- to move
17 to like the back He was like over the rear wheel
18 base when I jumped back in the van That's how come
19 when I jumped in the van he been already on his way
20 out the door But when I jumped in the back of the
21 van, the front seat been like empty because he been
22 like coming out right behind me And he just -- when
23 the shooting took place, I guess he just ducked to
24 the side. And he been in the back seat then So
25 like at the door

1 Q Didn't he wait until Mr Patterson got through
2 shooting before he took off?

3 A Probably did?

4 Q Excuse me I apologize Did your cousin, Mr.
5 Alexander, wait 'til Mr Patterson got through
6 shooting before he took off?

7 A Pretty much. He had no choice, because I was the one
8 getting shot He had to wait until I got in the van

9 Q And did any of the bullets of Mr. Patterson hit that
10 vehicle?

11 A I'm not sure

12 Q Any glass broken on your vehicle?

13 A Not that I'm aware of

14 Q And did anything -- when that shot you fired right
15 there, did anything pop out of your gun?

16 A It probably -- yeah It had to

17 Q It had to?

18 A Yeah

19 Q It had to because you had this gun, didn't you?

20 A No

21 Q That gun you just described a minute ago, it doesn't
22 pop out, does it?

23 A What are you talking about?

24 Q What's the gun you said you had a little while ago?

25 A Please don't point that What are you saying now?

1 Q I wasn't pointing it at you, sir I had it like
2 that

3 MR. STRICKLER. I was about to ask the same
4 thing, Your Honor

5 THE COURT. All right Don't wave the gun
6 around Please don't wave the gun around.

7 MR MEADORS. Your Honor, if I pointed in that
8 direction, I didn't mean to I've never done it. I
9 was holding it like this

10 THE COURT No, sir

11 MR. MEADORS I apologize.

12 THE COURT. All right, sir Let's move on

13 Q What's the type of gun you said you had to start
14 with?

15 A It was a small gun, like a .380

16 Q So, is this a .380?

17 A No I don't think so

18 Q The gun you had did dispel shell casings to the
19 right?

20 A Yeah I don't know. It was an automatic

21 Q You shot it before?

22 A No I shot it, yeah I shot it that day.

23 Q Now, you testified previously I believe, you didn't
24 have any minor cuts on your hands or anything that
25 you would have been bleeding there that day at the

1 scene Haven't you testified under oath to that
2 before?

3 A Besides bullet wounds, I didn't have nothing
4 bleeding.

5 Q And that's exactly what I'm asking you about You
6 testified in a previous hearing that you did not have
7 any And I'll refer --

8 A I ain't hear you

9 Q Were you treated for any cuts? Were you treated for
10 any cuts, any lacerations like you'd been sliced by
11 glass? You haven't been, have you?

12 A No Not that I'm aware of

13 Q I'm sorry?

14 A Not that I'm aware of I was passed out

15 Q But have you previously testified under oath that you
16 did not receive any injuries that would have been
17 caused by something like glass, cuts or lacerations?
18 Do you remember that? And you said no, sir?

19 A Yeah. Well, I was passed out, you know what I'm
20 saying I was passed out for like two weeks, you
21 know what I'm saying They cut open my chest and
22 they cut open my heart I was passed out I don't
23 what they did, to tell you the truth

24 Q With all due respect though, sir, you weren't passed
25 out when you answered that question though, were you?

1 A What are you talking about?

2 Q I'll show it to you. In response to a statement by
3 your attorney, a previous hearing under oath -- and
4 if I could approach, too. I apologize. I didn't ask
5 before I came. Do you mind if I come forward? Line
6 16, October 8th, 2002 "Let me ask you this Come
7 close Were you treated for any cuts, any
8 lacerations like you'd been sliced by glass?"

9 "No, sir"

10 A I hadn't. I mean, I wouldn't be worried about a cut
11 from glass anyway if I've been shot, you know what
12 I'm saying

13 Q Exactly Now, did you testify earlier that -- what
14 did Mr Patterson say to you when you all came up
15 there?

16 A He said something like, he was like, What the fuck,
17 you know what I'm saying, or What you all want?
18 Something like that. But he didn't say it like, you
19 know what I'm saying; you could tell he just had like
20 a hostile manner to him So when I seen him, I was
21 just like, whoa, you know what I'm saying?

22 Q He didn't have any reason to be talking to you that
23 way, did he?

24 A No I don't know him.

25 Q So your testimony is you pull up there and he comes

1 up and says the F word to you?

2 A Nah He really asked like a question, but he was
3 like hostile with it.

4 Q Did you answer him?

5 A No I just -- no. He had a gun I wasn't trying to
6 talk to him

7 Q You had a gun, didn't you?

8 A I picked it up after he came outside with -- with his
9 gun

10 Q Well, let me ask you about that Beg the Court's
11 indulgence Your Honor, we have a matter we need to
12 take up briefly

13 THE COURT Approach the bench, please

14 MR. STRICKLER Yeah Could we approach the
15 bench? We might be able to resolve it without having
16 to go out

17 THE COURT. You all can relax for a minute You
18 can stand up and stretch

19 (Whereupon, a bench conference is had

20 THE COURT All right. What's the question?

21 Was there a question? You just approached All
22 right Over the objection of the defendant I'll
23 allow the State to proceed with the prior statement

24 MR STRICKLER The record should reflect, Your
25 Honor, that if you're admitting the entire prior

1 statement, my objection relates to the last three
2 lines, the final question and answer in the
3 statement That is all my objection relates to The
4 record should reflect I had no objection from the
5 pre-trial hearing on to the rest of the statement.

6 THE COURT Well, that door has been issued, I
7 mean, has been opened

8 MR. MEADORS No question.

9 MR STRICKLER Yes, sir

10 THE COURT And I feel it's relevant as to the
11 issue of credibility Go ahead

12 MR. MEADORS. May it please the Court.

13 Q I'm going to refer you to what's been marked State's
14 105.

15 COURT REPORTER In evidence now, Your Honor?
16 Is that correct?

17 THE COURT. (Nods head affirmatively)

18 Q I was going to offer that after I got him to --
19 Mr Sears, do you recognize what's been marked
20 State's 105?

21 A Yes, sir

22 Q And that's your name at the top?

23 A Yes, sir

24 Q And your signature is at the bottom?

25 A Yes, sir.

1 Q On each of these four pages?

2 A Yes, sir

3 Q I mean, there's no dispute about that?

4 A Hmm-mm (negative).

5 Q The next is Scott McDonald?

6 A Yeah

7 Q Now, prior to that, what's been marked State's 106,
8 do you recognize that?

9 A Yes, sir

10 Q And does that have your signature on it, Mr. Sears?

11 A Yes, sir

12 MR. MEADORS Your Honor, we'd offer these both
13 now, 105 and 106.

14 MR. STRICKLER I just stated the only objection
15 I had, Your Honor

16 THE COURT Over the objection of the defendant.

17 MR. BURR No objection, Your Honor

18 THE COURT None from defendant Alexander

19 (WHEREUPON, State's Exhibit No 105 was admitted
20 into evidence)

21 (WHEREUPON, State's Exhibit No 106 was admitted
22 into evidence)

23 Q Mr Sears, this is an Advice of Rights Form, State's
24 106, isn't it?

25 A (Nods head affirmatively).

1 Q And, again, do you mind if I stand here, sir?

2 A I don't mind where you stand

3 Q Do you remember when Scott McDonald read you your
4 rights?

5 A Yes, sir

6 Q Do you remember he read them to you individually?

7 A Yes, sir

8 Q And then checked them off after he read to them to
9 you?

10 A Yeah

11 Q And you understood when he read them to you, didn't
12 you?

13 A Yes, sir

14 Q I mean, you're a smart -- you seem like a very
15 intelligent man He read -- you understood what he
16 was saying to you You understood each other Like
17 we're talking right now; you know what I'm asking?

18 A Yeah

19 Q You could understand when he was asking you stuff?

20 A Yeah

21 Q And he read you your rights "Before we ask you any
22 questions you must understand your rights You have
23 the right to remain silent anything you say can be
24 used against you in court You have the right to
25 talk to a lawyer for advice before we ask you any

1 questions and to have a lawyer with you during any
2 questioning If you cannot afford a lawyer one will
3 be appointed for you before any questioning if you
4 wish If you decide to answer questions now without
5 a lawyer present, you still have the right to stop
6 answering at any time You also have the right to
7 stop answering at any time until you talk to a
8 lawyer " Do you remember him reading those to you?

9 A Yes, sir

10 Q And you told him you understood those?

11 A Pretty much Yes, sir

12 Q Okay And you remember the Waiver of Rights "I've
13 read this statement of my rights and understand what
14 my rights are I am willing to talk and answer
15 questions I understand and know what I am doing
16 No promises have been made to me and no pressure or
17 coercion of any kind has been used against me " It's
18 called the Waiver of Rights?

19 A Yes, sir

20 Q You understand that?

21 A Yes, sir

22 Q You understood it when he read it to you, correct?

23 A Yes, sir

24 Q And you signed it, right? Both of these.

25 A Yes, sir

1 Q And you talked to Scott that day, didn't you?
2 Investigator McDonald?

3 A Yeah

4 MR MEADORS: And we would just ask that 105 be
5 put on this original that we would have, Your Honor

6 MR. STRICKLER: I'd ask that the 105, the other
7 one be preserved, Your Honor, for purposes of my
8 objections

9 MR MEADORS Could I make this 105? What's the
10 next one?

11 COURT REPORTER: Why don't we do 116?

12 MR. MEADORS. How about 116?

13 MR. STRICKLER Well, if he's not introducing
14 it --

15 (WHEREUPON, State's Exhibit No 116 was marked
16 for identification only)

17 THE COURT I'm not sure which one is which one

18 MR. MEADORS: I was simply replacing the other
19 one with this one so we'd have the last two lines
20 And then you .

21 Q You talked to him that day, on November 4th of
22 2002?

23 A Yes.

24 Q You all talked back and forth He didn't threaten
25 you any, did he?

1 A No

2 Q He didn't promise you anything, did he?

3 A No

4 Q He wasn't mean to you, was he?

5 A No

6 Q All indications of your conversations with Scott,
7 he's not a bad fellow, is he? Based on the time you
8 spent in there with him then He didn't yell at you?

9 A Oh, no.

10 Q I'm not saying you love him. But you all didn't get
11 in an altercation or anything?

12 A No

13 Q No words flying?

14 A No

15 Q On each of these statements you gave here -- I mean,
16 do you need to look at this? You've seen your
17 statement you give him then, right?

18 A It's pretty much what I just told you

19 Q I mean, I have to ask you this. You understand You
20 don't need to look at it again?

21 A No

22 Q And without going verbatim on each page, on each page
23 you signed, but it also says that you understand and
24 you've read this, correct? On each page

25 A Yeah I didn't write that though. But I --

1 Q That's on the form. I understand that But it's on
2 there?

3 A Mm-hmm (affirmative)

4 Q Now, in this -- I'll give you a -- you've testified
5 previously to these Ladies and Gentlemen that you
6 didn't get the gun -- please listen to me You
7 didn't get the gun 'til after you got out You hear
8 Mr. Patterson cussing at you an expletive, the F
9 word, cussing about something It's then you go back
10 in and get the gun Is that what you testified to?

11 A I didn't go back in I just turned around

12 Q Went and got it All right. Can you refer to your
13 statement? On page 2. "I had my L A. hat on
14 backwards " Do you see that?

15 A Yeah.

16 Q Okay The next sentence: "I also had a silver 380
17 caliber pistol that Tashim had given me as I was
18 getting out of the van"?

19 A Yeah

20 Q So that's when you were coming out to start with,
21 wasn't it?

22 A That's what it says.

23 Q Yes, sir And that's because that's what you told
24 him, wasn't it?

25 A No

1 Q So that's not right?

2 A No I told him -- may I explain?

3 Q Yes, sir

4 A I told him exactly what I just said here. I said I
5 reached back to the van And I was telling him this
6 and he was writing it And, you know, I tried
7 writing it at first I tried writing my own
8 statement at first, but I was -- I had like a cast on
9 my arm and, you know, I just -- so he offered to
10 write it And when he wrote it, I was telling him --
11 like we was talking face-to-face, and I was telling
12 him And it's really the same thing what I just
13 said But, you know, it's just like --

14 Q But it's different?

15 A One or two words, you know what I'm saying He'll
16 say somebody/somebody else It's just like one word
17 switched to make it look sort of different. But it's
18 not what I told him.

19 Q But you signed it?

20 A Yeah.

21 Q And you read it over before you signed it?

22 A Well, he read it to me

23 Q "I was about to shoot back when I got hit in the
24 hand"?

25 A I don't --

1 Q That was the next -- I'm sorry Still on that page

2 Page 2

3 A Yeah

4 Q So did you shoot or not?

5 A I'm pretty sure I did At the time I was like -- at
6 the time he was telling me, he was like, Look, you
7 didn't -- he was like, There wasn't no shell casings
8 from nobody else's gun And he was like, There is no
9 indication you shot And I said, Well, I'm not going
10 to say I didn't shoot, you know what I'm saying,
11 because it's possible that I fired off a round But,
12 you know what I'm saying, he said there wasn't no
13 shell casings But I was pretty sure that I had
14 fired like at least once

15 Q Could you turn to page -- I'm about through with
16 this Turn to page 3

17 A Where?

18 Q Question. "What was your purpose of going to
19 Sterling's that morning? What was your purpose of
20 going to Sterling that morning to rob Sterling?" Do
21 you see that?

22 A Yeah

23 Q And your answer. "Not really It was going to
24 just -- to be -- it was going to be just Tashim
25 talking to him We came in case Sterling acted

1 crazy I think Sterling shot me because he thought
2 we were going to rob him "

3 A Yeah

4 Q So you getting out of a van without a gun, and you
5 put in here that you got shot because -- that?

6 A Well, I figure --

7 Q Please let me finish and I'll let you finish, with
8 all respect

9 A All right.

10 Q You put in here that that made him think you were
11 going to rob him? I mean, you wrote that, didn't
12 you? Or you told him that, didn't you?

13 A Yeah When he said "not really", I said "no "
14 But -- you finished?

15 Q Yes, sir

16 A When he said "not really", I said "no " But he
17 said -- I thought -- the reason I said I thought
18 Tashim might have thought -- I mean not Tashim --
19 Sterling thought we might have robbed, might have
20 went there to rob him is because he came outside with
21 a gun, you know what I'm saying. He was like, Is it
22 possible that he thought you was going to be rob him?
23 I was like, you know what I'm saying, he came outside
24 with a gun What else was he going to think? You
25 know what I'm saying? So that's why I said, yeah,

1 it's possible You know what I'm saying, I think,
2 you know, man

3 Q Beg the Court's indulgence I think you can sit
4 there, too And, again, if you don't mind if I
5 approach you I was standing over there when you
6 pointed out to Mr Strickler where the van went And
7 I believe you said it came over this way, correct?
8 Came in this way? Or that's what I saw you do.

9 A Yeah

10 Q Is that right?

11 A Yeah.

12 Q So you pulled up here to this bay window? Bay door
13 I'm sorry.

14 A Bay window

15 Q How far out of there -- now, I'm still not clear
16 How far out of that bay door, if at all, was
17 Mr Sterling Patterson?

18 A He was like right here I think there's like a soda
19 machine right there He was like right there at the
20 bay window

21 Q Do you remember testifying previously under oath that
22 he was outside?

23 A Yeah. He was outside

24 Q Well, is he inside or outside?

25 A He's like right there at the -- it's a big bay door,

1 you know, the kind that rolls up like on garages.

2 It's a big bay door. And if you're standing outside,

3 if you're standing like coming out of the bay door,

4 it's just like being outside You can get rained on

5 if you were standing out there

6 Q Like that bay door?

7 A Yeah

8 Q Okay.

9 A Show them.

10 Q I'm fixing to I want you to show 'em. Show them
11 where he was.

12 A He was like right there. Because it was -- see,
13 that's why I say he was outside, because he was like
14 right there Our van was like right here And I had
15 just stepped out. When I stepped out I saw him

16 Q So he wasn't anywhere near inside, was he?

17 A He wasn't -- listen at me.

18 Q Was he inside the door or out? You're saying he's
19 out, right?

20 A You're trying, man --

21 Q I'm not trying. In or out?

22 A I'm telling you -- just listen what I'm telling you
23 You see this white line going up the wall right here?
24 He was like right next to that

25 Q And the van was here?

1 A No The van was like sideways

2 Q This way But there is no -- we were pointing that
3 way But it was pointing back to Columbia, wasn't
4 it?

5 A Yeah.

6 Q How did your hat get way over there?

7 A I didn't put my hat over there.

8 COURT REPORTER: I'm sorry I didn't hear the
9 response

10 A I said I didn't put my hat there.

11 Q That's your hat though?

12 A Yeah.

13 Q No question about that?

14 A No.

15 Q So, do you know who did put it there?

16 A I guess he put it there

17 Q So now Mr Sterling Patterson put your hat over here?

18 A I mean, he -- he had to

19 Q Let me ask you this much If what you just said, and
20 you've testified under oath, you were here, no way
21 your hat should be over here, is it?

22 A Hmm-mm (Negative)

23 Q It would be impossible, wouldn't it?

24 A Pretty much

25 Q Well, it would be, wouldn't it?

1 A Yeah

2 MR STRICKLER I'm sorry Demetrio, if you'd
3 please speak into the microphone so the court
4 reporter can get down what you're saying Thank you

5 Q Now, when you rode by the store that day,
6 Mr. Sears --

7 A Yes, sir

8 Q -- I think you said you all passed?

9 A Yes, sir

10 Q You tell me if I'm wrong And then you all went and
11 came back. Were you kind of casing it out to see how
12 many people were there when you did that?

13 A No No

14 Q That's fine if you want to say no I was just
15 asking You didn't see a black duffel bag over here,
16 did you?

17 A Not that I recall

18 Q Okay But, I mean, you were looking in that
19 direction, weren't you?

20 A Not really, 'cause --

21 Q So you can't remember if a black duffel bag was just
22 sitting out there?

23 A No I wasn't aware of that

24 Q I tell you one thing though That door wasn't broken
25 there when you went by there?

1 A I don't think so

2 Q It wasn't

3 A I don't think so

4 Q When you came up here and pulled back this way, that
5 door still wasn't broken, was it?

6 A No

7 Q I mean, you know it wasn't?

8 A I didn't thought, you know

9 Q Do you think you would have noticed that broken door
10 busted open like that when you came in?

11 A I think I would have noticed if I fell out of the
12 glass door

13 Q That wasn't my question It wasn't broken when you
14 got there, was it?

15 A No

16 Q What happened to the gun that you got from the van
17 and what you think you shot one time? What did you
18 do with it?

19 A Whenever I got back in the van, I leaned back in the
20 seat and it been in my lap So when I passed out I
21 woke up again and it just wasn't -- it wasn't there
22 I just figured my cousin or Tashim took it.

23 Q But you didn't know what happened to it?

24 A No

25 Q But your cousin might have taken it?

1 A Yeah

2 Q Because it either had to have been him or who?

3 A Tashim Tashim

4 Q Beg the Court's indulgence Your testimony today is
5 every shot that was fired by Mr. Sterling was from
6 that line or out, right? That's all you saw in the
7 fire, correct?

8 A On where?

9 Q Wherever you had him standing there in that bay door?

10 A From where he was standing?

11 Q Yeah Your testimony is that's the only place you
12 saw him shoot?

13 A Yeah.

14 Q You didn't see him shoot back at the door, did you?

15 A No

16 Q And one other thing. When you pulled up there --
17 because you were pretty close, you've said that you
18 saw that that door wasn't busted When you pulled up
19 right up to that bay door, you didn't see a gun
20 laying on the ground over there, was there?

21 A No.

22 Q Because it wasn't there then, was it?

23 A Not that I'm aware of.

24 Q Did you have a gun on this man's head and say, "I'll
25 kill you Where is the money"?

1 A He's lying

2 Q Is that a no?

3 A Yeah That's a no

4 Q You didn't even know he was there, did you?

5 A Yeah When I saw him

6 Q You come in You think it's just Andre And then

7 Mr Patterson comes, doesn't he?

8 A When I went there, he stepped out of the -- he'd been

9 already out of the store and he shot me I never

10 even went in the store

11 Q And do you deny that two other folks went inside with
12 you?

13 A Nobody stepped out of the vehicle but me.

14 Q Would you deny that when Mr Patterson came back from
15 his office and firing they went off?

16 A I can't --

17 Q Do you deny that?

18 A I can't --

19 Q Do you deny that when Mr. Patterson came back from
20 his office with his gun in his business and started
21 firing, the two folks that were with you, whoever
22 they were, went out the side door? Do you deny that?

23 A He might have got his gun from the back of his
24 office, but he came outside with it.

25 Q And do you deny them pointing a gun then at Sterling

1 Patterson?

2 A Yes, I deny that

3 Q And do you deny that you then got shot inside that
4 building?

5 A Think about what you're saying, man. I got shot
6 inside the building?

7 Q Think about what you're saying

8 A That .

9 Q And on November 30th, for the record, you pled to
10 three counts of strong armed robbery?

11 A Common law robbery, yes

12 Q That's called strong arm robbery, isn't it?

13 A Yes

14 Q And you went to Ntense? I mean, nobody made you go
15 there, did they?

16 A No That was my ride

17 Q That was your choice to go there?

18 A Well, yeah I didn't want to, but that was my ride

19 Q You have worked at Frazier's you said some This
20 business stuff that Mr. Patterson does, some of that
21 stuff is worth some money, isn't it?

22 A I don't know. I doubt it

23 Q That's all. Thank you

24 THE COURT Redirect?

25 MR. BURR. May it please the Court

1 THE COURT I'm sorry I thought -- go ahead
2 I missed one

3 CROSS-EXAMINATION

4 BY MR BURR

5 Q Mr Sears, I'll be very brief and to the point

6 A Okay

7 Q On your statement that you gave to Investigator
8 McDonald down at the Alvin Glenn Detention Center
9 after you were released from the hospital, when he
10 came out and talked to you, did he sit down and go
11 over all the evidence that he had collected? Did he
12 tell you all the stuff they had from the scene out
13 there?

14 A No He just -- when he came to talk to me he was
15 just -- he didn't go over all that. He was just
16 telling me --

17 Q And on page 2 when he's asking you what happened, you
18 voluntarily admitted that you had held a 380 caliber
19 pistol on November 8th, 2002?

20 A Yeah He didn't know I had a gun

21 Q But you told him that?

22 A Yeah.

23 Q And if it had been found, you would assume it would
24 probably have had your fingerprints on it, wouldn't
25 you?

1 A Yeah. Probably

2 Q On the last page of your statement he is inferring
3 that you dropped a black .9 millimeter at the scene
4 And you stated no?

5 A No

6 Q Did you have any way of knowing --

7 A No

8 Q -- that black 9 millimeter had been wiped completely
9 clean of all prints at that point?

10 A Do what?

11 Q Did you know at that point that that 9 millimeter
12 had been wiped clean of all prints?

13 MR MEADORS. Objection, Your Honor. I think
14 he's testifying

15 MR BURR It was testified in open court I
16 believe yesterday by one of the experts

17 MR. MEADORS: No, sir. I don't think it was

18 THE COURT. Overruled. Go ahead Go ahead

19 Q So you had no way of knowing it was wiped?

20 A No

21 Q Okay And when you told him that you rode out to
22 Percival Road with your cousin and Tashim that you
23 had no knowledge of a robbery, is that true?

24 A Yes

25 Q Did you know Mr Patterson or Mr Stokes prior to

1 this?

2 A No

3 Q Did their establishment from what you saw of it
4 appear to have anything of any real value?

5 A No.

6 Q How many businesses did you pass that did have
7 valuable property prior to arriving there?

8 A I might have -- I take that road every day going back
9 and forth to work because I live in Spring Valley
10 So sometimes I'll take -- what's that? 20 to 77
11 And sometimes I take Clemson all the way down
12 Percival Road, and I have never noticed it

13 Q My point is, coming from Colonial Village or wherever
14 it was that you were to get to Percival, you passed a
15 lot of establishments, didn't you?

16 A All the way up Garners Ferry to the highway

17 Q I have no further questions Thank you.

18 THE COURT Now redirect

19 MR. STRICKLER Thank you, sir. Just a few
20 things

21 REDIRECT EXAMINATION

22 BY MR STRICKLER

23 Q Let me get a copy of the statement Let me see what
24 you've got here, sir Okay 105 Where is the
25 other one? Just a couple of things, Demetrio You

1 went around and around about what Sterling said when
2 he came out the door Are you sure of what was said
3 to you by Sterling? No?

4 A No

5 Q Are you sure of the manner in which it was said?

6 A Yeah

7 Q What was the manner in which it was said?

8 A Hostile

9 Q Hostile? Okay Now, and you were asked about the
10 hat, that blue ball cap That's yours, right?

11 A Yeah That's mine

12 Q You were asked about whether Sterling -- it's been
13 located here as being roughly located at this point
14 He asked whether Sterling put it there, and you said
15 he had to You don't know who put it there, do you?

16 A No

17 Q Okay Just like as far as this bag, do you know
18 anything about this bag?

19 A It's not my bag

20 Q It's not your bag It was your hat, not your bag.
21 You don't know how either of them got wherever they
22 were in the parking lot Is that right?

23 A Yeah. My hat fell off me, but --

24 Q How it got from where it fell off you over there --

25 A I'm gone

1 Q -- you're gone by then, right?

2 A Yes

3 Q Okay. Now, you remember earlier I tried to ask Mr
4 McDonald about a statement on November 4th, 2002

5 I started to try to ask him about that We didn't go
6 into that This statement, when was this statement
7 taken? Has it got a date on it at the top?

8 A The 4th day of November, 2002

9 Q 2002 Okay So that would be the date that you gave
10 them this written statement that you signed and sworn
11 to, right?

12 A Yes, sir.

13 Q Okay. And at that point in time you were where? At
14 the Richland County Detention Center, also known as
15 the Alvin S Glenn Detention Center? Is that right?

16 A Yes, sir

17 Q Down at the county jail?

18 A Right.

19 Q You were in custody because of this charge, right?

20 A Yes, sir

21 Q So you gave him this statement down there He wrote
22 it out, right?

23 A Yes, sir

24 Q And on November 4th, 2002, at about 13 30, from 13 35
25 hours, from 1 35 in the afternoon to 2 05 in the

1 afternoon you told Mr. McDonald, question "What can
2 you tell me about the incident that took place at
3 3101 Percival Road on October 8th, 2002?" This is
4 what you told him. And correct me if I'm wrong here
5 "I met up with my cousin, Lloyd Alexander, earlier
6 that morning "

7 A Yeah

8 Q "I can't remember where I met him though "

9 A Yeah

10 Q "Me and Lloyd went down to Colonial Villa Apartments
11 and met up with someone Lloyd knew by the name of
12 Tashim."

13 A Yeah.

14 Q Does that sound like your statement to you?

15 A Yes, sir.

16 Q Okay. "While we were there talking Tashim said he
17 was going to go talk with Sterling about the money
18 that Tashim owed Sterling." That sound like your
19 statement to you?

20 A Yeah

21 Q That sound like what's written there? "Tashim asked
22 us to go because if Sterling started act crazy "

23 A Well, --

24 Q Is that your statement?

25 A Yes, sir

- 1 Q Okay. "Then Tashim said" -- oh "If Sterling
2 started acting crazy, then Tashim said he would take
3 his TV's and other stuff he had." That's in your
4 statement?
- 5 A Yes, sir
- 6 Q Okay So going to talk with Sterling and then if
7 Sterling started acting crazy Tashim was going to
8 take some stuff That's in your statement?
- 9 A Yes, sir
- 10 Q Okay "Lloyd and I agreed to go up there with
11 Tashim "
- 12 A Yes, sir
- 13 Q Right? "Lloyd drove his van up to Sterling's place
14 on Percival Road Lloyd drove past the business,
15 then turned around and pulled in facing Decker
16 Boulevard direction " Is that correct?
- 17 A Yes, sir
- 18 Q Facing the Decker Boulevard direction?
- 19 A Back towards Columbia
- 20 Q Back towards Columbia. Right "When we got there I
21 was the first one out the sliding door of the van "
22 Right?
- 23 A Yes, sir
- 24 Q "When I got out I had my L.A. hat on backwards I
25 also had a silver 380 caliber pistol that Tashim had

1 given me as I was getting out of the van "

2 A Yes, sir

3 Q Excuse me "Tashim had given me As I was getting
4 out of the van Sterling started shooting at me "
5 That's your statement, right?

6 A Yes, sir

7 Q I just want to make sure the whole thing is out
8 there "I was about to shoot back when I got hit in
9 the hand." That's what's in your statement?

10 MR. MEADORS Your Honor, that statement is in
11 evidence.

12 MR STRICKLER It hasn't been published yet
13 THE COURT. I'm going to allow --

14 MR. STRICKLER I'm sorry, sir. I apologize
15 THE COURT I'm going to allow him to publish
16 it. Go ahead.

17 MR. STRICKLER. Thank you, sir I do apologize

18 Q "I got hit in the hand. I never made it into the
19 store Nobody else got out of the van due to the
20 shooting that was going on " This is all your
21 statement, right?

22 A Yes, sir

23 Q "I got back into the van and Lloyd took off " Lloyd
24 being Willie Alexander, right?

25 A Yeah.

1 Q Okay "I passed out a short time later and when I
2 woke up I was in the hospital " Your statement?

3 A Right

4 Q "I do remember the police saying Come out of the
5 vehicle after the police van stopped "

6 A Yeah

7 Q (By Mr. Strickler)

8 "Q Describe Tashim "

9 "A Black male, 22 to 23 years old, dark
10 skinned, about six-three, skinny, no facial
11 hair, short dreads or braids. He hangs out
12 around Colonial Villa apartments

13 "Q Was your purpose of going to
14 Sterling's that morning to rob Sterling?

15 "A Not really It was going to be just
16 Tashim talking to Sterling. We came in case
17 Sterling acted crazy I think Sterling shot me
18 because he thought we were going to rob him "

19 MR MEADORS Your Honor, my only objection is
20 if he's going to publish it, he's not asking a
21 question He's just reading

22 THE COURT Sir, I've allowed him to publish
23 We'll get finished sooner if we allow him to publish
24 without interruption

25 Q (By Mr Strickler)

1 "Q Were you in the store at all during
2 this?

3 "A No I never made it near the store
4 Sterling came out shooting as soon as we pulled
5 in and I opened the sliding door

6 "Q Was the black .9 millimeter found at
7 the scene the gun you dropped during the
8 shooting?

9 "A No, it was not. It had to be
10 Sterling's gun."

11 And then there is -- he's moved in I can't
12 find the right one One more question and answer

13 "Q Have you committed any other crimes in
14 Richland County?" The answer is no.
15 That's your full statement?

16 A (Nods head affirmatively)

17 Q Now, as to that last question, clearly, you got --
18 you pled guilty in 2000 to three counts of common law
19 robbery, correct?

20 A Yes, sir.

21 Q Okay Were those in Richland County?

22 A Yes, sir

23 Q Did you think he was talking about -- I mean, were
24 you arrested by the Sheriff's Department in that
25 case?

1 A No.

2 Q No? Okay Did you think he was talking about
3 anything other than those three charges?

4 A Hmm-mm (Negative). I didn't know what he was .

5 Q Okay You didn't know that?

6 A (Shakes head negatively)

7 Q All right Did you know that they already knew about
8 the prior convictions that you had?

9 A Yeah I mean, I thought he was talking about like
10 something going on, open case or something. I didn't
11 know what he was talking about

12 Q But you knew he knew about the prior convictions you
13 had?

14 MR. MEADORS Objection to what he would think
15 he would know

16 A Yeah

17 MR. MEADORS: That's improper

18 THE COURT Sustained

19 Q Had you had a bond set yet?

20 A Me?

21 Q Yeah On this charge At the time this statement
22 was taken

23 A No I don't think so

24 Q You don't think so? All right All right Thank
25 you, Demetrio That's it

1 THE COURT. Recross? Anything further from this
2 witness?

3 MR MEADORS: No, sir.

4 THE COURT All right. Mr Burr?

5 MR. BURR Nothing, Your Honor

6 THE COURT: All right. Thank you very much.

7 MR SEARS. Can I go?

8 THE COURT Mr Sears, you may come down.

9 MR. STRICKLER Thank you, Your Honor With
10 that, Mr. Sears rests

11 THE COURT. All right. Anything further from
12 the State?

13 MR MEADORS. If I may refer with co-counsel for
14 one second.

15 (Pause)

16 MR MEADORS Two short witnesses in reply.

17 THE COURT All right Approach the bench

18 (Whereupon, a bench conference is had)

19 THE COURT. All right, Ladies and Gentlemen of
20 the Jury. The State plans to call two witnesses in
21 reply that are only in reply to the testimony of the
22 defendants It will be very brief testimony. But,
23 however, if you need a break, let me know Everybody
24 all right? All right It will just take --
25 Mr Smith is here?

1 MS CAMPBELL They're here

2 THE COURT All right Give me just a minute,
3 please

4 MS CAMPBELL Yes, sir

5 (Pause)

6 THE COURT Let me speak with you, counsel
7 I've just got an administrative matter I need to take
8 care of

9 (Whereupon, a bench conference is had)

10 MS CAMPBELL Thank you, Your Honor. The State
11 calls Lieutenant Stan Smith

12 JAMES S SMITH, after being duly sworn,
13 testifies as follows

14 THE CLERK Please have a seat. State your full
15 name

16 THE WITNESS James Standin Smith, S-T-A-N-D-I-N
17 is my middle name

18 DIRECT EXAMINATION

19 BY MS CAMPBELL

20 Q Lieutenant Smith, where are you employed?

21 A The Richland County Sheriff's Department.

22 Q And how long have you been working in law
23 enforcement?

24 A Since 1984

25 Q And what are your current duties at the Richland
County Sheriff's Department?

1 A I am the Lieutenant in charge of the major crimes
2 section. In the major crimes section we handle
3 homicides, aggravated assaults, sexual assaults,
4 armed robberies

5 Q So it's the major crime investigative unit you
6 handle?

7 A Yes

8 Q And Sergeant Scott McDonald, is he one of the persons
9 within that unit?

10 A We just did some reorganization, but he was one of
11 the people in that unit

12 Q I want to turn your attention back to October the 8th
13 of the year 2002 Did you become involved in the
14 investigation involving a robbery that occurred out
15 on Percival Road that morning?

16 A I did briefly, yes

17 Q And tell this jury just the extent of your
18 involvement that day?

19 A I became apprised of the incident that had happened
20 because it happened while we were all working, and
21 that there had been I believe some -- a subject
22 apprehended or subjects There had been an
23 individual shot I learned about that. Some of the
24 investigators had followed up some leads One of
25 them in particular was Laffin

1 Q Investigator Laffin?

2 A Investigator Laffin

3 Q Uh-huh (affirmative)

4 A And I learned there was a witness that had been
5 identified that was the girlfriend of one of the
6 suspects in the case and that she had been
7 forthcoming And I was asked to stand by at the
8 office and secure a statement from her.

9 Q And when you say she had been forthcoming, she was
10 cooperating?

11 A Yes

12 Q And voluntarily coming forward?

13 A That's correct

14 Q And did she come down to the Sheriff's Department on
15 October the 8th and speak to you?

16 A Yes I took a statement from her on the 8th

17 Q And let me be clear, and for the jury's sake Was
18 she ever under arrest, threatened with arrest or
19 anything of that nature?

20 A No

21 Q Was she ever considered a suspect in this case?

22 A No By the time I even knew that she existed I was
23 being advised that she was cooperative and was
24 telling the truth

25 Q When she came down to the Sheriff's Department that

1 afternoon, that would be late that afternoon, did you
2 proceed to take a statement from her?

3 A Yes, I did

4 Q After you taking a statement from her, were you aware
5 that her boyfriend or her husband, Willie Lloyd
6 Alexander, was also being interviewed?

7 A Yes

8 Q And that he was in custody at that point?

9 A Yes

10 Q And had been placed under arrest for attempted armed
11 robbery?

12 A Yes

13 Q And she was giving you information voluntarily?

14 A Yes

15 Q At any point did you ever place her under arrest or
16 threaten her with any type of arrest that afternoon?

17 A No I did not

18 Q Was that ever your intention?

19 A No, ma'am.

20 Q And during that afternoon after talking to Ms Jones,
21 did you have an occasion to go down to Scott
22 McDonald's office where he was interviewing Willie
23 Lloyd Alexander?

24 A I believe I briefly went to the office to see how the
25 interview was progressing, yes

1 Q And when you went down there, and tell for the jury
2 just so they can understand, your office where you
3 were interviewing Ms Jones, how is that set up?
4 Explain how that is set up as far as Sergeant
5 McDonald's office is, where they are in relation to
6 each other?

7 A The investigative section at the Sheriff's Department
8 is a large square area full of cubicles On the side
9 of the cubicles are four supervisors' offices. My
10 office is the furthestest office down of the four,
11 say, that way At the end of the cubicles going that
12 way there are a couple of other offices And
13 Sergeant McDonald's office is in one of those offices
14 at the end They're smaller offices.

15 Q Okay And you say that there are offices that kind
16 of edge on the side Inbetween that are what we call
17 cubicles. And how high up are the partitions making
18 those cubicles?

19 A They come to about here on me.

20 Q So about here on me?

21 A Yes, ma'am

22 Q About five feet?

23 A Around five feet That's right

24 Q And from Sergeant McDonald's office which is at the
25 other end to where your office is on this end, are

1 you able to see from one end to the other?

2 A You might see the top of the door over the cubicles,
3 but you can't see into the office No.

4 Q So, say, if Ms. Jones were in your office sitting
5 down crying or even standing up crying, would she be
6 able to be seen by Sergeant McDonald's office by
7 anyone?

8 A No

9 Q Okay I'm sorry I know it's a stupid question
10 When you went down there and you went into Sergeant
11 McDonald's office that day, what was your purpose of
12 going down there?

13 A I just, as I frequently do when we have an incident
14 like this, I want to see how it's progressing, see if
15 basically a confession has taken place or a denial or
16 where we are in that interview process.

17 Q When you went down there, did you relate any
18 information to Sergeant McDonald and Willie Lloyd
19 Alexander?

20 A Yes, ma'am, I did

21 Q What did you tell them when you went down to the
22 office that day?

23 A I told them both that Ms Jones had told the truth
24 and had admitted to how she became involved in the
25 incident that day.

1 Q And specifically as to Willie Lloyd Alexander's
2 involvement?

3 A Yes

4 Q And that's the information you related to them?

5 A That's correct.

6 Q At any time did you threaten Mr. Alexander with
7 murder or any form of murder?

8 A There wasn't a murder involved in it. No, ma'am.

9 Q At any point did you threaten to arrest Ms Jones if
10 he doesn't talk?

11 A No, ma'am

12 Q As Lieutenant in charge of investigations, what are
13 your customs as far as taking a statement and
14 reducing it to writing?

15 A It's the way we've always done it since I've been in
16 investigations We actually either -- of course back
17 then we used to handwrite them Now in the modern
18 age we actually type them out ourselves and have the
19 individual we take a statement from, whether it be a
20 defendant or a witness, review the statement and make
21 sure that they're satisfied with what's being
22 forwarded before they sign it. That's our practice
23 and that's what we do in just about every case

24 Q In every case? And is that policy? Was that
25 followed in this case?

1 A Yes, ma'am I see a handwritten statement here, and
2 of course the statement I took from Ms. Jones and the
3 statement from Mr Alexander also typed

4 Q And in your department is it customary to videotape
5 or record the statements?

6 A No, ma'am

7 Q Why not?

8 A Well, first of all, we don't have the means We take
9 literally hundreds of statements in cases I just
10 completed an investigation where I took 56
11 statements. And as a matter of consistency, we've
12 always done it in this fashion We also have a
13 system which is based on transference of paperwork
14 from our office to the Solicitor's office in a file
15 form. And paperwork is the best way to do it. It
16 also allows the person you're taking the statement
17 from to be sure that's what they want to say before
18 they sign it.

19 Q And before they sign it they're allowed to review
20 every statement in every case and then they sign off
21 that they acknowledge what it is?

22 A That's correct

23 Q So that makes sure that's what they really wanted to
24 put in their statement?

25 A That's correct

1 MR. STRICKLER Object to the leading

2 THE COURT Don't lead the witness

3 Q What does that ensure?

4 A It's ensures that that's what they want to say, you
5 know, that they haven't misstated something, had a
6 chance to look at it, review it Oftentimes we'll
7 make changes because they didn't say it that
8 particular way and when they went back and reviewed
9 it they wanted to change it And that happens
10 frequently.

11 MS CAMPBELL That's all I have for this
12 witness, Your Honor

13 THE COURT Mr. Burr

14 CROSS-EXAMINATION

15 BY MR BURR

16 Q One question What was your explanation for never
17 using an audio recorder to record people when they're
18 giving statements?

19 A Ever since I've been in investigations this has been
20 our practice We don't have the ability to retain in
21 every case an audiotape with the number of cases that
22 we'd have. The written statement has always been our
23 policy to take a written statement because it's the
24 best form to preserve what the person is trying to
25 say before they sign it.

1 Q The best form for whom?

2 A The best form for the person giving the statement

3 Q No further questions

4 THE COURT. Yes, sir

5 MR STRICKLER: And no questions whatsoever,

6 Your Honor

7 THE COURT Thank you very much

8 MS. CAMPBELL. May he be excused, Your Honor?

9 THE COURT. Certainly Thank you, Lieutenant
10 Smith

11 MR. MEADORS. Scott McDonald for two questions,
12 please

13 THE COURT. Sergeant McDonald, you're still
14 under oath You understand that?

15 WITNESS Yes, sir

16 SCOTT McDONALD, after being recalled to the
17 stand and reminded he is still duly sworn, testifies as follows.

18 DIRECT EXAMINATION

19 BY MR MEADORS

20 Q Referring to State's 115, in the summaries I believe
21 Mr -- I think Mr Burr asked this. If not, I
22 apologize I think it's Mr Burr About these
23 summaries in State's 115, were those your words, or
24 were those Mr. Alexander's words?

25 A They were Mr. Alexander's words. As I previously

1 stated, I typed this as we were going along Before
2 we print it I read everything back to him to make
3 sure this was his statement He read along with me
4 on the monitor, agreed that was his statement We
5 made any additions or deletions at that time or
6 corrections We then printed it out and I once again
7 handed it to him to get him to read over the printed
8 copy, make sure this in fact was his statement He
9 agreed this was his statement, not words I made up or
10 anything like that.

11 Q And the second part on page 3 here, I believe after
12 you said, "You want to tell us what really happened",
13 you didn't tell him what had happened and then he
14 repeat it?

15 A No No I confronted him with the facts I had at
16 that point and the unbelievable story he was telling
17 us about how he can call his girlfriend for help but
18 he can't call for help for his dying friend

19 Q Was he handcuffed to a chair?

20 A No, he was not.

21 Q Was he handcuffed at all?

22 A No

23 Q Did you threaten him at all?

24 A No

25 Q Thank you That's all we have.

1 MR BURR May it please the Court?

2 THE COURT. Yes, Mr Burr

3 CROSS-EXAMINATION

4 BY MR BURR

5 Q The last question on page 3 after your two-hour
6 interview with Lloyd Alexander, you asked him "Did
7 you plan the robbery with these guys?" What was his
8 answer?

9 A "No, sir"

10 Q No further questions.

11 MR. STRICKLER. I have nothing, sir Thank you

12 MR MEADORS That's all our reply Thank you,
13 Judge

14 THE COURT All right. Ladies and Gentlemen of
15 the Jury, that concludes all the evidence in the
16 case. The remainder of the case will consist of the
17 final arguments of counsel for each of the parties,
18 the State, both defendants, and my charge to you on
19 the law of the State of South Carolina as it applies
20 to this case after which the case will be given to
21 you for deliberation

22 Now, that process in all likelihood will take
23 perhaps a couple of hours It's been a long day I
24 had indicated to you earlier in the week that I felt
25 we could finish this case by today, but things don't

1 always go as I anticipate they'll go Just like they
2 say, it happens But we do have tomorrow

3 With all the evidence in the case I think it is
4 best -- and, frankly, it's just been a long day --
5 for all concerned that we resume in the morning
6 You'll get the final arguments the first thing, my
7 instructions, at which time the case will be
8 delivered to you for deliberation

9 Tomorrow may be your only chance for the county
10 to buy you lunch, since you've had to buy your lunch
11 yourself all week And I promise you if we go to
12 lunch I'll buy you lunch Now, on the other hand,
13 when we buy lunch, it comes from Lizard's Thicket
14 which means you'd better have your cholesterol
15 checked before you start eating

16 Nevertheless, I do appreciate your patience and
17 particularly your attentiveness I think the best
18 thing to do, it's 5:00, is to go ahead and recess for
19 the evening. Again, I'll ask you not to discuss the
20 case among yourselves when you return to the jury
21 room in the morning or with anyone else over the
22 evening hours I hope you have a pleasant evening
23 Let's resume tomorrow at 9-30 9 30 Thank you very
24 much

25 (Jury out at 5 00 P M)

1 THE COURT All right, counsel. In order that
2 we can proceed expeditiously in the morning, I'll ask
3 at this point in time if there are any motions to be
4 considered? Any motions on behalf of the defendant,
5 Alexander? Any motions on behalf of the defendant,
6 Sears?

7 MR STRICKLER: Thank you, sir. Of course at
8 this point in time I need to renew my directed
9 verdict motion now that all the evidence in the case
10 is in I would specifically renew the directed
11 verdict motion that was made at the end of the
12 State's case and specifically renew the motions and
13 requests that Your Honor revisit your prior rulings
14 and grant mistrials for all the grounds that I set
15 forth at the end of the State's case

16 Additionally, Your Honor, I need to -- I swear
17 there were -- excuse me I --

18 THE COURT. I recollect.

19 MR STRICKLER: I recollect -- I would not swear
20 at this point -- even taking the kindest form of the
21 word, I believe during the course of Mr Alexander's
22 testimony that I had occasion to -- excuse me, sir
23 That's why I shouldn't swear. All right I'll start
24 at the back and move forward. I know during the
25 course of Mr Sears' testimony I objected as to

1 pitting when Mr Meadors asked did Mr Sears comment
2 on the fact -- or I believe the question is, so the
3 doctor is lying

4 THE COURT. And I sustained the objection

5 MR STRICKLER. I objected You sustained We
6 approached the bench and I asked that I be able to
7 put on the record the fact the objection was to
8 pitting and that I would be moving for a mistrial on
9 that basis.

10 So, assuming Your Honor denies my motion for
11 mistrial in that regard, then in addition to the
12 motions that I asked you to reconsider at the end of
13 the State's case, I would then ask that you revisit
14 your decision as to granting a mistrial on the
15 pitting objection. And ah. Excuse me Was I
16 haven't lost my -- no I'm sorry

17 I'm getting Mr Alexander's testimony Mr
18 McDonald's testimony. I could swear there was one
19 more time we approached the bench and I asked that we
20 be able to place something on the record during the
21 defense case, and I can't remember what it is

22 MR BURR. The last two lines of the statement

23 MR STRICKLER: The last two lines of the
24 statement. Thank you I ask the record to reflect
25 my objection to the final two lines of the statement

1 now marked as State's 115

2 MR MEADORS 116

3 MR STRICKLER. 116 which is the earlier
4 statement of Mr Sears

5 THE COURT: The unredacted statement

6 MR. STRICKLER. The earlier statement. And 116
7 is the complete unredacted version of that,
8 concluding the last two lines referencing his prior
9 history And so I need to make sure that's noted,
10 that my objection to that is noted for the record.

11 MR. BURR Your Honor, Mr Alexander would also
12 renew his motion for a directed verdict Did you
13 take up the final issue of charges?

14 THE COURT I do But I want to get this
15 finished first.

16 MR STRICKLER. I'm finished

17 MR MEADORS. I just want to comment --

18 THE COURT I know But I've got to rule on the
19 motions I'll hear from the State

20 MR. MEADORS. Thank you, Your Honor As far as
21 the last two sentences --

22 THE COURT Let me make sure Mr Burr is
23 finished.

24 MR BURR: I'm finished, Your Honor.

25 THE COURT: Thank you

1 MR MEADORS As far as the last two sentences,
2 just very briefly, that was redacted in a previous
3 trial where we had not gone into the prior criminal
4 history

5 THE COURT It doesn't matter

6 MR. MEADORS Sir, in this case, respectfully,
7 at this point the prior record had already come in
8 before that statement came in This was a question
9 that went straight to his credibility Have you
10 committed any other crimes in Richland County? He
11 said no That's what we're offering it for I think
12 Your Honor ruled on that I just want the record to
13 reflect that We don't think it could have caused
14 any other undue harm to the defendant than admitting
15 to the three strong armed's he had already admitted
16 to

17 THE COURT I understand that

18 MR. MEADORS Secondly, Your Honor, as far as
19 the pitting, and if I'm mistaken, so be it And I
20 might be But I thought I had repeated a response
21 that the defendant gave, that the doctor either --
22 the doctor basically had either messed up So I kind
23 of repeated his response So I respectfully would
24 ask Your Honor to consider it wasn't pitting because
25 I think I repeated a response He was basically

1 saying the doctor messed up I wasn't trying to pit
2 two witnesses together I was repeating a response
3 he made And I'd just like the record -- that's the
4 way I remember the record

5 THE COURT Without getting into the specifics
6 of the pitting, clearly under State v Burgess or
7 something similar to that, pitting is objectionable
8 and is not allowed And I sustained the defense
9 objection to that.

10 With respect to the directed verdict motions and
11 the mistrial motions made on behalf of both
12 defendants, I respectfully deny the motions I think
13 the issues were clearly discussed and ruled on in
14 prior portions and stages of the trial I see no
15 reason at this point to reconsider those matters
16 All right

17 MR. STRICKLER. Thank you, sir.

18 THE COURT. Now, with regard to jury charges, I
19 have provided each, both the State and both of the
20 defendants, with a series of proposed charges which I
21 intended that you consider Some may or may or not
22 be -- we did it before the witness -- I mean, before
23 the evidence was complete Therefore, there may be
24 some issues, I mean, some proposed charges that are
25 unnecessary But I went ahead and I think gave you

1 everything Did you give them everything?

2 So, any objection to the proposed charges? And
3 then I'll take up the issues of suggested additional
4 charges that both Mr. -- at least Mr Burr provided
5 And I'm not certain that I have any other proposed
6 charges from any other party

7 MS CAMPBELL No objection from the State, Your
8 Honor.

9 MR. BURR No objection from defendant
10 Alexander

11 MR STRICKLER. There's no additions or
12 objections to the charges as you provided, Your
13 Honor, though I would agree that a couple of them
14 probably are unnecessary now: Failure of the
15 defendant to testify, et cetera I have no
16 additional charges myself

17 THE COURT Okay All right All right. I
18 think the only one that I was -- may have considered
19 should be deleted was the identification issue The
20 identification should -- is identification an issue
21 that the jury needs to be instructed on?

22 MR STRICKLER Yes, sir.

23 MR BURR. I have no objection to it, but it's
24 not what I would offer at this point

25 THE COURT Mr Strickler.

1 MR MEADORS. What did Mr Burr say?

2 MR. BURR. I wouldn't object to it But it not
3 one that I would be subjecting or submitting

4 MR. STRICKLER. I guess I'm of one mind with
5 Mr Burr

6 THE COURT Sir?

7 MR. STRICKLER I'm of one mind with Mr Burr in
8 that regard

9 MR MEADORS. I'd like the record to reflect
10 that.

11 THE COURT. Well, then does the State have any
12 position on the identification charge? Is it
13 necessary?

14 MR MEADORS I don't think it's an issue or
--15 necessary, personally.

16 THE COURT All right I don't want to violate
17 anybody's rights to a charge I do not think since
18 all parties have taken the stand, it just doesn't
19 seem to be an issue It was before everybody took
20 the stand

21 MR STRICKLER I think you're probably right,
22 Your Honor

23 THE COURT All right All right. Let me
24 address the --

25 MR MEADORS Judge, do you have experts in

1 here?

2 THE COURT No, I don't Thank you for
3 reminding me We'll pull it Just make a note to
4 pull experts Mr Strickler, are you satisfied with
5 the Bruton limiting instruction?

6 MR STRICKLER. Yes, sir

7 THE COURT. Thank you.

8 MR STRICKLER Yes, sir

9 THE COURT And the only other, I believe,
10 Mr Burr, you suggested a charge on the defendant's
11 statement, now statements?

12 MR. BURR Your Honor, that's brought up
13 earlier If I may, please, I'm not sure if I
14 submitted two or three. I went through what I had
15 versus what you have this morning The only
16 remaining one I would submit that I would request --

17 THE COURT Is on attempt?

18 MR. BURR On attempt, yes, sir

19 THE COURT So you agree that the Court's
20 proposed instruction on the statements is --

21 MR BURR. Yes, sir I'm satisfied with
22 everything, except we'd also like to add the attempt

23 THE COURT. All right I see no problem.

24 MS. CAMPBELL Your Honor, may I be heard on
25 that one?

1 THE COURT. Well, let me just -- sure. I see no
2 problem with the second paragraph. But --

3 MS CAMPBELL Of the attempt one?

4 THE COURT Yeah

5 MS CAMPBELL If it were to be complete. If
6 you look at State v Quick which is quoted from State
7 v. Evans, the part that I think; you know, first, it
8 has been shown beyond a reasonable doubt that he
9 intended to commit the crime of armed robbery
10 Second, the State must also prove mere planning of
11 preparation But there's a second part of that
12 sentence that he doesn't put in which requires an
13 overt act We would just ask that the complete part
14 of Quick be put into it

15 THE COURT: Okay

16 MS CAMPBELL Because I have no problem with
17 it, just that it be -- and I think I handed that up
18 earlier, Quick. It's in Quick, and I think I may
19 have highlighted it there

20 THE COURT All right. Any objection to quoting
21 the entire portion?

22 MR. BURR: No, Your Honor

23 MR MEADORS: Judge, may I just with all due
24 respect inquire, why do we need the Bruton limiting
25 instruction now? They've both been subject to cross

1 examination I respectfully don't think this charge
2 would apply at this point I think it only applied
3 if one statement came in and of course the defendant
4 hadn't testified In this case he has Both of them
5 have actually, and both have been subject to cross
6 examination. So it's for the jury to decide at that
7 point whether they want to consider it against the
8 other one because they've both been subject to, it's
9 my understanding, cross examination.

10 MS CAMPBELL It's non-redacted anyway

11 THE COURT We've got unredacted statements.

12 MR MEADORS We'd that ask that you not
13 charge --

14 THE COURT Well, Bruton is the confrontation
15 issue once the statements are admitted Do you have
16 a position on that, Mr. Strickler?

17 MR STRICKLER Certainly, sir. I'd oppose
18 anything regarding statements from co-defendants
19 throughout this trial At this point --

20 THE COURT. I'm going to leave it in

21 MR. STRICKLER. -- as they say --

22 MR MEADORS. Can I just from the record?
23 Bruton applies, in my humble opinion, when you don't
24 have the right to confrontation Obviously it's not
25 a Bruton case any more because they both testified

1 and were subject to cross examination

2 THE COURT Well, I'll take the word Bruton off
3 of it then

4 MR MEADORS. Sir?

5 THE COURT I'll take the word Bruton off of it

6 MR. MEADORS. But I guess, respectfully, I think
7 they can consider the statement against somebody
8 else. And they'll have to consider if it's
9 believable I just don't think this is a correct
10 statement of the law when they've testified

11 THE COURT. All right. I'll consider that over
12 the evening hours.

13 MR MEADORS Thank you.

14 MR BURR Thank you, Your Honor.

15 THE COURT: Mr Meadors, can you get your
16 children to school by 9-30?

17 MR MEADORS Judge, I think Mr Strickler might
18 help me Yes, sir I will I appreciate that

19 THE COURT: 9 30 Thank you

20 MR STRICKLER. Thank you, sir.

21 (Whereupon, the proceedings are concluded for
22 the day, to be reconvened tomorrow morning)

23

24

25

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) COURT OF GENERAL SESSIONS
) 2002-GS-40-10992, 10624

State of South Carolina)

vs.)

Willie Lloyd Alexander and
Demetrio Sears,

Defendants)

) TRANSCRIPT OF RECORD
) (Trial - Volume 4 of 4)

January 9, 2004
Columbia, South Carolina

BEFORE:

THE HONORABLE G THOMAS COOPER, JR , JUDGE, and a
jury

APPEARANCES:

KATHRYN LUCK CAMPBELL, SENIOR ASSISTANT SOLICITOR
JOHN MEADORS, DEPUTY SOLICITOR
Attorneys for the State

WILSON BURR, ATTORNEY AT LAW
Attorney for Defendant Willie Lloyd Alexander

DOUGLAS STRICKLER, PUBLIC DEFENDER
Attorney for Defendant Demetrio Sears

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

1 Friday, January 9, 2004

2 (WHEREUPON, State's Exhibit No. 105 was
3 withdrawn from evidence)

4 (WHEREUPON, State's Exhibit No 113 was
5 withdrawn from evidence)

6 (State's Exhibit Nos 105 and 113 are withdrawn
7 from evidence, according to the judge's instructions)

8 THE COURT Counsel, with respect to jury
9 instructions, it's my understanding you've been
10 provided with a proposed expert witness ^{and} attempt
11 charge. Any objection to either of those?

12 MS CAMPBELL No, sir

13 MR STRICKLER: None from Mr. Sears

14 MR BURR None for Mr Alexander, Your Honor

15 THE COURT: All right In reconsidering the
16 Bruton limiting instruction, since there appears to
17 be no confrontation issues remaining in this case, I
18 fail to see why the Bruton limiting instruction is
19 appropriate and propose to delete that from the
20 charge

21 MR STRICKLER. Just note my exception, Your
22 Honor, please

23 THE COURT Sure I think we decided yesterday
24 identification also was an unnecessary charge.

25 The only other thing that was proposed for your

1 consideration is that the hand of one charge is
2 rather lengthy, and it seems to me to be duplicative
3 of the mere presence charge and the aiding and
4 abetting or accomplice liability charge I think
5 both of those concepts, mere presence and aiding and
6 abetting, are included in the hand of one charge I
7 can string it out, but I don't see the necessity of
8 doing that unless the State or defense has a strong
9 position on that issue Any problem with the State?

10 MR. MEADORS No, sir

11 MS CAMPBELL So that I understand, Your Honor,
12 you're going to just do the hand of one, hand of all
13 charge you proposed?

14 THE COURT Yes

15 MS CAMPBELL And delete the aiding and
16 abetting?

17 THE COURT Yes Because it talks about mere
18 presence, and it talks about aiding and abetting

19 MS. CAMPBELL: That's fine So we wouldn't do
20 the aiding and abetting, we wouldn't do the mere
21 presence It would just be the hand of one which
22 talks about all that

23 THE COURT That's what I'm proposing to do

24 MS CAMPBELL That's fine Yes, sir

25 MR. BURR Your Honor, I would object to the

1 hand of one I think it's really redundant of the
2 other two charges Plus, the third --

3 THE COURT. Well, it is That's why I'm taking
4 out the two other charges.

5 MR. BURR There's a third party involved in
6 this thing. We have alleged throughout our defenses
7 that we're saying he may have been doing something
8 wrong and these two gentlemen were not aware of it.
9 I think the hand of one, hand of all could give the
10 jury the impression that if they were there that
11 they're guilty of whatever this third Tashim was
12 doing

13 MR MEADORS Judge, our whole case, and we
14 think the evidence shows, there's a robbery and there
15 was a driver. If the jury believes that, obviously
16 hand of one, hand of all would be the appropriate law
17 for them to consider

18 THE COURT Well, I guess that's an interesting
19 defense that the third party is the guilty party if
20 the guilty party -- if there is a third party, and
21 that painting your client with the same brush as the
22 third party is -- I just don't have a third party
23 The hand of one is applicable in this case I would
24 say that. I don't think I can take out hand of one,
25 hand of all just because there's an allegation

1 there's a third party who is the guilty defendant.
2 Although, even separate, there's no allegation or no
3 testimony from your clients that the third party did
4 anything wrong either According to your client or
5 defendants, the third party never even got out of the
6 car So he probably under your theory could not be
7 guilty of attempted robbery

8 MR BURR Your Honor, I think there was
9 testimony, and certainly we alluded to the fact, that
10 it was a possible drug deal going on that these two
11 gentlemen were not a party to, but that Mr Tashim
12 and Mr. Patterson had some deal prior to their
13 involvement in it.

14 THE COURT I think that is too speculative
15 You can argue that to the jury I'll let you argue
16 that to the jury

17 MR. BURR. Okay, sir.

18 THE COURT I just don't see that I can instruct
19 them on a hypothetical theory in the case

20 MR. MEADORS Your Honor, I don't think it's a
21 third party guilt case That explains maybe their of
22 theory of why they're on Percival, but we've still
23 got classic robbery with a guy driving --

24 THE COURT. There's evidence of that

25 MR. MEADORS Judge, one other thing, if I

1 missed it yesterday -- are you going to charge on the
2 prior record and all that? It may be in here and I
3 just didn't see it, the fact that you consider that
4 for credibility only I was going to argue that, but
5 I don't know if that was in there

6 THE COURT. No It should be in there You're
7 right Anything else? I'll do that That's a
8 simple --

9 MR STRICKLER Yes I would request that, Your
10 Honor.

11 THE COURT Sir?

12 MR STRICKLER I would specifically request
13 that

14 THE COURT Yes. Absolutely correct.

15 MR. MEADORS. Judge, the only other thing I
16 have, there are four -- at least three fine lawyers
17 and one adequate one here Since I'm going to be
18 last, could we take a few minute break prior to my
19 final closing? If any of these lawyers want to do
20 the same before theirs, I would certainly acquiesce
21 in that. But I just respectfully ask for a
22 two-minute break so I can --

23 THE COURT I'd rather not take four breaks

24 MR. MEADORS Whatever you say, Judge I just
25 for myself and whatever -- by that time I'll need it

1 THE COURT. If the arguments get to be lengthy
2 But as far as accumulating the evidence or putting it
3 in the order that you want it, I suggest that you may
4 want to take a look at it now You think they'll
5 tear it up.

6 MR. STRICKLER. I'll put it all in that box.

7 THE COURT. Shuffle it I'll consider that at
8 the time

9 MR MEADORS. Thank you.

10 THE COURT. All right You ready for the jury?

11 MS CAMPBELL. The State's ready, Your Honor

12 MR. STRICKLER Yes, Your Honor

13 THE COURT The order of argument as I
14 understand it is Campbell, Burr, Strickler Bring
15 the jury, please

16 (Jury in at 9 45 A.M.)

17 THE BAILIFF The jury is present, Your Honor

18 THE COURT. All right Thank you very much
19 Good morning, Ladies and Gentlemen I hope you had a
20 pleasant evening We're ready to conclude the trial
21 with the final arguments of counsel Ms Campbell,
22 you may proceed

23 MS CAMPBELL. Thank you. Ladies and Gentlemen,
24 the first thing I'd like to do this morning is to
25 take this opportunity to thank you for your service

1 in this case I know that at the beginning of the
2 week this is probably not what you envisioned each
3 and every one of you having to do this week But
4 over the course of the testimony in this case I've
5 noticed you've all been attentive and you've paid
6 close attention, and it's very important in this
7 case, as I think you've come to realize

8 And I do want to thank you for giving us your
9 time, your service, and in giving this case the
10 consideration and the attention that I think it's
11 become obvious that it deserves So on behalf of the
12 State of South Carolina, and I'm sure on behalf of
13 the defendants, too, I am thanking you for your
14 service in this case

15 Now, I am going to have this opportunity to talk
16 to you just briefly about the law in the case And
17 then you are going to hear from the defense
18 attorneys, Mr. Burr and Mr Strickler They're going
19 to address you about the law and the facts. And then
20 you're going to hear again from the State
21 Mr Meadors is going to get up here and speak to you
22 more about the facts of the case

23 And I want to take this opportunity, too, the
24 first thing I want to say is after you've heard from
25 all of us the judge is going to instruct you on the

1 law So while I'm up here talking, if I say anything
2 about the law and the judge tells you something
3 differently, you take the law as the judge gives it
4 to you It's got intentional on my part But you
5 take the law as the judge gives you

6 And in that same vein, Ladies and Gentlemen, as
7 you hear from the attorneys in the case, and if you
8 hear them and they talk about the facts and it's not
9 as you remember it, you remember the facts, because
10 you alone, Ladies and Gentlemen, have the most
11 important role in this courtroom because you are
12 judges of the credibility of the facts. You must
13 determine what happened back on October 8th of 2002.
14 So if anyone misquotes or mischaracterizes the facts
15 in this case, you remember it

16 Now, you have heard all the evidence and the
17 testimony that you can consider in the case, in this
18 case. And you must base your verdict on the evidence
19 that has been put before you, not on innuendo, not on
20 conjecture, not on speculation or just sheer wishful
21 thinking on their behalf, but on the evidence.

22 And evidence, Ladies and Gentlemen, are the
23 answers. It's not a fishing expedition by the
24 lawyers; it's not on conjecture The evidence is
25 what people came up here and swore to tell the truth

1 and what they testified to, the evidence that has
2 been put in that is corroborated by the sworn
3 testimony

4 I also want to apologize if over the course of
5 the last several days I have offended anyone in any
6 way As you noticed at times there's been -- we've
7 gotten caught up in the legal wrangling At times
8 something is admissible and it's not admissible It
9 may become admissible later. There have been times
10 when you've had to go back and wait on us to argue
11 legal issues here in the courtroom

12 And I want to apologize on behalf of the State
13 if Mr. Meadors or I, as we've gotten caught up, as
14 sometimes we do get caught up in the moment and get
15 excited about trying to get the evidence before you,
16 if we have done anything to offend you in any way,
17 please don't hold that against the State of South
18 Carolina. Please don't hold it against Sterling
19 Patterson and Andre Stokes It was not intentional
20 on our part

21 In a criminal case, it is somewhat unique Over
22 the last several days, as you've noticed, we've
23 called witnesses. You haven't seen depositions
24 There have been no videotapes And the purpose of
25 that, Ladies and Gentlemen, is crystal clear.

1 Because in the Constitution every defendant has a
2 right to confront each and every witness against
3 them And the law recognizes that.

4 And in that same wisdom, they recognize that you
5 have a right, even if there's been a report, even if
6 there has been a document generated by someone, the
7 State must bring before you live witnesses And the
8 purpose of that is the defendant has a right to
9 confront each and every witness against him, and you
10 have a right to evaluate each and every witness, to
11 look at them, have them come before you so you can
12 evaluate them for their credibility, their
13 believability It's all live testimony

14 Reports aren't admissible unless all the parties
15 stipulate, which doesn't happen often, as you may
16 have noticed, things of that nature And that's why
17 we had each and every witness come up here

18 Now, in certain cases, too, you have also heard
19 from witnesses who didn't have that much more to
20 offer other than you heard them talk about, Did have
21 evidence in your possession, did you take it. You
22 must prove a chain of evidence, is how we refer to
23 it And that very simply means that in order for you
24 to be able to hear the results of some testing in
25 this case, ballistics and other testing, we must

1 prove that that evidence wasn't tampered with, no one
2 altered it in any way, no one could have altered the
3 findings. That's why you have close to 100
4 photographs in front of you so that you can see how
5 the evidence presented initially, so that you can be
6 assured that that evidence wasn't altered or tampered
7 with in this case and that the results are accurate.

8 And, finally, on that same note I want to talk
9 to you a little bit about, you've heard about how
10 there were several officers at the scene There were
11 other officers that were also at the scene that you
12 haven't heard from. There were other officers there,
13 Officer Dowdy who was at the scene of where the van
14 was found

15 The State cannot bring each and every witness,
16 or we would be here forever What we do bring before
17 you is each witness that has something different to
18 offer Otherwise, it would be cumulative for another
19 officer to get up and say the same thing over and
20 over and over So you have heard from each and every
21 officer or each and every witness that has something
22 slightly different or something slightly more to add
23 about what they observed and what they saw back on
24 October the 8th of 2002

25 Now, let me tell you, Ladies and Gentlemen, and

1 as I told you at the beginning of this case, the
2 burden of proof is on the State of South Carolina to
3 prove each one of these men, although they acted
4 together, we must prove that each one of them
5 independently is guilty beyond a reasonable doubt
6 And again I reiterate in this case that is a burden
7 the State welcomes

8 And what is guilty beyond a reasonable doubt?
9 It is the highest level of proof in any courtroom in
10 our nation It is the level of proof the State must
11 always meet in criminal cases And that's the way it
12 should be because the State should have that burden

13 What is guilty beyond a reasonable doubt? In
14 our state and in our country the courts have defined
15 reasonable doubt or proof beyond a reasonable doubt
16 in the following manner Some people say it is proof
17 that makes a reasonable man hesitate to doubt But
18 the courts have gone a little bit further in allowing
19 this instruction to aid juries in determining what is
20 proof beyond a reasonable doubt

21 Proof beyond a reasonable doubt is proof that
22 leaves you firmly convinced of the defendant's guilt
23 There are very few things in this world that we know
24 with absolute certainty And in criminal cases the
25 law does not require proof that overcomes every

1 possible doubt It does not require that, although I
2 submit in this case we have

3 If based on your consideration of the evidence
4 you are firmly convinced, just firmly convinced that
5 the defendant is guilty of the crime charged, you
6 must find him guilty If, on the other hand, you
7 think that there is a real possibility that they
8 aren't guilty, then you should find them not guilty.
9 That is the level of proof that the State must reach;
10 although, Ladies and Gentlemen, I submit in this case
11 we have proved beyond any possible doubt We must
12 prove that you are firmly convinced of the
13 defendant's guilt, not overcoming every possible
14 doubt, but firmly convinced.

15 Now, in this case there are two indictments that
16 are before you, but they both charge the same thing
17 Because in cases where one or more people, two or
18 more people combine to commit a crime, then they can
19 all be charged -- and in some cases with multiple
20 offenses -- but in this case with attempted armed
21 robbery.

22 And in our code of laws -- and the judge will go
23 further in defining this -- attempted armed robbery
24 And the simplest way for me to explain it to you is
25 to first define what is armed robbery. And armed

1 robbery, Ladies and Gentlemen, is the taking and
2 carrying away of the personal property of another
3 with the intent to deprive the owner of that by use
4 of force or threats or intimidation and while armed
5 with a deadly weapon

6 And there are several lesser included's of that
7 A lesser included of armed robbery is common law
8 robbery or strong armed robbery A lesser included
9 of that is larceny

10 And starting out with larceny, what is larceny?
11 Larceny is the unlawful taking of the property of
12 another with the intent to permanently deprive the
13 person of the use of that thing Typically, in this
14 case it's somewhat typical of that, it can be goods,
15 household items, jewelry, any kind of personal
16 property But, typically, it's money or a
17 combination thereof

18 And you will hear as the judge addresses you, in
19 armed robbery there is no set amount of money that
20 has to be stolen. There's no set amount of, you
21 know, tires that have to be taken Any item of value
22 that is taken from another with the intent to deprive
23 them of that is larceny

24 And the very common term of larceny is stealing
25 Now, what makes larceny into robbery or strong armed

1 robbery, what's referred to as common law robbery?
2 Larceny is elevated into a robbery, a strong armed
3 robbery or a common law robbery when one does more
4 than just steal from another Stealing can be, say,
5 if I go to a high school and I see a locker, it's not
6 mine I go into it and I take those goods, that is
7 larceny, that is stealing

8 What makes it robbery is if I go to that same
9 high school and I go up to someone and I threaten
10 them, use of force, threats or intimidation and I
11 take from that person, the presence or person; it
12 doesn't have to be off your body, from your pocket,
13 but from anything over which you have dominion or
14 control Listen as the judge defines that

15 It becomes robbery basically when you go up to a
16 person, you threaten them, you threaten violence, you
17 use violence or intimidation and you take from their
18 presence or person, such as classically a robbery,
19 someone goes into a convenience store, threatens that
20 person, gets them to give them the money, then that
21 makes it robbery, because it doesn't even have to be
22 the personal goods of a person being robbed It is
23 the store over which he has dominion and control.
24 That makes it robbery Listen as the judge defines
25 it for you

1 What makes it armed robbery? When they use
2 violence, threats or intimidation, and they enforce
3 that violence, threats or intimidation with the use
4 of a deadly weapon And, Ladies and Gentlemen, no
5 one is going to get up here and argue that a loaded
6 9 millimeter, I believe it is, pistol is not a
7 deadly weapon

8 Very simply, larceny becomes robbery when you
9 elevate it, when it comes from a person And the
10 reason the law recognizes that is inherent The
11 risks go up, the risks to the victim. And when a
12 person comes into a store armed with a weapon, bad
13 things happen, just like in this case someone can get
14 hurt And it doesn't matter, and God knows you don't
15 want it to be a victim and you don't even want it to
16 be a defendant, but when people enter stores with
17 masks and guns, that is robbery And the law
18 recognizes that

19 Now, in this case there with was no successful
20 completion They don't get rewarded just because
21 Sterling Patterson had the wherewithal to get them
22 out of there They don't get bonus points. They
23 still are held responsible for their intent and their
24 attempt to do the robbery And that's why in our
25 case we have attempted armed robbery Because our

1 legislators recognized that it is still something
2 that he should be held accountable for even if it's
3 not completed, because the intent was there; and just
4 because they are foiled in their attempt, they don't
5 get Brownie points

6 Now, the judge is going to tell you that mere
7 presence at the scene of a crime is not, does not
8 make them responsible And the State wants to be the
9 first to tell you Mere presence, just because
10 someone is there doesn't make them guilty of a crime.
11 That wouldn't be right, and that is not right

12 However, when people go to a scene knowing
13 what's going to happen, and whether they are the
14 driver or the robber or the shooter, if they take a
15 role, if they are present aiding and abetting, then
16 they are guilty, each one of them, in the same manner
17 under a theory of law called the hand of one is the
18 hand of all

19 And the judge will instruct you on this He
20 will tell you in our state and in our country when
21 two or more persons acting with common design or
22 intent -- and each can have a separate role; and I'll
23 talk about that in a minute -- are present at the
24 commission of a crime, it matters not by whose
25 immediate hand or agency the crime is committed, all

1 are equally guilty The hand of one is the hand of
2 all Classic

3 This case is classic. Who was the first person?
4 It doesn't matter who carried the bag in It doesn't
5 matter who put the gun to Andre Stokes' head That
6 they all acted together It doesn't even matter if
7 the driver never when in.

8 A classic convenience store Two people
9 participating in a robbery. They enter the store
10 As they enter the store one goes up with the gun,
11 demands the money, points it at the clerk. The
12 second one, the lookout, never even gets past the
13 front door He's looking out to make sure nobody
14 comes up on the scene Classic hand of one, hand of
15 all

16 And I submit, Ladies and Gentlemen, there is no
17 dispute in this case that when all those people put
18 on their masks and they got out their guns and they
19 entered, threatened to kill Andre Stokes, there is
20 not much doubt about the hand of one is the hand of
21 all It matters not which role which one played,
22 each is guilty equally under the law

23 Now, there are two types of evidence that you've
24 heard about in this case, and the judge is going to
25 tell you about that There is circumstantial

1 evidence and there is direct evidence And very
2 simply, the judge will tell you there's no real
3 difference in the weight you give to the evidence
4 You give each and every piece of evidence in this
5 case whatever weight you feel is appropriate

6 What is the difference between direct evidence
7 and circumstantial evidence? Direct evidence, Ladies
8 and Gentlemen, is typically referred to as eye
9 witness testimony, eye witness evidence Someone
10 sees part of the crime or all of the crime And you
11 have heard from several eye witnesses in this case
12 direct testimony, testimony that is perceived through
13 the senses. What you see, you hear, feel, touch,
14 smell That is direct testimony.

15 In this case you heard from several eye
16 witnesses who gave direct testimony The
17 Quattlebaums And, by the way, I'll get to
18 credibility They don't know anybody They were
19 merely driving by And guess what? Thank God for
20 the Quattlebaums, because they were responsible
21 citizens They did what we hope every one of us
22 would do. When seeing a crime they went back and
23 they told the police about what they saw and they
24 gave them their numbers so that they could be
25 bothered 15 months later to come to court and testify

1 about what they saw. And they aren't here to tell
2 you who did what or what they were doing, but they
3 told you what they saw

4 Eye witness testimony Sterling Patterson,
5 Andre Stokes, they told you what happened that day
6 Sterling Patterson got up here and told you exactly
7 what he did, who he shot He didn't hold back,
8 reported it immediately. Eye witness testimony

9 And their testimony The Quattlebaums, Sterling
10 Patterson, Andre Stokes, which they reported
11 immediately is corroborated by the circumstantial
12 evidence in this case

13 Circumstantial evidence is what they call
14 indirect evidence. It's proof of a chain of facts or
15 circumstances that point to the existence of another
16 fact or circumstance And, very simply, Ladies and
17 Gentlemen, the ballistics in this case Where the
18 projectiles were found, the bullet holes I'm going
19 refer to, where the shell casings were found, that is
20 circumstantial evidence as to where the shooting
21 occurred.

22 And circumstantial evidence has been explained
23 in many ways Some people refer to it the following
24 way I went to bed last night As I looked out over
25 the ground, the ground was green Or in my yard it's

1 brown There wasn't anything on the ground I woke
2 up the next morning, and when I looked out it was
3 covered in white snow as far as you could see It is
4 a reasonable inference, circumstantially, I can take
5 as a fact it snowed while I was asleep

6 And, I submit, Ladies and Gentlemen, as you
7 listen to the defendants, they will get up here and
8 argue that your nextdoor neighbor went to North
9 Carolina, rented a snow machine, brought it down, and
10 put snow as far as you can see And that's
11 reasonable? Circumstantially, inferences that are
12 reasonable based on findings

13 The ballistics, the shell casings, things of
14 that nature The gunshot residue kits totally and
15 completely corroborate the direct testimony And
16 that's the nice part about this case, because you
17 have direct evidence In some cases that's all you
18 have You have circumstantial evidence. And in some
19 cases that's all you have

20 But look at each and every piece of credible
21 evidence in this case, and the direct evidence, the
22 testimony The Quattlebaums, Mr. Stokes,
23 Mr Patterson is totally and completely corroborated
24 by the findings at the scene The shell casings, the
25 projectiles, the hat, the front door, the bag The

1 direct evidence is corroborated by circumstantial
2 evidence

3 Now, in every case you also hear that we must
4 prove criminal intent And that is true And in
5 this case, Ladies and Gentlemen, I submit it wreaks
6 of criminal intent There is no dispute there The
7 law recognizes that when determining if someone had
8 criminal intent in their mind that you can't go back
9 and dissect their brain to determine what they were
10 thinking at the time So you must look at their
11 actions leading up to, at the time of, and afterwards
12 to determine whether or not someone had criminal
13 intent

14 And I submit, Ladies and Gentlemen, when people
15 enter a business wearing masks, armed with guns, they
16 flee the scene, they leave their dying cousin in the
17 car and scale a 15-foot wall, it wreaks of criminal
18 intent

19 Now, you also heard about some statements that
20 were given in the case And the judge is going to
21 tell you that even though he made the determination
22 that they were admissible, before you consider them
23 you must determine whether or not those statements
24 were voluntarily made

25 And in this case that's not really in dispute,

1 because there is no dispute in this case -- and the
2 judge will tell you -- that in determining the
3 voluntariness you must determine the defendants' age,
4 their ability to understand what they were doing,
5 things of that nature

6 But most importantly, he's going to tell you,
7 you must determine whether or not they were read
8 their Miranda rights There's no dispute in this
9 case, not in this courtroom, that these men were read
10 their Miranda rights not just once, more than once by
11 their own admission, that they were able to read,
12 write and understand the English language, that they
13 were read their rights and that they waived them

14 And the reason you know that is because they
15 signed off on it And they also -- even they had to
16 admit that was true in this case So in determining
17 whether or not you can consider a statement, you must
18 consider the voluntariness of it But in this case,
19 Ladies and Gentlemen, the police did their job. They
20 did it right in this case They read them their
21 rights and they made sure they understood them And
22 then they wanted to give a statement. And you can
23 even see their statements prove they knew what they
24 were doing, because when they wanted to change their
25 story, whatever they wanted to put down is put in

1 their statement To whatever degree they wanted to
2 admit things, it was put in the statement There is
3 nothing hidden here There are no tricks They did
4 their job in this case and they read them their
5 rights, and their statements were voluntary Listen
6 to the judge He will tell you what that is

7 You also heard from a series of witnesses which
8 are considered expert witnesses And, very simply,
9 the law recognizes in certain cases people, because
10 of their expertise and their training, their
11 education can come before you And normal witnesses,
12 such as myself, I can't give an opinion about
13 something, what I think the shell casings at the
14 scene may mean, things of that nature But if
15 someone is qualified as an expert, then they are
16 allowed to give an opinion as to what the evidence
17 shows

18 You've heard from the ballistics expert in this
19 case. David Collins You've heard from two crime
20 scene investigators who are experts in assessing
21 crime scenes That is their job And they were able
22 to give you opinions Investigator Livingston was
23 one of them He was able to give you an opinion
24 about the bullet hole Although it may seem obvious,
25 because you can see the rust in the pictures, but he

1 was able to give an opinion because of his expertise
2 In that same vein, Investigator Russell was able to
3 give opinions Investigator Collins was able to give
4 opinions

5 Now, in considering that the judge will tell
6 you, you consider expert testimony just like you do
7 anybody else You give it whatever weight you think
8 it deserves But in this case, Ladies and Gentlemen,
9 you've heard from all the experts and you've got all
10 the expert testimony you can consider in the case

11 And this is the last thing I want to talk about.
12 Believability And that's what this case boils down
13 to Because, Ladies and Gentlemen, it's not really
14 reasonable doubt, it's who you believe, because
15 you've got two different stories Credibility And
16 in determining credibility and the reason that the
17 witnesses had to get up here and testify is for you
18 to be able to judge them

19 In doing so, you can look at the following
20 factors Their demeanor Were they forthright or
21 hesitant? Was their testimony consistent with the
22 evidence or inconsistent with the evidence? Was
23 their testimony consistent with independent witnesses
24 or inconsistent with independent witnesses? Was
25 their testimony corroborated by the evidence, by the

1 other testimony?

2 You can believe part of what a witness says, all
3 of it, or none of it You can believe one against
4 many; many against one It is totally your
5 prerogative But in considering credibility,
6 remember bias or prejudice Do they have something
7 to gain or lose? Do they have a dog in the fight, so
8 to say?

9 In considering credibility, too, the final
10 factors you can also consider -- and in this case
11 it's come before you that certain people have prior
12 convictions. And that's not just to impugn someone's
13 character That is another prong that you can use in
14 considering a person's credibility And that's the
15 reason you were able to hear about those things.

16 Now, the defense in every case has absolutely no
17 obligation to bring forth any evidence in any case
18 But, Ladies and Gentlemen, once they do, once they
19 choose to take the stand, once they choose to put up
20 evidence, you judge them in the same manner you judge
21 every one of the State's witnesses That's the law
22 You judge their credibility Is their story
23 believable? Is it possible based on the independent,
24 uncontradicted testimony from others? From experts?
25 Judge them the same way, all we ask, as you judge the

1 State

2 Finally, Ladies and Gentlemen, all we ask is
3 that when you go back to your jury room we just ask
4 that you told them responsible for their choices, for
5 what they decided to do, what they thought was an
6 easy mark back on October the 8th, 2002 No more
7 than that, but no less Hold them responsible for
8 what they chose to do Thank you.

9 THE COURT Mr Burr

10 MR BURR Thank you May it please the Court
11 Good morning, Ladies and Gentlemen We've finally
12 gotten to the home stretch It's been a long week
13 I first want to thank you It has been a taxing and
14 exhausting week

15 You remember on just Wednesday morning the judge
16 told you that we had to work late because we had
17 additional duties Everybody in this courtroom has a
18 job beyond what we do today The judge is busy.
19 Mr. Strickler and I have our clients The
20 prosecutors have a case load that would boggle your
21 mind

22 So we get tired in here And quite often
23 lawyers get to bickering and bumping heads That
24 didn't happen this week It was a pleasure to
25 present this case to you, because everybody has been

1 absolutely cordial and polite, and it makes it a lot
2 easier

3 The people I would really like to thank is you,
4 because I know you have lives, you have jobs, you
5 have families, and it's exhausting sitting here
6 It's boring sometimes.

7 Wednesday evening when we went to -- I don't
8 know -- 5 45, I was getting extremely tired and I was
9 concerned that you were extremely tired I was
10 sitting there watching Every one of you focused on
11 the stand, and three of you were actually sitting on
12 edge of your seat leaning forward And when I saw
13 that, I said, Hey, we've got a good jury; we've got
14 people who are going to do a good job.

15 I'm not going to waste a lot of your time
16 There are 12 of you here What I say is not
17 evidence The judge is going to instruct you on the
18 law So what I tell you about that wouldn't matter
19 So I'd be wasting your time rehashing all the stuff
20 You've heard everything from the witness stand that
21 you're supposed to consider

22 But I would be remiss in my duties to my client
23 if I didn't just highlight a few points One point I
24 would like to point out, that Ms Campbell just went
25 over the burden of proof. And the burden of proof is

1 on the State. You'll notice the State just opened.
2 They give you the first recitation, and they get to
3 talk to you last That's because they have a high
4 burden Mr Strickler and I do not have that same
5 burden

6 But if you watch television, maybe been in
7 court, there is different types of proof, different
8 legal terminology. And if there's a scale of proof
9 for me to you, one of the first burdens of proof
10 would be probable cause If one of the police
11 officers wanted to go get a warrant to search a
12 house, he could go down to the magistrate, give an
13 affidavit and just give a little bit of evidence. We
14 have reason to believe, we saw this person come out,
15 it looked like so-and-so And that is a probable
16 cause And that's just on the scale of real close

17 You'll hear probably, if you haven't already
18 heard in the earlier part of the trial, you'll hear
19 later preponderance of evidence That's like over in
20 the next courtroom where we have a civil trial If
21 somebody has a car accident, one person says, You ran
22 the red light and the other guy says, I ran the red
23 light and nobody is going to jail There's just
24 money involved And so that preponderance of
25 evidence is just a little, just a tad over half way

1 They put evidence on both of it, it tilts this much,
2 you can say this guy wins

3 But when you get to beyond a reasonable doubt,
4 you are all the way over to the end of the scale
5 Every possible doubt And the reason of that is
6 because people's freedoms are at stake. So the
7 decision you make may very well be one of the most
8 important decisions you ever make in your life And
9 to these two gentlemen it's definitely the most
10 important decision you'll ever make.

11 You noticed that during the trial I have a
12 tendency to talk less than most people I'm not as
13 smart as most people I have controlled my life on
14 common sense And the judge is going to instruct you
15 on the law You have to follow his instructions
16 But he is not going to say leave your common sense
17 out in the hallway somewhere Think about what
18 really happened here, what you've heard.

19 If you remember in the brief opening statement I
20 gave you when we first started, I said it's going to
21 be a somewhat unusual case for me because I think I
22 agree with 90 percent of what the State is going to
23 present That hasn't changed They called -- I
24 don't know -- I think 16 -- probably 15, 16
25 witnesses And with the exception of two I think

1 every one of them was attempting to tell you the
2 truth. They told -- most of them were expert
3 witnesses that weren't even involved in the real
4 facts They were telling you how stuff works They
5 had no reason to lie to you They were telling you
6 how a bullet ejects out of a gun or whatever

7 The Quattlebaums, they had made statements early
8 on that they -- I'm certainly not insinuating they
9 are lying. They don't know either party here Keep
10 in mind they're going down the road at 55 miles an
11 hour; one of the most exciting things they've sent in
12 their entire life happens just like that They give
13 a statement to Police Officer Johnson telling him, We
14 saw people in a van taking off, we saw somebody
15 running after it

16 15 months later their story has changed a
17 little, not intentionally You've all had
18 experiences of that You think you see something and
19 the more you think about it, there's little blanks,
20 you fill it in Something did happen out there on
21 Percival Road I am not disputing that at all You
22 can go through all the testimony

23 Did these two gentlemen get up October the 8th,
24 2002? Did they get in a red van? Did they go to the
25 Colonial Villa or whatever it is? Did they drive out

1 to Percival Road? Did the gentleman, Mr. Sears here,
2 get shot three, four, five, six times? Whatever He
3 got shot That's a fact. Did they get back in the
4 van and run off somewhere? Was the van abandoned?
5 Did Mr Alexander climb a fence? Whatever Did he
6 give a statement? Was he scared out of his mind?
7 His cousin he thinks is dead He knows there are
8 drugs involved in this deal

9 Wouldn't it be great if we were all saints and
10 we immediately said, yes, here's exactly what
11 happened When people get arrested they are scared.
12 They want to give a self-serving statement Is that
13 going to get them into heaven? I don't know But
14 should they be convicted of some outrageous crime?
15 That they should not

16 All the things I just told you, that's the
17 facts It happened. There's only one question we're
18 dealing with Why did Mr. Patterson, why was he
19 peeping out of the window? Why did he come out
20 Bam, bam, bam, and fire off 11 rounds? That's what
21 we don't have evidence of We've got two different
22 versions of what happened.

23 The police officers came out, did a brilliant
24 job I know most of them, you know I wasn't
25 attacking anybody. But you do remember when Mr Ray

1 Livingston was up here And I don't see all the
2 evidence. I don't want to pull it out But, yeah
3 I see them down here Is it going to mess you up if
4 I rearrange your evidence?

5 MR MEADORS. Probably, but go ahead. That's
6 fine. I don't care Go ahead Use it

7 MR BURR You remember the yellow bag I pulled
8 out I asked Mr Livingston Why is this here? He
9 said, I don't know. I didn't know what it was I
10 collected everything The black bag, what does the
11 black bag have to do with an armed robbery? Nothing.
12 There is another bag in here that was admitted that
13 has what they referred to as two dew rags that were
14 found in the back of the van. Nobody has alleged
15 that the dew rags were used for anything

16 Nobody has taken the time to sort through this
17 stuff and tell you, here is how we're proving armed
18 robbery They just, you know, the police officers
19 gather it up; they brought it in here and laid it out
20 to you

21 So the one question that is really important
22 Why was there a shooting? Why would these two guys
23 get up 8, 9 00 in the morning, drive 15 miles across
24 town, pass numerous establishments, go to some little
25 rundown parts place at 9:00 on Tuesday morning and

1 think they're going to get anything?

2 There is more to that story I might not know
3 the rest of the story, you might not know the rest of
4 the story, but there is some reason Why would
5 anybody expect a business at 10 00 in the morning to
6 have money or anything worth getting shot over? That
7 doesn't make sense There is definitely something
8 wrong with this

9 One other thing that really surprised me in
10 testimony -- and I don't remember whose -- Russell
11 Mr Russell I think he was an expert of some sort.
12 And he was making testimony about the .9 millimeter
13 that was found at the scene And I don't know if you
14 actually saw the shock on my face. I had asked him
15 whether -- he said there were no retrievable
16 fingerprints, and I discussed whether there were
17 smudge prints He said no, it was wiped clean of
18 prints

19 That speaks volumes to me. If a person had been
20 there and got shot and dropped the gun, you know,
21 maybe if there weren't any retrievable prints, there
22 would have been some prints on it And if he were
23 there and he dropped it, if you bothered to wipe it
24 off, why wouldn't you put it in your pocket? That
25 doesn't make any sense.

1 The victims who were scared to death, after the
2 people -- they stayed inside because they didn't want
3 to get shot at. They waited until they left and then
4 they went and chased them? There may have been an
5 ulterior motive for running down the road and coming
6 back before the cops got there. You know you've got
7 something in your business, something is going on and
8 you just shot somebody, these tables could be
9 reversed very easily. Somebody had to do some real
10 quick thinking.

11 The one other witness that I don't mean to
12 disagree with here, he, you know, has no reason to
13 lie. But I have a hard time believing when the
14 doctor stood up here, perhaps he was telling the
15 truth but he was leaning for his side awfully hard.
16 And if you remember, he was questioned by the other
17 defense attorney about all the gunshots in his chest
18 and his stomach, all the blood, two liters of blood
19 that he lost. The only thing I asked him about was
20 getting shot in the hand.

21 If you get shot in the hand inside the store and
22 you fall through the window and you fall on the
23 ground and you get up and sprint with all these
24 bullet holes in you 60 feet across here to the van,
25 there is going to be some blood on that ground.

1 somewhere That defies common sense. There was no
2 evidence inside of the establishment showing no trace
3 that any of these gentlemen ever went inside

4 That doesn't really answer the question of what
5 went on or what happened, but it does cast a lot of
6 doubt as to Mr Patterson's story There's something
7 amiss with that That is more than reasonable doubt.
8 That's a great big doubt So you've got to ask
9 yourselves what would cause those different stories?

10 One last, I think the last point I want to make
11 This diagram which is marked as State's Exhibit 81,
12 it's for demonstrative purposes It helps you get
13 some idea of what the layout is since you did not
14 have to opportunity to actually see the building
15 But when we say it is not to scale, that is the
16 understatement of the year.

17 You remember there's testimony from Mr
18 Patterson that the two building parts are identical
19 I'm bad on square footage He either said 500 or
20 5,000 square feet each You can see that there's
21 no -- this is way off But I used it some in talking
22 to the witnesses I simply wanted to explain to you
23 that the driveway is nothing like this This whole
24 thing is off, but it's just a basic scale.

25 But you can see shooting from in here, and

1 that's supported according to the witnesses --
2 shooting in here, the casings not be over here, and
3 you would have had a view out the door here This
4 stuff kind of makes sense

5 Why he came out shooting I don't know There's
6 probably only two people in the world that know
7 exactly what happened. If there is a guy,
8 Mr. Tashim, ever who he is, Tashim Vann or whatever,
9 he knew what he was going out there for He knew
10 he'd had a discussion with Mr Patterson. Mr.
11 Patterson knows what was going on. Those are the
12 people who could tell you why they came out like
13 Wyatt Earp firing guns. But nothing else makes any
14 sense

15 There is more than reasonable doubt Don't get
16 bogged down because there's a lot of evidence that
17 908 percent of what has been presented really
18 happened It was all done because the government has
19 to go through all the steps They can't assume you
20 know stuff. But the majority of what's been
21 presented has been a waste of your time because we
22 could have stipulated, yeah, they were out there;
23 yeah, they got shot, but we don't know why

24 These two men have both already paid an
25 unbelievable price: 17 months in jail --

1 MR. MEADORS Objection, Your Honor. That is
2 totally improper

3 THE COURT Sustained

4 MR BURR They have both suffered

5 THE COURT Mr Burr

6 MR BURR I withdraw that statement, Your
7 Honor I'll withdraw the statement They have both
8 suffered greatly for being in the wrong place at the
9 wrong time I think both of them testified to you
10 that they knew this third person was involved in
11 drugs One of them, Mr Sears, testified to you that
12 he actually saw the gun on the seat of the car. Some
13 of you may be shocked and outraged by that, think
14 that is really bizarre Others of you I hope that
15 have had experience in the streets, in the
16 communities, that happens every day

17 Good, honest, young men -- well, let me get away
18 from the honest part. There are drugs out there
19 That is a part of our society Whether you like it
20 or not, whether I like it -- and I don't like it --
21 guns, walk down the street, if the cops would just
22 stop and arrest people, they would find more guns, it
23 would boggle your mind.

24 But does that mean that these people intended an
25 armed robbery on October the 8th, 2002? No We do

1 not know -- nobody here knows exactly what happened
2 There is a lot of doubt There is no real evidence
3 of armed robbery or attempted armed robbery

4 So I would beg you to think about the evidence,
5 use your common sense, and separate what is really
6 important from what's not important and come to the
7 right decision and find both of these men not guilty
8 Thank you, Ladies and Gentlemen

9 THE COURT Mr Strickler

10 MR STRICKLER May it please the Court, sir?

11 THE COURT Yes, sir

12 MR. STRICKLER. Let me just take one second and
13 get some stuff out of the way here

14 Mr Foreman, Ladies and Gentlemen of the Jury,
15 the State's case is as full of holes as Demetrio
16 Sears was October 8th, 2002. I will say it again
17 The State's case is as full of holes as Demetrio was
18 after Sterling Patterson shot him up October 8th of
19 2002 Each hole is a reasonable doubt I'll go
20 through I'm not going to take too long

21 I'll start with holes because -- and that will
22 be Dr Bynoe, I think was his name -- his testimony.
23 Because by the end of the direct, at the end of his
24 testimony when Ms Campbell was speaking with him, I
25 had the impression that Demetrio wasn't in such bad

1 shape in the hospital. He was perfectly capable of
2 running around, perfectly capable of running around
3 and not leaving blood, perfectly capable -- it didn't
4 sound like he was in very bad shape That's why I
5 spent some time talking with him about the exact
6 nature of the injuries he had

7 And, lo and behold, what we find out is -- and
8 it took some dragging to do it, and you can consider
9 that See, consider whether a witness is forthright
10 on the stand, I mean, is open, straightforward in
11 responding to questions when you evaluate their
12 credibility

13 And it took some dragging -- I had to start
14 trying to do some math myself -- to figure out how
15 many liters of blood a person might have and then to
16 figure out how many liters of blood -- liters, not
17 units of blood -- Demetrio lost Because, you see,
18 at the end of his testimony all we had was he had to
19 put in two units of blood Well, what's that? 300
20 cc's per unit He ends up having to put in a whole
21 bunch more than two units of blood He ends up
22 having to replace I believe 2 7 liters out of a rough
23 estimate of a total of 5 liters in the body So he
24 had to replace half the blood in Demetrio's body
25 Pretty good shape? Pretty good, pretty credible

1 testimony?

2 No He saved Demetrio's life. There is no
3 question about that Demetrio quickly responded,
4 honestly responded He saved my life He didn't
5 come in to talk about saving his life. He was
6 presented to you to give you the impression that he
7 was shot up and he runs 60 yards with no problem,
8 wouldn't leave any blood when he did it, holes blown
9 in his hands, a hand So you can assess that

10 You can also in assessing the kind of condition
11 Demetrio was in when you heard his testimony, fading
12 in and out of consciousness in the van I don't
13 know. Is that credible? We've got a videotape.
14 What did the person look like when he got out of the
15 van? That was Demetrio that fell out of the van.
16 Pretty good shape? I don't think so.

17 You've got Investigator Laffin who showed you
18 the video He looked like he was in pretty bad shape
19 to him So, you know, assess his credibility So,
20 holes I'm going to get back to the physical holes
21 in just a minute But I'll just try to talk about
22 more holes in this case.

23 You have the Quattlebaums, which everyone is in
24 agreement, they're not involved in this at all.
25 They're driving down the road minding their own

1 business Now, the question of how fast they were
2 driving down the road, because we learned that the
3 speed limit there is not 35, it's 55 And you don't
4 check your common sense at the door when you come to
5 court I suppose there are people that do 35 miles
6 an hour in a 55 zone I occasionally get behind
7 them.

8 My common sense, our common sense finds you are
9 far more likely to find them whipping around 55. How
10 much of a look do you have of things traveling at
11 55 miles an hour? Well, I mean, they're honest
12 They don't attempt to be able to identify anyone
13 I'm not saying they have intentionally changed their
14 story, but their story has changed.

15 How do we know that? We have Mr. Johnson, was
16 at that point in time Deputy Johnson, the first
17 responder to the scene, the first person to speak
18 with the Quattlebaums minutes after they saw whatever
19 they saw I went through with him his incident
20 report where he records the information Okay?
21 Records the information provided

22 I went through why you have these documents,
23 these standardized forms, the importance of them in
24 organizing and being able to remember 15 months after
25 the fact information related to the case And what

1 he recorded was not information from Tina Quattlebaum
2 that she'd seen anyone running towards the van The
3 information she'd seen, several individuals pulling
4 off No one running towards the van No testimony,
5 no information provided at that time that she saw
6 someone running One person with a mask and one
7 person with a gun There is no information recorded
8 on October the 8th, 2002, that's what those ladies
9 saw

10 Now, assessing credibility, I had to work to get
11 that information out of Mr Johnson, too He's a
12 police officer Or was a police officer He wants
13 to have his testimony agree, but facts are facts.
14 And what he wrote down is what he wrote down, and
15 what he wrote down doesn't agree with what the
16 Quattlebaums had to say on the stand. And eventually
17 you have to admit it: Holes

18 Back to holes, because this doesn't add up. And
19 this is circumstantial evidence You've got nine
20 shell casings inside the business We have a number
21 of holes in Demetrio Okay? A number of holes in
22 Demetrio But I want to talk with you about
23 projectiles Those are the things that make the
24 holes All right?

25 Recovered or located in Demetrio -- remember the

1 doctor's testimony -- one bullet in him. Testimony
2 the other ones went through, what's called
3 through-and-through wounds, entrance wound, exit
4 wound, entrance wound, exit wound Okay. Be it
5 four, be it five One bullet in him. The rest went
6 through-and-through Okay? So there is one
7 projectile accounted for

8 Mr Russell, Investigator Russell, the crime
9 scene man, processed the scene. What did he find at
10 the scene? One projectile outside the front door
11 We've got pictures of all this stuff Okay And
12 there's a diagram where he located them All right
13 One projectile outside the front door Now we've got
14 two projectiles Okay

15 Three projectiles recovered inside the business
16 We're up to five One projectile, a picture of where
17 it's embedded in the wood. They didn't get that out.
18 We're up to six Okay? That's it. Six. Nine shell
19 casings from a ten-shot gun with one in the chamber,
20 an 11-shot gun Six projectiles inside the business
21 Through-and-through is through-and-through and they
22 end up someplace They end up in the business
23 someplace But you know what? They didn't Holes
24 Lack of holes

25 Mr Patterson, I asked him, told the police

1 first when he first spoke I believe with Mr
2 McDonald, he believes there was return fire; tells
3 Cliff LaBlanc of The State newspaper, or Cliff
4 LeBlanc quotes him as saying, though Mr. Patterson
5 doesn't agree he said this, Mr LeBlanc quotes him as
6 saying, you know, firing back and forth You've
7 heard the exact words I'm not going to try to quote
8 the exact words Of the person firing, I don't know
9 who shot first, but everybody started shooting, words
10 to that effect

11 Well, you know what? That didn't happen. I
12 spent some time with Mr Russell I mean, if you've
13 got a guy in the front of the store and Mr Patterson
14 where he says he was in the back of the store, you've
15 got shots, projectiles and holes recovered in front
16 of the store, you've got none towards the back where
17 you find them from somebody shooting back at him
18 So, you know, sorry; that didn't happen, Mr
19 Patterson. That didn't happen

20 We're still on the bullets We have to
21 assume -- excuse me -- we have to assume some of the
22 bullets recovered at the scene, these
23 through-and-through wounds passed through the body of
24 Demetrio Sears, and recovered at the scene Where is
25 the DNA?

1 Where is the State of South Carolina who -- and
2 here is a legal concept, I haven't talked about law
3 too much -- here is a legal concept The burden of
4 proof the State has got to show you, the burden of
5 proof that the State welcomes is on them in this
6 case, as it is in every case and as it should be

7 You know, take the bullets, send them out to
8 SLED, have them do the testing on them to see if they
9 recover any blood from them Test it Test it with
10 his No doubt that man was shot in the place, we've
11 got the blood to prove it.

12 Well, not only do you not have any blood inside
13 the store, which boggles the mind, but you don't have
14 any effort to see if you can go ahead and verify and
15 corroborate, that means back it up, by consistent
16 other evidence with Mr Patterson's story Do that,
17 send the bullets out to SLED DNA offered Because
18 it's gone all the way through his body. The body is
19 full of blood Test the blood. Well, don't worry
20 about it What a burden Burden of proof

21 Speaking of blood, speaking of circumstantial
22 evidence, because that's circumstantial evidence
23 That would not be direct evidence That would be
24 Demetrio's blood on the bullets consistent with Mr
25 Patterson's story, corroborates this story,

1 circumstantial evidence that things happened the way
2 Mr Patterson said That's not there.

3 I heard mention of, you know, you go to bed at
4 night, the grass is brown, you get up in the morning,
5 snow is on the ground, it snowed last night I'm not
6 bringing in a snow blower I want to know where the
7 trail of blood through the snow is, because that
8 would be circumstantial evidence corroborating Mr
9 Patterson's story

10 Where is the trail of blood from a guy that has
11 had holes blown in his hand 60 yards across the
12 parking lot to where that van is located according to
13 State's witnesses? You don't check your common sense
14 at the door Where is that trail of blood? That is
15 circumstantial evidence You know, you can find --
16 you can find doubt in either the evidence that you
17 have, the evidence that you have heard, or in the
18 lack of evidence, the nonexistence of evidence The
19 nonexistence of a trail of blood puts Mr Patterson's
20 story into the realm of the not credible but
21 incredible Period

22 You know, Demetrio said something I actually
23 wrote it down and circled it. That's kind of how I
24 like to keep track of stuff that I find interesting
25 during a trial One statement that rang true, makes

1 common sense and applies to this case You see drug
2 dealers, you see guns; just like you see cops, you
3 see badges You see drug dealers, you see guns I'm
4 sure they're around here somewhere, and I'm not going
5 to dig them up A gun with a laser scope, another
6 gun wiped clean I don't know No prints on it I
7 don't know if there's rifling or not, no prints on
8 it You see gun dealers or drug dealers, you see
9 guns, just like you see cops, you see badges. Yep

10 So, you know, the State from time to time -- and
11 I'm going to sit down in just a couple of minutes
12 actually -- the State from time to time during their
13 closing -- I won't be able to respond to any of it --
14 like to claim that people like me, and me in
15 particular, come up here muddying the water, clouding
16 things up when it's crystal clear

17 Well, it's crystal clear One thing happened or
18 the other thing happened And the evidence does not,
19 does not jibe with what the State says happened
20 Now, you know, far from muddying the waters, I'm a
21 law enforcement officer Part of my job is to assist
22 in the enforcement of the highest law in this land
23 That would be the United States Constitution,
24 specifically, the Bill of Rights, the guarantees that
25 keep each and every one of us, including Demetrio,

1 safe, that guarantee a fair trial That's the law I
2 enforce, or try to That's the law I try to assist
3 in enforcing And that's the kind of law that I'm
4 going to ask that you enforce

5 So, the State's case is full of holes. Each
6 hole is sufficient for a jury honestly seeking the
7 truth and honestly applying the law as Judge Cooper
8 will charge it shortly, sufficient for such a jury to
9 return a verdict of not guilty

10 Let's talk just a little bit The burden of
11 proof in the case is on the State, as it is in every
12 case. Level of proof, the standard of proof is proof
13 beyond a reasonable doubt You've already been told
14 what that is I mentioned it in the beginning I'm
15 sure His Honor mentioned it at the beginning
16 Ms Campbell has mentioned it Mr Burr had
17 mentioned it I'm going to mention it again because
18 it's worth mentioning. Highest standard of proof
19 known to the law

20 You can phrase it a lot of different ways One
21 way is that a reasonable doubt is a doubt that causes
22 a person, a juror in this case, to hesitate to act
23 Okay? His Honor will tell you that if there is a
24 real possibility he's not guilty, then you are
25 required to find him not guilty. Let's go just a

1 little further down that road

2 Again, in a civil case, preponderance of the
3 evidence I want to mention that second standard,
4 clear and convincing evidence of guilt That's not
5 proof beyond a reasonable doubt If, I would submit
6 to you, reasonable doubt is as follows, if you think
7 he's -- Demetrio -- possibly guilty, that's certainly
8 not proof beyond a reasonable doubt If you think
9 he's probably guilty, that's not proof beyond a
10 reasonable doubt. If you think he is possibly not
11 guilty, okay, and that is just not some fantasy on
12 your part, the possibility that he's not guilty, the
13 possibility that a man that's had holes blown in his
14 hand would leave a bloody trail across the parking
15 lot, the possibility, the mere possibility that could
16 happen, well, that's far beyond a possibility, folks

17 I am sure it could not happen in some rare
18 circumstances. I am sure it is more probable than
19 not that you leave some blood in that situation I
20 am sure it's more probable than not that if you get
21 blown through a glass door or fall through a glass
22 door, safety glass or not, you get some kind of cut,
23 scrape, bruise, either from the glass, believe it or
24 not, or from falling down, smashing into the ground
25 Did the doctor go ahead ask and describe any cuts,

1 scrapes, bruises, consistent with falling down on the
2 concrete from getting blown through a door or falling
3 through a door? Nope

4 So, you know, real possibility. That's what the
5 law says, possibility Reals possibility that he's
6 not guilty, then it's your job to say he's not
7 guilty, if you follow the law Follow the law And
8 I'm asking that you follow the law, because it's your
9 job to say he's not guilty because there is a real
10 possibility he's just not. If you say otherwise, I
11 submit to you he's not guilty under the law, because
12 all you need to find is a real possibility that he's
13 not.

14 And as perhaps uncomfortable as it make anyone,
15 that's what the law says That's what the law says
16 That's what the law says is playing fair When the
17 State, when the government with all their resources
18 charges someone with a very serious criminal offense,
19 the law says that if there's even a real possibility
20 that he's not guilty, the 12 people that get to
21 decide that fact need to find him not guilty.

22 Now, the law also says that as jurors you have a
23 duty to discuss the law and the facts amongst each
24 other at the end of this case when you go back and
25 deliberate And I encourage you to do that I

1 encourage each and every one of you to listen to any
2 opinions regarding the evidence and the law expressed
3 by other members of the jury

4 I ask each and every one of you to take the
5 other members of this panel's thoughts into
6 consideration while you consider the evidence. And
7 if their view of the evidence causes you to change
8 your mind, then you're free to change your mind. If
9 their view of the evidence, if your view is different
10 from another member's of the panel and you discuss it
11 openly and freely, like you should, and you are still
12 not convinced that your view is wrong, then don't
13 change your mind You don't have to change your
14 mind If after open, honest conversation you are not
15 convinced of anyone else's opinion, you do not have
16 to change your mind

17 Now, I ask that you abide by your oath to well
18 and truly try between the State of South Carolina,
19 between the government of this country and this man
20 right there, and truly deliberate on the case and
21 return a verdict that speaks the truth

22 Every time you say a verdict that speaks the
23 truth, you need to remember it's a verdict that
24 speaks the truth beyond a reasonable doubt, beyond
25 each and every hole in the case I submit to you if

1 you do that, if you apply the law with the facts, you
2 will return a verdict that speaks the truth, and that
3 will be a verdict of not guilty. I ask that you do
4 that Thank you very much.

5 *THE COURT.* Ladies and Gentlemen, it's 11.00
6 Let's take a very short break If you'll just let me
7 know when you're ready, we'll continue with the
8 closing arguments Don't discuss the case now among
9 yourselves while you're in the jury room. This is
10 just a comfort break, shall we say

11 (Jury out at 10 53 A M)

12 *THE COURT* All right We'll stand at ease for
13 about ten minutes

14 MR MEADORS Thank you, Your Honor

15 *THE COURT:* Five or ten minutes.

16 (Whereupon, a break is taken)

17 (Jury in at 11 05 A M)

18 *THE COURT* All right, Mr Meadors You may
19 continue

20 MR. MEADORS May it please the Court?

21 *THE COURT:* You may Yes, sir

22 MR MEADORS Ms Campbell, Mr Strickler,
23 Mr Burr, Mr Foreman, Ladies and Gentlemen of the
24 Jury, like my co-counsel, I also want to thank you
25 all for being here, thank you all for being jurors in

1 this case I want to thank you for your attention
2 Being a juror is not easy, but without you all, the
3 system would fail The jury system and our criminal
4 justice system is what makes this country great.
5 Thank you all for being here and thank you for the
6 attention you've given us

7 I haven't had a chance to introduce myself I
8 haven't had a chance to talk to you yet I was
9 introduced to you My name is John Meadors I'm the
10 Deputy Solicitor for the Fifth Judicial Circuit
11 Ms Luck Campbell is Senior Assistant Solicitor of
12 the Fifth Judicial Circuit. We work for Solicitor
13 Barney Giese I think you all were introduced to him
14 Monday when Judge Manning introduced you to the
15 Solicitor We work for the Solicitor We represent
16 the people of the State of South Carolina, the State,
17 in this case, the people of Richland County

18 I want to talk to you briefly about -- and I
19 think all the lawyers have hit on it This case is
20 the most as important case that's going to be tried
21 or has been tried this week in this state and in this
22 country It's important to the defense attorneys, to
23 their clients, it's important to the victims, and
24 it's important to the State.

25 In every case, as all the lawyers have said,

1 there is the same burden Beyond a reasonable doubt
2 And in my years of trying to explain that, a
3 reasonable doubt to jurors, the judge is going to
4 charge you -- as Ms. Campbell said, the judge is the
5 judge of the law; you all listen to him -- firmly
6 convinced

7 But in my continued journey in learning how to
8 explain that, I've started explaining it this way
9 You know it You know it You've heard the
10 evidence You've watched the witnesses You've
11 watched their demeanor You know what the truth is
12 You are firmly convinced You know it

13 Now, you may have a question here, a question
14 there. Goodness, if we had this thing on video, I
15 think they'd be questioning whether the film was
16 manufactured right But if you have a little
17 question here, I could tell you the sun is not coming
18 up tomorrow, the river is not going to run through,
19 well, that's a question Is that possible? I guess
20 But that's not realistic You know that's not going
21 to happen.

22 So if you happen to have a question here or a
23 question there, that's just a question That's not a
24 reasonable doubt You take all of the evidence and
25 all the witness testimony, and if you know it, that's

1 a reasonable doubt I don't think we've met the
2 burden, I think we've gone beyond it I think this
3 is a case we have proved beyond all doubt And I'm
4 going to tell you why as I go through I think we've
5 gone beyond our burden

6 Mr Strickler mentioned it. Sometimes we -- I
7 am going to talk about a few things. When you have a
8 case this week, that we've had this week with the
9 evidence that we've had, well, we submit to you that
10 the evidence has shown it's a strong, direct,
11 something you see with your eyes, something you hear,
12 corroborated evidence, circumstantial evidence.

13 When you have a strong case like this, factual
14 case, these fine attorneys, Mr Burr, I like you,
15 too, I've enjoyed it with this week, these fine
16 attorneys, as they do in every case, yeah, they are
17 going to try to put up smokescreens

18 They're going to try to take your attention away
19 from what happened that day. And I respectfully
20 submit that they have done that throughout this
21 trial And they did it in their closing arguments
22 Mr Strickler especially put up a smokescreen And
23 he basically came right out with it I was debating
24 whether I should say what I'm going to say in a
25 minute, but I'm going to say it now

1 He said a minute ago, Were there drugs, where
2 there are guns, there are drugs, I'm a drug dealer.
3 But, yet, if there's a gun you're a drug dealer?
4 See, that's the theme they've tried -- he downright
5 said it a minute ago That's a smokescreen

6 I don't think you all will care if I say this
7 It's almost like two good-looking, nice, nicely
8 dressed, successful African American males can't be
9 successful unless they're doing something wrong,
10 unless they're involved in drugs That's what
11 they're saying Let's get it out there

12 You remember I asked somebody, What's that car
13 dealership right down from the Sheriff's Department?
14 I think it's the Lexus, was what they said They
15 have the same right and ought to be treated just like
16 any victim from Lexus, from Pulliam, from Jim Hudson
17 who does electrical work, who installs radio
18 equipment Don't take that away from them

19 There is no nothing about drugs in this case
20 Kind of funny Mr Burr talks about drugs more than
21 anybody His client didn't even mention it 'til
22 yesterday. 18 months later is the first time his
23 client put drugs in this case There is nothing
24 about drugs. That's the biggest smokescreen,
25 unfortunately, put. But please dust that smokescreen

1 aside

2 You know, I guess you could argue, even if it
3 was, which there's no evidence, even if it was a drug
4 deal, which it still wasn't, it's still attempted
5 armed robbery But there's no evidence of a drug
6 deal, no credible evidence

7 What are some of the other smokescreens? And
8 I'll briefly go over these Mr Strickler said he's
9 a law enforcement officer Well, I guess if he was
10 out there he would have stopped Tina for speeding
11 because she is driving reckless when she turns on
12 there He's got to, he's got to somehow get around
13 Tina and Maggie. But you can't

14 Well, you can try to say, well, Tim Johnson
15 didn't put everything she said down there Well, the
16 first line in that incident report he read when she
17 asked him was, they said it looked like a robbery
18 It looked like a robbery And they got up here and
19 put their hand on the Bible and took the oath and
20 said, I saw them coming out with a mask or a gun I
21 don't know who they are But I know it was a mask
22 and a gun; it looked like a robbery to me. I stopped
23 and called and came back You don't get any better
24 evidence than that Did Tim have it word-for-word
25 what they said? No If you think Tina and Maggie

1 are lying, let 'em go Give them their wares back
2 and let them go It's a smokescreen.

3 Another thing that's a smokescreen, and I
4 objected when they talked about they'd been punished,
5 they'd been in jail. Your job is to decide the facts
6 in this case We're not judging these people. You
7 are judging the facts and their actions That's what
8 this case about Punishment is up to His Honor
9 That's what we're here about, what they did That's
10 a smokescreen

11 Some of the other stuff they didn't bring up,
12 and I hesitate to bring it up but I'm going to in
13 case you all have a question. There was a robbery
14 questionnaire. The response Mr Sterling had to that
15 question You remember I said, Does it remind you of
16 something? He said, Well, it reminds me of this guy

17 He works in a business that comes in People
18 pay to get their car done right He's good at it
19 Did you hear his background? Engine, electrical
20 He's a smart young man My father-in-law is an
21 engineer He's neat, he's organized, he's smart
22 People pay a lot to get their cars done right
23 That's why they knew there'd be money there

24 All this other smokescreen: Why there? Why go
25 out there? Well, it's a rural area. Let's go right

1 downtown and rob something where everybody is around
2 That's where you go to rob stuff, out where nobody
3 is, out where you might get in and out real quick
4 Does that make sense? Isn't it more logical when you
5 go somewhere and less people are there? I submit
6 they didn't know Sterling was there. I'm going to
7 get to that in a minute That's a smokescreen

8 What are some other smokescreens? The blood
9 And I'm going to talk about this as we go through
10 Mr Strickler, I think he said he had to -- let me
11 find it He said he had to pull out some testimony
12 from Dr. Bynoe, like Dr Bynoe was holding something
13 back Dr Bynoe doesn't work for the State Yet, he
14 did save his life Oh, he did catch him on the fact,
15 I think Mr Strickler said in his opening, it was
16 eight shots I submit to you it was four, best case
17 scenario five Demetrio Sears has now got it Well,
18 I did say eight previously The guy has been shot
19 Judge his credibility Well, I think it was six
20 Dr. Bynoe

21 If we hadn't had Dr Bynoe here, they'd have
22 said all that blood right here was out there Why
23 wasn't that in here? Well, we got the doctor here
24 Internal injuries, you wouldn't necessarily expect to
25 find bleeding And I wouldn't expect it Could he

1 run out? Yeah And what's that word he used, he
2 said when you're in that state, excited You all
3 remember, and I can't remember He said, I wouldn't
4 expect to find blood there Shot in the hand Use
5 your common sense Said it didn't hit anything big
6 Blood wouldn't be spurting Did he do like this when
7 he gets hit? Is he hit when he goes out? I don't
8 know

9 We do miss three projectiles. That's a
10 question That's not a reasonable doubt Are they
11 somewhere out beside there, out that door? I don't
12 know You don't ever find everything. But that's
13 not a reasonable doubt. That's a question Is there
14 a spot of blood somewhere out on that pavement as
15 he's running back? Maybe there is That's all
16 they've got.

17 And these smokescreens, as Mr. Strickler just
18 said, he's hoping one of you all, one of you all will
19 stay behind that smoke Maybe two of you. That's
20 what he's hoping for See through the smoke.

21 This evidence isn't the State of South Carolina
22 vs the Demetrio Sears. This isn't the State --
23 excuse me -- the State of South Carolina against
24 Andre Stokes or the State of South Carolina against
25 Sterling Patterson They are the victims They're

1 the victims

2 You know, I look took a few notes How many
3 questions -- excuse me How many times did they
4 argue about their own client's statements? Did
5 either one of them mention their client's statement
6 to you all in their closing? No They didn't talk
7 about their own client's statement Went through
8 trying to suggest maybe that there was some coercion
9 throughout the trial. I didn't hear it really argued
10 in the closing We brought the entire testimony.
11 There's no coercion

12 Defendant Sears even admitted yesterday, not a
13 bad fellow I know he wishes he hadn't arrested him
14 But old Scott is not a bad fellow You all watched
15 their demeanor. There is no coercion there. They
16 didn't even mention their statements.

17 The judge is going to charge you, as Ms
18 Campbell said, on credibility and believability But
19 I think there's something else you know. We know
20 when we talk to people in our everyday lives, you
21 know when somebody is not telling the truth You can
22 watch the way they act You can watch the way they
23 respond You can look at them You know it. Do
24 they give answers Well, I'm not sure this happened,
25 I don't know if that happened; I don't know, or just

1 stop and don't know any more details

2 Now, everything is not going to be exactly the
3 same Everything is not exactly the same between
4 these two But they had the story and the details
5 and the evidence to back it up. Not that we need it,
6 but we had it

7 Credibility You're able to take your everyday
8 experiences when you go back there You don't leave
9 them right here When you go back in the jury room,
10 you're going to be able to take those with you and
11 use those to evaluate the credibility, the
12 believability of these witnesses. And let's talk
13 about that first with the defense witnesses

14 And I agree with Mr Burr when he said two
15 people, only two people weren't telling the truth I
16 agree with him And I submit to you they're sitting
17 over there. I submit to you they're sitting over
18 there. I don't think the truth is in them And I
19 don't mean that bad And I'll show you why I'll
20 show you why

21 What do they say? Basically, and I'm going to
22 be shorter than usual, than I usually am, they
23 basically say in their statements -- well, they say
24 several different things I think what they
25 presented to you yesterday was, we came, Mr Sears

1 says I came, I got out, and I basically got shot. I
2 see him with the gun there.

3 Use your common sense Sterling is just waiting
4 there? If they see a gun, why doesn't he just drive
5 off? He's got a gun, let's leave No He gets out
6 with a gun Well, no, that's wrong I put that in
7 my statement that Scott said, but most of that
8 statement is right, but that particular part of that
9 statement is wrong I didn't get out with my gun I
10 had to go back in once I saw him with the gun Then
11 I came out with a gun Then we started shooting

12 But everything else in that statement is right
13 Well, except when I said, you know, I thought he
14 thought it was a robbery He kind of put that in his
15 own words, too. That isn't right But everything
16 else is right about Tashim

17 Tashim who? About Tashim, somehow he owed him
18 \$800 and they're going over there Well, I thought
19 you were going to your appointment that morning when
20 you had comp that day It was 11 00. Yeah, but it
21 wasn't really an appointment at 11:00 So I tried to
22 go help Tashim I don't know his last name, but
23 we're going to go over here and help him collect on a
24 debt Instead of going to a doctor's appointment
25 with my wife I didn't want to do that. So I'm

1 going to do this before I go to the appointment for a
2 job Did you work the day before? Well, I had a
3 comp day before that, too Credibility,
4 believability And then he just starts shooting
5 And we leave. And we leave.

6 And Alexander says in his first part of his
7 statement, he says, well, I came over and he dropped
8 me at the store I didn't want to go with him to an
9 appointment. I wasn't even there. And he comes
10 back. This is the first part of his statement
11 You'll have it. He comes back and he says, man,
12 you've been shot Yeah, I've been shot Let's go

13 Well, that's not right. And see, each time
14 these fellows lie, that's judging their credibility
15 It's like his prior record We're not putting that
16 in to show because he did that he's more likely he
17 did that Well, under the rules, since it's a crime
18 of dishonesty, you can say you can use that to judge
19 his credibility And do so That's okay. It's
20 their actions you judge, not the person. That's what
21 this is about

22 The second part of his statement he comes back
23 After Veronica Jones, his girlfriend, wife, every
24 testimony she was cooperating, she was providing
25 information After he said, look, we know you're

1 with Sears that morning, she's provided information,
2 he then says, well, I did go over there Yeah, we
3 got together I went over there. But I didn't go
4 He's distancing himself. Distancing himself I
5 didn't go in. Demetrio went in I heard gunshots
6 and they came out Well, the evidence shows that
7 part is true But now he's trying to distance
8 himself He says, well, they've got him I'm trying
9 to distance myself

10 Then I leave I leave to go to the hospital I
11 think he said yesterday morning the hospital Well,
12 aren't there two exits to get to that hospital at
13 Moncrief before you get to the one on 77? But I was
14 going to 77 The van breaks down Then I started
15 walking He wasn't going to the hospital then He
16 sees the trooper Let me call the trooper He said
17 I don't want to call the trooper I'm not real crazy
18 about his testimony, quite frankly But he saw the
19 folks. He saw the individuals. And he admitted he
20 saw them

21 And you saw his demeanor, demeanor or
22 credibility You saw it up here yesterday All due
23 respect, he seemed to be very upset Let's go back
24 to October 8th about 10 30 when his cousin as he said
25 is dying in the van He's not crying then And as

1 of yesterday I wrote down, I'm glad I called the
2 trooper The trooper said -- I said, How was his
3 demeanor? He was fine He was joking around Not
4 my cousin has been shot, might be dead, Trooper
5 Nah, we're fine, everything is okay. Distance
6 himself from a crime he knows he's committed That's
7 cold I've got some fourth or fifth cousins I don't
8 like, but my first cousin, I don't tell somebody -- I
9 try to help them.

10 Folks, let me tell you what's got to happen for
11 their story to be true Maybe I shouldn't even argue
12 it For their story to be true, please listen to me,
13 they have to get there, and Mr Patterson has got to
14 be waiting there And I thought he said at first he
15 was outside, then he backs him up to that line You
16 remember the white line on the bay window

17 But he said he gets there and he looks at him
18 and said, What the heck are you all doing? Well,
19 first of all, he doesn't know the van Sterling said
20 he didn't know the van, didn't know Demetrio Why
21 would he be sitting there and be seeing that van? It
22 makes no sense whatsoever But they said he starts
23 shooting In the gun. Got out the gun No, that's
24 wrong Got the gun, then came out. It makes no
25 sense why they drove off

1 Sterling starts shooting, hits him I'll say four
2 times, doesn't hit anything else in the van The van
3 takes off Now, listen to what has to have happened
4 for that scenario to be true Listen to this,
5 please There had to be remote control shell casings
6 to bring them back in that door and go back around
7 there. I respectfully don't know what Mr Burr is
8 talking about when he said these could have gone back
9 in that doorway There is no way There is no way

10 You look at the bay door where Mr Sears says
11 that Sterling Patterson was standing And I will
12 find the picture in here There is no way that shell
13 casing, all the expert testimony, goes to the right,
14 could have gone back in, gone in the front office,
15 gone back down there to the back office. There is no
16 way But they said that's what happened

17 And then you know what Sterling would have had
18 to do? You know what he had to do after that? He'd
19 have had to have gone back in there. He'd have had
20 to either shoot nine more times because he's got to
21 get the shell casings in there, got to get some
22 projectiles in there

23 Well, you know what? I've got to knock the
24 chairs over There's a bullet hole in that chair
25 What else have I got to do? What have I got to do?

1 Break that door out Let's break the door out. Then
2 what have you got to do? Well, put the rag down
3 right here Get another gun, Andre Let's put a gun
4 down right here

5 All right Let's go Now let's go chase them
6 We go to chase them. They get in the car Whoa, we
7 can't leave yet I've got to pick up that hat. I've
8 got to pick up that hat Because he said, Mr. Sears
9 says they were up here, see, he's got to put himself
10 closer to make it fit the story, because if he's over
11 here where he knows they were, where the evidence
12 shows they were, where Tina and Maggie said they
13 were, where Sterling says they were, it fits. So he
14 can't put it there. So he's over here.

15 Well, how did your hat get over here? I guess
16 Sterling put it there I guess Sterling put it
17 there. Because that's what you'd have to believe
18 So he's got to get out of the car. Oh, I've got to
19 go move that hat, then go back in there, say, Whoa,
20 Andre, go get a black bag that looks like they were
21 going to steal something, put it out in the parking
22 lot So he goes and gets that and throws it out
23 there, said, Okay Now we can go chase 'em

24 Of course by this time Maggie and Tina would
25 have had to come by But they can't leave yet. You

1 know why? Because they've got to go back inside and
2 get another rag, put it over their head, come out
3 with the rags and the guns so Tina and Maggie can see
4 them Unless they're just blind, Tina and Maggie
5 blind?

6 That's incredible Not credible. That's the
7 only way it could have happened Only way under
8 their scenario it could have happened And it's
9 impossible That's why I say we've gone beyond our
10 reasonable doubt

11 Or the shell casings were out there at the front
12 after he goes inside and shoots nine times to leave
13 that evidence so the officers can find it, come in
14 here and tell you all it's corroborating evidence
15 He'd have had to go out there and pick out all those
16 other shell casings and put them up. Or did he get
17 them and throw them back in there, place them in
18 certain areas to the right? Did he know it went off
19 to the right? He said, well, I shot here, shot here,
20 shot here. Credibility, believability

21 And then, under their scenario, after they
22 leave, Mr Sears, what happened to the gun?
23 Sometimes the truth eats at them on cross or direct
24 I said, What happened to your shell casings? Well,
25 it went out to the right I said, Well, I thought

1 you had a revolver. He said, no, it was an
2 automatic I don't know if he said a semi-automatic
3 At least it's an automatic

4 Well, what happened? I don't know So you
5 definitely shot? I shot Well, I don't think he
6 shot I don't think there's evidence necessarily
7 that says he shot He's trying to put a bullet back
8 there so they could argue they didn't. Here I'm
9 arguing it So they could argue there should be
10 something back there.

11 Sterling said to you -- and he makes a big deal
12 about it -- talking to Cliff LeBlanc in the paper
13 Did he shoot? You heard Sterling I don't know if
14 he shot or not, but he had a gun at me and I shot
15 back I shot back I know there were 10 unfired
16 cartridges left in that Springfield which we submit
17 he had Did he fire one? I don't know. It doesn't
18 matter I submit to you he didn't Go through his
19 statement, and it seeps out, I started to fire He's
20 lying somewhere He's lying

21 I submit to you he came in, as I'll tell you in
22 a minute He saw Sterling They didn't know
23 Sterling was there Sterling started firing, as he
24 had every right Then under their scenario, to make
25 it fit now, I said, What happened to that gun, Mr

1 Sears? It just kind of disappeared Got to get rid
2 of the gun They must have taken it Now, he's kind
3 of saying, well, maybe he took it Hand of one, hand
4 of all

5 And then you have to go back and have the police
6 in it to make this story fit, that, well, they
7 coerced us Even though I said -- Demetrio went into
8 that second statement, which we didn't even argue
9 against it, that I was wrong then. Well, they made
10 that up They told him what to say Well, I think
11 we disproved that yesterday and through this trial
12 Believable Credibility, believability That's what
13 you have to believe

14 Folks, I'm going to tell you what happened And
15 it's based on really the only evidence I submit we
16 need It's based on direct evidence, eye witness
17 evidence from these two men back here, from these two
18 men who told you what they saw.

19 Sterling -- and there are pictures back here --
20 Sterling says at the beginning of the day's activity,
21 going over the day's activity with Andre, I sit back
22 and I see a van pulling up, the same area heading
23 back to Columbia, heading back he said I see them
24 getting out with as a mask and a gun, a couple of
25 guns I see three guys coming in I tried to go

1 back -- and she used the word "wreak" Does this
2 wreak of credibility? I tried to go back and
3 convey -- somebody said can you not tell us there's a
4 gun? Well, right now, if somebody had a gun, I'd say
5 a gun is over there Somebody coming at you with
6 three firearms, see if you can get out it

7 He goes back And I try to convey to Andre who
8 is playing some kind of game -- I can't remember -- I
9 tried to convey something is going on but words don't
10 come back I am going back to my office I go back
11 and I get my gun. Yeah, he's got a gun You go back
12 there and look at this SLED report when he went and
13 applied for a gun and got it to protect himself in
14 April of 2002 I'm glad he got it.

15 He goes back and gets that gun, takes the safety
16 off Got a safety on that gun. I want you to
17 remember that, too, if you will And he comes back
18 and he says, I'm going through my mind. I know these
19 two people are coming in I know Andre is out there
20 And then he hears, "Get down or I'm going to kill
21 you. I'm going to kill you If you move I'm going
22 to kill you", I think were the words "If you move
23 I'm going to kill you Where is your money?"

24 Now, the charge here, least I forget, is an
25 attempted armed robbery, intent to commit a crime, an

1 overstep in that direction "If you move I'm going
2 to kill you Where is your money?" If that's not
3 attempted armed robbery, let's do away with the law
4 He hears that going down there Andre is in the
5 front He comes down. He sees two individuals
6 there He says, I just fired I don't know if they
7 fired I start firing

8 And, folks, go look, go look at the evidence
9 We don't need this to corroborate, these two
10 gentlemen I submit But it's there Go look He
11 gets it He comes back. He starts firing as he's
12 coming up Do they say the shell casings eject to
13 the right? The pictures are there. They go to the
14 right But he was thinking back there when he
15 planned all this earlier Oh, yeah, I forgot

16 They go to the right Some of them may hit the
17 wall and come back some Come look at the pictures
18 Consistent They're coming up They're coming up
19 He fires These two guys, whoever they were -- and
20 this investigation is still continuing We're going
21 to find the other one or two We've got two of them
22 He comes up These guys flee It could have been
23 him

24 I submit to you this bag right here shows he
25 went inside. If he's driving, if it's on the other

1 side of that driveway, it doesn't matter. He didn't
2 have to go in A man who left his cousin to die to
3 death The State saved him The State saved
4 Demetrio Sears' life through those officers I
5 submit to you if Patrick wasn't there, whoever the
6 Patrick is, if that is even a person, three to four
7 people there? I don't know. Three went in. Did he
8 stay and drive, or was he one of the three that went
9 in? It doesn't matter The hand of one is the hand
10 of all

11 Doesn't it make sense? It makes it easier
12 doesn't it, if somebody works together to commit a
13 crime? He couldn't have gotten away quick unless you
14 had a driver. Maybe he did stay in His foot
15 pressed that gas His hands drove that car, drove it
16 back hidden away from that building And he says in
17 this statement in the second part after his wife has
18 told the truth and they said, do you want to tell the
19 truth? This other just doesn't make sense After he
20 said, I didn't want to call 911 but I could call my
21 wife

22 He says, yes, at that point I thought he was
23 going to rob him The day started the same, as I
24 said before Me and a guy were driving. He told me
25 that this guy had some money in rims He called him

1 the P word After he said that, I thought he was
2 going to rob him And he drove him over there Hand
3 of one is hand of all. Just like he had that gun to
4 his head Hand of one is the hand of all

5 And then we went past the old Percival Road We
6 went to the car shop This is the redacted version.
7 We have to redact some stuff until somebody
8 testifies But Sears went inside, is what he said,
9 and then he heard some gunshots Neither one of them
10 argued that You can't argue it That's what
11 happened.

12 He finally told the truth He finally told the
13 truth He left himself out He's still distancing.
14 He's distancing yesterday. You all got to bring him
15 back up nextdoor Don't let him distance himself any
16 more Finally, yeah, well, my cousin did it I was
17 there. I kind of knew what was going on, but I was
18 still distancing. Wouldn't have worked without him.
19 Then he leaves him to die

20 So Sterling has fired. Then two are out He's
21 back in the front shop there And what does he see?
22 He looks up and sees somebody standing over his
23 employee and his friend pointing a gun at him, and he
24 shoots and he shoots and he shoots And I'm glad he
25 shot And then that person goes out that door

1 Now, I don't know if the projectile popped that
2 door or if Demetrio Sears went out that door I
3 respectfully submit to you it doesn't matter I
4 brought the glass man in here, and I was going to rub
5 this glass all along here But you all saw him do
6 that I don't need to do it He said it's tempered
7 glass I think you could argue either way The
8 projectile is outside right there with masks. Is
9 that corroborated? I saw the guy with the mask. He
10 got shot. The mask goes I see his face I mean,
11 is that?

12 If it went through, the door is open you can see
13 in the picture They leave the scene pristine He
14 could have gone out the side door He could have
15 gone through There's a picture you could argue
16 looks like a silhouette He went through that door
17 Either way he wasn't cut. And Mr Price said he
18 wouldn't be cut. We'd had to drag Mr. Price up here
19 I guarantee you they'd be arguing, oh, you know,
20 they've been cutting that door How could there not
21 be blood from that door?

22 See, there is a perfect example. There is a
23 perfect example If we've missed something, use your
24 common sense. It's tempered glass You wouldn't be
25 cut if you went through it. That's what they want

1 one of you all, two of you all to grasp onto,
2 something That's all they've got is grasping, and
3 they want you all to grasp. Please don't

4 They then go outside and he tells you they're
5 leaving Mr Sears has gone outside at this point
6 And I submit to you Tina and Maggie have already
7 gone I submit to you the evidence, the reasonable
8 inferences, Tina and Maggie saw those first two
9 coming out, a mask and a gun. They go up, and then
10 Sears comes out after he's been shot.

11 What does Sterling and those do? He goes back
12 and gets another clip of ammunition, which he's
13 entitled to have Or does that make him a double or
14 triple drug dealer? And he says, We're going to go
15 back out there I'm going to wait a while Andre
16 told him to go. You all remind me about Andre
17 Andre doesn't want to go out there. But they do
18 They go out there They're sure they're gone and
19 they go out there and find them because it's not
20 right I want to go find them I want to get their
21 license tag I want to identify them to the police
22 and say, This is who robbed me This is who robbed
23 me. We didn't need 'em

24 But then Maggie and those came up. You all,
25 that scenario I told you all that they would have had

1 to do, but they couldn't have done that also,
2 because -- and I think Mr Byrd asked them -- Tina
3 and Maggie, they wouldn't have had to come right
4 back. They wouldn't have even had time to do the
5 thing you couldn't do that was impossible. They
6 couldn't have had time to do that. They come out and
7 they chased them They missed Maggie Isn't this
8 incredible, the way things happen with timing
9 Timing is everything and it all comes together to
10 make this perfect picture of guilt, I submit.

11 They leave They go after them They take the
12 wrong way They take a right on Alpine, think
13 they've missed them They come back Tina has
14 called 911. Andre has called 911 Let's see. I
15 want those cops to come back at my place There
16 ain't no drugs there Didn't find any drugs there
17 I want the police there

18 As soon as they get there, here's the gun,
19 here's what happened, here's a description of what I
20 did I got another clip in my car I took out
21 There's a bullet down there that fell that was
22 actually lodged in there And I asked Dave Collins,
23 well, how could that happen? He didn't know how to
24 do it? He said it's the first time he's shot a gun
25 I think it's clear And if that's true, he didn't --

1 yeah, he got him one with the scope. It was neat
2 It didn't cost so much more. He thought it was
3 already aimed up and would shoot right. Well, the
4 expert told you No, you've got to aim it yourself.
5 He didn't even know that But I guess if you've got
6 a gun, you should know, be an expert on guns in
7 addition to a drug dealer.

8 They come out They come out They give a
9 description Tina and Maggie are there They go
10 find the van You've got another scene You've got
11 the body there. No question Mr Burr says he shot
12 him And then the story about the statements And
13 I'll go into Mr Sears before I close, his statement

14 Only here is the other time in March, the 5th of
15 2002, again, where there's no mention made there were
16 drugs Only drugs yesterday He's still trying to
17 distance himself Mr Sears in here Yeah, I'm at
18 the scene Yeah, I had a gun, but not when he put I
19 had the gun Yeah, I guess he thought it was a
20 robbery It's in here It's in here

21 Have you committed other crimes? No Well,
22 that's a lie. He has. All you've got in this case
23 is his credibility and believability So you're
24 going to grasp for one of those things? The truth is
25 just elusive for these two men, these two defendants.

1 Folks, did I ask you all to remind me of Andre?
2 You know, we go back to what I said about
3 corroborating evidence We have the shell casing
4 Oh, the projectiles, if I left that out. The
5 projectiles, three there, one in the door, one
6 outside There's one in here

7 And Mr. Strickler is smarter than I am I'm not
8 smarter than Dr Bynoe, I can tell you that much.
9 You go back here and look One, two, entrance/exit
10 You remember when he said he followed it through? He
11 followed it through. That's one shot They tried to
12 make it eight at the start of this trial

13 Credibility, believability One, two. He's got
14 one that's still in him That's three And I claim
15 there's four. Stretch it. Could he have four or
16 five in his hand? I don't know Wasn't sure. But
17 at the most, five. Definitely not eight And it's
18 not six There's no way No way Credibility,
19 believability

20 You go back to the two witnesses, the two
21 witnesses And the other projectiles, where are
22 they? I don't know. If you grant to grasp for that,
23 they may be outside as he's running out of the front
24 door and he's shot? If you look at this one picture,
25 there's a dent in the door One of them is in the

1 side of the steal framed door There's another dent
2 in the wooden door And then there's like No 4 Go
3 look at it It's in the floor The diagram shows
4 there's five inside Now, that four could be a
5 bounce off the door and come back or there could be
6 another one in there They didn't get all the
7 projectiles I wish they had That's not a
8 reasonable doubt

9 The direct evidence in this case makes it
10 What's the name they didn't mention? Andre Nobody
11 mentioned Andre The indictment alleges that attempt
12 to take the goods or moneys from employees of Ntense
13 Audio. That's Andre Yes, he's a victim of his
14 business This is our victim They're both victims

15 You remember yesterday when I had this gun? And
16 I think I must have inadvertently pointed it up
17 there. I didn't mean to do that And he said, Oh,
18 no, please don't point it, don't point it. Last
19 night as I was preparing this, you know what I
20 thought about? And I'm not going to point it at his
21 head I thought about Andre. I thought about Andre

22 And her last question, Ms. Campbell's question
23 on redirect to Andre is, Andre, how did you know that
24 gun was on you? Andre is down on the ground like
25 this. You remember his testimony, that he was

1 crawling? He's crawling Oh, I forgot, too I've
2 always got to put something on He admitted this was
3 his hat He admitted he was wearing this hat.
4 That's his hat at the scene He admitted it

5 And as he's down on the ground there, How did
6 you know that gun was on you, Andre? I felt it I
7 felt it No, please don't point that gun I felt
8 it

9 You remember what David Collins told you about
10 this gun? I think he said it was a passive safety
11 I guess that means if you drop it, it won't go off
12 But what he said was if you grab it and you pull the
13 trigger it goes off That's no safety to me. And
14 this gun was pointed at Andre's head, on his head
15 And at that point, you know the only safety he had
16 was Sterling Patterson?

17 I submit to you the evidence is overwhelming in
18 the inference that Sterling Patterson saved his life
19 He saved his life Because, folks, those three armed
20 men with masks coming in there getting behind those
21 doors, they weren't there for a visit They were
22 there to rob

23 Sterling Patterson got that gun, as he's
24 entitled to do, people coming in his business. And
25 in this country he had a right to defend himself, and

1 he did And I'm glad he had the gun I'm glad he's
2 not dead. I'm glad he's not dead I'm glad he was
3 saved But he's not here to be rewarded, as
4 Ms Campbell said, for his injuries. He still must
5 face your judgment for punishment

6 Ladies and Gentlemen, I want to thank you. You
7 all know it You know it Justice is simple It's
8 simple Justice is pure Don't deprive them of
9 justice? When you go back to your jury room consider
10 the credibility, the believability, the demeanor
11 Consider the eye witnesses. Consider what we
12 respectfully say is overwhelming corroborating
13 evidence and come back with a verdict that says
14 Mr Willie Lloyd Alexander, we saw you yesterday, but
15 we're judging you on the actions of that day You
16 took him there You finally admitted it, that you
17 knew they were going to rob them You took him away
18 and you left him there. You're just as guilty
19 Whether you went in or not, we're going to find you
20 guilty.

21 And, Mr Sears, you had the gun on you You
22 said, Andre, I'm going to kill you, where is the
23 money? You were I D 'd There's evidence We know
24 you were there You were shot. And you're guilty

25 And we submit that's justice Thank you

1 THE COURT All right, Ladies and Gentlemen of
2 the Jury It now becomes my duty to explain to you
3 the law of the State of South Carolina as it applies
4 to this case

5 To begin with, I will repeat the fact that the
6 defendants each are charged with attempted armed
7 robbery And I'm going to just define that term for
8 you with more specificity in just a minute And,
9 again, I will tell you that the mere fact that an
10 indictment has been rendered in this case, the piece
11 of paper that's been rendered is not evidence of
12 anything

13 The indictment charges the defendant, Demetrio
14 Sears, with committing armed robbery on or about
15 October the 8th, 2002, and the defendant, Willie
16 Lloyd Alexander, with the crime of attempted armed
17 robbery on or about October the 8th, 2002

18 I remind you that the fact that the defendants
19 were arrested, charged and indicted in this case is
20 not evidence and cannot be considered by you as
21 evidence of guilt in this case, nor does it create
22 any presumption or inference of guilt These
23 documents, as I have said on several occasions, are
24 simply the formal written instruments which contain
25 the charges made against the defendant They are the

1 formal documents by which these cases are brought
2 into court

3 Now, I charge you that there are two defendants
4 in this case, each of whom has been charged with the
5 attempted robbery The case of each defendant and
6 the law concerning that defendant should be
7 considered separately and individually Your verdict
8 does not have to be the same for both defendants
9 The fact that you may find one defendant guilty or
10 not guilty should not control your verdict as to the
11 other defendant

12 Where more than one person is charged with a
13 crime, if the evidence warrants it, you may convict
14 one and acquit the other, or you may acquit both, or
15 you may convict both It will depend on your view of
16 the testimony and the evidence You must take each
17 defendant and consider the evidence as to that
18 defendant and my instructions to you on the law You
19 will then write a separate verdict of guilty or not
20 guilty for each defendant

21 Both defendants have pled not guilty to these
22 indictments, and those pleas put the burden on the
23 State to prove each defendant guilty. A person
24 charged with committing a criminal offense in South
25 Carolina is never required to prove himself innocent.

1 I charge you that it is an important rule of law
2 that a defendant in a criminal trial, no matter what
3 the seriousness of the charge may be, will always be
4 prepared to be innocent of the crime for which the
5 indictment was issued unless guilt has been proven by
6 evidence satisfying you of that guilt beyond a
7 reasonable doubt.

8 This presumption of innocence does not end when
9 you begin your deliberations, but it accompanies the
10 defendants throughout the trial until you reach a
11 verdict of guilt based on evidence satisfying you of
12 that guilt beyond a reasonable doubt

13 It's been said that the presumption of innocence
14 is like a robe or righteousness placed about the
15 shoulders of the defendant which remains with the
16 defendants until it has been stripped from the
17 defendants by evidence satisfying you of the
18 defendants' guilt beyond a reasonable doubt

19 In other words, the presumption of innocence is
20 not a mere legal theory It's not just a legal
21 phrase It is a substantial right to which every
22 defendant is entitled unless you, the jury, are
23 satisfied from the evidence of the defendants' guilt
24 beyond a reasonable doubt

25 Well, what is reasonable doubt in the law? A

1 reasonable doubt is the kind of doubt that would
2 cause a reasonable person to hesitate to act The
3 State has the burden of proving the defendants guilty
4 beyond that reasonable doubt Some of you may have
5 served as jurors in civil cases where you were told
6 it's only necessary to prove that a fact is more
7 likely true than not, such as by the greater weight
8 or preponderance of the evidence

9 In criminal cases, however, the State's proof
10 must be more powerful than that It must be beyond a
11 reasonable doubt Proof beyond a reasonable doubt is
12 proof that leaves you firmly convinced of the
13 defendants' guilt. There are very few things in this
14 world that we know with absolute certain, and in
15 criminal cases the law does not require proof that
16 overcomes every possible doubt.

17 If based on your consideration of the evidence
18 you are firmly convinced that the defendants are
19 guilty of the crimes charged, you must find the
20 defendant guilty. If, on the other hand, you think
21 there is a real possibility that the defendants are
22 not guilty, you must give the defendants the benefit
23 of the doubt and find them not guilty

24 I remind you again that during this trial that
25 you and I have certain duties to perform As the

1 trial judge it's my responsibility to preside over
2 the trial of the case. I also have the duty to rule
3 on the admissibility of the evidence offered during
4 the trial

5 You are to consider only the competent evidence
6 before you If any testimony was ordered stricken
7 from the record in this case, you must disregard that
8 testimony You are to consider only the testimony
9 and evidence which has been presented from the
10 witness stand and any exhibits which have been made
11 part of the record, and any stipulations of counsel

12 I have the additional duty to charge you the law
13 applicable to the case, and as the presiding judge I
14 am the sole judge of the law in this case It's your
15 duty as jurors to accept and apply the law as I now
16 explain it to you If you already have any idea as
17 to what the law is or what the law ought to be and it
18 does not agree with what I now tell you the law is,
19 you must abandon this idea because you're sworn to
20 accept the law the and apply the law exactly as I
21 state it to you

22 In every case tried in this court before a jury
23 the jury becomes the sole and exclusive judge of the
24 facts of the case. The trial judge cannot intimate,
25 safety, comment on, or make any statement to a trial

1 jury about the facts in a case

2 Since you, the jury, are the sole fact finders
3 in the case, you are not to infer from what I may
4 have said during the progress of this trial, in
5 ruling upon the admissibility of evidence, or
6 otherwise, or anything that I say now during the
7 course of these instructions to you that I have any
8 opinion about facts of this case The law does not
9 allow me to have an opinion about the facts in the
10 case This is a matter solely for you, the jury, to
11 determine As jurors it is your duty to determine
12 the effect, value, weight and truth of the evidence
13 presented during the trial

14 Now, there are two types of evidence which are
15 generally presented during a trial. Direct evidence
16 and circumstantial evidence Direct evidence is the
17 testimony of a person who claims to have actual
18 knowledge of a fact, such as an eye witness. It's
19 evidence which immediately establishes the main fact
20 to be proved

21 Circumstantial evidence is proof of a chain of
22 facts or circumstances indicating the existence of a
23 fact. It is evidence which immediately establishes
24 collateral facts from which the main fact may be
25 inferred. Circumstantial evidence is based on

1 inference and not on personal knowledge or
2 observation

3 The law makes absolutely no distinction between
4 the weight or value to be given to either direct or
5 circumstantial evidence, nor is a greater degree of
6 certainty required of circumstantial evidence than of
7 direct evidence You should weigh all of the
8 evidence in the case After weighing all of the
9 evidence, if you're not convinced of the guilt of the
10 defendant beyond a reasonable doubt, you must find
11 the defendant not guilty

12 Now, necessarily, you must determine the
13 credibility of witnesses who have testified in this
14 case Credibility means simply believability It
15 becomes your duty as jurors to analyze and to
16 evaluate the evidence and determine which evidence
17 convinces you of its truth.

18 In determining the believability of witnesses
19 who have testified in this case, you may believe one
20 witness over several witnesses or several witnesses
21 over one witness You may believe a part of the
22 testimony of a witness and reject the remaining
23 testimony of the same witness You may believe the
24 testimony of a witness in its entirety or reject the
25 testimony of a witness in its entirety.

1 You may consider whether any witness has
2 exhibited to you any interest, bias, prejudice or
3 other motive in this case You may also consider the
4 appearance and manner of a witness while on the
5 witness stand

6 Now, you have heard evidence that the defendants
7 were convicted of some crime or committed a bad act
8 which is not the subject of a conviction other than
9 the one for which the defendants are now on trial
10 This evidence may be considered by you if you
11 conclude it is true only in deciding whether the
12 defendants' testimony is believable and for no other
13 purpose. You must not consider either defendants'
14 prior record as any evidence of that defendant's
15 guilt of the charge that we're trying here today

16 Now, in order to establish criminal liability,
17 criminal intent is required For example, the mental
18 state required to be proven by the State for a
19 particular crime might be purpose or intent or
20 knowledge or criminal negligence Criminal intent
21 must be proven by the State beyond a reasonable
22 doubt

23 Criminal intent is always a matter that must be
24 determined by the jury from the circumstances
25 surrounding the situation. There is no way to prove

1 intent to a mathematical certainty There's no way
2 medical science can dissect a person's brain and
3 determine what the person had in mind. So the law
4 says criminal intent may be inferred from the
5 circumstances shown to have existed at the time and
6 place. And this is how you make a determination of
7 whether or not the element requiring intent was
8 present

9 It's not necessary to establish intent by direct
10 and positive evidence, but intent may be established
11 by inference in the same way as any other fact, by
12 taking into consideration the acts of the parties and
13 all the facts and circumstances of the case.

14 Criminal intent is a mental state, a conscious
15 wrongdoing It's up to you to determine what the
16 defendant intended to do based on the circumstances
17 shown to have existed at the time and place of the
18 criminal act

19 Criminal intent can arise from action or a
20 failure to act It may arise from negligence,
21 recklessness or an indifference to duty or to
22 consequences that is considered by the law to be the
23 equivalent of criminal intent

24 Now, you've heard some testimony in this case
25 from persons designated as experts The rules of

1 evidence ordinarily do not permit witnesses to
2 testify to opinions or conclusions An exception to
3 this rule exists for witnesses we call expert
4 witnesses A witness who by education and experience
5 has become an expert in some art, science or
6 profession may state an opinion as to relevant and
7 material matter in which the witness claims to be an
8 expert and may also state the reasons for that
9 opinion

10 You should consider any expert opinion received
11 in evidence in this case like any other evidence
12 Give it the weight that you think it deserves. If
13 you decide that the opinion of an expert witness is
14 not based on sufficient education and experience, or
15 if you conclude that the reasons given in support of
16 the opinion are not sound and that the opinion is
17 outweighed by other evidence, you may disregard that
18 opinion entirely.

19 An expert witness' testimony, in other words, is
20 to be given no greater weight than that of any other
21 witness simply because the witness is an expert

22 Further, you're not even required to accept --
23 you are not required to accept an expert's opinion
24 even though it's not contradicted

25 Now, as I said, I would define the actual

1 charges in this case The defendants are each
2 charged with attempted armed robbery In order to
3 prove this offense, the State must first prove beyond
4 a reasonable doubt that a defendant attempted to take
5 personal property from the person or presence of
6 another person

7 Property is in the presence of a person if it is
8 within the person's reach, inspection, observation or
9 control so that the person could, if not overcome by
10 violence or prevented by fear, keep possession of his
11 property

12 The State must also prove beyond a reasonable
13 doubt that a defendant attempted to carry the
14 property away intending to permanently deprive the
15 owner of the property and to keep the property for
16 the defendant's own use The attempted taking and
17 carrying away of the property must have been done
18 with violence or by putting the owner of the property
19 in fear of violence

20 And, finally, the State must prove beyond a
21 reasonable doubt that the defendant was armed with a
22 deadly weapon during the robbery A deadly weapon is
23 an article, instrument or substance which is likely
24 to cause death or great bodily harm Whether an
25 instrument has been used as a deadly weapon depends

1 on the facts and circumstances of each case

2 The following are examples of instruments which
3 may be deadly weapons They are a pistol, a shotgun,
4 a rifle, a knife, or any other similar object And a
5 gun may be a deadly weapon even if it's not
6 operating

7 Attempted crimes are generally ones of specific
8 intent such that the act constituting the attempt
9 must be done with the intent to commit that
10 particular crime In the context of an attempted
11 crime, specific intent means that the defendant
12 consciously intended the completion of the acts
13 compromising (sic) the offense In other words, the
14 completion of such act is the defendants' purpose

15 Additionally, the State must prove that the
16 defendants' specific intent was accomplished by some
17 overt act beyond mere preparation in furtherance of
18 the intent, and there must be an actual or present
19 ability to complete the crime Preparation consists
20 of devising or arranging the means or measures
21 necessary for the commission of the crime The
22 attempt or overt act is the direct movement toward
23 the commission after preparations are made

24 Now, if a crime is committed by two or more
25 people who are acting together in committing a crime,

1 the act of one is the act of all A person who joins
2 with another to accomplish an illegal purpose is
3 criminally responsible for everything done by the
4 other person which occurs as a natural consequence of
5 the acts done in carrying out the common plan or
6 purpose

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

15 Prior knowledge that a crime is going to be
16 committed without more is not sufficient to make a
17 person guilty of a crime. Mere knowledge of the fact
18 that another person is going to commit a crime, even
19 if the defendant is present when the crime is
20 committed, is not sufficient to convict a person as a
21 principal Guilt as a principal is shown by actual
22 or constructive presence at the scene as a result of
23 prior arrangement Therefore, a finding of a prior
24 arranged plan or common scheme is necessary for a
25 finding of guilt as a principal

1 The State must prove beyond a reasonable doubt
2 by competent evidence the theory of the hand of one
3 is the hand of all A principal in a crime is one
4 who either actually commits the crime or who is
5 present aiding, abetting or assisting in committing
6 the crime When a person does an act in the presence
7 of or with the assistance of another, the act is done
8 by both

9 If two or more acting with a common plan or
10 intent are present at the commission of a crime, it
11 does not matter who actually commits the crime All
12 are guilty The hand of one is the hand of all
13 Present at the commission of a crime means to be
14 sufficiently near to aid or abet and assist in the
15 commission of the crime

16 However, mere presence alone at the scene of a
17 crime is not sufficient to convict one as a principal
18 on the theory of aiding and abetting Intent is also
19 a necessary element. There must have been a common
20 design or intent to commit the crime, and the crime
21 must have been committed pursuant thereto with the
22 person acting, aiding and abetting by some overt act

23 Intent means intending the result which actually
24 occurs, not accidentally or involuntarily Intent
25 may be shown by acts and conduct of the defendant and

1 other circumstances from which you may naturally and
2 reasonably infer intent. And the State must prove
3 these elements beyond a reasonable doubt

4 Now, Ladies and Gentlemen, in this case there
5 are two statements of the defendants The statements
6 alleged to have been made by each of the defendants
7 have been admitted into evidence And while the
8 Court has determined that the statement is
9 admissible, I instruct you that you make the ultimate
10 decision of whether or not the defendant made the
11 statement

12 If the defendant did make the statement, you
13 must determine whether the statement was made by the
14 defendant voluntarily and of his own free will. This
15 means that the statement was not caused by pressure,
16 force, fear, threats, coercion or intimidation or by
17 hope or promise of leniency or a reward of any kind

18 In determining whether the statement was
19 voluntary, you should consider both the
20 characteristics of the defendant and the details of
21 the questioning Some factors you may want to
22 consider are the age of the defendant, the
23 defendant's education or lack of education, the
24 defendant's mental ability or capacity, and the
25 defendant's intelligence, background and environment,

1 the length and place of the detention, the nature of
2 the questioning, and the advice or lack thereof to
3 the defendant of his Constitutional rights;
4 including, but not limited to, the right to remain
5 silent, that any statement could be used against him
6 in a court of law, the right to have a lawyer
7 present, that if he could not afford a lawyer a
8 lawyer would be appointed to represent him without
9 any cost, and that he could stop making the statement
10 at any time

11 You must carefully consider all of the
12 circumstances surrounding these statements before you
13 give any weight to the alleged statements And the
14 State again has the burden of proving beyond a
15 reasonable doubt that each of the alleged statements
16 was voluntary

17 If you determine it was, you may give the
18 statement any further consideration that you deem
19 proper You must decide what weight, if any, should
20 be given to the alleged statement If you determine
21 the alleged statement was not freely and voluntarily
22 given and the statement of the defendant, you should
23 not consider the statement at all.

24 Now, Ladies and Gentlemen, there was some
25 comment made during closing arguments about

1 punishment that may or may not have previously been
2 applied to the defendants or it would apply to the
3 defendants You should not consider that in any of
4 your deliberations You are not to give -- you are
5 to determine the defendants' guilt or innocence
6 That is your responsibility Any punishment is a
7 matter for the Court to deal with and not for the
8 jury

9 Now, nothing that I may have said during the
10 course of this trial has been in any way intended to
11 express or suggest a view of the case or an opinion
12 of the facts, the weight of the evidence or the
13 credibility of the witnesses. If any of my actions
14 or words have so seemed to indicate, you disregard
15 such and form your own opinion as to these matters

16 I am required to declare the law as I have done
17 through these instructions to assist and guide you to
18 a just and lawful verdict Whether some of these
19 instructions will apply will depend on what you find
20 to be the facts The fact that I have instructed on
21 various subjects during this closing must not be
22 taken by you as indicating an opinion of this Court
23 as to what you should find to be the facts or which
24 party is entitled to your verdict

25 Your verdict must represent the considered

1 judgment of each juror In order to return a verdict
2 it's necessary that each juror agree Your verdict
3 must be unanimous It is your duty as jurors to
4 consult with one another to deliberate with a view to
5 reaching an agreement if you can do so without
6 violence to your individual judgments. Each of you
7 must decide the case for himself or herself, but do
8 so only after an impartial consideration of the
9 evidence in the case with your fellow jurors

10 In the course of your deliberations do not
11 hesitate to re-examine your own views and change your
12 opinion if convinced it is erroneous, but do not
13 surrender your honest conviction as to the weight or
14 effect of the evidence solely because of the opinion
15 of your fellow jurors or for the mere purpose of
16 returning a verdict

17 Remember at all times that you are not partisans
18 favoring one party over the other You are judges,
19 judges of the facts Your sole interest is to seek
20 the truth from the evidence in this case.

21 Now, Mr. Foreman, I will send the indictments to
22 the jury room with you On the face of the
23 indictment in the bottom left-hand corner is a place
24 for your verdict Once the jury has reached a
25 verdict as to each defendant, if you will fill in the

1 words guilty or not guilty, sign and date the verdict
2 form and knock on the jury room door, we will receive
3 your verdict

4 Now, I'm going to ask you to retire to the jury
5 room. Do not begin your deliberations until all of
6 the evidence comes into the jury room You need to
7 have all of the evidence before you start your
8 deliberations. The video is available to you If
9 you wish to see the video again, we'll bring the
10 monitor into the jury room and allow you to see -- to
11 view the video If you'll just let us know what you
12 want

13 I think maybe our lunches, or your lunches may
14 be here We'll see about that But, again, do not
15 begin your deliberations until you receive all the
16 evidence. You may retire to the jury room Thank
17 you very much.

18 (Jury out at 12 10 P M)

19 THE COURT. Exceptions to the charge on behalf
20 of the State?

21 MR. MEADORS No, sir.

22 THE COURT Defense?

23 MR. BURR None for Mr. Alexander, Your Honor

24 MR. STRICKLER Note my continued exception to
25 your decision not to charge the Bruton charge Yes,

1 sir

2 THE COURT. Bruton Yes, sir

3 MR STRICKLER. That's all

4 THE COURT Thank you very much All right,
5 counsel Let's be careful with this evidence Even
6 in closing counsel picked up the wrong piece of
7 evidence to -- I want only the unredacted statements
8 going to the jury, not the redacted statements.

9 COURT REPORTER. I've pulled that

10 THE COURT. You pulled it?

11 COURT REPORTER. Yes, sir.

12 THE COURT You didn't pull Meadors' file

13 MR MEADORS I must have grabbed it, or I may
14 have taken one from my --

15 (Pause)

16 (WHEREUPON, State's Exhibit No 115 was
17 withdrawn from evidence)

18 (5Whereupon, State's Exhibit No. 115 is
19 withdrawn from evidence)

20 THE COURT. The question is whether it's in
21 evidence

22 MR. MEADORS Judge, I know I offered it.

23 THE COURT The original?

24 MR. MEADORS No, sir Just yesterday Because
25 I remembered when Luck came back and said it's Sears

1 And we switched it I think the issue now becomes
2 when we switched it, even though I think it's offered
3 on the record, the original with Sears in there, when
4 we switched it, inadvertently, another redacted copy
5 got marked instead of the original

6 THE COURT. Would you agree with that?

7 MR STRICKLER I agree that you offered the
8 original, that I objected, that Your Honorer
9 erroneously ruled that the original could come in,
10 and that what we have in evidence is two redacted
11 copies. That's what I agree

12 THE COURT. All right.

13 MR STRICKLER. I do not agree to substitute any
14 evidence after all the evidence has already been
15 argued and is in evidence

16 THE COURT I'm going to --

17 COURT REPORTER Could I mark that as 117 then?
18 The original?

19 THE COURT. The original -- the original
20 unredacted statement of Willie Alexander was admitted
21 into evidence following the testimony or during the
22 testimony of Willie Alexander The fact that there
23 were at least two prior redacted statements in the
24 face of Bruton objections may have led to some
25 confusion on the part of the court reporter

1 COURT REPORTER Or of John I'm not confused.

2 THE COURT As to which of the statements should
3 have been marked And I don't know what the number
4 is or should be

5 COURT REPORTER. I think, for the record --

6 THE COURT: But this document is admitted and
7 it's not, as Mr Strickler says, the admission of
8 additional evidence following the trial of the case

9 MR. MEADORS So we would ask it that it be
10 marked what?

11 COURT REPORTER. No 117 would be the next in
12 order And then I'll pull 115 out

13 MR. MEADORS So it's to replace 115.

14 THE COURT. I don't want redacted statements
15 going to the jury.

16 MR. MEADORS That was my next question So 115
17 is out then

18 COURT REPORTER. And I need to have that.

19 THE COURT: They're in the record They're just
20 not going to the jury

21 (WHEREUPON, State's Exhibit No 117 was marked
22 for identification and received into evidence)

23 (Whereupon the jury begins deliberating at
24 approximately 12:27 P.M.)

25 THE COURT: All right, counsel Approach the

1 bench, please All right, counsel, the Court has
2 been informed the jury has a verdict. Are you ready
3 to receive the verdict?

4 MR MEADORS. The State's ready.

5 THE COURT Defense ready? Mr. Burr, are you
6 ready?

7 MR BURR Yes, sir

8 THE COURT Mr Strickler?

9 MR STRICKLER Yes, sir

10 THE COURT All right Bring the jury, please.

11 (Jury in at 2.22 P M.)

12 THE BAILIFF The jury is present, Your Honor

13 THE COURT All right Thank you very much

14 Mr Foreman, has the jury reached a verdict?

15 FOREPERSON. Yes, sir

16 THE COURT. Would you hand it to the bailiff,
17 please.

18 (Foreman complies).

19 THE COURT All right, Madam Clerk. Would you
20 publish the verdict, please?

21 THE CLERK. Yes, sir 2002-GS-40-10992, State
22 of South Carolina vs. Demetrio Sears, indictment for
23 attempted armed robbery, the verdict is guilty,
24 signed by the foreman Mr Foreman, is this your
25 verdict and the verdict of this entire jury?

1 FOREPERSON: Yes, ma'am

2 THE CLERK Thank you 2002-GS-40-10624, State
3 of South Carolina vs Willie Lloyd Alexander,
4 indictment for attempted armed robbery, the verdict
5 is guilty, signed by the foreman Mr. Foreman, is
6 this your verdict and the verdict of this entire
7 jury?

8 FOREPERSON: Yes, ma'am

9 THE CLERK: Thank you

10 THE COURT: Any desire to poll he jury?

11 MR. STRICKLER: Mr. Sears requests polling, Your
12 Honor

13 MR BURR Yes, Your Honor, I do.

14 THE CLERK This is on the verdict for Willie
15 Alexander When I call your name I will have two
16 questions If you would answer, please. Stacy
17 Jacobs, was this your verdict?

18 JUROR: Yes.

19 THE CLERK Is it still your verdict?

20 JUROR Yes.

21 THE CLERK Sarah Reese, was this your verdict?

22 JUROR: Yes

23 THE CLERK: Is it still your verdict?

24 JUROR: Yes

25 THE CLERK Joseph Johnson, was this your

1 verdict?

2 JUROR Yes

3 THE CLERK Is it still your verdict?

4 JUROR Yes

5 THE CLERK Ernestine Washington, was this your
6 verdict?

7 JUROR Yes.

8 THE CLERK Is it still your verdict?

9 JUROR: Yes

10 THE CLERK. Jessica Lovelace, was this your
11 verdict?

12 JUROR Yes

13 THE CLERK Is it still your verdict?

14 JUROR Yes.

15 THE CLERK Keith Thompson, was this your
16 verdict?

17 JUROR Yes.

18 THE CLERK Is it still your verdict?

19 JUROR Yes

20 THE CLERK Melanie Coles, was this your
21 verdict?

22 JUROR Yes

23 THE CLERK. Is it still your verdict?

24 JUROR Yes

25 THE CLERK Randy Jeffcoat, was this your

1 verdict?

2 JUROR. Yes

3 THE CLERK Is it still your verdict?

4 JUROR. Yes

5 THE CLERK Damon Webber, was this your verdict?

6 JUROR Yes

7 THE CLERK Is it still your verdict?

8 JUROR. Yes

9 THE CLERK Johnny Mack, was this your verdict?

10 JUROR. Yes

11 THE CLERK. Is it still your verdict?

12 JUROR: Yes

13 THE CLERK. Marsha Ward, was this your verdict?

14 JUROR Yes

15 THE CLERK. Is it still your verdict?

16 JUROR Yes

17 THE CLERK: Paulette Cartledge, was this your

18 verdict?

19 JUROR Yes.

20 THE CLERK: Is it still your verdict?

21 JUROR: Yes.

22 THE CLERK. Thank you On the charge -- on the
23 indictment against Demetrio Sears Stacy Jacobs, was
24 this your verdict?

25 JUROR. Yes

1 THE CLERK Is it still your verdict?

2 JUROR Yes

3 THE CLERK Sarah Reese, was this your verdict?

4 JUROR Yes

5 THE CLERK Is it still your verdict?

6 JUROR Yes

7 THE CLERK Joseph Johnson, was this your
8 verdict?

9 JUROR Yes

10 THE CLERK. Is it still your verdict?

11 JUROR Yes

12 THE CLERK Ernestine Washington, was this your
13 verdict?

14 JUROR. Yes

15 THE CLERK. Is it still your verdict?

16 JUROR Yes

17 THE CLERK Jessica Lovelace, was this your
18 verdict?

19 JUROR Yes

20 THE CLERK Is it still your verdict?

21 JUROR: Yes

22 THE CLERK. Keith Thompson, was this your
23 verdict?

24 JUROR. Yes

25 THE CLERK Is it still your verdict?

1 JUROR. Yes

2 THE CLERK Melanie Coles, was this your
3 verdict?

4 JUROR. Yes

5 THE CLERK Is it still your verdict?

6 JUROR. Yes

7 THE CLERK: Renee Jeffcoat, was this your
8 verdict?

9 JUROR Yes

10 THE CLERK. Is it still your verdict?

11 JUROR: Yes

12 THE CLERK Damon Glover, was this your verdict?

13 JUROR: Yes.

14 THE CLERK. Is it still your verdict?

15 JUROR Yes

16 THE CLERK. Johnny Mack, was this your verdict?

17 JUROR. Yes

18 THE CLERK. Is it still your verdict?

19 JUROR Yes

20 THE CLERK Marsha Ward, was this your verdict?

21 JUROR Yes

22 THE CLERK. Is it still your verdict?

23 JUROR Yes

24 THE CLERK. Paulette Cartledge, was this your
25 verdict?

1 JUROR. Yes

2 THE CLERK. Is it still your verdict?

3 JUROR. Yes

4 THE CLERK. The jury has been polled, Judge

5 THE COURT. Thank you very much. All right,

6 Ladies and Gentlemen of the Jury, I do want to take
7 this opportunity on behalf of myself and the court
8 personnel and the litigants in this case to thank you
9 for your service this week This will conclude your
10 service on this jury This does not conclude the
11 case, however. There is one final thing that needs
12 to be, and that is the sentencing which is done by
13 the Court

14 You are free to sit through the sentencing. And
15 I think jurors frequently want to do that to see the
16 finality of the process But, on the other hand,
17 those of you who wish to leave may do so The
18 sentencing will not be very long. Typically, it's
19 not very long, a matter of a few minutes

20 I do have your request that you submitted to the
21 Court, and I am going to comply with that request I
22 have advised counsel of your request, and we
23 absolutely no problem with it And we will make
24 those arrangements for you

25 As I said, those of you who -- it will take a

1 few minutes to get the paperwork together for the
2 sentencing You know and you probably see on
3 television or in some Federal courts sometimes that
4 sentencing is done at a later date Quite frankly,
5 we have so many cases here in Richland County that
6 it's just not practical to wait for sentencing So,
7 the tradition has been in South Carolina, and it is
8 here in Richland County, that sentencing takes place
9 immediately after the jury's verdict if a guilty
10 verdict is found

11 And as I say, there is some paperwork that needs
12 to be completed I have to sign, and you're certainly
13 more than welcome to sit and observe this process
14 I've asked your alternate to -- Ms Jones was free to
15 leave She thought so much of you that she wanted to
16 stay and sit through the entire process. And I
17 appreciate you doing that, Ms Jones And I
18 understand why you want to When you sit through a
19 trial for a week and then are not able to participate
20 in the deliberations, it leaves a little bit to be
21 desired But it's a very important function that
22 Ms Jones has served as alternate for our jury this
23 week

24 All right Any motions on behalf of either
25 defendant?

1 MR BURR. Nothing further for Mr Alexander,
2 Your Honor.

3 THE COURT All right

4 MR. STRICKLER. Yes, sir For Mr Sears, of
5 course, Your Honor, at this point in time for the
6 record I need to go ahead and request Your Honor
7 direct a new trial in this matter I'd ask that you
8 revisit my previously stated motions for directed
9 verdict both at the end of the State's case and at
10 the end of the defense case I'd ask you to revisit
11 my previously stated motions for mistrial during the
12 course of this trial and indeed revisit my motion for
13 severance of the two cases made prior to the
14 beginning of this trial, a re-evaluation of your
15 decisions in that regard and change those decisions,
16 Your Honor, granting a mistrial at this time and
17 granting a new trial at this time

18 THE COURT Thank you, Mr Strickler

19 MR. STRICKLER Yes, sir

20 THE COURT As I have indicated on prior
21 occasions throughout the course of the trial, and
22 particularly at directed verdict stages of the trial,
23 I felt that the issues were fairly discussed, fairly
24 reasoned and were correct rulings according to the
25 law of this state and the Constitution of the United

1 States, the Constitution of the State of South
2 Carolina I feel that the jury has fairly considered
3 the evidence in this case before them and the law as
4 instructed to them by the Court Therefore, I must
5 respectfully deny your motions.

6 MR. STRICKLER. Thank you, sir And you
7 understand of course that I make those motions in an
8 effort to preserve any --

9 THE COURT. Certainly.

10 MR. STRICKLER: -- error that exists

11 THE COURT I understand

12 MR. STRICKLER: Yes, sir That's all I have

13 THE COURT That will be for another court at a
14 another time and another place

15 MR STRICKLER Yes, sir

16 THE COURT Are the defendants ready for
17 sentencing? Bring the defendants All right,
18 Mr Meadors, excuse me As to -- we will continue
19 the same order as the numerical order of the
20 indictments As to Mr Willie Lloyd Alexander, does
21 the State have any --

22 MR MEADORS. Ms. Campbell is going to handle
23 Mr. Alexander.

24 MS CAMPBELL Your Honor, as far as his prior
25 record, as you're aware of the numerous arrests, but

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Jenny H Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 5th, 7th, 8th, and 9th days of January, 2004

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

May 7, 2004

Jenny H. Williams

Jenny H Williams, Court Reporter

1 the convictions I do believe were for disturbing
2 schools back in the 1990's He's also had a
3 conviction for simple possession of marijuana and
4 then another conviction which is pled out to a simple
5 possession of marijuana second from 2000 I believe

6 THE COURT Anything further from the State as
7 to Mr. Alexander?

8 MS. CAMPBELL As to his prior record, no, sir

9 THE COURT Anything else from the State?

10 MR MEADORS Judge, I can tell you that I don't
11 think -- I think the evidence showed and I think the
12 jury said I think he was an integral part in this,
13 ought to be punished as a principal He certainly
14 was there, kept trying to distance himself But we
15 would ask for a substantial sentence for Mr.
16 Alexander

17 THE COURT Mr Burr

18 MR. BURR. May it please the Court, Your Honor
19 As you've already heard, Mr Alexander has a very
20 minimal prior conviction rate, nothing more than the
21 simple possession charges and disturbing school He
22 has been married to Ms Veronica Jones for quite some
23 time now They have three small children He's
24 already served 17 months as of yesterday in a
25 pre-trial status I'm sorry 16 months as of

1 yesterday in pre-trial status There is just no
2 indication that Mr Alexander is a threat to the
3 community We would just beg for mercy, and please
4 temper justice with mercy in Mr Alexander's case
5 Your Honor, be as lenient as possible for Mr
6 Alexander

7 THE COURT All right It's my understanding,
8 is it not, Solicitor, that the maximum penalty in
9 each of these cases is a 20-year sentence? Is that
10 correct?

11 MR MEADORS. That's correct

12 THE COURT All right As to Mr Sears
13 Solicitor.

14 MR. MEADORS Oh, I'm sorry, sir I thought you
15 were going to -- Judge, as far as, you've heard his
16 record. He had three armed robberies which were pled
17 down to three strong armed robberies on the date
18 that's already been put in the record, I believe
19 November 30th, 2000. In addition to that, Your
20 Honor, I believe -- is that it?

21 MS CAMPBELL. Simple possession of marijuana.

22 MR. MEADORS. -- simple possession of marijuana
23 second conviction

24 Judge, I think he's a danger to the community
25 I think he's shown that. I think he's showed this.

1 They went into a business armed We'd ask for a
2 substantial sentence

3 THE COURT. All right Mr Strickler

4 MR STRICKLER Thank you, sir Of course
5 you've heard some background from Demetrio during the
6 course of the trial Be it five shots or eight shots
7 or four shots, he was seriously injured, and I don't
8 think it misstates the situation to say that he was
9 left for dead, and had not the police arrived and he
10 had exited the vehicle, he would have died in the
11 vehicle He was certainly bleeding to death at that
12 point in time.

13 I'm not saying that's punishment I am saying
14 that's hopefully a lesson learned. If you can't
15 learn a lesson from that, you can't learn anything.

16 I, too, would ask the Court to exercise what
17 mercy you can He's 21 years old. He was 20 at the
18 time of the incident As I've gone over with him
19 during the course of my representation, he
20 understands that the maximum penalty in this case is
21 20 years He understands that it is a non-parolable
22 offense, that whatever sentence Your Honor imposes
23 he'll have to serve 85 percent of that sentence prior
24 to being eligible to be discharged on community
25 supervision I've gone over that with him on a

1 number of occasions I'd just ask that you exercise
2 what mercy you can, sir

3 THE COURT Anything further from the State?

4 MR MEADORS Please, Your Honor I've talked
5 to both the victims in this case. I've gotten to
6 know them very well over the past year And I think,
7 I hope as I conveyed in my closing that they're good
8 people, solid, good people And I think a lot of
9 them, and I have become better by getting to know
10 them They don't want to say anything now. They
11 want to thank the jury for their verdict, as I do,
12 and just put it in Your Honor's hands. I think
13 that's all we have

14 MS CAMPBELL· That's all

15 THE COURT All right What's Mr Alexander's
16 age?

17 MR. ALEXANDER 27, sir

18 MR BURR. 27, Your Honor.

19 THE COURT Mr Sears is now 21?

20 MR. STRICKLER Yes, sir

21 (Pause)

22 THE COURT All right Mr. Sears, I have
23 considered the jury verdict in this case, and it
24 convinces me And I must accept the fact that the
25 State's case and the facts as alleged by the case, by

1 the State, are correct I find it to be a violent
2 act And those of you who know me know I'm not
3 much -- I don't have much tolerance for guns or
4 drugs.

5 Mr Sears, the sentence of the Court is you be
6 committed -- I'm sorry I beg your pardon Mr.
7 Alexander, the same is true for you, sir. The
8 sentence of the Court is you, Mr Alexander, be
9 committed to the State Department of Corrections for
10 a period of 14 years

11 Mr Sears, the sentence of the Court is you be
12 committed to the State Department of Corrections for
13 a period of 18 years Good luck to both of you

14 MR. MEADORS: Thank you, Your Honor.

15 MR STRICKLER Thank you, Your Honor

16 MR. BURR Thank you, Your Honor

17 THE COURT. Thank you Mr Watson, take the
18 jury, please The jury is excused. Thank you very
19 much Court is adjourned

20 (Whereupon, the proceedings are concluded)

21

22

23

24

25

STATE OF SOUTH CAROLINA	)	In The Court of Common Pleas
	)	
COUNTY OF RICHLAND	)	Fifth Judicial Circuit
	)	
Demetrio L. Sears #271284,	)	Case No. 2006 CP 40-01599
Applicant,	)	
	)	
	)	
	)	APPLICANT'S FIRST AMENDMENT
	)	TO ORIGINAL APPLICATION FOR
	)	POST-CONVICTION RELIEF
	)	
State of South Carolina	)	
Respondent	)	

PLEASE TAKE NOTICE that the Applicant above-named, Demetrio L. Sears #271284, herein amends his Original Application for Post Conviction Relief with this First Amendment to Post Conviction Relief, pursuant to South Carolina Rules of Civil Procedure Rule 71(c) SCRPC, and in accordance with S.C. Code Ann. §17-27-70 and §17-27-80, to allege and include the following:

Claims/Amendments

1. Counsel provided deficient performance in failing to advocate Applicant's defense and attempt to establish victim's version of events as impracticable and/or implausible.

Sterling Patterson alleged that two gunmen entered the shop prior to Applicant and that he had initially exchanged gunfire at the two individuals standing directly in front of him before directing his gunfire at the Applicant. According to the Patterson the first two individuals that he allegedly discharged his firearm at were less than ten (1) feet away from him at the time of the shooting. See Exhibit 22 "Crime Scene Diagram". Applicant contends that the failure of counsel to attack the notion or

challenge the plausibility that 1) Patterson fired multiple shots at two individuals supposedly less than 10 feet away from him and missed while 2) Applicant stood by idle with a loaded firearm and waited for Patterson to cease firing in the direction of the two individuals before raising his firearm at Patterson was unreasonable and that the outcome of the proceeding would have been different had counsel had done so. Failure of counsel to make these connections and illustrate to the jury the irrational version of events and to exploit these flaws in the prosecution's case demonstrated deficient performance constituting prejudicial ineffective assistance of counsel in that counsel failed to adequately advocate the Applicant's defense and Applicant contends that such error was not harmless.

2. Ineffective assistance of trial counsel in failing to visit the scene of the incident or instructing an investigator to do so.

During the course of the prosecution against the Applicant, trial counsel failed to visit the crime scene or instruct an investigator to do so and Applicant maintains that failure to do so was harmful and prejudicial to his defense.

An inspection or visit to the alleged crime scene by either counsel or an investigator employed by counsel would have provided counsel with a clear understanding of the deficiencies in Patterson's testimony and allowed counsel to attack the credibility of the victim's alleged version of events as a whole. First, had counsel visited the scene of the incident he would have been made aware that the partition in the shop in which the Applicant was supposedly standing behind when the shooting took place, could not have allowed the Applicant to be shot below the waist as he had been due to the height of the partition. See Exhibit 4 "Trauma Flow Sheet". Secondly, the distance between the individuals in the shop would have been realized as being too short to make a target (let alone two targets) as Patterson alleged took

plane and provided counsel with the information to damage Patterson's credibility on such. Thus, this failure of counsel was prejudicial to the defense of the Applicant and had counsel visited the crime scene or employed an investigator to do so then the outcome of the trial would have been different as counsel would have been able to better defend the Applicant on critical areas of the case.

Respectfully submitted,


Demetrio L. Searns

May 31, 2007

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	In The Court of Common Pleas
	)	
COUNTY OF RICHLAND	)	Fifth Judicial Circuit
	)	
Demetrio L. Sears,	)	Case No. 2006-CP 40-01599
Applicant,	)	
	)	(2)
	)	
v	)	APPLICANT'S SECOND AMENDMENT
	)	TO ORIGINAL APPLICATION FOR
	)	POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
Respondent.	)	

PLEASE TAKE NOTICE that the applicant above named, Demetrio L. Sears #271284, herein amends his Original Application for Post-Conviction Relief with this Second Amendment to Post-Conviction Relief, pursuant to South Carolina Rules of Civil Procedure, Rule 71(d), SCRCP, and in accordance with S.C. Code Ann. §17-27-70 and §17-27-80, to allege and include the following

ISSUE / CLAIM

1. Ineffective assistance of counsel in failing to realize and impeach with numerous inconsistent statements of the alleged victims and make note of favorable evidence.

STATEMENT OF THE CASE

Applicant was convicted of attempted armed robbery (2002-GS-40-10992) on January 9, 2004 by a trial by jury before the Honorable Judge G. Thomas Cooper in the Richland County Judicial Center. Applicant was tried along with a co-defendant, Mr. Willie Lloyd Alexander, who was represented by Mr. Wilson Burr. Applicant was represented by attorney Douglas Strickler and the state was represented by Deputy Solicitor John Meadors and Assistant Deputy Solicitor K. Luck Campbell. Applicant received a sentence of eighteen (18) years confinement in the South Carolina

Department of Corrections and a timely appeal was filed on applicant's behalf

On direct appeal, applicant was represented by Joseph L. Savitz, Esq., of the South Carolina Commission on Indigent Defense. This appeal was denied on February 24, 2006 in an unpublished opinion.

Applicant next filed the present application for post-conviction relief in March of 2006. This amendment now follows.

ARGUMENT

1. Trial counsel provided deficient performance amounting to ineffective assistance in failing to present and/or impeach alleged victims with numerous inconsistent statements.

For several reasons, Applicant alleges that he received ineffective assistance from his trial counsel, Douglas Strickler, in his failings to impeach the alleged victims and attack their credibility with the use of their prior inconsistent and contradictory statements.

Examples of instances in which clear and blatant variations from the alleged victims' prior statements that were made are, listed below as a - d, as follows:

a. Bullet In Parking Lot

This example lies in a projectile found outside the establishment that the applicant was alleged to have attempted to rob. Investigator Jerry A. Russell is a crime scene investigator with the RCSD. He was qualified as such on Trial Transcript Pg 134, Ln 4-14. He testified that a projectile was found outside the shop, in the parking lot, apparently shot into the gravel on Pg 149, Ln 20- Pg 150, Ln 1. A location of the projectile as found in relation to where Mr. Patterson claimed the shooting took place can be seen in Exhibit 22. As none of the alleged victims ever claimed that the discharge of firearms took place outside the shop from any firearm, the position of this projectile is contradictory to the alleged victims' version of events. This unexplained projectile was left unchallenged by Mr. Strickler throughout the trial.

David J. Collins says, in discussing the evidence that was submitted to him for examination, the following:

" In addition to the firearms and the ammunition and magazines that I received with them, I relieved four fired bullets or projectiles that were recovered from the scene and a total of nine fired 9 millimeter Luger caliber cartridge cases that were also recovered I believe from the scene " Trial Transcript Pg 404, Ln 24 - Page 405, Ln 4

" These bullets have a thinner copper jacket around the outside than many other bullets do, and, therefore, they are more susceptible to damage

What I was able to determine by looking at the characteristics of the rifling, that is, the number of the grooves in the barrel, the direction of the twist in the barrel, the direction of the twists in the barrel and the widths of those grooves, I was able to determine that they could have been fired by this firearm which is State's Exhibit 30. However, there were differences in the rifling characteristics between the fired evidence bullets and the test bullets that are fired by State's Exhibit 32. And so, therefore, they could have not have been fired by this firearm " Trial Transcript Pg 405, Ln 18 Pg 406, Ln 7

Andre Stokes, one of the alleged victims, testified on cross-examination by Mr Strickler at applicant's first trial in this matter to the following

Q At any point was Sterling outside shooting at any point?

A No, he wasn't.

Q Sterling was inside the entire time the shooting was happening?

A Yes

First Trial Transcript Page 127, Ln 3-8

The above excerpt demonstrates that the alleged testimony is that no shooting occurred outside of the establishment. The question then presented, and the focus of this example, is how did a projectile end up outside with no logical explanation as to where it had come from.

In talking about this bullet found outside, Investigator Jerry A. Russell testifies as follows

Q And before I sit down, we mentioned earlier and I want to get back to this projectile that we found right outside

A Yes, ma'am

Q And I show you State's Exhibit 71 and 72. Do you recognize those?

A Yes, ma'am

Q And in 71, is there a projectile shown on there?

A Yes, ma'am

Q And is this a close up of it?

A Right. The same projectile

Q The same thing. And that's the projectile that you actually collected from outside?

- A Right That's correct.
 Q And that was again right outside this front door on State's Exhibit 6?
 A Yes, ma'am

Trial Transcript Pg 186, Ln 6- 21

Patterson testifies that he did all of this shooting inside the shop and makes not note of shooting a firearm outside the establishment Trial Transcript Page 237 240 On the other hand, and in significant part, the applicant has repeatedly maintained that the exchange of gunfire took place outside of the place of business where this incident occurred Trial Transcript Page 677 681 The projectile thus serves the dual purpose of showing an inconsistency and/or an impossibility in the alleged story of the victims as well as serving as corroborating evidence to the version of events that the applicant testified to Counsel's failure to highlight this favorable evidence was prejudicial to the applicant and amounted to ineffective assistance

b. Going to Bank.

This example revolves around conflicting statements made by the alleged victims Andre Stokes and Sterling Patterson regarding whether or not they were with each other when the place opened, who opened the place, what happened prior to the incident occurring

Stokes testified on cross examination by Mr Wilson Burr as follows

- Q How did Mr Patterson get to work that day?
 A I - - I wasn't there when he - -
 Q Does he own a car?
 A Yes
 Q Was his car there that day?
 A No, I didn't see his car
 Q Had he been to the bank that morning?
 A I'm not sure I - I wasn't - - I didn't see him go to the bank, so I couldn't tell you
 Q Did you see him come back from the bank?
 A No

Trial Transcript Page 177, Ln 5-17

Stokes additional testified on cross by Mr Strickler to the following

- Q Okay And Sterling had left the store that morning for some period of

time?

A Yes - Well, he didn't leave me because I wasn't there. The time I got there, he was already back.

Q Okay. By the time you got there, He was already - when did you - - when did you get to work that morning?

A Around 8:50.

Q Around 8:50?

A Yes.

Q So during the time you were there, Sterling never left the store.

A Correct.

Q -- Right?

A Correct.

Q So that's why you said you didn't know if he left the store, you didn't know what vehicle he took to make that drive?

A Exactly.

Trial Transcript Page 191, Ln 6-19

Sterling Patterson testified on direct from Mr. Meadors as follows:

A We met at the store. I unlocked the doors, opened the door. I said "All right, you know, just take care of things. I'm running to the bank and I will be right back."

Q So you left Andre there while you went to Fort Jackson Federal Credit Union on Parklane to make a deposit?

A That's correct, and ---

Q And get checks?

A And to pick up some checks.

Trial Transcript 156, Ln 16-24

Sterling Patterson additionally testified on direct by Mr. Meadors:

Q Okay. What time did you get there?

A I think I got there a few minutes until 9:00 o'clock. Usually I try to get there a few minutes early. Let Andre in and still got enough time to get to the bank by 9:00 o'clock. That's usually what I do.

I got there, opened the doors, let him in, opened the garage door. We've got one in the front and one in the back. And usually we open the front glass door -- I mean, not the front glass door but the front door because we've got two doors. It's a regular steel door and then there's a glass door so you can still see inside the building --

Q Okay.

A --- Where they -- they enter in. Opened the doors, told him, hey. I'm going to the bank. I need to get a cashier's check for an order we got coming in through UPS this morning. Left, went to the bank, got a cashier's check, returned back to the store.

Trial Transcript Page 213, Ln 14 - Page 214, Ln 6

This indication of fabrication by the alleged victims further substantiates the position of the applicant in that the testimony of both Stokes and Patterson was no more than self serving fiction. As this example is present during both trials of the applicant, this inconsistency should have been, arguably, that much more apparent to trial counsel. In failing to impeach the alleged victims with their own testimony or making this evident to the jury during the closing arguments, counsel's performance fell below a reasonable expectation of professionalism and prejudiced applicant.

c. Conversation with Alleged Robbers

This example is dealing with the alleged conversation that Sterling Patterson had with the alleged attempt robbers prior to firing at them. Andre Stokes says Sterling Patterson came on an extensive conversation with the alleged perpetrators and Patterson attempts to conform his testimony to reflect the position of Andre Stokes and avoid, unsuccessfully, to be in conflict with his own testimony.

Patterson testified at a previous proceeding, under oath and in-camera, on cross-examination to Mr. Strickler that

Q Okay. You hear what is being said out there. You have a short period where you decide "What am I going to do?"

A That's correct.

Q And you make up your mind?

A That's right.

Q Okay. And you came out - - and I take it you came out and you decided that you weren't going to try to negotiate, you came out and just started firing, is that right?

A That's right.

First Trial Transcript Page 76 Ln 12-21

Patterson additionally testified on cross-examination at the same previous proceeding to Mr. Strickler that

Q There is a wall between you and whatever is going on out there. However many seconds you are back there, you know, getting the safety off, and all that, you are not looking at them, you step out, there was a couple of them, and the other fellow with the ball cap with Andre on the ground, right?

A That's correct.

Q Okay. And you pretty much start firing at them then?

A Yeah, that's correct

First Trial Transcript Page 217, Ln 12-20

Stokes testified to the following on redirect from Ms. Campbell

Q And he also asked you something about what the point when you were on the ground, I believe, and the guy is pulling you to the back and he's got the gun to your head. And you mentioned before that Sterling starts -- you could hear Sterling saying something, but you couldn't hear what he was saying. Was he having a conversation with these robbers? Is that what was going on?

A I think so

Q He was having a conversation?

A Yes

Q Was he telling them to get away from you?

A I -- I -- I couldn't hear what he was saying

Q There wasn't a back and forth conversation going on though, was there?

A I heard a bunch -- a bunch of talking though

Q A bunch of talking?

A Yes

Q And what -- what kind of voices were being used? Was it like a, hey, how are you conversation?

A No

Q Tell the jury what you mean, and I know it's hard to articulate. What was happening in there?

A They were arguing

Trial Transcript Page 196 Ln 18 Page 197, Ln 7

Then Patterson testified further on direct by Mr. Meadors at second trial

Q Did you have any conversation with these folks?

A Honestly, like I say, things going so fast, things rushing through my mind. When I came around the corner, I may have said something. I mean, it wasn't like, hey, man, how are you all doing? I think it was more like, why are you all trying to rob me? And I started firing, you know. I don't know exact words that it was, but it wasn't like, you know, how are you all doing today? It was more like, you know, why are you all trying to rob me or what's going on or something like that. But it was like maybe five words at the most in -- in that conversation.

I don't think they said anything back because like I say, as soon as they -- I'm coming around the corner. Before I even came around the corner, I had my gun in front of me and I come around the corner like this (indicating). And

it was like, you know, why are you all trying to rob me, and started shooting
Trial Transcript (2) Page 248, Ln 5-22

The conflicting testimony of both Stokes and Patterson make clear that their testimony is at odds with each other and at the very least harbors suspect. As both of their testimonies played a key role in the conviction of the applicant, prejudice occurred in counsel's failure to convey and make clear this instance of contradiction, in conjunction with the other examples listed, to the jury

d. Skin Complexion & Gloves

Counsel's pattern of failing to illustrate instances of conflicting testimony is further displayed in the testimony of Stokes regarding whether or not the person he alleged grabbed him and threw him to the ground had on gloves or not

Stokes stated on cross-examination in a previous proceeding to Mr Strickler that:

Q Okay You didn't know whether he was wearing any gloves? That is UNK, unknown, right?

A Right

First Trial Transcript Page 130, Ln 21-23

Stokes later testified on direct to Ms Campbell that

Q And describe the man that you first saw

A Well he was - - he had a mask over his face, like a grayish mask, and he had a baby blue baseball cap - - -

Q Uh huh

A - - And I could see like where his eye area at It was like he was light-skinned And when he had grabbed me, I could see the complexion on his hands that he was light-skinned too

Q Okay

A And - - and, yeah, that's - that's the only description I can give for him

Trial Transcript Page 146, Ln 19- Page 147 Ln 1

This example is pertinent two-fold First, it makes evident trial counsel's inattentiveness in grasping the importance of the inconsistent and uncorrelated

testimony being given. Second, and arguably of greater significance, the very question of whether or not gloves were even alleged to be worn in the story of the victims was in itself a question of significant value.

A firearm was found in the parking lot of the establishment that is the basis of this incident and was allegedly dropped by the applicant after he had been shot several times by Patterson. However, no fingerprints were found on the firearm and Investigator Jerry A. Russell, being questioned in regards to the lack of fingerprints, stated the following to Ms. Campbell on direct examination:

Q And on this gun which is State's exhibit 30, were you able to get any fingerprint evidence?

A No, ma'am.

Q Not any?

A No, ma'am.

Q Why is that?

A There just weren't any fingerprints left on the weapon. Or, I mean they could have had on a pair of gloves. There is numerous reasons I didn't locate anything identifiable.

Trial Transcript Page 202, Ln 4-13

Investigator Russell additionally testified to the following on cross examination by Mr. Burr to the following:

Q I'm not asking identifiable print. Was the gun wiped clean?

A No. I mean, I don't know. I don't know if it was wiped clean or not.

Q You found nothing to indicate that anybody had handled it?

A Right.

Trial Transcript Page 215 Ln 4-10

The failing of counsel to bring out both the fact that Stokes had previously stated that he did not know if the man that grabbed him was wearing gloves or not and then stating that he had seen the man's hands in addition to this making the fact that no fingerprints found on the firearm that was suppose to be in the possession of the applicant less likely and more improbable, amounted to ineffectiveness of counsel prejudicial and harmful to the applicant.

e. Van Pursuit.

This example of trial counsel's ineffectiveness stems from Sterling Patterson's claim of seeing the van leave the scene of the incident directly after the incident was alleged to have occurred

Patterson stated, under oath at a previous proceeding to Mr Meadors that

A As I'm running out, Andre kind of - - he is - he is a little bit behind me I guess he, you know, kind of cautious about running right out As I run out, I can see through the side window the van pulling out of the parking lot

First Trial Transcript Page 168, Ln 22 - Page 169 Ln 3

Patterson then state in a subsequent proceeding that

Q Did you look around your business? How did you assure yourself they were, in fact, gone?

A Well, once we came out, I looked through the side window, the van was gone, went to the side door, the van was gone, got in the car and left

Trial Transcript Page 266, Ln 12 16

This example, compounded with the others listed above, show clear and unmistakable deficient performance on the part of trial counsel that was prejudicial to the applicant in that the credibility of the witnesses were basically the whole of the prosecution's evidence against the applicant

f. Facial Description

Patterson testified that he saw the face of the applicant while he was shooting at the applicant and that this enabled him to give the authorities an adequate description Trial Transcript Page 224, Ln 5-12 At applicant's first trial Patterson testified that he could not see applicant's face when applicant stepped out of the vehicle he was in because Patterson claimed he already had a mask covering his face **Exhibit 5 & 6** This, however is in contradiction to a statement given by Patterson directly after the incident occurred to Investigator Scott McDonald of the Richland County Sheriff

Department. In an investigative report by Investigator McDonald, **Exhibit 7 & 9**, Patterson states that he is able to make a positive identification of the applicant because he was able to see his face after applicant had stepped out of the vehicle and allegedly put on a mask. Patterson said nothing in the investigative report about being able to identify applicant while firing his weapon at him in the investigative report as he later claimed at both of applicants trials.

Applicant contends that the failure of counsel to identify this and use it to attack the credibility of Patterson allowed the trial judge to conclude that the identification was reliable as well as also giving credibility to Patterson's version of events, a version applicant has maintained is fabricated. Trial Transcript Page 684-685, Ln 24-16

In Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984) the United States Supreme Court set out the parameters used to determine whether counsel was ineffective. Examining the requirements of the Sixth Amendment, the Court noted that "[a]n accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Id.* at 685. "The benchmark for judging any claim of ineffectiveness must be whether 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." *Id.* In order to obtain relief under the standards set forth in Strickland, an applicant must show both: 1) that counsel failed to render reasonable effective assistance under prevailing professional norms, and 2) that he was prejudiced by his counsel's ineffective performance. Strickland, Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1994), see also Simpson v. Moore, 627 S.E.2d 701, 367 S.C. 587. (To establish that counsel was ineffective, a defendant must show that (1) trial counsel's ineffective representation fell below a reasonable expectation of

reasonableness and (2) but for counsel's errors, there is a reasonable probability that the outcome of the trial would have been different, "reasonable probability" is a probability sufficient to undermine confidence in the outcome of the trial)

The credibility of a witness may be attacked by any party, including the party calling the witness. South Carolina Rules of Evidence Rule 607, SCRE. The prior inconsistent statements of the alleged victims directly controverted the testimonies subsequently given and go directly to the critical defense position of fabrication. See State v. Sierra, 337 S.C. 368, 523 S.E.2d 187 (S.C. 1999) (Considerable latitude is allowed in the cross-examination of a witness, always within the control and direction of the presiding judge, to test the accuracy of the witness's memory, his bias, prejudice, interest, or credibility, in doing so, the witness may be asked questions in reference to irrelevant matter, or in reference to prior statements contradictory of his testimony, or in reference to statements as to relevant matter not contradictory of his testimony.) In State v. Owenby, 267 S.C. 666, 230 S.E.2d 898, the South Carolina Supreme Court found that it was error for the trial judge to refuse to allow defense counsel to impeach a prosecution witness by questioning him relative to testimony in a previous trial because transcript of previous testimony was not available for use. In the present case, whether or not other means of impeachment were available, counsel had in his possession a complete transcript of applicant's first trial and was in error in not using them.

To the extent that the prior inconsistent statements of the alleged victims could be used to demonstrate that the testimony of the alleged victims was a product of fabrication and be used to impeach said witnesses, considered together with the other evidence of varying versions of the incident in question, such deficient performance on the part of trial counsel in failing to impeach and connect the testimony given can not be said to have been part of sound trial strategy. Such impeachment had the potential to cast serious doubt on the reliability of the testimony of the prosecution's key witnesses and, as such, was an error that deprived applicant of a fair trial as guaranteed by the Sixth Amendment. See Von Dohlen v. State, 360 S.C. 598, 602 S.E.2d 738 (S.C. 2004) (A defendant has the right to effective assistance of counsel under the Sixth Amendment), also Hall v. Catoe, 360 S.C. 353, 601 S.E.2d 335 (S.C. 2004) (A criminal defendant is constitutionally entitled to effective representation.)

CONCLUSION

For the reasons above stated, applicant prays this court grant him relief in the form of vacation of his conviction and a remand for a new trial. Applicant asserts additionally that in light of counsel's failure to raise, argue, and make a proper record of this meritorious matter for appellate review, such unprofessional error and deficient performance constitutes "actual" and "constructive" ineffective assistance at trial. Failure to raise this matter with specificity acted to bar it being raised on direct appeal and thus rendered counsel constitutionally ineffective. Strickland, Id., United States v. Cronk, 466 U.S. 648, 104 S.Ct. 2039 (1988).

Respectfully submitted,

A handwritten signature in black ink, appearing to be "D. J. [unclear]", written over a horizontal line.

May 31, 2007

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	In The Court of Common Pleas
	)	
COUNTY OF RICHLAND	)	Fifth Judicial Circuit
	)	
Demetrio L. Sears #271284,	)	Case No. 2006-CP 40 01599
Applicant,	)	
	)	
	)	
v	)	③
	)	APPLICANT'S THIRD AMENDMENT
	)	TO ORIGINAL APPLICATION FOR
	)	POST-CONVICTION RELIEF
	)	
State of South Carolina,	)	
Respondent	)	

PLEASE TAKE NOTICE that the applicant above-named, Demetrio L. Sears #271284, herein amends his Original Application for Post-Conviction Relief with this Third Amendment to Post-Conviction Relief, pursuant to South Carolina Rules of Civil Procedure, Rule 71(d), SCRPC, and in accordance with S.C. Code Ann. §17-27-70 and §17-27-80, to allege and include the following

Claims/Amendments

1. Ineffective assistance of trial counsel in failing to obtain an expert to counter Dr. Bynoe's narrow and conclusively stated opinions regarding the lack of blood evidence at the scene of the incident and failing to render adequate cross-examination.
2. Ineffective assistance of trial counsel in failing to review applicant's medical records prior to trial and misstating facts as a result of
3. Applicant amends Issue F to additionally include the allegation that counsel failed to pursue favorable line of questioning and amends Issue Q to include the allegation that counsel failed to properly cross-examine Dr. Bynoe.

Issue One

1. Ineffective assistance of trial counsel in failing to obtain an expert to counter Dr. Bynoe's narrow and conclusively stated opinions regarding the lack of blood evidence at the scene of the incident and failing to render adequate cross-examination.

Dr. Raymond Bynoe, a trauma surgeon employed at the Palmetto Richland Memorial Hospital testified on behalf of the State as to the condition of the applicant

after the applicant was submitted to his care Trial Transcript Page 273, Ln 3 Page 310, Ln 1 Dr Bynoe made several statements during his testimony that strongly indicated that a person who has suffered the injuries that the applicant did will not bleed externally initially and that such an occurrence is common in gunshot wound victims Applicant contends that such an assessment was highly prejudicial and that trial counsel should have employed an expert in the field of medical trauma or blood evidence to counter the testimony of Dr Bynoe, or adequately cross examine Dr Bynoe regarding this, as such testimony was clearly subjective

On direct-examination by Solicitor Campbell, Dr Bynoe testified in relevant part, as follows

- Q And even with the nature of these injuries may not have left any blood evidence there at the scene?
- A Correct
- Q As time passed however you mentioned that there wouldn't have been any initial bleeding or most of the bleeding was internal As time passed, say if he sat in a van for a period of time, would there have been more internal bleeding as time passed?
- A Yes ma'am

Trial Transcript Page 285, Ln 12-20

On cross-examination by Mr Burr Dr Bynoe testified as follows

- Q Wouldn't it be extremely unusual to have a gunshot that penetrated your hand and for the individual to be inside the building and cross 60 feet across the parking lot and not leave a drop of blood?
- A Leave a drop of blood, yes sir
- Q That would be unusual, wouldn't it? An individual has been shot twice in the chest, once in the lung and once in the abdomen Isn't it a little difficult to believe that they would turn and sprint 60 feet across the parking lot?
- A I would say we see a lot more unusual things than that in the course of the 15 years that I've been in the trauma center
- Q But when you see those things, that is the exception to the rule, is it not?
- A Not necessarily Not necessarily the exception

Trial Transcript Page 286 Ln 19-Page 287 Ln 10

On redirect by Solicitor Campbell, Dr. Bynoe testified as follows:

Q There were no major vascular arteries or organs hit?

A For external bleeding.

Q For external bleeding?

A For external bleeding. There were no major vascular structures that are easily accessible to the outside of the body.

Q So initially, when the bullets penetrated and everything, there would not have been any significant external bleeding?

A Correct. Just from the local bleeding point itself.

Trial Transcript Page 308 Ln 16-25

In general, Dr. Bynoe's testimony basically conveyed to the jury that it would not have been uncommon for the applicant to receive the multiple injuries as he did and simply not bleed externally. This was a position that, although clearly subjective and speculative, was not adequately challenged on cross-examination. As the lack of blood evidence played a key factor in the defense of the applicant, and given the fact that Dr. Bynoe was clearly determined to hold to such an irrational opinion, the failing of trial counsel to employ an expert in the field of blood evidence fell below prevailing standards of professionalism and was prejudicial to the applicant.

In Fraiser v. State, 306 S.C. 158, 410 S.E.2d 572 (1991), the South Carolina Supreme Court dealt with the issue of whether trial counsel had been ineffective for failing to procure an expert witness for the defense. Since trial counsel had "vigorously cross-examined the state's DNA expert and attacked the accuracy of the evidence", Id. at 573, the Court held that counsel had not been ineffective. In the present case, trial counsel did not vigorously cross-examine Dr. Bynoe as he failed to even question the fact that the applicant was alleged to have fallen to the ground, where such an occurrence would have been more likely to leave blood evidence. Additionally, the fact that no blood evidence was present goes directly to the heart of the applicant's defense and, additionally, Dr. Bynoe's opinions were almost conclusively stated in his testimony to render the need of an expert witness to counter such statements almost

mandatory. The defense relied heavily on the lack of blood evidence at the scene of the incident and to allow Dr. Bynoe to submit to the jury that such an occurrence was "common", when the basis for his opinion and evaluation of the situation could so easily be countered with alternative theories and viable defense explanations that were favorable to the applicant, was extremely prejudicial to the applicant due to the fact that the topic Dr. Bynoe was discussing went directly to the heart of the applicant's case.

2. Ineffective assistance of trial counsel in failing to review applicant's medical records prior to trial and misstating facts as a result of

From the beginning of applicant's trial, trial counsel had asserted that applicant had maintained eight gunshot wounds from the victim in this case as a result of the incident that is was the basis of the charges against the applicant. Trial Transcript Page 58, Ln 15 and 17-20. This proposition by counsel was based on a misinterpretation by counsel when the applicant stated to him prior to his first trial, in a brief exchange in which counsel was attempting to get the applicant to plead guilty less than an hour before applicant's first trial, that the lack of blood at the scene of the incident was improbable due to the fact that he had been bleeding from eight different bullet holes in his body. Counsel inferred from applicant's statement that applicant had been shot by the alleged victim in this case a total of eight times, without regard or consideration that applicant had actually suffered a lesser amount of gunshots due to the fact that some of the injuries were corresponding entry and exit wounds. Counsel never reviewed applicant's medical records to confirm this position and never discussed this aspect of applicant's case with the applicant prior to stating as a matter of fact to the jury that applicant had actually suffered a total of eight gunshot wounds.

Failure of counsel to consult with the applicant for clarification or review

applicant's medical record prior to making this assertion to the court proved to be a devastating blow to the defense of the applicant. Dr. Bynoe testified to the extent that applicant had suffered three to four gunshot wounds that he dealt with himself, Trial Transcript Page 277, Ln 2-9, and that he had also suffered wounds to the extremities (left hand) that he did not operate on and so could not comment on the exact nature of those wounds. Trial Transcript Page 276, Ln 18-25. This testimony literally shattered a significant portion of any credibility that the defense had accumulated with the jury in that it made defense counsel look as if he had been lying to the jury from the very beginning of trial in an attempt to further expound on the lack of blood evidence at the scene of the incident. Due to the fact that the defense consistently put the defense of the applicant that trial counsel consistently focused on in advocating applicant's defense failure of counsel to ensure that the facts that he relayed to the jury were in fact true and to review applicant's medical records was extremely prejudicial to the applicant. Had counsel conferred with the applicant prior to trial or reviewed his medical records in order to learn the nature and extent of applicant's injuries than this assertion by counsel could have been avoided and the outcome of the proceeding would have had a substantial likelihood of being different.

3. Applicant amends (a) Issue F to additionally include the allegation that counsel failed to pursue favorable line of questioning and amends (b) Issue Q to include the allegation that counsel failed to properly cross-examine Dr. Bynoe.

a. Issue F of applicant's original application for post conviction relief states as follows

Trial Counsel provided ineffective assistance in failing to present favorable existing evidence (Shoe Report)

Applicant additionally amends this issue to state in full the following

Trial counsel provided ineffective assistance in failing to present favorable existing evidence and to pursue favorable line of questioning (Shoe Report)

b_ Issue Q of applicant's original application for post conviction relief states as follows

Ineffective assistance of counsel in failing to present favorable existing evidence (Blood Transfusion Reports)

Applicant additionally amends this issue to state in full the following

Ineffective assistance of counsel in failing to present favorable existing evidence and failing to adequately cross examine Dr. Bynoe regarding this evidence (Blood Transfusion Reports)

CONCLUSION

For the reasons above stated, applicant prays this court grant him relief in the form of vacation of his conviction and a remand for a new trial. Applicant asserts additionally that in light of counsel's failure to raise, argue, and make a proper record of this meritorious matter for appellate review, such unprofessional error and deficient performance constitutes "actual" and "constructive" ineffective assistance at trial. Failure to raise this matter with specificity acted to bar it being raised on direct appeal and thus rendered counsel constitutionally ineffective. Strickland, Id., United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1988).

Respectfully submitted,


Demetrio L. Sears

May 31, 2007

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	In The Court of Common Pleas
	)	
COUNTY OF RICHLAND	)	Fifth Judicial Circuit
	)	
Demetrio L. Sears #271284,	)	Case No. 2006-CP-40 01599
Applicant,	)	
	)	
	)	
	)	4a
	)	APPLICANT'S FOURTH AMENDMENT
	)	TO ORIGINAL APPLICATION FOR
	)	POST-CONVICTION RELIEF
	)	
	)	
State of South Carolina	)	
Respondent.	)	
_____	)	

PLEASE TAKE NOTICE that the applicant above-named, Demetrio L. Sears #271284, herein amends his Original Application for Post Conviction Relief with this Fourth Amendment to Post Conviction Relief, pursuant to South Carolina Rules of Civil Procedure, Rule 71(d), SCRCP, and in accordance with S.C. Code Ann. §17-27-70 and §17-27-80, to allege and include the following

Amendments

1. Applicant amends Issue G to additionally allege failure of counsel to adequately cross-examine Dr. Bynoe regarding his wounds and Applicant amends Issue K to additionally allege ineffectiveness of counsel in failing to challenge Patterson's version of events in regards to the manner in which he shot applicant.

Issue G of applicant's original application for post-conviction relief reads as follows:

Ineffective assistance of counsel in failing to obtain expert to examine trajectory of projectiles fired and wounds suffered by applicant as a result of

Applicant amends Issue G to read, in full, as follows:

Ineffective assistance of counsel in failing to obtain expert to examine trajectory of projectiles fired and wounds suffered by applicant as a result of and in failing to adequately cross-examine Dr. Bynoe regarding these wounds.

Furthermore, Issue K of applicant's original application for post-conviction relief

reads as follows

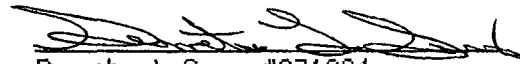
Trial counsel provided ineffective assistance in failing to obtain crime scene expert and/or properly examine state's crime scene expert

Applicant amends Issue K to read, in full, as follows

Trial counsel provided ineffective assistance in failing to obtain crime scene expert and/or properly examine state's crime scene expert and in failing to challenge Patterson's version of events in regards to the manner in which he shot applicant

Applicant respectfully submits this Fourth Amendment to his Original Application for Post-Conviction Relief

Respectfully submitted,


Demetrio L. Sears #271284

May 31, 2007

Columbia, South Carolina

4B

STATE OF SOUTH CAROLINA	)	In The Court of Common Pleas
	)	
COUNTY OF RICHLAND	)	Fifth Judicial Circuit
	)	
	)	Case No 2006-CP-40-01599
	)	
Demetrio L. Sears #271284,	)	
Applicant	)	APPLICANT'S FOURTH AMENDMENT
	)	TO ORIGINAL APPLICATION FOR
	)	POST-CONVICTION RELIEF
vs	)	
	)	
	)	
State of South Carolina	)	
Respondent	)	
_____	)	

PLEASE TAKE NOTICE that the Applicant above-named Demetrio L. Sears herein amends his Original Application for Post-Conviction Relief, pursuant to South Carolina Rules of Civil Procedure, Rule 71(d), SCRCP, and in accordance with S C Code Ann §17-27-70 and §17-27-80, to include the following

1) Applicant amends and supplements Applicant's Second Amendment to his Original Application to Post-Conviction Relief to additionally include subsection g as follows.

g Kassim Hosendove Identification & Inv McDonald's Credibility

Directly after the incident occurred, both Mr. Patterson and Mr. Stokes were questioned by the investigating officers in regards to the identification of possible accomplices of the Applicant. Mr. Patterson stated, after identifying Kassim Hosendove in a photo line-up, that Applicant and Hosendove were at the incident location the day before the incident in an attempt to case the location. Mr. Patterson stated that Mr. Hosendove and Applicant came to the incident location in a white pick-up truck and asked Mr. Patterson several questions regarding equipment (Exhibit 42). However, the

police later confirmed that Kassim Hosendove could not have been present as he had an airtight alibi. As such, Mr. Patterson's statements and identification were proven false.

Applicant contends that this fabrication on the part of Mr. Patterson goes directly to the defensive position that Patterson's account of the events are a fabrication and failure of trial counsel to recognize and utilize this prejudiced the Applicant. Additionally, trial counsel should have pointed out that suggestive tactics by the investigating officers were employed as the investigating officer presented the photo line-up to Patterson and had knowledge that Hosendove was alleged to be a known accomplice of the Applicant. This suggests that the investigating officer lead Patterson and guided him into picking out Hosendove. Such tactics are prejudicial to the Applicant as unconstitutional police maneuvers would render his trial unfair. Had trial counsel pointed out the above, the result of the proceeding would have been different.

2) Additional Exhibits Included.

- a Exhibit 36 (Page 138 of First Trial Transcript)
- a Exhibit 37 (Page 169 of First Trial Transcript)
- a Exhibit 38 (Page 76 of First Trial Transcript)
- a Exhibit 39 (Page 217 of First Trial Transcript)
- a Exhibit 40 (Page 131 of First Trial Transcript)
- a Exhibit 41 (Page 127 of First Trial Transcript)
- a Exhibit 42 (Page 4 of Investigative Report of Inv. McDonald)
- a Exhibit 43 (Newspaper article regarding incident)
- a Exhibit 44 (RCSD Consent to Search Form where Blue Shoes taken)

Respectfully submitted,


Demetrio L. Sears

November 21 2007

STERLING PATTERSON--DIRECT BY MR MEADORS

168

1 fired at him I fired at him He kind of staggered back
2 And that is when I assumed that he was hit, and I just
3 kept firing I mean, he has got a gun, you know, I'm
4 shooting at him, so I'm like, you know, panic

5 And in the midst of -- When I'm shooting at him, his
6 mask falls, and, you know, that helped me in the
7 description, you know, and helping the police when they
8 came asking me who, you know, to describe the person that
9 I saw His mask fell He kind of fell back through the
10 door By then I was out of bullets I couldn't, you
11 know, I couldn't shoot no more, and I turned around and
12 ran back into the office because I didn't know, you know,
13 now I'm out of bullets, if they are like, "All right,
14 let's go back in," or were they going to leave

15 I'm like panic I'm like, "Okay, I got to get
16 another clip out the back, hurry up and reload just in
17 case they come back in," you know, so we are not just
18 like, you know, helpless

19 At this time I can hear the van doors close and I can
20 hear them skid off So I tell Andre, "Come on, come on,
21 come on, let's go, we need to follow them "

22 As I'm running out, Andre kind of -- He is -- He is a
23 little bit behind me I guess he, you know, kind of
24 cautious about running right out As I run out, I can see
25 through the side window the van pulling out of the

EXHIBIT

36

1 driveway where actually the driveway leads onto another
2 road and it is only like a 30-foot section right there
3 They pull out and they turn right on Percival So we jump
4 into the car I was driving, which was my friend's car, and
5 by the time we got in the car a couple of cars that was
6 coming down the street had already got in between us and
7 the van, you know, they are racing down the street and a
8 couple of cars -- The speed limit right in that area is
9 55, so the other cars coming down, you know, they come up
10 behind the van

11 We crank up, we back up, we get on the road and we go
12 behind them It is like a little hill, it is not a big
13 hill, but it is like a little hill, and I'm assuming, I
14 seen some cars turning on Alpine and I seen some go
15 straight, so I'm assuming they turned on Alpine, you know,
16 the first street to make a turn on, so we turn on Alpine
17 We got down to about where the overpass of I-20 is We
18 didn't see him You could see, you know, a little bit
19 further down Alpine, we didn't see nothing, so we
20 turned -- I turned around and I tell Andre, "Call 911 "

21 I raced back up Alpine, make a right on Percival
22 going towards I-77 to see if we see them down there We
23 didn't see them there We turned around at the Shell
24 station and headed back to the store, and at this time he
25 is on the phone with 911

EXHIBIT

37

1 Q ---just trying to tell Andre You are not having
2 much luck with that, so you head to the back, and not
3 watching when you are heading to the back, and as you turn
4 in the office, you see the first one coming into your
5 store, right?

6 A That's correct

7 Q I'm just trying to get the sequence of events So
8 you catch sight of the first one as he comes into the
9 store, and then you are getting your gun I take it,
10 right?

11 A That's correct

12 Q Okay You hear what is being said out there You
13 have a short period where you decide, "What am I going to
14 do?"

15 A That's correct

16 Q And you make up your mind?

17 A That's right

18 Q Okay And you came out -- And I take it you came out
19 and you decided you weren't going to try to negotiate, you
20 came out and just started firing, is that right?

21 A That's correct

22 Q Okay And a couple of them headed back the way they
23 had come in and the other one went out, tried to go out,
24 the front door, is that right?

25 A That's correct

EXHIBIT

38

1 any more, you are trying to give the word to Andre and
2 heading to your office to get the gun, right?

3 A I mean, I didn't stop to look back, but as I turned
4 into the office I can see over my shoulder the guy coming
5 into the door

6 Q Okay So you got a glimpse of the first of them
7 coming through the door as you are going into your office?

8 A That's correct

9 Q You get your weapon in the office, you are obviously
10 not looking at them at that point in time, right?

11 A That's correct, behind the wall

12 Q There is a wall in between you and whatever is going
13 on out there How ever many seconds you are back there,
14 you know, getting the safety off, and all that, you are
15 not looking at them, you step out, there was a couple of
16 them, and the other fellow with the ball cap with Andre on
17 the ground, is that right?

18 A That's correct

19 Q Okay And you pretty much start firing at them then?

20 A Yeah, that's correct

21 Q And you fired -- just emptied the clip, right?

22 A That's correct

23 Q That thing will fire as fast as you pull the trigger,
24 right?

25 A Pretty much

EXHIBIT

39

ANDRE STOKES--CROSS BY MR STRICKLER

131

1 Q So what is written in the space for mask from you?

2 A It says---

3 Q White-slash-towel?

4 A Yes

5 Q Okay And then right after that there is a space for
6 information regarding what kind of cap or hat the person
7 was wearing, and sure enough there is a baby blue baseball
8 cap described, right?

9 A Right

10 Q Now, this was done shortly after the incident,
11 correct?

12 A Right

13 Q Be it minutes or an hour after the incident You
14 would agree with me, then, that apparently you told the
15 officer that the person had on a gray T-shirt?

16 A (Nods affirmatively)

17 Q And blue jeans?

18 A (Nods affirmatively)

19 Q And at that point in time you told them white and
20 blue shoes, right?

21 A Right

22 Q And you were in a position to see the shoes because
23 you are down on the floor by the person's feet, right?

24 A Right

25 Q Okay And that as far as a mask goes, it was white

EXHIBIT

40

1 shooting stopped until the police got there, right?

2 A Right

3 Q At any point was Sterling outside shooting at any
4 point?

5 A No, he wasn't

6 Q Sterling was inside the entire time the shooting was
7 happening?

8 A Yes

9 Q That's all I have Please answer any questions the
10 defense may have

11 MR STRICKLER May it please the Court, sir?

12 THE COURT Okay

13 CROSS-EXAMINATION

14 BY MR STRICKLER

15 Q Good morning, Mr Stokes

16 A Hey

17 Q Now, you talked with Ms Campbell about these
18 descriptions you gave When was it that you gave those
19 descriptions?

20 A I couldn't remember

21 Q I'm sorry?

22 A I couldn't remember

23 Q Well, I'm not asking for a time Was it that same
24 day of the incident?

25 A To Ms Campbell?

EXHIBIT

41

Richland County Sheriff's Department
Criminal Investigative Division
Investigative Report

Veronica Jones on his cell phone to come and pick him up Jones met him around Kilbourne Rd near Barkoot Apts And picked him up

Lt Smith took a statement from Veronica Jones in reference to this incident Jones states she had received a call from Alexander telling her to come pick him up and that Demetrio had been shot and was dying Jones picked up Alexander on Kilbourne Rd. near Barkoot Apts

Based on his confession to being at the scene, knowing the robbery was going to take place and then fleeing from the scene with the other two suspects, I/O charged Alexander with Att Armed Robbery and had Inv Martin transport him to RCDC Alexander attempted to show Martin where he picked up the third suspect, but Alexander wasn't able to locate this area

100902/ 1400

I/O checked with Dr Newcombe at Richland Memorial who was the attending doctor on Sears Newcombe stated that Sears was critical but stable at this time Newcombe indicated that he was in need of additional surgery on 101002 to repair his intestines and bowels Deputies were assigned to guard Sears I/O also spoke with Nurse Laura Hawsey asking to be notified if Sears recovered enough to speak with officers ←

I/O took the warrant on Sears to Warrant Division to enter in the computer and to serve on Sears if he recovers from his injuries

I/O received a call from Stacey Barckovich and Kelly Gailes from Probation and Parole who have Sears as a client. Gailes asked for a copy of the warrant so he could revoke Sears's probation Gailes states that in terms of a third suspect, that a likely candidate might be Kassim Hosendove B/M, ←
DOB 040780 Kassim is a close friend who has committed crimes with Sears before I/O faxed a copy of the warrant to Gailes to assist him.

101102

I/O notified by Deputy Chief Wilson that due to Sears's condition (Critical, unconscious) that the Sheriff wanted to pull the deputy guarding Sears at this time.

101402

I/O spoke with Nurse Erica Benson who stated that Sears was still Critical, but was conscious Sears does not respond to voices though at this time

I/O prepared a photo line up containing Kassim Hosendove This line up was shown to Sterling Patterson and Andre Stokes at 3101 Percival Rd Stokes was unable to identify Hosendove as one of the subjects involved with the attempted robbery Patterson was able to positively identify ←
Hosendove after studying the line up carefully Patterson states he believes that Sears and Hosendove had come to the incident location the day before the attempted robbery in a white pick up truck. Patterson states they came in the business and asked some questions about equipment and were looking around, possibly casing the location for the robbery I/O completed a photo line up form with Patterson.

ROBBERY FOILED

I kind of hate that I shot the guy I just wanted to chase them out "

— Sterling Patterson, store owner

SHOOTING

FROM PAGE A1

pistol to Stokes' head and forced him to the ground, Patterson said. The would-be robber told Stokes, "If you move I'll kill you, Patterson said.

The slighly built Patterson said he did not hesitate. He dashed to the back office for his gun and returned to confront the robbers.

"They had their guns drawn and pointed at me. I had my gun pointed at them.

They were about 15 feet away. "I don't know if I shot first or they shot first. All I know is everybody started shooting.

I was angry. That's why I started shooting.

"I was afraid for my life." When the gunman in the UNC cap straightened and started firing, Patterson said he "put the red light (laser aim) on him. That's why I know I hit him in the chest.

The gunman was blown through the storm door. A gray T-shirt surrounded by glass shards, lay on the ground after the shooting, but there was no blood, Patterson said.

After Patterson emptied the clip, he went to the back office to reload.

By the time he returned, the three men had scrambled into the minivan and were driving south on Perceval toward Alpine Road.

Patterson and Stokes jumped into a friend's Honda Accord to chase them. Stokes called 911 from the car.

"We just got robbed, he shouted into Patterson's cell phone.

But they lost the van in traffic and headed west on I-20.

The van took another route. Shortly after deputies were called, the minivan the suspects had been driving was seen along the side of I-77 between Jackson Boulevard and Fort Jackson, deputies said.

Deputies noticed movement in the minivan and ordered the person out. At first the man didn't move. Then he fell out of the rear passenger door.

He was rushed by ambulance to Palmetto Health Richland hospital.

Investigators issued an armed robbery warrant for the injured man, Demetrio Seers, 20, of 2523 Pleasant Ridge Rd., who remained hospitalized in critical condition, Pellacci said.

Figuring the two other men had jumped over the wall separating Jackson Boulevard from I-77, deputies started searching the area about 10:30 a.m.

They checked neighborhoods around Shady Lane, Kibourne Road and Jackson Boulevard with a helicopter and K-9 unit. They went door to door warning residents with a public address system.

State troopers, Columbia and Forest Acres police assisted. Deputies also notified officials at Fort Jackson.

Richland District 1 locked down Crayton Middle School and Brennan Satchel Ford and Bruckman elementary schools for two hours. After three hours, police called off the search.

Later, investigators arrested a second man, Willie Alexander, 36, of 2523 Pleasant Ridge Road, on a



Sterling Patterson was in the garage to the left when an armed trio entered his business at the right, overpowering a worker.

"I don't know if I shot first or they shot first. All I know is everybody started shooting. I was angry. That's why I started shooting. I was afraid for my life."

— Sterling Patterson, store owner

charge of armed robbery. Joseph Pellacci, Richland County sheriff's spokesman said.

The third suspect was at large. Richland County deputies found a suspect's handgun at Patterson's store, but they were not sure all had been armed or that all had fired at Patterson.

Deputies said the MPV was not registered to the suspects. It was not stolen, but police would not say who owned it.

Police would not identify the suspect who was shot or the other suspects.

Patterson said he had seen the men before. They'd been in the store casing it, he said.

And, one of the guys had tried — and failed — to hold him up a month ago at a gas station. He's lucky I didn't shoot him that time, he said.

As he thought back on the shooting, Patterson had mixed feelings.

I kind of hate that I shot the guy I just wanted to chase them out.

Then he thought about Lashanta, his wife of two years and his two young children.

I just think your life could have ended there. You wouldn't have had that last chance to say I love you.

Staff Writer Kimathi Lewis contributed to this report.

all roads
Walk with us
Dut Squ Cent
CROSSROADS

Hamburger Steak
Smothered With
Grilled Onions
Lizad's
Thicket
Comfort Food From Our Family To Yours

WANTED
3 HOMES THAT NEED PAINTING
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Ask Us About The ALLTEL

Month to Month

RICHLAND COUNTY SHERIFF'S DEPARTMENT
 CONSENT TO SEARCH

10-09-02
 (Date)

2523 Highway Ridge Dr.
 (Location)

I, JAMES ALEXANDER do hereby consent to the search of my premises and/or ~~automobile~~ without a search warrant by WU L R Davis WU Edwards and _____, Officers of the Richland County Sheriff's Department. These Officers are authorized by me to take from my premises and/or ~~automobile~~ letters, papers, materials or other property which they may desire.

Description of property to be searched GUEST ROOM
White/Blue/like does, Black Shirts, Gray Sweat pants

I am aware that any evidence obtained as a result of the search can be used against me in a court of law.

This written permission is being given by me to the above-named officers freely, voluntarily, and without threats or promises of any kind.

WITNESS

WITNESS

SIGNED

EXHIBIT

44

Demetrio L. Sears

Case No 2006-CP-40-01599

PCR Issues (As Amended)Rec'd 2/20/18
a hearing**1 Counsel failed to adequately consult or communicate prepare for trial, or attempt to have a working relationship with Applicant**

Location Issues A-D Page 1-3 of PCR Memorandum
 Transcript None
 Exhibits None

2 Counsel was ineffective in failing to request a continuance

Location Issues E Page 4 of PCR Memorandum
 Transcript None
 Exhibits None

3 Counsel provided deficient performance in failing to object to alleged juror misconduct and failing to object to trial court's failure to investigate such

Location Issues L Page 13-14 of PCR Memorandum
 Transcript T T Page 6 Ln 17-23 (Co-counsel objects to misconduct) T T Page 12 Ln 8-9 (Judge orders juror be brought back and questioned)
 Exhibits None

4 Trial counsel provided ineffective assistance of counsel in failing to present favorable existing evidence and pursue favorable line of questioning (shoe report)

Location Issue F Page 6 of PCR Memorandum
 Transcript T T Page 189-190 Ln 6-19 (Strickler asking Stokes about shoes) 1st T T Page 131 (Stokes saying his face was right by shoes he's certain)
 Exhibits Exhibit 1 (Page 131 from 1st trial transcript) Exhibit 2 (RCSD Property Form) Exhibit 3 (Investigator M D Stalb's report stating collection of white shoes) Exhibit 40 (Page 131 from 1st T T above) Exhibit 44 (Located in 4th Amendment RCSD search form showing they took white/blue shoes from aunt's house)

5 Trial counsel provided ineffective assistance in failing to object to prosecutor misconduct (presentation of shoes)

Location Issue U Page 25-26 of PCR Memorandum
 Transcript Whole testimony of Andre Stokes
 Exhibits Exhibit 1 (Transcript from 1st Trial) Exhibit 2 (RCSD Property Form)

Exhibit 3 (Investigator M D Stalb Report Collected white shoes) Exhibit 44 (RCSD report showing they took blue/white shoes from aunt s house)

6 Ineffective assistance of counsel in failing to realize and impeach with numerous inconsistent statements and contradictions of the alleged victims and to make note of favorable evidence

a Bullet in Parking Lot

Location Issue 1(a) of Applicant s 2nd Amendment Page 2
 Transcript Page 149 Ln 20 (Investigator Russell testifies that a projectile was shot into the ground outside) Page 237-240 (SP testifies that all the shooting took place inside and none took place outside)
 Exhibits Exhibit 22 (Crime scene diagram)

b Going to Bank

Location Issue 1(b) of Applicant s 2nd Amendment, Page 4
 Transcript Page 177, Ln 5 (Stokes says that he did not see SP going to bank) Page 191 Ln 6 (Stokes says that when he got there SP never left and that SP had already been to bank says that he wasn't there when SP got back) Page 156 Ln 16 (SP says he met Stokes at shop opened doors talked about day went to bank and came back) Page 213 (SP says same again)
 Exhibits None

c Conversation with Alleged Perpetrators

Location Issue 1(c) of Applicant's 2nd Amendment Page 6
 Transcript 1st T T Page 76 (SP says that he did not try to negotiate with perps and just came out shooting) 1st T T Page 217 Ln 12 (SP say that he came out and just started firing) Page 196 Ln 18 (Stokes says that ne hears alot of back and forth conversation between SP and perps right before shots took place He specifically said they were arguing) Page 248 Ln 5 (SP says that he may have said something to perps)
 Exhibits Exhibit 38 (Page 76 from 1st T T) Exhibit 39 (Page 217 from 1st T T)

d Skin Complexion & Gloves

Location Issue 1(d) of Applicant s 2nd Amendment, Page 8
 Transcript 1st T T Page 130 Ln 21 (Stokes says that he doesn t know if alleged robber was wearing gloves or not) Page 146 Ln 19 (Stokes says that he could see that the person who grabbed him was light-skinned by seeing the back of his hands) Page 202 Ln 4 (Inv Russell trying to explain why no fingerprints were on gloves says defendant could have

Exhibits had on gloves)
None

e Van Pursuit

Location Issue 1(e) of Applicant's 2nd Amendment Page 9 at bottom
Transcript 1st T T Page 168 Ln 22 (SP says that as he runs out of the shop he sees thru side window the van pulling out of the parking lot), Page 266 Ln 12 (SP says that he looked thru the side window and the van was gone Looked thru the side door and the van was gone)
Exhibits Exhibit 36 (Page 168 from 1st T T) Exhibit 37 (Page 169 from 1st T T)

f Facial Description

Location Issue 1(f) of Applicant's 2nd Amendment Page 10
Transcript N/A
Exhibits Exhibits 5 and 6 (These are excerpts from 1st T T where SP claimed that he could not see DS as he stepped out of the van cause he had on a mask that was covering his face) Exhibits 7 thru 9 (Inv Scott McDonald's report where SP stated that he identified me by seeing my face before putting on a mask)

g Kassim Hosendove Identification & Inv McDonald's Credibility

Location Issue 1(g) of 4th Amendment Page 1
Transcript Page 264-265 Ln 12 (Co-counsel Mr Burr asks SP if he picked out anybody not arrested SP says no When asked if he ever positively identified Hosendove to Inv McDonald he responded not to my remembrance) T T Page 497 Ln 1-19 (Inv McDonald stated that SP picked KH out of line-up and stated that we came to incident location day before) T T Page 497 Ln 20 (Strickler injects an objection on a matter of law while Burr is cross-examining McDonald about lies)
Exhibits Exhibit 42 (Inv Scott McDonald report where SP identifies Hosendove as suspect out of photo line-up and says that DS and Hosendove came to shop the day before incident and was possibly casing the place)

7 Trail counsel provided deficient performance in failing to present or utilize favorable evidence (dispatch records)

Location Issue O of PCR Memorandum Page 17
Transcript Page 84 Ln 19 (Quattlebaums say they heard no shots and did not know what occurred prior to seeing van leave) Page 475 Ln 3 (Inv says that LA is not known to authorities until hours later) Page 222 Ln 6 (SP

says that all the shooting took place inside and none took place outside)
 Page 677 Ln 15 (DS saying that he was shot while standing next to the van)

Exhibits Exhibit 19-21 (Dispatch Records saying POSS BACK GLASS SHOT OUT) Exhibit 41 (Page 127 from 1st T T Stokes saying that all shooting took place inside and none took place outside), Exhibit 22 (crime scene diagram)

8 Trial counsel provided ineffective assistance in failing to obtain a crime scene expert to analyze the scene and in failing to challenge the allege victims version of events in regards to the manner in which he shot Applicant

Location Issue K of PCR Memorandum Page 12

Transcript Page 225 Ln 5 (SP says that he can only see down to mid-chest area because DS was standing behind partition)

Exhibits Exhibit 4 (Trauma Flow Sheet showing where I got shot) Exhibit 11-12 (Inv J Russell saying no bullet holes in partition)

9 Counsel provided ineffective assistance in failing to advocate Applicant's defense and attempt to establish victim s version of events as impracticable and implausible

Location Issue 1 of 1st Amendment Page 1

Transcript None

Exhibits Exhibit 22 (crime scene diagram)

10 Ineffective assistance of counsel in failing to present favorable evidence (Blood Transfusion Report) and in failing to adequately cross-examine Dr Bynoe regarding this evidence

Location Issue Q of PCR Memorandum Page 21

Transcript Page 289 Ln 10 (Dr Bynoe said that I lost two units of blood and that was how much he replaced when DS got to ER)

Exhibits Exhibit 24-35 (Blood Transfusion Report)

11 Ineffective assistance of trial counsel in failing to obtain a second opinion or an expert to counter Dr Bynoes narrow and conclusively stated opinions or to object to these opinions as outside the scope of his expertise regarding the lack of blood evidence at the scene of the incident and in failing to adequately cross-examine Dr Bynoe regarding such

Location Issue 1 of 3rd Amendment Page 1

Transcript Page 285 Ln 12 (Dr Bynoe says that I may not have left no blood

initially but as time passed I would have done more bleeding)
Exhibits None

12 Ineffective assistance of counsel in failing to obtain an expert to examine the trajectory of the projectiles fired and the wounds suffered by the Applicant as a result of, or in failing to adequately cross-examine Dr Bynoe regarding these wounds

Location Issue G of PCR Memorandum Page 7
Transcript Page 223 Ln 16 (SP says DS was standing in upright position when he fired upon him) Page 224-225 (SP says that DS feel backwards out of the shop front door from being shot) Page 578-580 (Dr Bynoe says that shoulder wounds correspond to lower back wound but does not know which is entry and which is exit) Page 680 Ln 22 (DS saying I was shot in the back as entering vehicle)
Exhibits Exhibit 4 (Trauma Flow Sheet)

13 Ineffective assistance of trial counsel in failing to review Applicant's medical records prior to trial and misstating facts as a result of

Location Issue 2 of 3rd Amendment Page 4
Transcript Page 58 Ln 1 (Strickler saying that I got shot eight times in opening statement) Page 276-277 (Dr Bynoe saying I got shot three times in the body and two times in the extremity)
Exhibits None

14 Counsel provided deficient performance in failing to present evidence that Applicant had invoked his right to have counsel present during questioning

Location Issue J of PCR Memorandum Page 11
Transcript Page 88 (Inv McDonald stated that I had not invoked any of my rights prior to him taking my statement)
Exhibits Exhibit 10 (Investigative Report by Travis Holdorf saying Deputy Cataldo stated that I had asked for an attorney)

15 Ineffective assistance of counsel in failing to present evidence that co-defendant's statement was unreliable and product of coercion and duress

Location Issue N of PCR Memorandum Page 16
Transcript Page 476-479 (LA gave two statements before alleging me as sole perp) Page 556-558 (LA said his statement was result of pressure and influence by police)
Exhibits Exhibits 13-18 (Letters by LA stating how he thought I was dead and

that police said that he was going to be charged with murder)

16 Counsel was ineffective in failing to request self-defense charge and request jury be instructed that Applicant had a right to arm himself in self-defense if he reasonably believed that he was acting in self-defense

Location Issue M of PCR Memorandum Page 15
 Transcript Page 678-681 (DS saying that he armed himself after seeing SP preparing to shoot him) Page 685 (DS saying that he had no intention of robbing anyone)
 Exhibits None

17 Ineffective assistance of counsel in failing to develop viable defense strategy

Location Issue R of PCR Memorandum Page 22
 Transcript None
 Exhibits None

18 Denial of effective assistance of counsel in cumulative effect of counsel's errors

Location Issue S of PCR Memorandum Page 23
 Transcript None
 Exhibits Exhibit 43 (Newspaper Article)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON
	)	PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2006-CP-40-1599
	)	
Demetrio Sears, 271284,	)	
	)	
Applicant,	)	
	)	
v	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent	)	
	)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed March 20, 2006, would respectfully show this Court

I

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County The Applicant was indicted at the December 2002 term of the Court of General Sessions for Richland County for attempted armed robbery (02-GS-40-10992) He was represented by Douglas Strickler, Esquire On January 5, 2004, the Applicant proceeded to trial after which he was found guilty of attempted armed robbery He was sentenced by the Honorable G Thomas Cooper, Jr , to confinement for a period of eighteen (18) years for armed robbery

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Sears, Op No 2006-UP-126 (S C Ct App filed February 24, 2006)

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records

II

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

1 Various allegations of ineffective assistance of trial counsel

III

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S C 441, 334 S E 2d 813 (1985)

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as

having produced a just result " Strickland v Washington, 466 U S 668, 104 S Ct 2052, 2064, 80 L Ed 2d 674, 692 (1984), Butler, 334 S E 2d 813

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L Ed 2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v State, 300 S C 115, 386 S E 2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S C at 117, 386 S E 2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S C at 117-18, 386 S E 2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that 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, 305 S E 2d 247 (1983).

IV

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

V

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held

HENRY DARGAN McMASTER
Attorney General

JOHN W McINTOSH
Chief Deputy Attorney General

SALLEY W ELLIOTT
Assistant Deputy Attorney General

ROBERT L BROWN
Assistant Attorney General

By _____
ATTORNEYS FOR RESPONDENT

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December 29, 2006

1 STATE OF SOUTH CAROLINA
2 COUNTY OF BEAUFORT

COURT OF COMMON PLEAS
2006-CP-40-1599

3
4
5 DEMETRIO SEARS

6 TRANSCRIPT OF RECORD

7
8 THE STATE OF SOUTH CAROLINA

9 FEBRUARY 20, 2008
10 COLUMBIA, SOUTH CAROLINA

11
12
13 B E F O R E

14 THE HONORABLE ALLISON LEE

15
16 A P P E A R A N C E S

17 BRIAN T PETRANO, ESQUIRE
18 OFFICE OF THE ATTORNEY GENERAL

19 CHARLES JOHNSON, ESQUIRE
20 ATTORNEY FOR THE DEFENDANT

21 REPORTED BY DAPHNE HELMS
22 CIRCUIT COURT REPORTER

23 TRANSCRIBED BY BRENDA J SIGWALD,
24 COURT REPORTER

25

I N D E X

COLLOQUY 3

WITNESS

DEMETRIO SEARS

DIRECT EXAMINATION 5

CROSS-EXAMINATION 60

REDIRECT EXAMINATION 68

DENNIS STRICKLER

DIRECT EXAMINATION 69

CROSS EXAMINATION 83

DEMETRIO SEARS

DIRECT EXAMINATION 90

CROSS EXAMINATION 92

COLLOQUY 94

CERTIFICATE OF TRANSCRIPTION 100

1 **THE COURT** GOOD MORNING, EVERYONE PLEASE BE SEATED
2 GOOD MORNING WE'RE HERE WE'RE HERE ON POST-CONVICTION
3 RELIEF HERE DOCKET NUMBER 2006-CP-40-1599, DEMETRIO SEARS
4 VERSUS THE STATE OF SOUTH CAROLINA THE APPLICANT IS
5 REPRESENTED BY CHARLIE JOHNSON AND THE STATE IS REPRESENTED
6 BY BRIAN PETRANO

7 IS THERE ANYTHING WE NEED TO TAKE UP BEFORE WE GET
8 STARTED?

9 **MR JOHNSON** YOUR HONOR, I JUST HAVE A -- MY ISSUES
10 THAT HAVE BEEN OUTLINED I HAVE GIVEN THEM TO THE STATE

11 **THE COURT** OKAY

12 **MR JOHNSON** MAY I APPROACH? I WANT TO GIVE YOU A COPY
13 OF THE ISSUES AS WE'RE GOING TO PRESENT THEM

14 **THE COURT** THANK YOU ANYTHING ELSE?

15 **MR PETRANO** NO, YOUR HONOR I DID SIMPLY WANT TO ADD
16 THAT THE STATE CERTAINLY DOES APPRECIATE THE APPLICANT TYPING
17 EVERYTHING, SO FOR WHATEVER THAT'S WORTH

18 **MR JOHNSON** WE'RE PREPARED TO GO FORWARD, YOUR HONOR

19 **THE COURT** OKAY YES, SIR, MR JOHNSON

20 **MR JOHNSON** AT THIS TIME, YOUR HONOR, I'D LIKE TO CALL
21 DEMETRIO SEARS TO THE STAND

22 YOUR HONOR, IS IT POSSIBLE THAT HE COULD HE HAVE --

23 **THE COURT** WHATEVER HIS DOMINANT HAND IS, IF YOU WILL
24 UNLOCK, PLEASE

25 **MR PETRANO** AND WHILE HE'S TAKING THE STAND, YOUR

1 HONOR, IF YOU DIDN'T MIND, IF I MAY, THE PCR APPLICATION DATE
2 OF MARCH 20TH, 2006, WE'VE RECEIVED APPROXIMATELY FIVE
3 AMENDMENTS INCLUDING THE SUMMARY VERSION THAT WE JUST
4 RECEIVED AND I JUST RECEIVED TODAY I BELIEVE IN THE LAST
5 ONE WAS NOVEMBER OF '07

6 THERE WAS A DIRECT APPEAL IT WAS DENIED IN THE 2006 VT
7 126 REMITTITUR DATE OF FEBRUARY 24, 2006, AND IT WAS JUDGE G
8 THOMAS COOPER WHO DID THE ORIGINAL TRIAL AND IT WAS AFTER
9 INDICTMENT 2002-GS-40-10992, ATTEMPTED ARMED ROBBERY, AND THE
10 SENTENCE WAS 18 YEARS AND THAT'S ALL THANKS

11 DEMETRIO SEARS, AFTER BEING DULY SWORN, TESTIFIED
12 AS FOLLOWS

13 **THE COURT** IF YOU WOULD HAVE A SEAT AND STATE YOUR FULL
14 NAME I DON'T KNOW -- WHAT DO YOU NEED TO TURN THAT OTHER
15 MICROPHONE

16 THE WITNESS DEMETRIO LEWIS SEARS

17 **MR JOHNSON** YOUR HONOR, FOR THE RECORD THERE WAS ALSO
18 TWO TRIALS IN THIS MATTER THE FIRST TRIAL WAS A HUNG JURY

19 **MR PETRANO** THAT'S CORRECT

20 **THE COURT** I'M SORRY, WHAT?

21 **MR JOHNSON** WAS A HUNG JURY AND THERE WAS A SECOND
22 TRIAL SO THERE WILL BE, PROBABLY, SOME REFERENCE TO THE FIRST
23 TRIAL I THINK WE HAVE TRANSCRIPTS OF BOTH

24 **MR PETRANO** I'M NOT SURE ABOUT THAT YOUR HONOR,
25 WHENEVER THERE'S A DIRECT APPEAL, THE STATE TYPICALLY JUST

1 MAKES COPIES OF THAT APPENDIX AND WHETHER OR NOT THE ORIGINAL
2 TRIAL IS IN HERE, I DON'T BELIEVE IT IS

3 MR JOHNSON I THINK WE HAVE SOME EXHIBITS FROM IT

4 MR PETRANO YES

5 THE COURT SO WE'RE JUST TALKING ABOUT THE EXHIBITS,
6 WE'RE NOT TALKING ABOUT THE TESTIMONY BECAUSE THAT WOULDN'T
7 BE

8 MR JOHNSON THAT'S CORRECT, YOUR HONOR

9 THE COURT OKAY SO AS LONG AS WE HAVE THE EXHIBITS --
10 AND YOU'VE GOT COPIES OF THEM OR DO I NEED TO GET THEM?

11 THE WITNESS I'VE GOT COPIES OF THEM IN MY PCR

12 MR PETRANO THEY CERTAINLY SHOULD BE IN THE COURT'S
13 PACKET AND THEY'RE ATTACHED TO HIS AMENDMENTS

14 MR JOHNSON THAT'S CORRECT, YOUR HONOR

15 THE COURT OKAY NOW, I MAY NOT HAVE ALL THE
16 AMENDMENTS

17 MR JOHNSON I THINK THE EXHIBITS THAT HE'S REFERRING
18 TO IS ACTUALLY IN THE ORIGINAL PCR AND ANY EXHIBITS THAT YOU
19 DON'T HAVE, YOUR HONOR, WE'LL BE HAPPY TO FURNISH TO YOU I
20 THINK YOU MAY HAVE ALL THE EXHIBITS THAT WE'LL REFER TO

21 THE COURT OKAY

22 MR PETRANO THE PCR APPLICATION -- OKAY THANK YOU

23 DIRECT EXAMINATION

24 BY MR JOHNSON

25 Q MR SEARS, ARE YOU PRESENTLY INCARCERATED?

1 A YES, SIR

2 Q WHERE ARE YOU BEING HELD?

3 A BROAD RIVER CORRECTIONAL INSTITUTION

4 Q WHAT ARE YOU BEING HELD THERE FOR?

5 A ATTEMPTED ARMED ROBBERY

6 Q DID YOU GO TO TRIAL ON THOSE MATTERS?

7 A YES, I DID

8 Q WHAT WAS THE RESULT OF THAT TRIAL?

9 A GUILTY VERDICT

10 Q AND WHAT WAS THE SENTENCE?

11 A EIGHTEEN YEARS

12 Q EIGHTEEN YEARS? WERE YOU REPRESENTED BY COUNSEL IN THAT

13 TRIAL?

14 A YES, I WAS

15 Q WHO WAS THAT COUNSEL?

16 A DOUGLAS STRICKLER

17 Q IS HE PRESENT TODAY?

18 A YES, HE IS

19 Q AND YOU RECOGNIZE HIM

20 A YES, SIR

21 Q OKAY YOU HAVE A NUMBER OF ISSUES THAT YOU HAVE

22 PRESENTED THAT YOU HAVE PREPARED, IS THAT CORRECT?

23 A YES, SIR

24 Q WE'RE GOING TO GO OVER THE ISSUES ONE AT A TIME

25 A OKAY

1 Q LET'S START WITH THE FIRST ISSUE THAT YOU HAVE PREPARED
2 FOR THE COURT YOU HAVE, "COUNSEL FAILED TO ADEQUATELY
3 CONSULT, COMMUNICATE, PREPARE FOR TRIAL, AND ATTEMPT TO HAVE
4 A WORKING RELATIONSHIP WITH THE APPLICANT "

5 A YES, SIR

6 Q NOW, WE WENT OVER THIS BEFORE YOU UNDERSTOOD THAT --
7 YOU UNDERSTOOD THERE ARE TWO THINGS THAT YOU HAVE TO PROVE
8 FOR INEFFECTIVE ASSISTANCE OF COUNSEL, IS THAT CORRECT?

9 A YES, SIR

10 Q COULD YOU PLEASE TELL ME WHAT THOSE TWO THINGS ARE

11 A DEFICIENT PERFORMANCE ON MY COUNSEL'S PART AND THAT THAT
12 PERFORMANCE PREJUDICED ME

13 Q AND IT PREJUDICED YOU?

14 A YES, SIR

15 Q DO YOU UNDERSTAND WHAT THE PREJUDICE PART IS? THAT THE
16 OUTCOME WOULD BE DIFFERENT, IS THAT CORRECT?

17 A YES, SIR

18 Q LET'S START WITH THE FIRST REQUIREMENT IN RELATIONSHIP
19 TO THAT FIRST ISSUE THAT YOU HAVE THERE, HOW DO YOU FEEL THAT
20 YOUR COUNSEL WAS INEFFECTIVE?

21 A I FEEL LIKE HE WAS IN INEFFECTIVE FOR FAILING TO CONSULT
22 WITH ME OR TALK TO ME ANY WHICH WAY ABOUT MY CASE I WENT
23 TO -- WHEN I GOT LOCKED UP IT WAS OCTOBER 8, 2008 (SIC) AND
24 FROM OCTOBER 8, 2008 TO FEBRUARY OF 2003, I DIDN'T REALLY --
25 I DIDN'T KNOW WHO WAS ASSIGNED TO MY CASE

1 Q WAIT A MINUTE NOT 2008 NOW

2 A MY BAD I APOLOGIZE 2003 -- 2002 TO 2003 FEBRUARY
3 OF 2003

4 **THE COURT** I'M SORRY, MR SEARS WHEN YOU GET EXCITED
5 YOU SPEAK A LITTLE FAST IF YOU WOULD JUST SLOW DOWN A JUST
6 A LITTLE BIT SO I CAN MAKE SURE I HEAR EVERYTHING AND KEEP UP
7 WITH YOU OKAY

8 THE WITNESS OKAY
9 BY MR JOHNSON

10 Q LET'S START OVER AGAIN WHEN WERE YOU FIRST ARRESTED?

11 A OCTOBER 8, 2008 -- I MEAN 2002

12 Q 2002 OCTOBER 8, 2002?

13 A YES, SIR

14 Q AND YOU WERE LOCKED UP AT THAT TIME, IS THAT CORRECT?

15 A THAT'S WHEN THE INCIDENT OCCURRED

16 Q OKAY

17 A AND --

18 Q WHEN DID YOU FIRST SEE YOUR ATTORNEY?

19 A DOUGLAS STRICKLER?

20 Q YES

21 A THAT WAS MAYBE LIKE THREE WEEKS BEFORE MY TRIAL,
22 SEPTEMBER THE 1ST, I BELIEVE

23 Q OF WHAT YEAR?

24 A SOMEWHERE AROUND SEPTEMBER FIRST, ON OR ABOUT

25 Q OF WHAT YEAR?

1 A 2003

2 Q 2003?

3 A YES, SIR

4 Q SO FROM OCTOBER THE 8TH OF 2002 --

5 A YES, SIR

6 Q -- TO SEPTEMBER OF 2003 --

7 A YES, SIR

8 Q -- YOU DID NOT SEE ANYONE OR YOU HAD ANOTHER ATTORNEY?

9 A THERE WAS -- INITIALLY THERE WAS ANOTHER ATTORNEY THAT
10 CAME TO SEE ME FROM THE PUBLIC DEFENDER'S OFFICE, BUT RIGHT
11 AFTER 2003 I HAD MY PAROLE REVOKED SO I HAD TO GO TO
12 TURBEVILLE ON A PAROLE VIOLATION AND THE ATTORNEY WHO WAS
13 SEEING ME BEFORE DIDN'T HAVE NONE OF MY PAPERWORK AND SHE WAS
14 JUST LIKE, WELL, SHE'LL GET BACK TO ME BUT THEY SWITCHED MY
15 ATTORNEYS TO DOUGLAS STRICKLER SOMETIME LATER THAT YEAR AND I
16 NEVER HAD AN OPPORTUNITY -- THE ONLY PERSON I TALKED TO FROM
17 REALLY THE PUBLIC DEFENDER'S OFFICE WAS AN INVESTIGATOR WHO
18 CAME TO SEE ME

19 BUT AS FAR AS SPEAKING TO AN ATTORNEY I NEVER HAD ANY
20 CONVERSATIONS WITH ANYONE

21 Q THE INITIAL ATTORNEY YOU RECEIVED FROM THE PUBLIC
22 DEFENDER'S OFFICE, DO YOU REMEMBER WHO SHE WAS?

23 A SHEILA MIMS

24 Q HOW MANY TIMES DID SHE SEE YOU?

25 A ONE TIME

1 Q HOW MANY TIMES DID THE INVESTIGATOR SEE YOU?

2 A ONE TIME

3 Q SO WHEN MR STRICKLER CAME TO SEE YOU, THAT WAS
4 SEPTEMBER OF 2003?

5 A YEAH IN BETWEEN FROM MARCH WHEN I WENT TO TURBEVILLE
6 ON THE PAROLE VIOLATION, FROM MARCH 2003 TILL ALL THE WAY --
7 TILL HE CAME TO SEE ME, I WAS WRITING THE PUBLIC DEFENDER'S
8 OFFICE AND ASKING THEM IF SOMEBODY HAD BEEN ASSIGNED TO MY
9 CASE AND I WAS HAVING MY FAMILY CALL THE PUBLIC DEFENDER'S
10 OFFICE AND ASK THEM, YOU KNOW, IF THEY KNEW WHO HAD BEEN
11 ASSIGNED TO MY CASE AND I JUST COULDN'T NEVER GET AN
12 ANSWERED SO I WOULD JUST WRITE GENERALLY TO THE CHIEF PUBLIC
13 DEFENDER AND ASK THEM TO PLEASE LET ME KNOW CAN I GET MY
14 DISCOVERY, CAN YOU LET ME KNOW WHAT'S GOING ON WITH MY CASE
15 AND NOBODY JUST EVER RESPONDED SO LIKE ALL THE WAY UP
16 UNTIL, I THINK THE FIRST PART OF SEPTEMBER THEY CALLED ME --
17 I MEAN JUST OUT OF BLUE THEY CALLED ME DOWN FROM TURBEVILLE
18 DOWN HERE TO THIS COURTHOUSE AND MR STRICKLER SEEN ME
19 DOWNSTAIRS

20 Q OKAY DOWN IN LOCK UP?

21 A WELL, YEAH DOWN IN LOCK UP SO I WENT DOWN TO SEE
22 HIM -- I WENT DOWNSTAIRS TO SEE HIM AND I WAS ALREADY DOWN
23 THERE THEY CALLED ME FROM TURBEVILLE AND HE JUST SAID THAT
24 HE WAS JUST GETTING MY CASE FILE, THAT HE DIDN'T HAVE -- HE
25 DIDN'T HAVE ALL MY SLED REPORTS HE DIDN'T HAVE A LOT OF

1 STUFF IN MY CASE, BUT, YOU KNOW, THAT THE SOLICITOR WAS
2 ASKING ABOUT MY CASE

3 SO HE SAID THAT, YOU KNOW, HE SAID -- HE ASKED ME HOW I
4 FELT ABOUT -- HOW I FELT ABOUT ACCEPTING A GUN CHARGE, A ONE
5 YEAR GUN CHARGE FOR THE SHOOTING OR WHATEVER SO, YOU KNOW,
6 WE TALKED ABOUT THAT FOR LIKE A COUPLE OF MINUTES AND THEN HE
7 WAS LIKE, WELL, HE'S GOING TO GO BACK AND SEE WHAT THE
8 SOLICITOR SAYS AND THEN, YOU KNOW, IF WE WERE TO GO TO TRIAL
9 HE WAS GOING TO CALL ME BACK TO RICHLAND COUNTY LIKE THIRTY
10 DAYS AHEAD OF TIME AND WE WOULD DISCUSS THE CASE AND WE WOULD
11 GO OVER EVERYTHING BEFORE WE ACTUALLY WENT TO TRIAL HE SAID
12 HE WOULD BRING ME BACK TO THE RICHLAND COUNTY DETENTION
13 CENTER SO I SAID --

14 Q ALL RIGHT HOLD UP

15 A OKAY

16 Q SO DID HE BRING YOU BACK?

17 A ON MY TRIAL DATE

18 Q SO FROM SEPTEMBER OF 2003 DID YOU SEE HIM ANY MORE PRIOR
19 TO YOUR TRIAL DATE?

20 A AFTER THAT MEETING?

21 Q AFTER THAT MEETING

22 A NO THE NEXT DAY I HAD A TRIAL WAS ABOUT THREE WEEKS
23 LATER HE CALLED ME BACK DOWN TO THE COURTHOUSE AND HE WAS
24 SAYING, YOU KNOW, HE BASICALLY TOLD ME TO TAKE A PLEA DEAL OF
25 FIFTEEN YEARS AND THAT I WOULD BE BETTER TAKING A PLEA DEAL,

1 THAT IF I WENT TO TRIAL, YOU KNOW, IT WAS A CERTAINTY THAT I
2 WAS GOING TO GET TWENTY YEARS SO I WAS LIKE I DIDN'T WANT
3 TO PLEAD

4 Q WHAT WAS THE DATE WHEN HE TOLD YOU THAT? THAT WAS THE
5 DATE OF YOUR TRIAL?

6 A IT WAS -- IT WAS THE FIRST DAY OF MY TRIAL AND THEN WE
7 WAS TALKING ABOUT IT AND HE WAS LIKE, WELL, YOU KNOW, YOU'LL
8 GO THE TRIAL IN LIKE AN HOUR, YOU KNOW WHAT I'M SAYING AND
9 I WAS LIKE, MAN I DON'T EVEN KNOW YOU HOW AM I GOING TO
10 TRIAL IN AN HOUR SO, YOU KNOW, HE WAS LIKE, WELL, YOU KNOW,
11 THEY'RE CALLING YOUR CASE IN AN HOUR I SAID, MAN, YOU KNOW
12 WE HAVE GOT TO ASK THE JUDGE FOR A CONTINUANCE

13 AND HE WAS LIKE, YOU KNOW, THE JUDGE IS NOT GOING TO
14 GRANT A CONTINUANCE HE WAS LIKE, FOR WHAT YOU KNOW WHAT
15 I'M SAYING, HE WAS LIKE, YOU KNOW, IT'S JUST NOT REASONABLE
16 SO I SAID WELL, I WOULD LIKE TO GO OVER MY STUFF AND HE WAS
17 LIKE, WELL, WHAT DO YOU WANT TO GO OVER I SAID, I DON'T
18 KNOW, BUT I WANT TO GO OVER IT BECAUSE I HAVEN'T SEEN ANY OF
19 THE PAPERWORK I DON'T KNOW WHAT THEY GOT AGAINST ME I
20 DON'T KNOW WHO'S SAYING WHAT I AIN'T GOT NONE OF MY
21 DISCOVERY

22 Q ALL RIGHT HOLD UP TAKE YOUR TIME

23 NOW, YOU SAID HE DIDN'T RECEIVE ANY DISCOVERY SO DID
24 YOU SEE ANY DISCOVERY -- IS THIS -- THIS IS FIRST TRIAL WE'RE
25 TALKING ABOUT, CORRECT?

1 A THAT WAS -- YEAH MY FIRST TRIAL

2 Q SO YOU DIDN'T SEE ANY OF YOUR DISCOVERY?

3 A NO

4 Q YOU MET WITH HIM YOU IN SEPTEMBER AND THEN ABOUT THREE
5 WEEKS LATER, THAT'S WHEN YOU WERE CALLED BACK TO TRIAL, IS
6 THAT CORRECT?

7 A YES

8 Q SO YOU WENT TO TRIAL THAT DAY, IS THAT CORRECT?

9 A YEAH

10 Q AND THEN THE RESULT OF THAT TRIAL WAS?

11 A A HUNG JURY

12 Q A HUNG JURY

13 DURING THAT TRIAL YOU FOUND OUT CERTAIN INFORMATION
14 RELATED TO YOUR CASE THAT YOU DIDN'T KNOW ABOUT BEFORE?

15 A I MEAN, YEAH I MEAN EVERYTHING THAT I DIDN'T KNOW I
16 FOUND OUT AT THE TRIAL I FOUND OUT WHAT PEOPLE WAS SAYING
17 WHEN THEY GOT ON THE STAND AND TESTIFY AND LIKE, YOU KNOW,
18 THE FIRST DAY I WAS SHOCKED TO BE THERE SO I DIDN'T REALLY, I
19 WASN'T REALLY COMPREHENDING EVERYTHING, BUT YOU KNOW LIKE THE
20 SECOND OR THIRD DAY I SORT OF PICKED UP ON A LITTLE, A LITTLE
21 MORE

22 Q SO PRIOR TO TRIAL YOU DIDN'T KNOW ANY OF THE ISSUES, IS
23 THAT CORRECT?

24 A NO, I DIDN'T I DIDN'T KNOW ANYTHING

25 Q NOW, THE SECOND TRIAL, THE ONE THAT WE'RE HERE ABOUT

1 TODAY --

2 A UH-HUH

3 Q -- WHERE YOU WERE FOUND GUILTY, HOW MANY TIMES DID YOU
4 MEET WITH HIM PRIOR TO THAT TRIAL?

5 A AFTER MY FIRST TRIAL?

6 Q RIGHT

7 A I AIN'T SEEN HIM NONE FROM MY FIRST TO MY SECOND
8 TRIAL, I DIDN'T SEE HIM NONE I WAS WRITING AGAIN I WAS
9 WRITING THE PUBLIC DEFENDER'S OFFICE ASKING, YOU KNOW, WOULD
10 HE SEE ME SO WE CAN GO OVER MY CASE AND FROM -- THAT WAS
11 LIKE SEPTEMBER 22ND -- I MEAN SEPTEMBER 23RD, THAT MY FIRST
12 TRIAL ENDED IN A HUNG JURY SO AFTER MY FIRST TRIAL, I WENT
13 TO TRIAL AGAIN IN JANUARY, JANUARY THE 4TH OF 2005 I DIDN'T
14 EVEN KNOW I WAS GOING TO TRIAL THEN HE JUST CALLED ME BACK
15 IN BETWEEN MY FIRST AND MY SECOND TRIAL, I DIDN'T SEE HIM AT
16 ALL HE DIDN'T WRITE ME A LETTER HE DIDN'T LET ME KNOW
17 ANYTHING

18 Q SO LET'S CLARIFY THIS YOUR FIRST TRIAL WAS BASICALLY
19 THE END OF SEPTEMBER, FIRST OF OCTOBER OF 2003?

20 A IT ENDED SEPTEMBER 23RD

21 Q OF 2003?

22 A IT STARTED SEPTEMBER 21ST OF 2003 AND IT ENDED SEPTEMBER
23 23RD, 2003

24 Q ALL RIGHT IT WAS A ONE-DAY TRIAL?

25 A I SAID SEPTEMBER 21ST TO SEPTEMBER 23RD

1 Q OKAY WELL, I'M SORRY AND THEN YOU DIDN'T SEE HIM
2 AGAIN UNTIL 2000 --

3 A THE DAY I STARTED MY SECOND TRIAL

4 Q WHICH WAS WHAT DATE?

5 A JANUARY 4TH

6 Q OF 2000 WHAT?

7 A 2004

8 Q OF 2004?

9 A 2004 THREE MONTHS LATER

10 Q THREE MONTHS LATER OKAY

11 NOW, DID YOU PREPARE FOR ANY OF THE ISSUES OR DID YOU
12 HAVE ANY CONVERSATION WITH HIM PRIOR TO TRIAL?

13 A NO HE WAS JUST LIKE HE CAME DOWN TO SEE ME HE SAID
14 WELL, YOU'RE GOING TO BE TRIED -- WHICH I WASN'T TRIED WITH
15 MY CO-DEFENDANT AT THE FIRST TRIAL SO HE JUST LET ME KNOW
16 THAT I WAS TO BE TRIED WITH ONE OF THE CO-DEFENDANTS IN THIS
17 PRESENT TRIAL

18 I JUST ASKED HIM, YOU KNOW, I WASN'T NOTIFIED THAT I WAS
19 COMING TO TRIAL I ASKED HIM WAS MY FAMILY NOTIFIED? YOU
20 KNOW, IS MY FAMILY PRESENT? AND THEY WASN'T SO I MEAN, I HAD
21 TO CALL THEM THAT NIGHT AND LET THEM KNOW I WAS AT TRIAL
22 AGAIN

23 Q SO HOW DID IT AFFECT YOUR WORKING RELATIONSHIP WITH HIM?

24 A WE DIDN'T -- WE DIDN'T HAVE NONE BECAUSE HE KEPT -- HE
25 KEPT WANTING ME TO PLEAD GUILTY HE WAS EXTREMELY UPSET THAT

1 I WOULDN'T PLEAD GUILTY BECAUSE HE FELT LIKE THE STATE WAS
2 OFFERING ME A GOOD DEAL WHEN HE FIRST CAME TO ME, THEY SAID
3 FIFTEEN YEARS IN BETWEEN THE FIRST TRIAL THEY SAID TWELVE
4 YEARS WHEN THE JURY WAS TAKING FOREVER IN THE JURY ROOM
5 THEY SAID TEN YEARS

6 THEN AT THE BEGINNING OF MY SECOND TRIAL THEY SAID
7 THEY'LL OFFER ME EIGHT YEARS AND HE WAS JUST UPSET THAT I
8 WOULDN'T TAKE IT BECAUSE -- I GUESS HE FELT LIKE IT WAS A
9 GOOD DEAL MY POSITION WAS THAT IT CAN'T BE A GOOD DEAL IF
10 YOU DIDN'T DO IT SO, YOU KNOW, I COULDN'T SEE PUTTING
11 MYSELF IN PRISON FOR EIGHT YEARS OFF OF SOMETHING THAT, YOU
12 KNOW, WHEN I KNOW I DIDN'T DO IT AND I KNOW THIS PERSON IS
13 LYING SO I JUST COULDN'T ACCEPT TAKING THE DEAL AND HE WAS
14 JUST EXTREMELY UPSET ABOUT THAT

15 Q ALL RIGHT LET'S TALK ABOUT THE ACTUAL INCIDENT THAT
16 YOU WERE CHARGED WITH

17 A OKAY

18 Q WHAT HAPPENED THAT DAY?

19 A WHEN THE INCIDENT OCCURRED?

20 Q RIGHT

21 A I CAME TO -- ME AND MY COUSIN AND ANOTHER INDIVIDUAL, WE
22 CAME TO A -- IT WAS A RIM SHOP, AN AUTO BODY SHOP ON PERCIVAL
23 ROAD AND WE CAME TO THE INCIDENT LOCATION AND WHEN WE GOT
24 THERE AN INDIVIDUAL HAD BEEN STANDING OUTSIDE OF THE SHOP
25 THE OWNER -- THE OWNER OF THE SHOP

1 Q IS THAT --

2 A THE OWNER OF THE SHOP, THE ALLEGED VICTIM

3 Q IS THAT THE VICTIM?

4 A HE WAS STANDING OUTSIDE IN FRONT OF THE SHOP SO WHEN I
5 STEPPED OUTSIDE OF THE VEHICLE THAT I WAS IN, I SEEN HIM
6 OUTSIDE OF THE SHOP SO WHEN I -- WHEN I STEPPED OUT OF THE
7 VEHICLE I TURNED AROUND HE HAD A PISTOL IN HIS HAND

8 NOW, WHEN I STEPPED BACK -- WHEN I REACHED BACK IN THE
9 CAR IN THE MPV THAT WE WAS IN AND I GRABBED THE PISTOL THAT
10 WAS IN OUR VEHICLE AND HE WAS SAYING SOMETHING TO ME AND I
11 WAS SAYING SOMETHING TO HIM AND HE ENDED UP -- I MAY HAVE
12 SHOT FIRST AND HE MAY HAVE SHOT FIRST, BUT WE WERE SHOOTING
13 AT EACH OTHER SO HE SHOT ME SEVERAL TIMES SO ONCE HE SHOT
14 ME -- THE SHOOTING TOOK PLACE OUTSIDE IN THE PARKING LOT
15 ONCE HE SHOT ME I JUMPED BACK IN THE VEHICLE THAT WAS -- I
16 WAS RIGHT OUTSIDE MPV SLIDING DOOR SO I JUMPED BACK IN THE
17 VEHICLE AND, MY COUSIN, HE TOOK OFF AND I PASSED OUT AFTER
18 THAT

19 YOU KNOW, I WOKE FOR A BRIEF PERIOD OF CONSCIOUSNESS,
20 MAYBE TEN MINUTES AND I PASSED OUT AGAIN I DIDN'T WAKE UP
21 FOR LIKE TWO WEEKS LATER

22 Q SO HOW MANY TIMES WERE YOU SHOT?

23 A I WAS SHOT FOUR TIMES

24 Q BY WHAT TYPE OF GUN?

25 A NINE MILLIMETER

1 Q NOW, DID YOU DISCUSS THAT WITH YOUR DEFENSE ATTORNEY?

2 A NO HE -- I MEAN HE AIN'T NEVER ASKED ME WHAT HAPPENED
3 I WAS TRYING -- I WAS ACTUALLY TRYING TO GET -- I GUESS THE
4 TRANSPORTATION RECORDS FROM THE DEPARTMENT OF CORRECTIONS SO,
5 YOU KNOW, I COULD SUBSTANTIATE WHAT I'M SAYING REGARDING MY
6 MOVEMENT BACK AND FORTH HERE TO RICHLAND COUNTY, BUT, YOU
7 KNOW

8 Q IN YOUR FIRST TRIAL WHEN IT WAS A HUNG JURY?

9 A YES, IT WAS

10 Q WHAT DO YOU THINK -- WHAT TYPE OF DEFENSE WAS USED
11 DURING THAT TRIAL?

12 A I DON'T EVEN KNOW WHAT DEFENSE WAS USED I MEAN, WE
13 DIDN'T -- WE WASN'T REALLY TALKING TOO MUCH BECAUSE HE
14 WASN'T -- HE WASN'T REALLY INTERESTED IN YOU KNOW
15 CONVERSATION UNLESS IT REVOLVED AROUND A PLEA DEAL I
16 COULDN'T ACCEPT A PLEA BECAUSE I JUST COULDN'T PLEAD GUILTY
17 SO, YOU KNOW

18 Q WHY DO YOU FEEL YOU WASN'T GUILTY?

19 A BECAUSE, I MEAN, I HAD THE GUN AND I WAS SHOOTING AT THE
20 MAN I ADMITTED THAT I TOLD THE POLICE THAT I TOLD THEM
21 THAT I HAD A GUN, BUT THE MAN WAS LYING WHEN HE SAID THAT I
22 ATTEMPTED TO ROB HIM HE WAS USING THAT AS A JUSTIFICATION
23 FOR SHOOTING ME SO YOU KNOW HE MADE UP THIS WHOLE THING
24 ABOUT ME ATTEMPTING TO GO ROB HIM AND I COULDN'T PLEAD GUILTY
25 TO THAT WHAT I HAD A PROBLEM WITH IS PLEADING GUILTY TO THE

1 ATTEMPTED ROBBERY CHARGE I NEVER HAD A PROBLEM -- I TOLD
2 THE JURY AND I TOLD I TOLD THE POLICE I WAS IN POSSESSION OF
3 A GUN I TOLD THEM THAT I FIRED A GUN AND YOU KNOW I NEVER I
4 NEVER CONTESTED THAT I JUST HAD A PROBLEM WITH THEM SAYING
5 THAT HIM SAYING THAT I ATTEMPTED TO ROB HIM

6 Q OKAY SO YOUR NEXT ISSUE ON HERE IS A COUNSEL WAS
7 INEFFECTIVE FOR FAILURE TO REQUEST A CONTINUANCE

8 A YEAH

9 Q WHAT -- IS THAT -- DID THAT RELATE TO THE SECOND TRIAL?

10 A YES

11 Q WHY DO YOU FEEL THAT HE WAS INEFFECTIVE FOR -- WHAT WAS
12 THE NEED TO REQUEST A CONTINUANCE?

13 A I MEAN, BECAUSE WE HAD A LOT OF STUFF WE COULD HAVE
14 PREPARED FOR I MEAN, I UNDERSTAND THAT -- I DON'T KNOW IF
15 HE FELT LIKE HE WAS PREPARED, BUT I DIDN'T KNOW ANYTHING
16 ABOUT MY CASE I MEAN, I JUST HAD A FIRST TRIAL AND WAS
17 EXPECTING THAT HE WOULD COME TALK TO ME ABOUT THE FIRST TRIAL
18 AND WHAT HAD OCCURRED AND WHAT I COULD EXPECT TO OCCUR AT
19 THIS SECOND TRIAL, BUT YOU KNOW HE JUST NEVER DID I JUST
20 WANTED A BETTER UNDERSTANDING OF MY CASE YOU KNOW AND HE
21 DIDN'T WANT TO GIVE IT TO ME

22 Q YOU ASKED HIM TO REQUEST A CONTINUANCE?

23 A I ASKED HIM I ASKED HIM TO SPEAK TO THE JUDGE I
24 ASKED HIM, I SAID, ARE YOU REQUESTING A CONTINUANCE, WILL YOU
25 REQUEST A CONTINUANCE HE WAS LIKE NO HE'S NOT GOING TO DO

1 TO GO IT I SAID, WELL, LET ME SPEAK TO THE JUDGE HE SAID
2 WELL, YOU CAN'T SPEAK TO THE JUDGE SO, YOU KNOW, I WAS JUST
3 UNDER THE IMPRESSION THAT I COULDN'T

4 Q SO A REQUEST FOR A CONTINUANCE WAS NEVER --

5 A NO, I MEAN, HE NEVER ASKED FOR ONE

6 Q YOU NEVER HAD ANY MEETINGS PRIOR TO THE DAY OF THE
7 SECOND TRIAL

8 A NO I FELT LIKE WE SHOULD HAVE WENT OVER SOMETHING HE
9 SHOULD HAVE AT LEAST ASKED ME WHAT OCCURRED ON THAT DAY AND,
10 YOU KNOW, WENT OVER SOME OF THE DISCOVERY WITH ME I'M SURE,
11 YOU KNOW, HE HAD TO HAVE HAD QUESTIONS IN PREPARING FOR TRIAL
12 REGARDING, YOU KNOW, MY DEFENSE BUT HE NEVER ASKED ME
13 ANYTHING HE NEVER MET WITH ME, HE NEVER CONSULTED WITH ME
14 ALL HE EVER GAVE ME WAS A NEGATIVE OUTLOOK EVERY TIME -- A
15 NEGATIVE OUTLOOK ON GOING TO TRIAL EVERY TIME I TRIED TO
16 ASK HIM ABOUT MY CASE, YOU KNOW, HE JUST HE -- JUST ACTED
17 DISINTERESTED AND HE JUST GAVE ME

18 Q OKAY NOW, THE THIRD ISSUE YOU HAVE IS COUNSEL PROVIDED
19 DEFICIENT PERFORMANCE IN FAILING TO OBJECT TO THE ALLEGED
20 JURY MISCONDUCT AND FAILING TO OBJECT TO TRIAL COURT AND
21 FAILURE TO INVESTIGATE SUCH WHAT ARE YOU REFERRING TO?

22 A THERE WAS A -- THERE WAS A LADY THAT WAS SEEN TALKING TO
23 THE ALLEGED VICTIM IT WAS OUTSIDE OF THE COURTROOM AND MY
24 AUNT CAME AND TESTIFIED THAT THE THEY HAD SEEN THEM TALKING
25 OUTSIDE AND YOU KNOW THEY WAS EXTREMELY FRIENDLY

1 Q NOW, THE LADY, WAS THAT --

2 A SHE WAS A JUROR SHE WAS ALREADY SEATED AS A JUROR

3 Q SHE WAS ON THE JURY?

4 A YEAH

5 Q AND WHAT HAPPENED? SOMEONE SAW HER TALK TO THE VICTIM
6 PRIOR TO TRIAL?

7 A THEY WAS -- SHE WAS HOLDING A CONVERSATION LIKE WITH THE
8 WITH THE ALLEGED VICTIM OUTSIDE OF THE COURTROOM SO MY AUNT
9 CAME AND TESTIFIED -- WHEN MY COUSIN'S ATTORNEY BROUGHT THAT
10 UP MY AUNT CAME AND TESTIFIED SO WHEN SHE CAME TO TESTIFY,
11 THE JUDGE BASICALLY SAID, WELL, WHAT WE'LL DO IS -- BECAUSE I
12 THINK THAT THERE HAD ALREADY BEEN AN ISSUE WITH HER HAVING A
13 FAMILY THAT'S BEEN A SHERIFF IN THE COURTROOM HE SAID,
14 WE'LL BRING HER BACK AND WE'LL ASK HER ABOUT THE FAMILY IN
15 THE COURTROOM AND WE'LL ASK HER ABOUT THIS AS WELL

16 Q THEY NEVER PURSUED IT ANY FURTHER?

17 A AIN'T NEVER PURSUED IT ANY FURTHER I NEVER UNDERSTOOD
18 I MEAN

19 Q WAS SHE ACTUALLY ON YOUR --

20 A YEAH, SHE WAS ON MY JURY

21 Q THAT'S THE SECOND TRIAL?

22 A YES, SARA WEEKS

23 Q AND SHE WAS ACTUALLY ON THE JURY THAT CONVICTED YOU?

24 A YES

25 Q DID YOU ASK YOUR ATTORNEY WHY HE DIDN'T BRING THAT UP

1 A I MEAN THAT WAS THAT WAS MY FIRST DAY OF TRIAL IT WAS
2 ONCE AGAIN -- I WAS JUST AMAZED TO BE THERE

3 Q THE NEXT ONE IS YOU HAVE, TRIAL COUNSEL PROVIDED
4 INEFFECTIVE ASSISTANCE OF COUNSEL IN FAILING TO PRESENT
5 FAVORABLE EXISTING EVIDENCE AND PURSUE FAVORABLE LINE OF
6 QUESTIONING ARE YOU REFERRING TO THE SHOES?

7 A I'M REFERRING TO THE SHOES

8 Q NOW, HOW -- TELL ME ABOUT THE SHOES

9 A AT MY FIRST TRIAL THERE WAS -- THE SOLICITOR HAD A PAIR
10 OF BLUE TENNIS SHOES AND SHE HAD THEM ON -- AND SHE HAD THEM
11 ON A DESK OVER THERE --

12 Q WHERE DID SHE SAY SHE GOT THE BLUE TENNIS SHOES FROM?

13 A I DON'T THINK SHE EVER SAID BUT I LATER FOUND OUT
14 THAT, YOU KNOW, SHE -- THEY TOOK THEM FROM MY AUNT'S HOUSE,
15 HERE IN COLUMBIA BUT WHEN I CAME INTO THE COURTROOM, I WAS
16 LISTENING TO ANDRE STOKES, ONE OF THE ALLEGED VICTIMS TESTIFY
17 AND HE WAS SAYING THAT I HAD ON BLUE TENNIS SHOES WHEN I PUT
18 HIM TO THE GROUND HE SAID I PUT HIM TO THE GROUND HE SAID
19 I HAD A GUN TO HIS HEAD HE SAID ALL HE COULD REALLY SEE WAS
20 MY BLUE TENNIS SHOES SO, YOU KNOW, THE SOLICITOR HAD A PAIR
21 OF BLUE TENNIS SHOES AT MY FIRST TRIAL

22 AND SHE ASKED ME, WELL, DO THESE LOOK FAMILIAR AND HE
23 WAS LIKE, YEAH, THOSE LOOK LIKE THE SHOES RIGHT THERE SO I
24 WAS TELLING MR STRICKLER, I SAID, LOOK I DON'T EVEN OWN A
25 PAIR OF BLUE SHOES I DON'T KNOW WHERE THEY GOT THEM FROM

1 I SAID I WAS PASSED OUT FOR TWO WEEKS IN THE HOSPITAL

2 I SAID, I'M PRETTY CERTAIN THAT, YOU KNOW, I HAD ON
3 WHITE TENNIS SHOES SO HE, YOU KNOW, HE DIDN'T REALLY PAY ME
4 NO ATTENTION, BUT THAT WAS AT MY FIRST TRIAL

5 SO AT MY SECOND TRIAL I HAPPENED TO FIND -- I HAPPENED
6 TO FIND -- I THINK IT'S EXHIBIT 3 THE POLICE REPORT SAYING
7 THAT I HAD ON WHITE TENNIS SHOES SO I THINK IT WAS IN MY
8 PROBATION PAPERS IT WAS LIKE THE ONLY PIECE OF MATERIAL I
9 HAD, SO I BROUGHT IT BACK TO THE COURTROOM ON THE SECOND
10 DAY -- I MEAN, ON THE SECOND DAY OF MY SECOND TRIAL

11 Q UH-HUH

12 A AND MR STOKES GOT BACK ON THE STAND AND THEY HAD THE
13 SHOES SITTING RIGHT THERE ON THE END OF THE DESK AND WHEN I
14 WAS WALKING THROUGH THE DOOR, I WALKED THROUGH THE DOOR AND
15 THEY HAD A PICTURE OF THE OF ALL THE WHITE SHOES THAT I HAD
16 ON THE DAY OF THE INCIDENT SO I SAT DOWN AT THE DESK AND I
17 GAVE MR STRICKLER THE PAPER I SAID, LOOK, THE MAN LIED AT
18 THE LAST TRIAL I SAID I DON'T KNOW WHERE THEY GOT THESE
19 SHOES FROM I SAID, THE SOLICITOR HAS GOT THEM BLUE SHOES
20 OVER THERE LIKE THEY'RE MY SHOES AND I SAID, THEY'RE NOT
21 SAID, THE MAN IS LYING

22 I SAID HERE GOES THE RICHLAND COUNTY PROPERTY SHEET
23 SHOWING THAT THEY TOOK A BLUE SHIRT, BLUE JEANS AND WHITE
24 SHOES OFF ME WHEN I WENT TO THE HOSPITAL SO HE LOOKED AT
25 THE PAPER AND HE SAID, OKAY YEAH, YOU'RE RIGHT

1 SO HE TOOK THE PAPER AND, YOU KNOW, THE DUDE -- I MEAN
2 THEY DID DIRECT EXAMINATION FROM THE SOLICITOR AND THEN THEY
3 CAME BACK AND HE HAD HIS OPPORTUNITY TO CROSS-EXAMINE THE
4 WITNESS SO HE ASKED -- HE ASKED THE QUESTION REAL GOOD
5 BECAUSE THE MAN WAS TRAPPING HIMSELF OFF HE WAS ASKING, HE
6 WAS SAYING ARE YOU CERTAIN HE HAD ON BLUE SHOES HE WAS
7 LIKE, YOU COULD BE CERTAIN ABOUT ANYTHING

8 IT WAS ON PAGE 189 TO 190 ON LINE -- BEGINNING ON LINE
9 6, WHERE HE WAS ASKING STOKES ABOUT THE SHOES AND STOKES WAS
10 SAYING THAT THE SHOES WERE RIGHT BY HIS FACE THAT HE IS
11 CERTAIN THAT THESE WERE THE SHOES AND HE SAID HE COULDN'T
12 BE MISTAKEN ABOUT IT HE ASKED ABOUT FOUR QUESTIONS ABOUT
13 THE SHOES AND HE KEPT SAYING, YES, THEY WAS BLUE SHOES

14 AND HE HAD THE PAPERWORK IN HIS HAND SHOWING I HAD ON
15 WHITE SHOES AND I LATER FOUND OUT THAT THE BLUE SHOES THAT
16 THEY HAD, THEY GOT THOSE AFTER THE FACT FROM WHEN THEY --

17 Q BEFORE YOU GO ON, DID HE IMPEACH HIM ON THAT?

18 A HE DIDN'T DO ANYTHING THE MAN WAS LYING ABOUT THE
19 SHOES THE SOLICITOR HAD THE SHOES RIGHT THERE I WALKED BY
20 THE DESK WHEN I -- BECAUSE I HAD TO WALK BY THE SOLICITOR'S
21 DESK TO GET TO THAT DESK SO I SAID, LOOK, MR STRICKLER, I
22 SAID, HERE GOES PAPERWORK SHOWING THAT THE MAN IS LYING I
23 SAID, NOT ONLY THAT, I SAID THEY GOT PICTURES OF MY WHITE
24 SHOES OVER THERE ON THE DESK OVER THERE

25 BUT THEY'RE NOT -- YOU KNOW, THE JURY IS NOT SEEING

1 THIS SO, YOU KNOW, HE WAS LIKE -- HE ACTED LIKE HE WAS
2 GOING TO ASK HIM ABOUT IT, BUT HE YOU JUST NEVER DID THE
3 MAN JUST --

4 Q SO HE NEVER FOLLOWED THROUGH ON THE IMPEACHMENT

5 A HE NEVER FOLLOWED THROUGH THE MAN WAS JUST
6 CONSISTENTLY LYING IN HIS FACE AND HE JUST NEVER FOLLOWED
7 THROUGH

8 Q DID HE MAKE THAT DOCUMENT PART OF THE RECORD TO SHOW
9 THAT YOU HAD ON --

10 A I DON'T BELIEVE SO I'M NOT CERTAIN I DON'T THINK SO

11 Q I MEAN DURING YOUR TRIAL, DID HE EVER BRING THAT
12 PAPERWORK UP?

13 A HE DIDN'T EVER BRING IT UP I WAS -- THAT'S -- I WAS
14 TRYING TO BE REAL HUMBLE AND I NEVER TRIED TO TELL HIM HOW TO
15 PRESENT A DEFENSE OR ANYTHING LIKE THAT, BUT I QUESTIONED HIM
16 WHEN HE SAT DOWN WHY HE DIDN'T IMPEACH THE MAN BECAUSE THE
17 MAN WAS LYING RIGHT IN HIS FACE AND HE WAS TELLING ME -- HE
18 TOLD ME, WELL, I'M GOING TO BRING IT OUT DURING CLOSING
19 ARGUMENTS THAT WAY HE CAN'T -- HE WON'T BE ABLE TO SAY
20 ANYTHING ABOUT IT

21 BUT HE NEVER BROUGHT IT OUT -- WHEN THE INVESTIGATOR
22 CAME UP HE NEVER BROUGHT IT OUT IN CLOSING ARGUMENT IT
23 JUST WAS NEVER BROUGHT OUT

24 Q SO IT WAS NEVER MENTIONED AGAIN?

25 A IT WAS NEVER MENTIONED AGAIN

1 Q NOW, LET'S --

2 A BUT HE ASKED HIM REPEATEDLY ABOUT THE SHOES AND, YOU
3 KNOW, THAT WAS REALLY -- THAT WAS FRUSTRATING BECAUSE THAT
4 WAS THE ONLY -- THAT WAS THE ONLY THE ONLY PIECE OF PAPERWORK
5 I REALLY HAD THAT COULD HELP ME AND, YOU KNOW, I WENT OUT OF
6 MY WAY TO GIVE IT TO HIM HE DIDN'T UTILIZE IT IN ANY WAY

7 Q AND YOU HAVE THAT IN ONE OF YOUR EXHIBITS?

8 A YES, EXHIBIT 3

9 Q IN YOUR ORIGINAL TRANSCRIPT, YOUR ORIGINAL PCR?

10 A YEAH

11 Q OKAY NOW, THE NEXT ONE YOU HAVE IS, TRIAL COUNSEL
12 PROVIDED INEFFECTIVE ASSISTANCE --

13 A EXCUSE ME IT'S EXHIBIT 2

14 Q EXHIBIT 2?

15 A YEAH

16 Q OKAY TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE IN
17 FAILING TO OBJECT TO PROSECUTOR MISCONDUCT WHAT -- THE
18 PRESENTED THE SHOES WHAT'S --

19 A I FEEL LIKE THE PROSECUTOR WAS WRONG FOR EVEN BRINGING
20 OUT THOSE SHOES BECAUSE THEY WEREN'T MINE THEY KNEW THOSE
21 SHOES WEREN'T MINE I HAD --

22 Q HOW DO YOU KNOW THEY KNEW THEY WEREN'T YOURS?

23 A BECAUSE I WASN'T WEARING THEM THEY HAVE THE REST OF MY
24 CLOTHES THEY HAVE MY WHITE SHOES I MEAN, THEY HAVE MY
25 WHITE SHOES THEY HAVE MY SHIRTS AND MY BLUE JEANS,

1 EVERYTHING THAT WAS TAKEN OFF ME FROM THE DAY OF THE INCIDENT
2 WAS CUT OFF ME BECAUSE I WENT TO THE EMERGENCY ROOM SO THEY
3 TOOK MY CLOTHES FROM ME AND ON THE BOTTOM THEY SAID THEY GOT
4 TO HOLD IT AS EVIDENCE FOR COURT

5 SO I KNOW THEY HAD MY SHOES THEY HAVE PICTURES OF MY
6 SHOES ON THEIR DESK PLUS THEY TOOK THE BLUE SHOES AT THE
7 END OF -- AT THE END OF EXHIBIT -- I MEAN, AT THE END OF MY
8 FOURTH AMENDMENT, I FOUND OUT THAT THEY TOOK THE BLUE SHOES
9 FROM MY AUNT'S HOUSE AFTER THE FACT AND BROUGHT THEM BACK
10 AND I GUESS USED THEM TO CORROBORATE STOKES'S TESTIMONY

11 Q OKAY

12 A THAT'S EXHIBIT 44

13 Q OKAY NOW, WE HAVE EXHIBIT 44 YOU'RE REFERRING TO
14 EXHIBIT 44 IN YOUR PCR?

15 A YES IT'S ATTACHED TO MY FOURTH AMENDMENT IT'S THE
16 RICHLAND COUNTY SHERIFF'S DEPARTMENT CONSENT TO SEARCH FORM
17 IT SAYS ON THE BOTTOM THAT WHEN THEY SEARCHED MY AUNT'S HOUSE
18 ON 2523 PLEASANT HILL ROAD, THEY TOOK A PAIR OF WHITE AND
19 BLUE NIKE SHOES

20 Q FROM YOUR AUNT'S HOUSE WERE YOU LIVING AT YOUR AUNT'S
21 HOUSE?

22 A NO I WAS LIVING IN SPRING VALLEY

23 Q DID YOU MAKE YOUR ATTORNEY AWARE OF THAT?

24 A YES, I MADE HIM AWARE OF THAT

25 Q YOUR NEXT ISSUE IS YOU HAVE, INEFFECTIVE ASSISTANCE OF

1 COUNSEL IN FAILING TO REALIZE AND IMPEACH NUMEROUS
2 INCONSISTENT STATEMENTS AND CONTRADICTIONS OF THE ALLEGED
3 VICTIM AND TO MAKE NOTES OF FAVORABLE EVIDENCE THEN YOU GO
4 INTO SPECIFICS YOU SAID THE BULLET IN THE PARKING LOT
5 WHAT DO YOU MEAN BY THAT?

6 A THERE WAS A BULLET IT WAS -- THE ALLEGED VICTIM WAS
7 SAYING THAT THE SHOOTING TOOK -- THIS WAS THE MAIN DIFFERENCE
8 BETWEEN HIS TESTIMONY AND MY TESTIMONY WAS THAT HE WAS
9 SAYING THE SHOOTING TOOK PLACE INSIDE I WAS SAYING THAT THE
10 SHOOTING TOOK PLACE OUTSIDE SO HE WAS, I MEAN, THEY FOUND A
11 BULLET IN THE PARKING LOT OUTSIDE BUT THE WAY THE SOLICITOR
12 WAS SAYING, EVERY TIME THE BULLET WOULD BE BROUGHT UP, THEY
13 SAY, THEY FOUND A PROJECTILE OR A BULLET THAT HAD BEEN FIRED
14 FROM A GUN OUTSIDE IN THE PARKING, BUT HE --

15 Q NOW, WHEN YOU SAY BULLET, YOU'RE REFERRING TO THE
16 PROJECTILE OR THE CASING?

17 A I MEAN THE GUN -- I MEAN A BULLET THAT'S BEEN FIRED FROM
18 A GUN

19 Q OKAY

20 A SO THEY FOUND THAT OUTSIDE IN THE PARKING LOT BUT HE
21 NEVER USE THIS TO ADVANCE WHATEVER DEFENSE WE PRESENTED
22 EITHER WHICH WAY

23 Q HOW COULD THAT HAVE HELPED YOU?

24 A BECAUSE IT BACKS UP WHAT I'M SAYING IT BACKS UP MY
25 WHOLE POSITION BECAUSE I'M SAYING THAT ME AND HIM WAS OUTSIDE

1 IN THE PARKING LOT SHOOTING THEY FOUND THE BULLET OUTSIDE
2 IN THE PARKING LOT THAT JUST SUBSTANTIATES WHAT I'M SAYING
3 SO, YOU KNOW -- AND HE'S SAYING -- THE ALLEGED VICTIM IS
4 SAYING THAT NO SHOOTING WHATSOEVER TOOK PLACE OUTSIDE

5 SO I DON'T UNDERSTAND HOW THAT -- HOW THAT COULD HURT ME
6 OR I DON'T UNDERSTAND HOW THAT WOULD NOT HAVE HELPED ME

7 Q OKAY BUT IT WAS NEVER BROUGHT UP DURING THE TRIAL?

8 A IT WAS NEVER BROUGHT UP AND, YOU KNOW, I THINK -- I
9 THINK IT WASN'T BROUGHT UP BECAUSE IT JUST -- THE SOLICITOR
10 KEPT SAYING THE BULLET BY THE FRONT DOOR LIKE IT WAS POSSIBLE
11 FOR THE BULLET TO BE SHOT FROM WHERE THE ALLEGED VICTIM WAS
12 SAYING HE WAS SHOOTING OUTSIDE INTO THE PARKING LOT AND
13 THAT'S NOT THE CASE

14 THE BULLET WAS FOUND OFF TO THE SIDE AND THERE'S NO
15 POSSIBLE WAY IT COULD HAVE CAME FROM INSIDE OF THE -- INSIDE
16 OF THE ESTABLISHMENT SO, YOU KNOW

17 Q ALL RIGHT NOW YOU HAVE THE NEXT ISSUE YOU HAVE GOING
18 TO THE BANK?

19 A YEAH THIS WAS JUST SIMPLY THAT, YOU KNOW, WHAT I WAS
20 TRYING TO DO RIGHT HERE IS JUST POINT OUT -- BECAUSE THEY WAS
21 LYING POINT BLANK THE TWO ALLEGED VICTIMS, THEY WERE LYING
22 AND --

23 Q WHAT DID THEY SAY?

24 A THEY WERE SAYING -- WELL, ONE -- ONE GOT ON THE STAND
25 AND SAID THAT HE WAS GOING TO THE -- THAT WHEN HE GOT TO

1 THE -- WHEN HE GOT TO THE SHOP STERLING PATTERSON WAS NOT
2 THERE, THAT HE WAS NEVER THERE, THAT HE CAME LATER AFTER HE
3 HAD ALREADY CAME BACK FROM THE BANK AND THEN STERLING
4 PATTERSON GOT ON THE STAND HE WAS LIKE, WELL WE GOT THERE
5 TOGETHER AND WE DISCUSSED IT AND WE WENT OVER NUMEROUS THINGS
6 AND THEN I WENT TO THE BANK STOKES WAS HERE THE WHOLE TIME
7 THEN WHEN I CAME BACK STOKES WAS STILL HERE

8 SO I WAS JUST ATTEMPTING TO GO SHOW THAT, YOU KNOW, THAT
9 WAS AN INCONSISTENCY IN THAT STATEMENT

10 Q DID YOUR ATTORNEY POINT OUT THAT INCONSISTENCY?

11 A NO, HE DIDN'T POINT THAT OUT I POINTED IT OUT TO HIM
12 ACTUALLY

13 Q THEN YOU HAVE CONVERSATION WITH ALLEGED PERPETRATORS?

14 A YES, SIR ONCE AGAIN, IT WAS INCONSISTENCIES IN THEIR
15 TESTIMONY BECAUSE THEY ASKED STOKES DID HE HEAR ANYBODY SAY
16 ANYTHING PRIOR TO, YOU KNOW, MR PATTERSON SHOOTING AT THE
17 INDIVIDUALS THAT WAS SUPPOSED TO BE INSIDE OF THE
18 ESTABLISHMENT AND STOKES WAS SAYING, YES, THAT THEY HELD A
19 CONVERSATION INSIDE PRIOR TO THE SHOOTING TAKING PLACE AND
20 MR PATTERSON WAS SAYING THAT HE CAME AROUND THE CORNER AND
21 HE JUST STARTED SHOOTING AUTOMATICALLY AND HE DIDN'T TALK TO
22 ANYBODY AND HE JUST STARTED LETTING OFF ROUNDS AND, YOU
23 KNOW, THAT WAS JUST ANOTHER LIE BETWEEN THEM

24 Q WHAT COULD YOUR ATTORNEY HAVE DONE TO POINT THAT
25 INCONSISTENCY OUT?

1 A I MEAN, I DON'T EXPECT HIM TO CATCH EVERYTHING, BUT I
2 WAS RIGHT THERE NEXT TO HIM POINTING IT OUT FOR HIM BECAUSE I
3 REMEMBER WHEN THEY SAID THAT AT THE FIRST TRIAL AND I WAS
4 LETTING HIM KNOW BUT HE JUST WASN'T INTERESTED

5 Q DID HE EVER GET A COPY OF THE FIRST TRIAL TRANSCRIPT?

6 A YEAH WE HAD A COPY -- I THINK THAT'S WHAT TOOK THE
7 TRIAL -- THE SECOND TRIAL THREE MONTHS TO COME BACK FOR THE
8 SECOND TRIAL

9 Q OKAY YOUR NEXT ISSUE, YOU HAVE SKIN COMPLEXION AND
10 GLOVES

11 A YEAH THE -- STOKES, HE TESTIFIED TWO DIFFERENT WAYS
12 BECAUSE AT MY FIRST -- WHAT THEY WERE SAYING, BECAUSE IT WAS
13 A GUN FOUND ON THE PREMISES AND THIS GUN DIDN'T HAVE NO
14 FINGERPRINTS, DIDN'T HAVE NO SMUDGES, WASN'T FIRED, IT WAS
15 JUST A GUN ON THE GROUND

16 SO STOKES -- THE INVESTIGATOR HAD SAID THAT IT WAS
17 POSSIBLE THAT, YOU KNOW, ONE OF THE PERPETRATORS OR ME WAS
18 SUPPOSED TO HAVE ON GLOVES BUT, YOU KNOW, STOKES HAD GOT ON
19 THE STAND AND TESTIFIED THAT HE KNEW I WAS A LIGHT-SKINNED
20 INDIVIDUAL BECAUSE HE WAS ABLE TO SEE MY HANDS AND SEE
21 COMPLEXION OF MY HANDS SO TO ME THAT MAKES IT LESS PROBABLE
22 THAT THE GUN WOULDN'T HAVE HAD NO FINGERPRINTS BECAUSE THAT
23 WAS SUPPOSED TO BE MY GUN ON THE GROUND

24 Q WERE THERE ANY GLOVES EVER RECOVERED?

25 A NO, THERE WASN'T NO GLOVES RECOVERED NOBODY HAD

1 GLOVES

2 Q OKAY THEN YOU HAVE THE VAN PURSUIT

3 **THE COURT** I'M SORRY, I DIDN'T UNDERSTAND YOU

4 **MR JOHNSON** I'M SORRY VAN PURSUIT

5 **THE WITNESS** AND THAT WAS PATTERSON AND THAT WAS

6 ANOTHER INCONSISTENCY IN HIS TESTIMONY WHERE HE WAS SAYING

7 THAT HE LOOKED OUT HE CAME OUT AND HE SAID WHEN HE LOOKED

8 OUTSIDE, I GUESS WHEN HE WAS, YOU KNOW, MAKING UP HIS STORY,

9 HE SAID HE LOOKED OUTSIDE AND HE DIDN'T SEE A VAN OUTSIDE AND

10 WHEN HE LOOKED OUTSIDE THE VAN WAS COMPLETELY GONE BUT THEN

11 ON THE SECOND TRIAL HE CAME AROUND, HE SAID HE LOOKED OUTSIDE

12 AND HE SAW THE VAN GONE GO RIGHT ON THE PERCIVAL ROAD OR

13 WHATEVER BUT, YOU KNOW, IT WAS JUST ANOTHER MINOR, WELL,

14 WHEN YOU VIEW THEM ALL TOGETHER THEY HAVE AN IMPACT

15 Q SO IT WAS ANOTHER INCONSISTENCY?

16 A YEAH, AND THAT'S -- AND SEE --

17 Q WAS THAT POINTED OUT BY YOUR ATTORNEY?

18 A NO, IT WASN'T THE MAIN THING IS, IS THAT THEY DON'T

19 HAVE NO PHYSICAL EVIDENCE BECAUSE THAT'S WHY I WENT TO TRIAL

20 BECAUSE I KNOW THEY DON'T HAVE NO PHYSICAL EVIDENCE BECAUSE I

21 KNOW WHAT HAPPENED THAT DAY SO THAT'S WHY I INSISTED ON

22 GOING TO TRIAL AND THE MAIN THING AGAINST ME WAS THIS

23 PERSON'S CREDIBILITY SO I FEEL LIKE HE SHOULD HAVE ATTACKED

24 THAT PERSON'S CREDIBILITY EVERY CHANCE HE HAD BECAUSE THIS IS

25 WHAT'S GETTING ME CONVICTED

1 Q OKAY THEN YOU HAVE FACIAL DESCRIPTION?

2 A YES

3 Q WHAT IS THAT?

4 A THIS IS WHERE STERLING PATTERSON, HE SAID AS I STEPPED
5 OUTSIDE OF THE VAN HE SAID THAT I HAD ON A MASK AND THAT
6 THAT'S WHY HE COULDN'T SEE MY FACE AND THE INVESTIGATOR
7 THAT -- AND IN THE INVESTIGATOR REPORT HE TOLD -- THAT'S
8 IN -- THAT'S EXHIBIT 7 HE SAID THAT HE TOLD INVESTIGATOR
9 SCOTT MCDONALD THAT HE COULDN'T IDENTIFY ME BECAUSE I HAD
10 ALREADY HAD A MASK ON MY FACE

11 DO YOU SEE WHAT I'M SAYING? HE'S SAYING -- AT ONE POINT
12 HE'S SAYING THAT I HAD -- HE'S SAYING THAT HE COULDN'T
13 IDENTIFY ME BECAUSE I ALREADY HAD A MASK ON MY FACE AND THEN
14 HE COMES BACK AND SAYS THAT RIGHT BEFORE I PUT MY MASK ON MY
15 FACE HE CAN IDENTIFY ME BECAUSE HE GETS A CHANCE TO SEE ME

16 Q ALL RIGHT SO IN THE FIRST TRIAL HE SAID YOU HAD A MASK
17 ON?

18 A AT MY FIRST TRIAL HE SAID THAT HE COULD NOT SEE MY FACE
19 WHEN I STEPPED OUTSIDE OF THE VAN BECAUSE I HAD ON A MASK

20 Q THEN THE SECOND TRIAL HE SAID?

21 A YES, AT MY SECOND TRIAL HE SAID HE COULD AND IN THE
22 INVESTIGATIVE REPORT, WHICH IS EXHIBIT 7, HE SAID THAT HE
23 IDENTIFIED ME BY SEEING MY FACE BEFORE I PUT ON THE MASK

24 Q OKAY AND WAS THAT INCONSISTENCY BROUGHT OUT IN YOUR
25 SECOND TRIAL?

1 A NO

2 Q WAS A MASK EVER RECOVERED?

3 A NO

4 Q WAS A MASK USED --

5 A NO

6 Q -- IN EVIDENCE OR WAS THERE ANY OTHER TESTIMONY OTHER
7 THAN HIS THAT YOU HAD A MASK ON?

8 A NO

9 Q THE NEXT ISSUE YOU HAVE IS KASSIM HOSENDOVE?

10 A HOSENDOVE

11 Q AND INVESTIGATOR MCDONALD'S CREDIBILITY WHAT IS THAT
12 REFERRING TO?

13 A KASSIM HOSENDOVE, HE WAS -- AFTER THE INCIDENT OCCURRED,
14 THEY WENT TO -- THEY WENT TO THE ALLEGED VICTIM, STERLING
15 PATTERSON, AND THEY ASKED HIM -- AND THAT'S IN THE
16 INVESTIGATIVE REPORT IN, I THINK IT'S EXHIBIT 42 IT'S
17 ATTACHED TO MY FOURTH AMENDMENT THEY ASKED STERLING
18 PATTERSON, YOU KNOW, HOW MANY PEOPLE WAS THERE OR WHATEVER
19 AND I GUESS HE TOLD THEM A NUMBER SO THEY KNEW WHO I WAS --
20 THAT WHEN THEY FOUND OUT WHO I WAS THEY WENT TO MY PAROLE
21 OFFICER AND THEY ASKED MY PAROLE OFFICER, THEY SAID WELL WHO
22 ARE MY KNOWN ASSOCIATES SO MY PAROLE OFFICER TOLD
23 INVESTIGATOR MCDONALD THAT MY KNOWN ASSOCIATES WAS KASSIM
24 HOSENDOVE SO INVESTIGATOR MCDONALD PUTS KASSIM HOSENDOVE IN
25 A PHOTO LINE-UP AND BRINGS IT BACK TO MR PATTERSON

1 SO PATTERSON PICKS OUT HOSEDOVE IN THE PHOTO LINE-UP
2 SO WHEN PATTERSON PICKS OUT HOSEDOVE IN THE PHOTO LINE-UP,
3 THEN I GUESS THEY GO DO THEIR INVESTIGATION AND THEY FIND OUT
4 THAT HOSEDOVE IS IN FLORIDA SOMEWHERE, SO HE COULDN'T HAVE
5 BEEN THERE BUT IN ADDITION TO MR PATTERSON PICKING OUT MR
6 HOSEDOVE, THEY SAID HE TOLD -- HE TOLD THE INVESTIGATOR
7 ADDITIONALLY THAT THIS INCIDENT OCCURRED ON OCTOBER 8TH HE
8 TOLD THEM JUST THE DAY BEFORE THAT ME AND MR HOSEDOVE HAD
9 CAME TO THE INCIDENT LOCATION, THAT HE WENT IN DETAIL AND
10 IT'S IN EXHIBIT 42, HE SAID THAT ME AND HIM CAME TO THE
11 INCIDENT LOCATION, THAT WE TALKED TO HIM, THAT WE CAME IN A
12 WHITE PICKUP TRUCK, AND THAT, YOU KNOW, I GUESS HE SAID WE
13 WAS CASING THE PLACE HE SAID WE DID ALL THIS THE DAY
14 BEFORE

15 Q BUT THERE WAS EVIDENCE INDICATING MR HOSEDOVE --

16 A HE WAS HE WAS LYING

17 Q -- WAS NOT THERE?

18 A HE WAS NOT THERE

19 Q AND YOU HAD THAT INFORMATION, IS THAT CORRECT?

20 A EVERYBODY HAD THAT INFORMATION

21 Q DID YOUR ATTORNEY BRING THAT UP DURING THE SECOND TRIAL?

22 A NO, HE DIDN'T AND SEE, I THINK ALSO -- I THINK ALSO
23 MCDONALD'S TESTIMONY IS -- I THINK IT WAS A LITTLE SUSPECT
24 BECAUSE THE CHAIN OF EVENTS HAS, HE PUTS IT IN THE
25 INVESTIGATIVE REPORT IS THAT HE WENT TO MY PAROLE OFFICER,

1 THEN HE CAME BACK AND AFTER MY PAROLE OFFICER INFORMED HIM
2 THAT MR HOSEDOVE IS ONE OF MY KNOWN ASSOCIATES THEN HE
3 COMES BACK TO MR PATTERSON

4 SO THEN MR PATTERSON, EVEN THOUGH HE DOESN'T KNOW
5 ANYBODY AND HE CAME AND LATER TESTIFIED AT TRIAL THAT, YOU
6 KNOW, HE STARTS SAYING, WELL, YOU KNOW, THEY AIN'T REALLY
7 QUESTIONED HIM ABOUT, BUT THEY ASKED HIM ABOUT MR HOSEDOVE
8 YOU KNOW, IT WAS NEVER BROUGHT OUT THAT THAT WAS A LIE, THAT
9 WHAT HE WAS SAYING WAS A LIE, BECAUSE I WANTED THE JURY TO
10 KNOW THAT, YOU KNOW, HE MADE UP A WHOLE STORY PRIOR TO, ON
11 THAT DAY OF THE INCIDENT ABOUT WHAT OCCURRED, ABOUT -- THE --
12 ABOUT WHAT HE SAID THE DAY BEFORE BUT HE THAT WAS NEVER
13 BROUGHT OUT TO BE A LIE TO THE JURY BECAUSE HE JUST NEVER
14 BROUGHT IT OUT

15 Q HE WAS NEVER IMPEACHED ON PRIOR INCONSISTENT STATEMENTS?

16 A NO IT WAS BROUGHT UP, BUT THEY NEVER -- IT NEVER
17 WENT -- IT NEVER WENT ANYWHERE HE NEVER ASKED HIM NOTHING
18 ABOUT IT, THE JURY NEVER KNEW THAT THAT WAS A LIE THEY
19 NEVER KNEW THAT I NEVER CAME TO THE PLACE THE DAY BEFORE,
20 THAT -- WELL IT WAS JUST A LIE AND, YOU KNOW, I THINK THE
21 JURY SHOULD HAVE KNOWN THAT, BECAUSE HE WENT IN DETAIL TO
22 TELL THEM THAT LIE BUT ALSO, YOU KNOW, I THINK INVESTIGATOR
23 MCDONALD, HIS CREDIBILITY WAS SORT OF SUSPECT, TOO, BECAUSE
24 HE WENT TO MY PAROLE OFFICER AND MY PAROLE OFFICER TOLD HIM
25 MY KNOWN ASSOCIATE WAS MR HOSEDOVE SO WHEN HE TOLD HIM MY

1 KNOWN ASSOCIATE WAS MR HOSEDOVE, HE BRINGS MR HOSEDOVE --
2 PUTS MR HOSEDOVE IN A PHOTO LINE-UP AND BRINGS IT BACK TO
3 MR PATTERSON AND EVEN THOUGH PATTERSON SAYS, WELL I DON'T
4 KNOW -- AT TRIAL HE'S SAYING HE DOESN'T KNOW ANYBODY, BUT
5 EVEN THOUGH WE KNOW HE DOESN'T KNOW ANYBODY, I'M NOT WILLING
6 TO BELIEVE THAT IT'S JUST A COINCIDENCE THAT MR PATTERSON
7 PICKS OUT THE ONLY PERSON -- MIS-IDENTIFIES THE ONLY PERSON
8 ON THE PHOTO LINE-UP THAT'S KNOWN TO BE MY KNOWN ASSOCIATE

9 Q OKAY NOW, NUMBER 7 YOU HAVE, TRIAL PROVIDED DEFICIENT
10 PERFORMANCE IN FAILING TO PRESENT OR UTILIZE FAVORABLE
11 EVIDENCE, THE DISPATCH RECORDS

12 WHAT IS THAT ABOUT?

13 A THE DISPATCH RECORDS ARE EXHIBIT 19 THROUGH 21

14 Q UH-HUH

15 A WHAT THAT'S ABOUT IS THAT AFTER THE INCIDENT OCCURRED
16 THEY WAS -- I GUESS MR PATTERSON HAD TOLD THEM THAT ME AND
17 MY CO-DEFENDANT WAS IN AN MPV OR A MINIVAN

18 Q UH-HUH

19 A THEY WAS LOOKING FOR THE MINIVAN SO WHEN THEY -- OF
20 COURSE, IN LOOKING FOR THE MINIVAN, I GUESS THEY ASKED MR
21 PATTERSON OR THE WITNESSES AT THE SCENE WHAT -- WHAT THE
22 DESCRIPTION -- THE DESCRIPTION OF THE MINIVAN SO AT THE END
23 OF THE DESCRIPTION THEY PUT IN THE BACK OF -- IN THE BACK OF
24 THE POLICE REPORTS THAT POSSIBLE BACK GLASS ON THE MINIVAN
25 HAD BEEN SHOT -- IT SAYS POSSIBLE BACK GLASS SHOT OUT SO,

1 YOU KNOW, I THINK THAT, FIRST -- AT FIRST THE QAUTTLEBAUMS
2 WERE THE ONLY OTHER INDIVIDUALS THAT WERE THERE, PRESENT ON
3 THE DAY OF THE SCENE AND -- WELL, THEY WASN'T EVEN PRESENT
4 THEY WAS JUST RIDING BY SO THE QUATTLEBAUMS, THEY WERE
5 RIDING BY ALL THEY TESTIFIED IS THAT THEY SEEN A VAN
6 LEAVING THE SCENE THEY TESTIFIED ON PAGE 84, LINE 19 THAT
7 THEY DIDN'T HEAR NO SHOTS THEY DIDN'T KNOW WHAT OCCURRED
8 PRIOR TO, YOU KNOW, THEM RIDING BY AND SEEING THE INCIDENT
9 LOCATION

10 SO WHEN THE POLICE WAS PUTTING OUT THE BOLO OR WHATEVER
11 THEY CALL IT THEN, THEY DESCRIBED THE VEHICLE AS POSSIBLE
12 BACK GLASS BEING SHOT OUT SO MY QUESTION IS WHY WOULD
13 THEY TELL THE POLICE -- WHY WOULD MR PATTERSON OR MR
14 STOKES, THE ALLEGED VICTIMS TELL THE POLICE THAT THEY
15 BELIEVED THAT THE VEHICLE HAD A POSSIBLE BACK GLASS SHOT --
16 BEING SHOT OUT IF NONE OF THE SHOOTING TOOK PLACE OUTSIDE
17 IF THEY'RE SAYING THE SHOOTING TOOK PLACE INSIDE, WHY ARE
18 THEY TELLING THE POLICE THAT THEY BELIEVE, WHEN THE POLICE
19 ASKED THEM FOR A DESCRIPTION OF THE MINIVAN THAT POSSIBLE
20 BACK GLASS HAD BEEN SHOT OUT?

21 Q SO WAS THE BACK GLASS SHOT OUT?

22 A NO, THE BACK GLASS WASN'T SHOT OUT

23 Q BUT YOU BELIEVE THAT -- THAT COULD HAVE BEEN USE TO DO
24 SHOW INCONSISTENCY IN THAT STATEMENT?

25 A YEAH I MEAN, BECAUSE I TESTIFIED THAT I WAS STANDING

1 RIGHT NEXT TO THE VAN WHEN -- WHEN THE SHOOTING OCCURRED
2 AND I THINK THAT THAT WOULD HAVE FURTHERED MY POSITION
3 BECAUSE OBVIOUSLY, YOU KNOW, TO ME IT SHOWS THAT THE SHOOTING
4 TOOK PLACE OUTSIDE

5 Q OKAY

6 A AND SEE HIS -- LET ME JUST ALSO SAY THAT HIS CREDIBILITY
7 WAS -- MR PATTERSON WAS THE MAIN WITNESS AGAINST ME IT WAS
8 BASICALLY HIS CREDIBILITY AGAINST MINE HIS CREDIBILITY WAS
9 ALREADY SUSPECT BECAUSE HE HAD ALREADY -- HE HAD TOLD THE
10 POLICE FROM THE BEGINNING THAT ME AND SEVERAL OTHER
11 INDIVIDUALS CAME INTO THE SHOP AND THAT WE WERE SHOOTING AT
12 HIM AND THAT'S WHY HE SHOT BACK THAT'S LIKE EXHIBIT 43

13 ON EXHIBIT 43, HE'S QUOTED AS SAYING, I DON'T KNOW IF
14 THEY SHOT FIRST OR IF I SHOT FIRST ALL I KNOW IS EVERYBODY
15 STARTED SHOOTING

16 SO THEN THEY FIND OUT THAT THERE'S NO RETURN FIRE SO
17 THEY'RE LIKE, OKAY WELL, HOW IS SOMEBODY SHOOTING AT YOU IF
18 THERE'S NO RETURN FIRE SO HIS CREDIBILITY WAS ALREADY
19 SUSPECT AND HE WAS LIKE, WELL, I WAS JUST CONFUSED ABOUT
20 THEM SHOOTING AT ME OR WHATEVER, YOU KNOW WHAT I'M SAYING?
21 BUT YOU KNOW HIS CREDIBILITY WAS ALREADY SUSPECT

22 SO MY POSITION WAS THAT HE WAS LYING THE WHOLE TIME AND
23 THAT'S THE POSITION I MAINTAIN AND MY POSITION WAS THAT THE
24 SHOOTING TOOK PLACE OUTSIDE, AS IT ACTUALLY DID AND I THINK
25 THIS SHOWS THAT THE SHOOTING TOOK PLACE OUTSIDE OR AT LEAST

1 SOMEBODY CAN INFER THAT THE SHOOTING TOOK PLACE OUTSIDE --

2 Q OKAY

3 A -- FROM THIS EVIDENCE I THINK IT SHOULD HAVE BEEN
4 ADVANCED TO THE JURY

5 Q AND THAT WAS NOT ADVANCED BY YOUR ATTORNEY?

6 A NO, IT WASN'T

7 Q NUMBER 8, TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE
8 IN FAILING TO OBTAIN A CRIMINAL -- A CRIME SCENE EXPERT TO
9 ANALYZE THE SCENE AND IN FAILING TO CHALLENGE THE ALLEGED
10 VICTIM'S VERSION OF EVENTS IN REGARD TO THE MANNER IN WHICH
11 HE SHOT THE APPLICANT?

12 A THIS ISSUE RIGHT HERE -- THIS ISSUE REVOLVES AROUND,
13 REALLY PATTERSON'S TESTIMONY BECAUSE HE CAME ON THE STAND
14 AND, YOU KNOW, HE -- LIKE I SAID, HIS TESTIMONY IS WHAT'S
15 GETTING ME CONVICTED BECAUSE THEY DON'T HAVE ANY -- THEY
16 DON'T HAVE NO DIRECT EVIDENCE THEY DON'T HAVE NOTHING ELSE
17 BUT HIS TESTIMONY SO I KNOW THEY DON'T HAVE NO PHYSICAL
18 EVIDENCE AND THEY NEVER PRESENTED ANY AND HIS CREDIBILITY
19 IS THE KEY THING OF MY CASE AND I THINK THAT'S SOMETHING WE
20 SHOULD HAVE BEEN ATTACKING

21 THIS ISSUE RIGHT HERE, ON PAGE ON PAGE 225, LINE 5 OF MY
22 OF MY FILE -- OF MY TRANSCRIPT HE SAYS THAT HE COULD ONLY SEE
23 DOWN TO MY MID-CHEST BECAUSE I WAS STANDING BEHIND A
24 PARTITION IN THE SHOT WHEN HE WAS SHOOTING AT ME THAT'S
25 WHAT HE'S TELLING -- THAT'S WHAT HE'S TESTIFYING TO WHEN HE'S

1 DESCRIBING WHAT -- THE SHOOTING AS HE -- AS HE WAS PUTTING
2 IT AND HE SAID THAT HE COULD ONLY SEE DOWN TO MY MID-CHEST
3 AT THAT TIME I ASKED I ASKED MR STRICKLER, I SAID, WELL
4 IF HE CAN ONLY SEE DOWN TO MY MID-CHEST WHEN HE'S SHOOTING AT
5 ME, HOW DO I GET SHOT BELOW THE BELT LINE? THAT DOESN'T MAKE
6 ANY SENSE HE'S SAYING THAT I WAS STANDING BEHIND A
7 PARTITION INSIDE THE SHOP AND THAT HE CAN ONLY SEE DOWN TO MY
8 MID-CHEST BECAUSE I'M BEHIND THIS PARTITION BUT I GET SHOT
9 BELOW THE BELT LINE

10 Q WHERE WERE YOU SHOT?

11 A I WAS SHOT -- THEY LABELED IT SUB-PUBIC REGION IT'S
12 RIGHT BELOW MY BELT LINE SO, YOU KNOW, I DON'T UNDERSTAND
13 HOW

14 Q WAS HE QUESTIONED ABOUT THAT?

15 A NO, HE WASN'T QUESTIONED ABOUT THAT AND THE ONLY WAY
16 THAT HE COULD HAVE SHOT ME LIKE THAT IS IF I HAD BEEN -- IF
17 THE BULLET WOULD HAVE WENT THROUGH THE PARTITION AND HIT ME
18 IN THE STOMACH BUT, YOU KNOW, THE -- INVESTIGATOR RUSSELL,
19 HE GOT ON THE STAND AND TESTIFIED THAT THERE WAS NO BULLET
20 HOLES NOWHERE INSIDE THE PARTITION

21 SO MY MAIN THING IS, IF YOU CAN'T SEE BELOW MY BELT --
22 IF YOU CAN'T SEE BELOW MY CHEST YOU CAN'T SEE ME BELOW MY
23 CHEST AND I THINK HE SHOULD HAVE BROUGHT THAT OUT BECAUSE
24 THAT WAS JUST ANOTHER LIE, YOU KNOW, JUST A LIE

25 Q THE NEXT ONE IS YOU HAVE, COUNSEL PROVIDED INEFFECTIVE

1 ASSISTANCE FAILING TO ADVOCATE APPLICANT'S DEFENSE AND
2 ATTEMPT TO ESTABLISH VICTIM'S VERSION OF EVENTS AS PRACTICAL
3 OR IMPLAUSIBLE IS THAT RELATED TO WHAT YOU SAID ABOUT THE
4 CHEST?

5 A THAT'S -- SORT OF, BUT I THINK THAT -- I THINK MORE TO
6 THE -- MORE TO THE POINT IS IT'S BASICALLY DEALING WITH WHAT
7 HE WAS SAYING IN GENERAL BECAUSE HE NEVER ATTEMPTED TO
8 ATTACK -- YOU KNOW, TO ME WHAT HE WAS SAYING WAS JUST REALLY
9 SILLY BECAUSE HE SAID THAT ME AND TWO OTHER INDIVIDUALS CAME
10 INTO THE SHOP -- THAT WE CAME INTO THE SHOP -- THAT THEY
11 CAME -- THAT TWO OTHER INDIVIDUALS CAME HALFWAY BETWEEN THE
12 FRONT DOOR AND WHERE HE WAS STANDING, WHICH IS SEVEN FEET
13 AND SHE SAID HE FIRED ROUNDS REPEATEDLY AT TWO INDIVIDUALS
14 SEVEN FEET AWAY FROM HIM, BUT HE DIDN'T HIT ANYBODY THEN I
15 WAS SUPPOSED TO BE STANDING OVER THERE, I GUESS JUST WAITING
16 FOR HIM TO GET DONE SHOOTING, THEN I RAISED THE GUN THAT HE
17 SAID I HAVE, THEN I -- NOT FIRED THIS GUN EVEN THOUGH IT
18 DOESN'T HAVE A SAFETY AND IT'S FULLY LOADED, THAT I DON'T
19 FIRE THIS GUN I JUST RAISE IT AND THAT HE JUST SHOOTS ME
20 AND THEN I FLY OUT OF THE GLASS DOOR I DON'T LEAVE NO
21 BLOOD -- EVEN BEING SHOT NUMEROUS TIMES I DON'T LEAVE NO
22 BLOOD NOWHERE ON THE SCENE I DROP A GUN THAT IT DOESN'T
23 HAVE ANY FINGERPRINTS AND I RUN ACROSS THE PARKING LOT
24 THAT -- AND DON'T LEAVE NO BLOOD NOWHERE ON THE PREMISES
25 Q SO LET'S TALK ABOUT THAT THAT'S THE NEXT QUESTION

1 WHERE YOU MENTION ABOUT THE BLOOD TRANSFUSION

2 A YEAH

3 Q THE DOCTORS STATED -- HOW MUCH BLOOD DID THE DOCTOR
4 STATE THAT YOU LOST?

5 A THIRTY UNITS OF BLOOD

6 Q THIRTY UNITS OF BLOOD SO THAT WAS A GREAT DEAL OF
7 BLOOD, IS THAT CORRECT?

8 A YES

9 Q AND WAS THERE ANY BLOOD FOUND AT THE SCENE?

10 A THERE WASN'T NO BLOOD FOUND AT THE SCENE THE ONLY
11 BLOOD THAT WAS FOUND WAS INSIDE OF THE VEHICLE BECAUSE THAT'S
12 WHY -- WHEN I GOT SHOT I JUMPED RIGHT BACK INSIDE THE
13 VEHICLE

14 Q BUT THE VICTIM IN THIS CASE TESTIFIED THAT HE SHOT YOU
15 INSIDE?

16 A HE TESTIFIED ME SHOT ME INSIDE THAT -- THE BULLETS --
17 ALL THESE BULLETS SUPPOSEDLY WENT THROUGH ME AND THAT, YOU
18 KNOW, I GOT SHOT IN THE HAND, THAT I FELL TO THE GROUND, THAT
19 I GOT UP AFTER FALLING TO THE GROUND, RAN ACROSS THE PARKING
20 LOT AND JUST LEAVE NO BLOOD ANYWHERE

21 Q DID YOUR ATTORNEY QUESTION HIM ABOUT THAT?

22 A YES, HE QUESTIONED HIM ABOUT THAT

23 Q DID HE ASK HIM ABOUT WHY THERE WAS NO BLOOD?

24 A YES

25 Q WELL, HOW DID YOU FEEL THAT WAS INEFFECTIVE IF HE DID

1 THOSE THINGS?

2 A I FEEL LIKE HE WAS INEFFECTIVE -- WITH THE BLOOD, THAT'S
3 A SEPARATE ISSUE, BUT WITH THIS ISSUE RIGHT HERE, I FEEL LIKE
4 HE WAS INEFFECTIVE FOR, YOU KNOW -- BASICALLY THE WHOLE
5 TESTIMONY THAT HE WAS GIVING WAS JUST -- IT JUST COULDN'T
6 HAVE HAPPENED IT WAS JUST -- IT WAS JUST -- IT WAS JUST
7 SILLY THE WAY THAT HE WAS PRESENTING IT BECAUSE HE WAS SAYING
8 THAT, YOU KNOW, TWO PEOPLE WAS SEVEN FEET IN FRONT OF HIM AND
9 THAT HE FIRED AT THEM AND THAT HE DIDN'T HIT THEM EITHER
10 WHICH WAY

11 WELL, MY NEXT ISSUE WITH THE BLOOD -- WITH THE BLOOD
12 TRANSFUSION REPORT, THE DOCTOR, WHEN HE CAME ON THE STAND, HE
13 WAS -- I MEAN FROM THE VERY GET GO, I TOLD MR STRICKLER,
14 LOOK MAN, THE DOCTOR TOLD ME THAT I LOST THIRTY UNITS OF
15 BLOOD THAT'S WHAT'S DOCUMENTED AND I GOT THE BLOOD
16 TRANSFUSION REPORT FROM EXHIBIT 24 TO 35 TO SHOW THAT, YOU
17 KNOW I ACTUALLY LOST THAT AMOUNT OF BLOOD BUT, YOU KNOW,
18 THE DOCTOR WAS DENYING -- WELL, HE WASN'T DENYING THAT HE
19 WAS JUST BEING REAL EVASIVE WITH IT SO IT WAS REAL HARD TO
20 SHOW, YOU KNOW, HOW MUCH BLOOD I LOST AND I THINK MR
21 STRICKLER SHOULD HAVE BROUGHT THAT OUT AND HE SHOULD HAVE
22 BROUGHT THE REPORT -- THE BLOOD TRANSFUSION REPORT OUT
23 BECAUSE, YOU KNOW, THE AMOUNT OF BLOOD LOST WAS BASICALLY,
24 YOU KNOW, ALL HE WAS REALLY PUSHING HE WAS JUST SAYING, YOU
25 KNOW, THE AMOUNT OF TIMES I GOT SHOT AND THE AMOUNT OF BLOOD,

1 THERE SHOULD BE SOME BLOOD SOMEWHERE ON THE SCENE AND THERE
2 WAS NONE

3 BUT, YOU KNOW, HE DIDN'T REALLY PRESENT ANYTHING TO SHOW
4 HOW MUCH BLOOD THAT I DID LOSE

5 Q THERE WAS EVIDENCE THOUGH AVAILABLE TO HIM THAT COULD
6 HAVE SHOWN HOW MUCH BLOOD?

7 A YEAH I MEAN HE HAD THE WHOLE -- I MEAN THE WHOLE -- MY
8 WHOLE MEDICAL FILE WAS PROBABLY AS BIG AS THE TRANSCRIPT
9 SO, YOU KNOW, HE HAD IT RIGHT THERE AVAILABLE TO HIM AND
10 WELL, YOU KNOW, IT JUST -- IT'S JUST CONFUSING

11 Q NUMBER 12, YOU HAVE, INEFFECTIVE ASSISTANCE OF
12 COUNSEL --

13 A I THINK YOU SKIPPED NUMBER 11

14 Q OH, I'M SORRY I MISSED ONE? ON NUMBER 11, INEFFECTIVE
15 ASSISTANCE OF TRIAL COUNSEL IN FAILING TO OBTAIN A SECOND
16 OPINION FOR AN EXPERT TO COUNTER DR BYNOES?

17 A BYNOES

18 Q -- BYNOES NARROW AND CONCLUSIVELY STATED OPINIONS OR TO
19 OBJECT TO THESE OPINIONS AS OUTSIDE THE SCOPE OF HIS
20 EXPERTISE, REGARDING THE LACK OF BLOOD EVIDENCE AT THE SCENE
21 OF THE INCIDENT AND IN FAILING TO ADEQUATELY CROSS-EXAMINE
22 DR BYNOES REGARDING SUCH

23 WHAT ARE YOU REFERRING TO?

24 A BECAUSE DR BYNOES CAME ON THE STAND AND HE SAID THAT
25 THE SOLICITOR WAS TRYING TO FIND, YOU KNOW, THAT THEY HAD A

1 PROBLEM BECAUSE I LOST SO MUCH BLOOD AND THERE WAS NO BLOOD
2 AT THE SCENE OF THE INCIDENT SO THEY WAS TRYING TO
3 FIGURE -- THEY WAS REALLY TRYING TO GET DR BYNOES TO SAY,
4 YOU KNOW, JUST IT'S UNLIKELY FOR SOMEBODY FOR SHOT AND TO BE
5 BLEEDING

6 SO HE CAM -- WHEN THEY -- WHEN SHE ASKED HIM, SHE SAID
7 WELL -- BECAUSE THERE WAS BLOOD IN THE VAN, BUT THERE WAS NO
8 BLOOD NOWHERE ELSE ON THE PREMISES SO THEY WAS TRYING -- HE
9 WAS SAYING SOMETHING ALONG THE LINES OF, WELL, WHEN I GOT
10 SHOT I WOULDN'T HAVE BEEN BLOOD BLEEDING INITIALLY, THAT I
11 WOULD HAVE WAITED TO BLEED AND THAT ALL MY BLEEDING WOULD
12 HAVE BEEN DONE AT A LATER TIME

13 AND I FEEL LIKE, YOU KNOW, HE SHOULDN'T HAVE SAID THAT
14 BECAUSE HE COULDN'T -- HE CAN'T KNOW SOMETHING LIKE THAT IF
15 I GET SHOT, YOU KNOW, I'M JUST GOING TO BLOOD IF YOU GET
16 SHOT YOU'RE JUST GOING TO BLEED BUT HE'S SAYING THAT I GOT
17 SHOT AND THAT DESPITE BEING SHOT IN MY HAND AND MY STOMACH
18 AND MY BACK AND EVERYWHERE ELSE THAT I JUST DIDN'T BLEED
19 RIGHT THEN I JUST WAITED AND THEN I STARTED POURING OUT
20 BLOOD WHEN I GOT TO THE VAN WHEN HE SAID THAT, YOU KNOW,
21 THAT WAS BASICALLY WHAT THE SOLICITOR WAS AIMING FOR HIM TO
22 SAY BECAUSE SHE WAS SAYING -- SHE WAS BASICALLY TRYING TO SAY
23 THAT, WELL, I WOULDN'T LOSE NO BLOOD INITIALLY, BUT AFTER A
24 PERIOD OF TIME I MAY HAVE -- I MAY START BLEEDING AGAIN

25 THEY'RE TRYING TO SAY THAT I STOPPED BLEEDING AT ONE

1 TIME AND THEN CAME ABOUT AND STARTED BLEEDING AT ANOTHER
2 TIME

3 Q ALL RIGHT DID YOU EXPLAIN -- DID YOU ASK MR STRICKLER
4 ABOUT THAT?

5 A I ASKED HIM ABOUT THAT AND, YOU KNOW, HE -- HE JUST
6 WASN'T -- I MEAN, HE WANTED ME TO PLEAD AT THIS TIME YOU
7 KNOW HE WAS JUST REAL -- ALL HE KEPT SAYING IS THAT, YOU
8 KNOW, AT THE END OF MY FIRST TRIAL, HE JUST TOLD ME -- WHEN I
9 ASKED HIM WHAT HAPPENED HE SAID, WELL, YOU'LL PROBABLY COME
10 BACK AND THEY'LL PROBABLY CONVICT YOU, YOU KNOW WHAT I'M
11 SAYING SO I WAS JUST PRETTY RESIGNED TO THE FACT THAT HE
12 WASN'T GOING TO DO TOO MUCH

13 SO, YOU KNOW, HE DIDN'T REALLY -- HE DIDN'T REALLY HEAR
14 TOO MUCH OF WHAT I WANTED TO SAY, ANYTHING I TRIED TO BRING
15 TO HIM -- I DIDN'T TRY TO BRING ANYTHING THAT I DIDN'T KNOW
16 ABOUT I JUST TRIED TO BRING SOMETHING TO HIM THAT WAS
17 INCONSISTENT IN THEIR TESTIMONY OR SOMETHING I COULD PICK UP
18 TO TRY TO HELP MY DEFENSE BECAUSE I'M GOING TO TRIAL I'M
19 NOT GOING TO TRIAL BECAUSE, YOU KNOW, I JUST WANT THE LIFE
20 EXPERIENCE I'M GOING TO TRIAL BECAUSE I WANT TO PROVE MY
21 INNOCENCE

22 AND, YOU KNOW, REGARDLESS OF WHETHER HE THINKS THAT
23 EIGHT YEARS OR SIX TO EIGHT YEARS IS A GOOD PLEA DEAL, I
24 CAN'T ACCEPT THAT AND I THINK HE SHOULD HAVE STOPPED TRYING
25 TO GET MY PLEAD BECAUSE THAT WAS EXTREMELY STRESSFUL SO,

1 YOU, KNOW AT THE TIME WE DIDN'T WE DIDN'T REALLY HAVE NO --
2 WE DIDN'T HAVE LIKE NO TALKING RELATIONSHIP BECAUSE HE JUST
3 FELT LIKE I WAS WASTING HIS TIME BY GOING TO TRIAL AND, YOU
4 KNOW, WHEN THEY'RE OFFERING ME A GOOD PLEA DEAL -- EVERY TIME
5 HE COME BACK HE JUST, WILL I TAKE THE PLEA DEAL YOU'RE
6 GOING TO GET FOUND GUILTY, YOU'RE GOING TO GET TWENTY YEARS
7 AND, YOU KNOW, WE -- I TRIED EXPLAIN THINGS TO HIM, YOU KNOW,
8 BUT HE BRUSHED ME OFF AND HE WAS JUST DISINTERESTED SO, YOU
9 KNOW, IT WASN'T -- HE NEVER REALLY -- IT WASN'T REALLY
10 WORKING BETWEEN US

11 Q WELL, LETS MOVE ON THE NUMBER 12 YOU HAVE, INEFFECTIVE
12 ASSISTANCE OF COUNSEL IN FAILING TO OBJECT TO OBTAIN AN
13 EXPERT TO EXAMINE THE TRAJECTORY OF THE PROJECTILES FIRED AND
14 THE WOUNDS SUFFERED BY THE APPLICANT AS A RESULT OF, OR IN
15 FAILING TO ACCURATELY CROSS-EXAMINE DR BYNOES REGARDING
16 THESE WOUNDS

17 WHAT ARE YOU REFERRING TO?

18 A THIS IS REFERRING TO -- BECAUSE DR BYNOES SAID THAT THE
19 BULLET -- BECAUSE I GOT SHOT IN MY SHOULDER -- OR I GOT SHOT
20 IN MY BACK THE CORRESPONDING WOUND IS TO MY SHOULDER SO,
21 YOU KNOW, THAT'S A SHORT DOWNWARD DISSENT

22 SO, MR -- I MEAN, PATTERSON TESTIFIED, THE ALLEGED
23 VICTIM TESTIFIED THAT WE WERE STANDING DIRECTLY LOOKING
24 STRAIGHT ON EVEN GROUND LOOKING DIRECTLY AT EACH OTHER WHEN
25 HE FIRED AT ME SO TO ME THAT CONTRADICTS HIS POSITION AND

1 SUPPORTS MINE BECAUSE I TESTIFIED THAT WHEN I WAS STEPPING
2 INTO THE VAN AND I WAS LEANING FORWARD THAT HE SHOT ME IN THE
3 BACK AND THAT'S WHAT HE DID HE SHOT ME IN THE BACK AND
4 THE BULLET HIT ME IN THE BACK AND IT CAME OUT OF MY SHOULDER
5 BECAUSE THE BULLET WOUND STARTS IN MY LOWER BACK AND IT COMES
6 OUT FROM MY SHOULDER

7 SO I COULDN'T SEE HOW MR PATTERSON IS SAYING THAT WE'RE
8 BOTH ON EVEN GROUND, THAT HE'S FIFTEEN FEET AWAY FROM ME AND
9 HE SHOOTS ME AND THE BULLET HITS ME IN MY SHOULDER AND THE
10 BULLET JUST ENDS UP COMING OUT OF MY LOWER BACK THAT
11 DOESN'T MAKE NO SENSE AND DR BYNOES TESTIFIED THAT HE DIDN'T
12 KNOW WHICH ONE WAS THE ENTRY OR EXIT WOUND, BUT THE WOUNDS
13 WERE CORRESPONDING SO I FEEL LIKE HE WAS INEFFECTIVE FOR
14 BRINGING THAT OUT BECAUSE, ONCE AGAIN, HIS TESTIMONY IS
15 WHAT'S GETTING ME CONVICTED HIS CREDIBILITY IS WHAT THEY
16 GOT TO CONVICT ME ON

17 Q SO THE DOCTOR TESTIFIED HE COULDN'T TELL WHERE THE
18 WOUNDS -- WHICH DIRECTION THE WOUND WAS COMING FROM?

19 A HE COULDN'T TELL WHICH WAS THE ENTRY OR THE EXIT WOUND
20 ALL HE KNEW IS THAT THE WOUNDS WERE CORRESPONDING THE WOUND
21 IN MY LOWER BACK AND THE WOUND IN MY SHOULDER

22 Q AND WAS ANY ATTEMPT MADE TO HAVE ANOTHER DOCTOR EXAMINE
23 THE RECORDS?

24 A NO NOT THAT I'M AWARE OF

25 Q NUMBER 13, INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN

1 FAILING TO REVIEW APPLICANT'S MEDICAL RECORDS PRIOR TO TRIAL
2 AND MISSTATING FACTS AS A RESULT OF

3 WHAT ARE THE FACTS THAT HE MISSTATED?

4 A WHEN HE WAS TRYING TO GET ME TO PLEAD GUILTY TO THE
5 CHARGE, HE WAS SAYING -- I LET HIM KNOW, I SAID, WELL, LOOK,
6 HOW IS THERE NO BLOOD AT THE SCENE I SAID THE MAN IS LYING
7 I SAID, HOW IS THERE NO BLOOD AT THE SCENE AND YOU KNOW I GOT
8 SEVEN OR EIGHT -- I GOT SEVEN OR EIGHT BULLET WOUNDS IN ME
9 YOU KNOW WHAT I'M SAYING?

10 SO HE TOOK THAT TO MEAN LIKE I GOT SHOT SEVEN OR EIGHT
11 TIMES NOW, WHEN HE TURNED AROUND -- WHEN HE PRESENTED THAT
12 TO THE JURY, THAT MADE US LOOK REALLY BAD IN FRONT OF THE
13 DOCTOR BECAUSE HE -- FROM HIS OPENING ARGUMENTS HE CAME AND
14 TOLD THE JURY THAT ON -- LET ME SEE ON PAGE 58, ON LINE 1,
15 HE TOLD THE JURY, YOU KNOW, I GOT SHOT EIGHT TIMES

16 SO, YOU KNOW, THAT WAS MAKING IT LIKE LOOK LIKE WE WAS
17 TRYING TO MAKE MORE OF WHAT WE HAD AND THAT IT WOULD BE MORE
18 PROBABLE TO HAVE BLOOD THERE ON THE SCENE OF THE INCIDENT AS
19 OPPOSE TO JUST TELLING THEM I GOT SHOT FOUR TIME

20 NOW, WHEN BYNOES CAME UP AND TESTIFIED AND HE TOLD THE
21 JURY, YOU KNOW, ABOUT WHEN HE WAS TALKING ABOUT MY BULLET
22 WOUND AND HOW I GOT SHOT AND, YOU KNOW, HE TOLD THE JURY HOW
23 MANY TIMES I GOT SHOT, THAT MADE IT LOOK TO THE JURY LIKE WE
24 WAS LYING, YOU KNOW AND I GUESS WE REALLY WERE YOU KNOW
25 WHAT I'M SAYING? BECAUSE THAT'S WHAT HE ADVANCED TO THE

1 JURY

2 AND WHEN I TOLD HIM -- FROM THE BEGINNING- WHEN WE WAS
3 DOWNSTAIRS WHEN HE CAME AND TALKED TO ME, I TOLD HIM -- I
4 DON'T KNOW IF HE MISUNDERSTOOD, BUT EITHER WHICH WAY I FEEL
5 LIKE HE SHOULD HAVE RESEARCHED SOMETHING OR AT LEAST ASKED ME
6 ABOUT IT BECAUSE HE TOLD THE JURY THAT, YOU KNOW, I GOT SHOT
7 EIGHT TIMES IF HE WAS CONFUSED ABOUT THAT, HE COULD HAVE
8 JUST ASKED ME OR HE COULD HAVE PRESENTED -- OR HE COULD HAVE
9 RESEARCHED THE RECORD OR EVEN IF HE DID ASK ME, I WOULD
10 EXPECT HIM TO RESEARCH THE RECORD SO, YOU KNOW

11 Q OKAY

12 A BUT THAT'S WHAT I GOT A PROBLEM WITH BECAUSE THAT MADE
13 IT LOOK REAL GOOD AND THAT'S -- YOU COULD HAVE FELT IT IN THE
14 COURTROOM THAT, YOU KNOW -- THEY JUST MADE IT LOOK LIKE WE
15 WAS -- THEY MADE IT LIKE WE WAS BEING DISHONEST WITH THE JURY
16 BECAUSE THEY JUST FELT LIKE WE WAS MISSTATING -- WE WAS
17 MISSTATING THE FACTS TO THEM AND, YOU KNOW

18 Q OKAY LETS GO TO NUMBER 14 COUNSEL PROVIDED DEFICIENT
19 PERFORMANCE IN FAILING TO PRESENT EVIDENCE THE APPLICANT HAD
20 INVOKED HIS RIGHT TO HAVE COUNSEL PRESENT DURING QUESTIONING
21 WHAT IS THAT RELATED TO?

22 A I HAD ASKED -- WHEN I HAD GOT SHOT --

23 Q UH-HUH

24 A -- AND THE POLICE, THEY WAS -- YOU KNOW, I HAD A BRIEF
25 PERIOD OF CONSCIOUSNESS AND THEY HAD ASKED -- THEY HAD ASKED

1 THEY WAS ASKING ME A WHOLE BUNCH OF QUESTIONS SO I HAD MY
2 DRIVER'S LICENSE IN MY POCKET AND, YOU KNOW, OTHER -- BUT I
3 GAVE THEM MY DRIVER'S LICENSE OR WHATEVER WAS IN MY POCKET
4 AND THEY JUST ASKING ME QUESTIONS

5 Q WERE YOU AT THE HOSPITAL?

6 A NO, I WASN'T IN THE HOSPITAL I WAS -- THIS WAS RIGHT
7 OUTSIDE -- THIS IS WHEN I WAS ON THE GROUND OUTSIDE WHEN I
8 HAD FELL OUTSIDE OF THE VEHICLE AND THEY HAD -- THEY WAS
9 PUTTING IN HANDCUFFS I GUESS AND -- I DON'T KNOW BECAUSE I
10 WAS ALMOST UNCONSCIOUS BUT, YOU KNOW, THEY WAS ASKING ME A
11 WHOLE BUNCH OF QUESTIONS AND I SAID, LOOK I DON'T WANT TO
12 TALK I SAID I WANT AN ATTORNEY

13 SO I GUESS THEY DIDN'T REALLY PAY NO ATTENTION TO THAT
14 BECAUSE THEY KEPT COMING BACK AND ASKING ME BUT THE LADY --
15 IN EXHIBIT 10, THE LADY -- DEPUTY CATALDO, SHE PUT DOWN IN
16 THE INVESTIGATIVE REPORT THAT ON AT THAT DAY THAT I HAD
17 ALREADY ASKED FOR AN ATTORNEY AND, YOU KNOW, AFTER THE FACT
18 THEY JUST COMING BACK AND ASKING ME AGAIN FOR, YOU KNOW --
19 THEY KEPT TRYING TO -- THEY CAME AND TALKED TO ME IN THE
20 HOSPITAL AFTER THAT AND THEN THEY CAME AND TALKED TO ME IN
21 THE COUNTY JAIL AND, YOU KNOW, I DIDN'T THINK THAT THEY WERE
22 SUPPOSED TO DO, BUT, YOU KNOW, BEING THAT THEY WAS I DIDN'T
23 THINK THAT YOU KNOW

24 Q DID ANY STATEMENTS THAT YOU GAVE TO THEM AFTER YOU
25 STATED THAT YOU NEEDED AN ATTORNEY, WAS ANY OF THOSE

1 STATEMENTS USED AGAINST YOU AT TRIAL?

2 A YEAH BUT SEE IT WASN'T -- I TOLD -- I TOLD -- -I TOLD
3 THE INVESTIGATOR WHAT HAPPENED, BUT HE MISSTATED SOME OF THE
4 THINGS IN THERE THAT BECAUSE MY HAND WAS IN A CAST AT THAT
5 TIME AND HE WAS WRITING IT FOR ME AND LIKE ONE OF THE
6 THINGS THAT HE MISSTATED IN THE -- IN MY STATEMENT, WAS HE
7 SAID -- IT WAS A QUESTION THAT HE HAD ASKED HE HAD ASKED ME
8 A QUESTION SAYING SOMETHING ALONG THE LINES OF, DO I BELIEVE
9 THAT MR PATTERSON BELIEVED THAT HE COULD HAVE BEEN -- THAT
10 WE COULD HAVE BEEN THERE TO ROB HIM THAT DAY?

11 AND I SAID, WELL, I DON'T KNOW BECAUSE I DON'T KNOW WHAT
12 MR PATTERSON COULD BELIEVE YOU KNOW I'M SAYING? I DON'T
13 KNOW WHAT HE'S THINKING I DON'T KNOW HIS MIND FRAME SO
14 WHEN I GOT THE STATEMENT THAT -- I MEAN THE BASIC ANSWER WAS
15 I DON'T KNOW BUT WHEN I GOT STATEMENT THE QUESTION WAS
16 SOMETHING LIKE, WAS I THERE TO ROB HIM OR SOMETHING AND IT
17 SAID, I DON'T KNOW IT MADE IT LOOK LIKE, YOU KNOW, ROBBING
18 WAS SOMETHING I DID ON MY PAST TIME OR SOMETHING SO, YOU
19 KNOW, IT WASN'T FAVORABLE

20 BUT, YOU KNOW, THE REST OF THE STATEMENT, IT WAS JUST
21 TELLING THE TRUTH, BUT THAT PART WASN'T -- IT WASN'T
22 FAVORABLE I WISH IT WOULD HAVE BEEN EXCLUDED IT WOULD
23 HAVE BEEN HELPFUL IF IT HAD BEEN EXCLUDED AND I THINK IT
24 COULD HAVE BEEN BECAUSE, YOU KNOW, LIKE THE INVESTIGATOR
25 REPORT FROM THE DAY OF THE INCIDENT SAID THAT I HAD REQUESTED

1 AN ATTORNEY THAT'S WHAT THE DEPUTY PUT IN THERE BECAUSE I
2 SAID I DIDN'T WANT TO TALK I SAID I WANTED AN ATTORNEY
3 AND, YOU KNOW, THEY JUST -- I GUESS THEY DIDN'T PAY ATTENTION
4 TO IT AND THEN INVESTIGATOR MCDONALD -- THE JUDGE WAS
5 ASKING HIM ON THE STAND, HE WAS LIKE DID, MR SEARS INVOKE
6 ANY OF HIS RIGHTS OR ANY OF THE -- ANY OF ALL THAT AND HE
7 WAS, NO, HE DIDN'T -- HE DIDN'T REQUEST AN ATTORNEY, HE
8 DIDN'T REQUEST NONE OF THAT AND I DID, AND THEY HAVE GOT IT
9 IN THEIR PAPERWORK

10 Q OKAY BUT YOUR ATTORNEY DIDN'T MENTION THAT?

11 A NO

12 Q ON NUMBER 15, YOU HAVE INEFFECTIVE ASSISTANCE OF COUNSEL
13 IN FAILING TO PRESENT EVIDENCE THAT CO-DEFENDANT'S STATEMENT
14 WAS UNRELIABLE AND PRODUCT OR COERCION AND DURESS

15 WHAT ARE YOU REFERRING TO?

16 A YEAH THAT'S EXHIBITS 13 THROUGH 18 MY CO-DEFENDANT,
17 HE MADE -- WELL, HE MADE WHAT YOU CALL AN INCULPATORY
18 STATEMENTS REGARDING BOTH OF US SO HE MADE THAT -- THAT WAS
19 LIKE HIS THIRD STATEMENT THAT HE MADE SO I KNEW -- I MEAN
20 WHEN ME AND MR PATTERSON WAS SHOOTING AT EACH OTHER, I WAS
21 STANDING DIRECTLY OUTSIDE THE VEHICLE AND HE WAS RIGHT NEXT
22 TO ME SO, YOU KNOW, AFTER LIKE THE THIRD STATEMENT HE SAID
23 SOMETHING LIKE, WELL, MR SEARS WENT INSIDE THE SHOP AND
24 SEARS ATTEMPTED TO ROB THIS MAN BUT I KNEW THAT TO BE A
25 LIE SO WHEN HE STARTED -- SO HE STARTED -- HE WROTE ME SOME

1 LETTERS AND HE SENT THE LETTERS TO ME AND I NEVER RESPONDED
2 BACK TO THEM, BUT THEN I DID RESPOND BACK ONE TIME AND I
3 SAID, WELL WHY DID YOU EVEN SAY SOMETHING LIKE THAT BECAUSE
4 YOU KNOW, IT'S NOT TRUE AND HE WROTE BACK AND HE SAID, WELL
5 THE INVESTIGATOR TOLD THEM -- AT THE TIME I WAS UNCONSCIOUS
6 BECAUSE I WAS LIKE IN A COMA FOR TWO WEEKS IN THE HOSPITAL
7 SO THEY TOLD HIM THAT I HAD BEEN SHOT THE LAST TIME HE SEEN
8 ME I WAS UNCONSCIOUS, SO THEY TOLD HIM THAT I WAS DEAD, THAT
9 HE WAS GOING TO BE CHARGED WITH MURDER AND THEN THAT'S WHY HE
10 MADE THE STATEMENTS THAT HE MADE SO YOU KNOW

11 Q DID YOU HAVE THAT LETTER?

12 A YEAH I GAVE IT I MAILED -- I DIDN'T ACTUALLY
13 REALIZE -- I DIDN'T ACTUALLY REALIZE THAT -- THAT WHERE THEY
14 WERE UNTIL THEY CAME BACK IN MY DISCOVERY BECAUSE THIS WAS
15 PART OF THE STUFF THAT I WAS ATTEMPTING -- WHEN I WAS
16 ATTEMPTING TO CORRESPOND BETWEEN, YOU KNOW, MY FIRST AND MY
17 SECOND TRIAL AND -- REALLY PRIOR TO MY FIRST TRIAL WHEN I WAS
18 ATTEMPTING TO FIND OUT, YOU KNOW, WHO MY ATTORNEY WAS AND,
19 YOU KNOW, ALL OF THAT, I SENT THAT LETTER -- I MADE A COPY
20 AND I SENT IT TO HIM SO, YOU KNOW, AND THEN I LOST MY COPY
21 IT CAME BACK IN MY DISCOVERY

22 Q SO YOUR DEFENSE ATTORNEY HAD THAT EVIDENCE?

23 A YEAH

24 Q DURING THE TRIAL?

25 A IT WAS IN THE DISCOVERY

1 Q DURING THE TRIAL DID YOUR CO-DEFENDANT MAKE A STATEMENT
2 THAT YOU HAD WENT INSIDE AND ROBBED THE PLACE?

3 A NO

4 Q HE DIDN'T? WHAT DID HE SAY DURING THE TRIAL?

5 A I MEAN HE TOLD THE TRUTH WHEN HE GOT TO TRIAL WHEN HE
6 GOT TO TRIAL HE DIDN'T SAY THAT -- HE TOLD THEM THAT, YOU
7 KNOW, WHAT OCCURRED AND HOW THE POLICE WAS PRESSURING HIM
8 INTO MAKING THE STATEMENT AND THAT HE BELIEVED THAT -- HE
9 THOUGHT I WAS DEAD AND I WAS -- THESE LETTERS RIGHT HERE, I
10 FEEL LIKE THEY CORROBORATED WHAT HE WAS SAYING THEY SHOULD
11 HAVE BEEN PRESENTED SO THAT WAY WE COULD SEE LIKE THIS IS NOT
12 HIS FIRST TIME SAYING THIS

13 Q DID YOUR ATTORNEY USE THAT PAPERWORK TO CORROBORATE HIS
14 TESTIMONY?

15 A NO

16 Q NUMBER 16 YOU HAVE, COUNSEL WAS INEFFECTIVE IN FAILING
17 TO REQUEST SELF-DEFENSE CHARGE AND REQUEST JURY BE INSTRUCTED
18 THAT APPLICANT HAD THE RIGHT TO ARM HIMSELF IN SELF-DEFENCE
19 IF HE REASONABLY BELIEVED THAT HE WAS ACTING IN SELF-DEFENSE
20 WHAT DOES THAT CONCERN?

21 A I THINK THAT WE SHOULD HAVE HAD -- THAT I SHOULD HAVE
22 BEEN GIVEN A SELF-DEFENSE INSTRUCTION BECAUSE I THINK THEY
23 COULD HAVE -- THE JURY, I THINK COULD HAVE -- MIGHT HAVE
24 FOUND ME GUILTY JUST ON THE SIMPLE FACT THAT I PICKED UP A
25 GUN AND, YOU KNOW, ALL THROUGHOUT MY TESTIMONY, YOU KNOW, I

1 MEET ALL THE ELEMENTS OF SELF-DEFENSE SO I FEEL LIKE THAT A
2 SELF-DEFENSE CHARGE SHOULD HAVE BEEN PRESENTED TO THE JURY

3 Q WAS IT REQUESTED BY YOUR ATTORNEY?

4 A NO, IT WASN'T REQUESTED AND, YOU KNOW, I FEEL LIKE
5 BECAUSE, YOU KNOW -- I COULD BE ACTING LAWFULLY EVEN IF I'M
6 IN UNLAWFUL POSSESSION OF A WEAPON IF I CLAIM SELF-DEFENSE OR
7 IF I DON'T CLAIM SELF-DEFENSE, EITHER WAY WHICH WAY THAT
8 CHARGE COULD STILL BE GIVEN TO THE JURY SO I FELT LIKE WE
9 SHOULD HAVE BEEN -- THE JURY SHOULD HAVE BEEN GIVEN THAT
10 OPPORTUNITY BECAUSE THEY KNOW I HAD AN ILLEGAL FIREARM

11 SO, YOU KNOW, THAT ALREADY WAS NEGATIVE SO THEY MAY
12 HAVE FOUND ME GUILTY JUST OFF THE SIMPLE FACT THAT I HAD AN
13 ILLEGAL FIREARM BUT, YOU KNOW, MY WHOLE TESTIMONY WAS
14 PUTTING ME IN A SELF-DEFENSE CONTEXT AND I FEEL LIKE, YOU
15 KNOW, THAT CHARGE SHOULD HAVE BEEN GIVEN TO THE JURY JUST --
16 IF FOR SO FOR NO OTHER REASON THEY'LL KNOW THAT I COULD HAVE
17 HAD THAT ACTING IN SELF-DEFENSE

18 Q OKAY NUMBER 17 YOU HAVE, INEFFECTIVE ASSISTANCE OF
19 COUNSEL IN FAILING TO DEVELOP VARIABLE DEFENSE STRATEGY?

20 A I FEEL LIKE -- I FEEL LIKE WE WAS JUST FLOATING THROUGH
21 THE TRIAL WE DIDN'T HAVE NO SPECIFIC POINT TO TRIAL I
22 MEAN, FIRST BECAUSE HE DIDN'T CONSULT WITH ME BUT, YOU
23 KNOW, I FEEL LIKE WE SHOULD HAVE A DISCERNIBLE DEFENSE
24 STRATEGY SOMEWHERE ALONG THE LINES SO, YOU KNOW, OUR
25 QUESTIONS COULD HAVE BEEN POSED TO COME TO, YOU KNOW, TO

1 REACH SOMETHING SPECIFIC OR TO ADVANCE A SPECIFIC DEFENSE
2 WHATEVER DEFENSE HE WANTED TO RAISE, THAT'S ON HIM, BUT I
3 THINK WE NEEDED ONE AND WE NEEDED A STRATEGY BEHIND IT

4 HE DIDN'T ASK ME ANYTHING ABOUT, YOU KNOW, ANY TYPE --
5 HE NEVER -- TO THIS DAY HE HASN'T EVEN ASKED ME WHAT
6 HAPPENED SO, YOU KNOW, I DON'T KNOW WHAT KIND OF DEFENSE HE
7 COULD EVEN PRESENT ON MY BEHALF REALLY WE WAS JUST FLOATING
8 THROUGH TRIAL SO, YOU KNOW

9 AND IT WAS -- LIKE I SAID, IT WAS, IT WAS -- IT
10 WASN'T -- IT WAS PRETTY TERRIFYING

11 Q AND THEN FINALLY, YOU BASICALLY SAID THAT DENIAL OF
12 EFFECTIVE ASSISTANCE OF COUNSEL IN CUMULATIVE EFFECT OF
13 COUNSEL'S ERRORS

14 SO YOU FEEL THAT THE CUMULATIVE EFFECT OF ALL THE ERRORS
15 RESULTED IN YOUR BEING FOUND GUILTY IS THAT BASICALLY WHAT
16 YOU'RE SAYING?

17 A YES, I DO BECAUSE FOR THE SIMPLE FACT THAT, YOU KNOW,
18 ALL THE ERRORS THAT -- ALL THE ERRORS THAT OCCURRED, YOU
19 KNOW, A LOT OF THEM GO TOWARDS, YOU KNOW, THE WITNESSES'
20 TESTIMONY OR PATTERSON'S TESTIMONY AND HE WAS LYING I
21 MEAN HIS CREDIBILITY WAS THE KEY THING AT MY TRIAL THAT GOT
22 ME CONVICTED, BECAUSE

23 Q AND JUST FOR CLARIFICATION, PRIOR TO THE FIRST TRIAL YOU
24 MET WITH MR STRICKLER ONE TIME, IS THAT CORRECT?

25 A YEAH, THREE WEEKS BEFORE TRIAL

1 Q THE FIRST TRIAL RIGHT?

2 A UH-HUH

3 Q ON THE SECOND TRIAL YOU MET WITH HIM THE DAY OF TRIAL

4 A ON MY SECOND TRIAL?

5 Q RIGHT

6 A SAY THAT AGAIN I DIDN'T HEAR YOU

7 Q YOU MET WITH HIM THE DAY OF YOUR TRIAL?

8 A YES JANUARY 4TH -- ON MY SECOND TRIAL?

9 Q RIGHT

10 A YES

11 Q SO FROM -- I GUESS IT WOULD BE OCTOBER THE 8TH OF 2002,

12 TO THE END OF YOUR SECOND TRIAL, WHICH WOULD HAVE BEEN

13 JANUARY OF 2005?

14 A YES

15 Q YOU MET WITH MR STRICKLER TWO TIMES

16 A I MET WITH HIM ONE TIME -- THE ONLY TIME I MET WITH HIM

17 THAT WE WASN'T AT TRIAL WAS THE TIME BEFORE MY FIRST TRIAL

18 AND THAT WAS LIKE, YOU KNOW, THAT WAS LIKE I MIGHT HAVE BEEN

19 DOWN THERE TEN MINUTES IN THE LITTLE HOLDING CELL DOWNSTAIRS

20 AND I WAS BACK TO TURBEVILLE

21 Q AND THAT WAS YOUR ONLY DEALINGS?

22 A WITH MR STRICKLER OTHER THAN BEING AT TRIAL AND HIM

23 CALLING ME TO THE COURTHOUSE FOR TRIAL, YES

24 Q IS THERE ANYTHING ELSE THAT I HAVE FORGOTTEN TO ASK YOU

25 THAT YOU WOULD LIKE TO MAKE THE COURT AWARE OF?

1 A NO, I THINK THAT PRETTY MUCH COVERS EVERYTHING

2 MR JOHNSON I HAVE NO OTHER QUESTIONS, YOUR HONOR

3 THE COURT ANY CROSS?

4 MR PETRANO YES, BRIEFLY, YOUR HONOR THANK YOU

5 CROSS-EXAMINATION

6 BY MR PETRANO

7 Q GOOD MORNING MR SEARS I JUST HAVE A COUPLE OF
8 QUESTIONS AND JUST FORGIVE ME FOR THE WAY I PUT THEM
9 THERE'S BASICALLY TWO VERSIONS OF EVENTS OF HOW THE SHOOTING
10 OCCURRED THERE'S THE CONVICTION, THE STATE'S VERSION AND
11 THEN YOUR VERSION?

12 A UH-HUH

13 Q IN YOUR VERSION HOW DID THE GLASS BREAK?

14 A I NEVER SAID THE GLASS BROKE

15 Q SO THE GLASS WAS STILL INTACT?

16 A WHAT GLASS ARE YOU REFERRING TO?

17 Q THE DOOR NOT THE BACK GLASS -- NOT THE BACK MINIVAN
18 GLASS, BUT THE DOOR -- I GUESS THE FRONT DOOR, NOT THE ROLL
19 UP DOOR, BUT THE FRONT DOOR TO THE STORE THE STATE CLAIMS
20 THAT YOU GOT SHOT THROUGH IT OR WHATEVER, IS THAT CORRECT?

21 A YES, SIR YES, SIR

22 Q SO HOW DID THAT BREAK IF YOU WERE NEVER INSIDE?

23 A IT COULD HAVE BROKE FROM HIM SHOOTING FROM THE INSIDE OF
24 THE STORE

25 Q BUT I THOUGHT YOU SAID HE WAS OUTSIDE?

1 A NO

2 Q HE WAS OUTSIDE THE DOOR, WHEN HE SAW YOU GETTING OUT OF
3 THE CAR?

4 A YES, HE WAS

5 Q AND SO IF HE WAS STANDING THERE, WHY WOULD HE TURN
6 AROUND AND SHOOT BEHIND HIM?

7 A HE WASN'T SHOOTING BEHIND HIM

8 Q OKAY

9 A WHAT HE DID IS THAT WHEN WE WAS OUTSIDE AND WE WERE
10 SHOOTING AT EACH OTHER --

11 Q RIGHT

12 A -- HE SHOT ME

13 Q RIGHT

14 A I JUMPED BACK IN THE VEHICLE MY DEFENSE WAS THAT FROM
15 THAT POINT ON, HE FABRICATED THE SCENE BECAUSE HE WENT BACK
16 INSIDE AND SHOT THE INSIDE OF THE -- SHOT UP -- THE SHOP UP
17 NOW, HE LIED SEVERAL TIMES REGARDING THAT, SO, YOU KNOW,
18 I THINK THAT WE HAD A GOOD CHANCE TO PROVE THAT BECAUSE HE
19 SHOT ME AND HE DIDN'T WANT TO GO TO JAIL FOR SHOOTING ME SO
20 THAT'S WHERE THIS ATTEMPTED ROBBERY THING CAME INTO PLACE
21 HE HAD -- AND, YOU KNOW, ALL THROUGHOUT -- EVERYTHING OTHER
22 THAN THAT HE STARTED LYING ABOUT, YOU KNOW, THE RETURN FIRE
23 TO HIM AND EVERYTHING OTHER BUT, YOU KNOW, THERE WAS NO
24 EVIDENCE THAT NOBODY WAS SHOOTING BACK TOWARDS HIM OR THERE
25 WAS NO EVIDENCE THAT ANY SHOOTING TOOK PLACE BESIDES HIM

1 INSIDE THE SHOP

2 Q OKAY I APPRECIATE YOU CLEARING THAT UP BECAUSE I
3 WAS -- I DIDN'T UNDERSTAND

4 SO -- AND I'M NOT PUTTING WORDS IN YOUR MOUTH SO HE
5 SHOT AT YOU BECAUSE YOU PULLED UP AND THEN YOU GUYS LEFT
6 AND THEN TO -- I GUESS TO MAKE A DEFENSE FOR HIM LATER YOU'RE
7 CLAIMING THAT HE SHOT THE STORE UP BY HIMSELF?

8 A YES, HE DID

9 Q OKAY AND YOU SAID THAT -- AND I MIGHT BE GETTING IT
10 WRONG THAT HE PULLED THE -- YOU SAW HIM WITH THE GUN AND YOU
11 GRABBED THE OTHER GUY'S GUN FROM THE VAN?

12 A YES, I DID

13 Q THAT WAS HIS?

14 A YES

15 Q AND THEN YOU STARTED SHOOTING OR YOU DIDN'T SHOOT? I
16 DIDN'T CATCH THAT?

17 A NO HE RAISED UP HIS GUN I RAISED UP THE ONE I HAD AND
18 WE JUST FIRED AT EACH OTHER

19 Q SO YOU FIRED SHOTS?

20 A YEAH, I FIRED SHOTS

21 Q AND WHAT KIND OF GUN WAS THAT? THE ONE YOU WERE USING?

22 A I BELIEVE IT WAS -- IT WAS A HANDGUN I DON'T KNOW THE
23 SPECIFIC KIND

24 Q WAS IT A REVOLVER OR AUTOMATIC?

25 A IT WAS AN AUTOMATIC

1 Q AND HAD YOU EVER USE THAT HAD GUN BEFORE?

2 A NO

3 Q HAD YOU EVER FIRED AN AUTOMATIC BEFORE?

4 A NO

5 Q OKAY YOU SAID THAT THERE WASN'T A SAFETY ON IT OR YOU
6 SAID SOMETHING ABOUT A GUN THAT WAS --

7 A NO, THERE WAS ANOTHER GUN THERE WAS ANOTHER GUN
8 THERE WAS ANOTHER GUN AT THE SCENE AND THEN ACTUALLY IN HIS
9 TESTIMONY -- IT'S IN THE TRANSCRIPT IF YOU READ HIS TESTIMONY
10 THAT THERE WAS ANOTHER GUN THAT WAS OUTSIDE OF THE
11 ESTABLISHMENT THAT WAS ON THE GROUND AND THE GUN WASN'T --
12 I TOLD THE -- I TOLD THE OFFICERS I SAID, LOOK I HAD A GUN
13 AND I FIRED A GUN, BUT THAT GUN THAT'S ON THE GROUND, THAT'S
14 JUST NOT THE GUN THAT I FIRED

15 SO, YOU KNOW, THE -- THEY ASKED THE INVESTIGATOR, WELL,
16 YOU KNOW, WHAT -- IS THERE ANY FINGERPRINTS OR IS THERE
17 ANYTHING OF THAT NATURE ON THE GUN AND HE SAID NO, THERE'S NO
18 SMUDGES HE DOESN'T KNOW IF THE GUN HAD BEEN WIPED CLEAN OR
19 WHAT BECAUSE IT'S NEVER BEEN FIRED IT'S JUST A GUN ON THE
20 GROUND SO, YOU KNOW, I THINK IT'S ALSO PERTINENT TO SAY
21 THAT IN HIS TESTIMONY -- IF YOU READ THROUGH HIS TESTIMONY,
22 HE ALREADY SAID THAT, YOU KNOW, I THINK THAT SUPPORTS MY
23 POSITION WITH SAYING THAT HE FABRICATED THE -- THAT SECOND
24 PART OF THE INCIDENT TO COVER HIMSELF, IS THAT HE SAID THAT
25 AFTER THE SHOOTING TOOK PLACE HE WENT TO THE BACK -- BEFORE

1 HE TRIED TO CORRECT HIS TESTIMONY, HE WENT TO THE BACK AND
2 GOT THE OTHER GUN AND THEN HE SAID I GOT THE OTHER CLIP
3 SO, YOU KNOW

4 Q OKAY SO THAT SECOND GUN IN THE PARKING LOT, THE ONE IN
5 THE DRAWING OF THE CRIME SCENE, THAT'S -- WHATEVER YOU WANT
6 IT A DRAWING OR DIAGRAM -- THE ONE IN THE PARKING LOT JUST
7 OUTSIDE THE DOOR, THAT WAS HIS SECOND GUN?

8 A I DON'T KNOW IT WASN'T MINE

9 Q AND WHAT HAPPENED TO YOURS? THE ONE YOU USED I'M JUST
10 GOING TO SAY YOURS I KNOW YOU SAY IT WAS THE OTHER GUY'S IN
11 THE VAN, BUT LET'S JUST SAY, THE GUN YOU USED, WHAT HAPPENED
12 TO THAT? WAS THAT INTRODUCED AT THE TRIAL?

13 A NO, IT WASN'T

14 Q SO THAT GUN WAS NEVER RECOVERED?

15 A NO, IT WASN'T

16 Q OKAY AND YOU WERE EVENTUALLY PICKED UP, I GUESS ALMOST
17 IN A COMA, UNCONSCIOUS, IN THE VAN ON 77?

18 A YES, SIR

19 Q SO WHEN THE OTHER GUYS, THE DRIVER AND THE OTHER PERSON
20 IN THE BACK SEAT FLED, ONE OF THEM MUST HAVE TAKEN THE GUN
21 OBVIOUSLY, IF IT WASN'T IN THE CAR?

22 A YES, SIR

23 Q BECAUSE YOU HAD IT WITH YOU WHEN YOU GOT BACK IN THE
24 CAR?

25 A YES, SIR

1 Q OKAY AND WHAT HAND DO YOU DID YOU SHOOT WITH?

2 A MY RIGHT HAND

3 Q AND THAT'S THE HAND THAT YOU SAID WAS IN A CAST THAT THE
4 OFFICER HAD TO TAKE THE STATEMENT FROM YOU BECAUSE YOU
5 COULDN'T WRITE?

6 A NO MY LEFT HAND WAS IN A CAST BECAUSE I GOT SHOT IN
7 ANY LEFT HAND

8 Q OKAY SO YOU GOT SHOT IN THE LEFT HAND WHAT HAND --
9 YOU SHOOT WITH YOUR RIGHT HAND?

10 A YEAH -- SAY THAT AGAIN

11 Q WHAT HAND DO YOU SHOOT? DID YOU SHOOT WITH?

12 A MY RIGHT HAND

13 Q OKAY AND YOU GOT SHOT IN YOUR LEFT HAND?

14 A YES, I DID

15 Q OKAY AND YOU'RE SAYING WHEN YOU GOT SHOT -- AND
16 CORRECT ME IF I'M WRONG -- YOU GOT SHOT IN THE BACK AND THEN
17 IT CAME OUT THE SHOULDER?

18 A YES, IT DID

19 Q THAT'S WHEN YOU WERE GETTING BACK IN THE VAN?

20 A YES

21 Q ACCORDING TO YOUR TESTIMONY SO THAT SHELL OR BULLET,
22 I'M NOT SURE WHAT TO CALL IT, WOULD BE IN THE VAN?

23 A I DON'T THINK THEY REALLY SEARCHED THE VAN LIKE THAT

24 Q OKAY SO --

25 A I THINK BECAUSE THEY SAID THAT THE -- SEE I WENT INTO A

1 COMA SO THEY DIDN'T ASK ME ANYTHING BUT I THINK THAT
2 SINCE HE WAS SAYING ALL THE SHOOTING TOOK PLACE ON THE
3 INSIDE, THEY DIDN'T REALLY, YOU KNOW, WORRY ABOUT THE VAN OR
4 DO THE TYPE -- LOOK FOR ANYTHING LIKE THAT IN THE VAN

5 Q OKAY

6 A SIMPLY FOR THE FACT THAT HE WAS SAYING ALL THE
7 SHOOTING -- I WASN'T THERE I WASN'T CONSCIOUS TO SAY
8 OTHERWISE

9 Q OKAY AND I JUST ARE HAVE ONE LAST QUESTION YOU SAID
10 THAT YOU HAD THE LETTERS FROM THE CO-DEFENDANT, WHEN HE KIND
11 OF EXPLAINED THAT HE WAS UNDER -- I THINK IT WAS YOUR WORD,
12 DURESS, BECAUSE THE STATE TOLD HIM THEY WERE GOING TO CHARGE
13 HIM WITH YOUR DEATH, THE MURDER?

14 A YES

15 Q IF YOU DIED AND I THINK HE MIGHT HAVE THOUGHT YOU WERE
16 DEAD BUT YOU HAD THOSE LETTERS, I THINK YOU TESTIFIED
17 EARLIER, IN YOUR DISCOVERY PACKET AND THAT THAT'S WHERE THEY
18 WERE?

19 A YEAH, WELL I HAD THEM WHEN I GOT THEM I MADE COPIES OF
20 THEM AND I SENT THE ORIGINALS TO MR STRICKLER

21 Q OKAY I KNOW YOU SAID --

22 A WHEN I SENT THE ORIGINAL TO HIM, I HAD ACTUALLY LOST MY
23 COPY AND I FORGET ABOUT IT REALLY UNTIL, YOU KNOW, THEY CAME
24 BACK WITH MY DISCOVERY PACKET

25 Q WHEN DID YOU GET THE DISCOVERY PACKET?

1 A AFTER I WAS CONVICTED IN PRISON

2 Q OKAY THANK YOU NO FURTHER QUESTIONS

3 A I JUST -- CAN I ADD ON ALSO THAT THE TWO PEOPLE THAT WAS
4 DRIVING BY, THE QUATTLEBAUMS, THEY HAD -- THIS IS IN
5 REFERENCE TO -- I THINK YOU -- I THINK MR JOHNSON HAD ASKED
6 ME, BUT I CORRECT IT, BECAUSE I'M REFLECTING ON THAT NOW

7 HE HAD ASKED ME DID ANYBODY ELSE SEE ANY MASK OR
8 ANYTHING OF THAT NATURE THEY HAD SAID THE QUATTLEBAUMS AT
9 MY FIRST TRIAL HAD SAID THAT THEY HAD SEEN GUNS AND A MASK
10 AND PERPETRATORS LEAVING THE SCENE OF THE CRIME BUT, YOU
11 KNOW, AT MY SECOND TRIAL THEY CAME BACK AND THEY SAID -- AND
12 AFTER THE CO-COUNSEL, MR BURN, MY CO-DEFENDANT'S COUNSEL
13 BROUGHT OUT A POLICE REPORT THEY CAME BACK AND THEY SAID
14 WELL -- WHEN THEY SAID, WELL ON THE DAY OF THE INCIDENT YOU
15 DIDN'T TELL POLICE THAT YOU SAW GUNS AND A MASK AND ALL THAT
16 AFTER THAT THEY WAS JUST LIKE, YOU KNOW, THEY WAS LIKE WE
17 CAN'T REMEMBER AND ALL THAT

18 SO, YOU KNOW, THAT'S WHY I SAID AT THE FIRST TRIAL THEY
19 ALLEGED TO HAVE SEEN A MASK AND ALL THAT, BUT AT MY SECOND
20 TRIAL, AFTER THEY BROUGHT OUT THE INVESTIGATOR -- I'LL
21 JUST -- I'M JUST BRINGING THIS OUT TO CORRECT WHAT I SAID
22 EARLIER BECAUSE I DON'T WANT YOU TO THINK I'M LYING OR
23 ANYTHING, BUT WHEN THEY SAID THAT THEY SAW A MASK AT MY FIRST
24 TRIAL, WHEN THEY CAME BACK AT THE SECOND TRIAL, THEY
25 CORRECTED THEMSELVES BY SAYING ALL THEY SAW WAS A VEHICLE

1 LEAVING THE SCENE, AFTER THE INVESTIGATOR OFFICER WAS
2 QUESTIONING IN REGARDS TO WHAT THEY ACTUALLY DID SEE

3 Q THANK YOU

4 MR JOHNSON JUST BRIEFLY, YOUR HONOR

5 REDIRECT EXAMINATION

6 BY MR JOHNSON

7 Q MR SEARS, DID YOU SEE ANY DISCOVERY PRIOR TO EITHER
8 TRIAL?

9 A I DIDN'T SEE ANYTHING AT ALL I KNEW ABOUT WHAT PEOPLE
10 WERE SAYING WHEN I GOT CALLED TO THE COURTHOUSE

11 MR JOHNSON NO OTHER QUESTIONS YOUR HONOR, WE HAVE
12 NOTHING FURTHER

13 THE COURT YOU MAY STEP DOWN THANK YOU ANY
14 ADDITIONAL WITNESSES?

15 MR JOHNSON WE HAVE NO ADDITIONAL WITNESSES, YOUR
16 HONOR ALL EXHIBITS ARE PART OF THE RECORD ALREADY, AND AT
17 THIS TIME WE REST, YOUR HONOR

18 THE COURT ANYTHING FROM THE STATE?

19 MR PETRANO YES, YOUR HONOR MAY IT PLEASE THE COURT,
20 WE'D LIKE TO CALL MR DOUGLAS STRICKLER TO THE STAND

21 DOUGLAS STRICKLER, AFTER BEING DULY SWORN,
22 TESTIFIED AS FOLLOWS

23 THE COURT HAVE A SEAT AND STATE YOUR FULL NAME,
24 PLEASE

25 THE WITNESS MY NAME IS DOUGLAS STEVEN STRICKLER

DIRECT EXAMINATION

BY MR PETRANO

Q MR STRICKLER, THANKS FOR COMING TODAY I'M GOING TO GO
AHEAD AND PRE-APOLOGIZE IF I'M A LITTLE HAPHAZARD IN MY
QUESTIONING WE'VE GOT A LOT OF ALLEGATIONS TO COVER I MIGHT
GO OUT OF ORDER

HOW LONG HAVE YOU BEEN PRACTICING LAW?

A SINCE I WAS SWORN IN IN NOVEMBER OF 1981

Q 1981 AND SINCE THEN, HOW LONG HAVE -- HOW MUCH OF THAT
HAS BEEN DEVOTED TO THE CRIMINAL PRACTICE?

A WE MIGHT AS WELL SAY EXCLUSIVELY

Q OKAY AND WHAT'S YOUR CURRENT POSITION?

A I'M THE FIFTH CIRCUIT PUBLIC DEFENDER

Q AND SO WHEN YOU SAY THE PUBLIC DEFENDER, YOU'RE THE
PUBLIC DEFENDER FOR THE FIFTH CIRCUIT?

A THAT'S CORRECT

Q OKAY AND HOW LONG HAVE YOU BEEN IN THAT POSITION?

A SINCE JANUARY OF THIS YEAR

Q OKAY AND WHAT WAS YOUR POSITION AT THE TIME OF
REPRESENTATION OF THE CLIENT -- THE APPLICANT?

A I RECEIVED THE FILE IN MAY OF '03 EXCUSE ME I WAS
DEPUTY PUBLIC DEFENDER WHEN I RECEIVED THE TRIAL (SIC) AND
WHEN I TRIED -- FOR RICHLAND COUNTY, WHEN I RECEIVED THE FILE
AND WHEN I TRIED THE CASE THE FIRST TIME I WAS CHIEF PUBLIC
DEFENDER FOR RICHLAND COUNTY WHEN I TRIED THE CASE THE SECOND

1 TIME

2 Q OKAY AND DO YOU REMEMBER YOUR REPRESENTATION IN THIS
3 CASE?

4 A I'VE BEEN RE-ACQUAINTING MYSELF WITH IT DURING THE
5 COURSE OF THE TESTIMONY IN THIS CASE

6 Q OKAY AND YOU'VE BEEN ABLE TO UTILIZE YOUR FILE AND YOU
7 HAVE EVERYTHING, THERE'S NOTHING MISSING?

8 A I HAVE RE-ACQUAINTED MYSELF WITH IT I DON'T HAVE A
9 FULL COPY OF THE TRANSCRIPTS IN EITHER OF THE CASES SO

10 Q OKAY

11 A DO I HAVE AN INDEPENDENT OF RECOLLECTION OF EVERYTHING
12 THAT HAPPENED DURING THE TRIALS? NO

13 Q THANK YOU THE APPLICANT CLAIMED YOU ONLY MET A COUPLE
14 OF TIMES DO YOU RECALL MEETING WITH HIM AND HOW MANY TIMES
15 AND WHERE THAT WOULD HAVE BEEN?

16 A WELL, I RECALL BY REFERENCING MY NOTES DO I HAVE ANY
17 INDEPENDENT RECOLLECTION OF IT? NO IF I CAN, PLEASE, JUST
18 SO THE RECORD IS CLEAR AS TO CONFERENCES WITH MR SEARS, THIS
19 CASE WAS OPENED IN OUR OFFICE OCTOBER 23RD, 2002 I
20 INITIALLY, AS DEPUTY AT THAT POINT IN TIME, PART OF ANY
21 RESPONSIBILITIES WAS ASSIGNING CASES TO THE ATTORNEYS IN THE
22 OFFICE, SO I ASSIGNED THE CASE TO AN ATTORNEY IN OUR OFFICE
23 BY THE NAME OF SHEILA MIMS MS MIMS MET WITH MR SEARS
24 NOVEMBER 20TH, 2002, AT THE COUNTY JAIL CONSULTED WITH HIM
25 SHE MET WITH HIM AGAIN FEBRUARY 20TH, 2003, AT THE COUNTY

1 JAIL AND CONSULTED WITH HIM MS MIMS THEN LEFT OUR OFFICE
2 I RE-ASSIGNED THE CASE ON FEBRUARY 25TH, 2003, TO MS TARA
3 SHIELD, WHO REALIZED THAT SHE HAD A CONFLICT IN
4 REPRESENTATION SHORTLY AFTER THE FILE WAS ASSIGNED TO HER
5 AND I REASSIGNED THE FILE TO AN ATTORNEY IN OUR OFFICE BY THE
6 NAME OF JASON KING

7 HE SPOKE -- THAT WAS ON MARCH 6TH, 2003 MR KING SPOKE
8 WITH MR SEARS ON THE PHONE A COUPLE OF TIMES, SAW HIM MARCH
9 26, 2003, TOOK NOTES ON THAT CONVERSATION AND I SPOKE WITH
10 HIM AGAIN APRIL 15TH, 2003, WHEN MR SEARS WAS ASKING ABOUT
11 THE POSSIBILITY OF ANY PLEA OFFERS IN THE CASE MR KING
12 THEN LEFT OUR OFFICE

13 SO I REASSIGNED THE CASE TO MYSELF, MAY 8TH, 2003, ALONG
14 WITH EVERY OTHER CASE THAT MR KING HAD WHICH RAISED MY
15 CASELOAD AT THAT POINT IN TIME TO SOME 200 CASES I REVIEWED
16 THE FILE AT THAT POINT IN TIME MY REVIEW OF THE FILE AT
17 THAT POINT -- PARDON ME -- INDICATED FROM MS MIMS' NOTES OF
18 A CONVERSATION SHE HAD WITH MR SEARS ON FEBRUARY 20TH, THAT
19 HE RECEIVED A LETTER FROM HIS COUSIN REGARDING THE STATEMENT
20 BEING GIVEN AND A REFLECTION ON THE AMOUNT OF BLOOD INVOLVED

21 I REVIEWED HER TRANSFER MEMO THAT SHE'S PREPARED WHICH
22 SHE REFLECTS ON BOTH AGAIN THE LACK OF BLOOD, SHELL CASINGS
23 FOUND ON THE GROUND AND THE STATEMENT THAT HE'D REFERENCED
24 AND I REVIEWED NOTES FROM CONFERENCES BY MR KING WITH MR
25 SEARS ON TWO SEPARATE OCCASIONS, LOOKS LIKE -- WELL, HIS

1 NOTES REGARDING THE CASE OF MARCH 25TH AND 26TH, IN WHICH HE
2 HAD REVIEWED THE DISCOVERY IN THE MATTER WITH MR SEARS,
3 SPECIFICALLY DURING THE CONFERENCE HE HAD ON -- HIS NOTES FOR
4 THE 25TH MUST HAVE BEEN NOTES TO HIMSELF BECAUSE HE REVIEWED
5 THE FILE MARCH 26TH HIS NOTES WERE FROM HIM CONFERENCE WITH
6 MR SEARS INDICATING HE HAD REVIEWED THE DISCOVERY WITH MR
7 SEARS I REVIEWED HIS TRANSFER MEMO, INDICATING THAT THE
8 INVESTIGATION NEEDED TO BE DONE WE ALREADY HAD AN IN-HOUSE
9 INVESTIGATOR WITH OUR OFFICE LOOKING INTO ASPECTS OF THIS
10 CASE HE DID A LOT OF WORK ON THIS CASE

11 I THEN MET WITH AND REVIEWED THE CASE WITH OUR IN-HOUSE
12 INVESTIGATOR, REVIEWED THE FILE COMPLETELY, MADE ARRANGEMENTS
13 TO HIRE A CRIME SCENE EXPERT BY THE NAME OF DON GIRNDT TO
14 TALK ABOUT ASPECTS OF THIS CASE WITH HIM I ARRANGED TO --
15 HAVE BECAUSE AT THAT POINT IN TIME I WAS UNABLE TO FREE UP A
16 FULL DAY OF MY TIME TO TRAVEL TO MR SEARS LOCATION I
17 ARRANGED TO HAVE HIM BROUGHT TO THE COURTHOUSE SO I COULD
18 CONFER WITH HIM

19 I MET WITH HIM AUGUST 29TH, 2003, FOR APPROXIMATELY
20 EIGHT TENTHS OF AN HOUR IN LOCK UP I REVIEWED HIS DISCOVERY
21 WITH HIM AND THE SITUATION WITH HIM I REVIEWED HIS
22 CONTENTION THAT HE HAD BEEN SHOT EIGHT TIMES WITH HIM I
23 REVIEWED THE FACT WITH HIM THAT -- THAT HIS COUSIN HAD TOLD
24 HIM THAT THE POLICE HAD TOLD HIM THEY WOULD CHARGE HIM WITH
25 MURDER IF MR SEARS DIED I REVIEWED HIS CONTENTIONS

1 REGARDING WHAT HAPPENED WITH HIM

2 I WENT AND CONFERRED WITH BOTH MY REGULAR INVESTIGATOR
3 AND WITH MY CRIME SCENE PERSON ON THAT DATE I CONFERRED
4 WITH THE PROSECUTORS ON THAT DATE I WENT BACK AND CONFERRED
5 WITH MR SEARS AGAIN ON THAT DATE FOR ANOTHER THREE TENTHS OF
6 AN HOUR TO INCLUDE, MY NOTE -- INCLUDING THE FACT THE
7 EVIDENCE DIDN'T LOOK THAT HOT FOR US THAT WAS MY WORDS IN
8 MY FILE NOTES THAT AFTER DISCUSSING THE IMPLICATIONS OF THE
9 BALLISTICS AND CRIME SCENES WITH THE EXPERT THAT I'D HIRED

10 SO I MET WITH HIM ON THAT DATE I MET WITH HIM AGAIN
11 THE DATE OF TRIAL MY REVIEW OF THE NOTES FROM THE PREVIOUS
12 TWO COUNSEL WHO HAD SPOKEN WITH HIM MADE IT CLEAR THAT THEY
13 HAD REVIEWED THE SITUATION WITH HIM THOROUGHLY PRIOR TO
14 TRIAL I INDICATED TO HIM AGAIN WHAT THE -- WHAT OUR CRIME
15 SCENE EXPERT WOULD INDICATE WOULD SUPPORT THE STATE'S
16 CONTENTION HE STILL INDICATED HE WANTED A TRIAL

17 SO WE PREPARED TO GO TO TRIAL I CONVEYED THE OFFER OF
18 THE -- PRIOR TO TRIAL I MET WITH THE PROSECUTORS AND JUDGE
19 KINARD AND MY NOTE SAYS THAT JUDGE KINARD HAD INDICATED THAT
20 DUE TO HIS TWO PRIOR STRONG-ARMED ROBBERIES THAT THE
21 DEFENDANT IS LOOKING AT FIFTEEN ON A STRAIGHT-UP PLEA IN
22 FRONT OF HIM THAT WAS THE DAY PRIOR TO TRIAL I REVIEWED
23 THAT WITH MR SEARS AND HE STILL WANTED TO GO TO TRIAL

24 SO A LONG EXPLANATION I REALIZE, BUT I THINK THE RECORD
25 NEEDS TO BE CLEAR ABOUT THE FACT THAT MR SEARS WAS SEEN ON A

1 NUMBER OF OCCASIONS THE RESULTS OF WHICH WERE -- OF WHICH I
2 WAS AWARE OF BY SEVERAL DIFFERENT ATTORNEYS WITH THE OFFICE
3 I SAW HIM ONCE FOLLOWING UP ON ADDITIONAL INFORMATION ONCE I
4 GOT THE FILE ON ONE OCCASION I UPDATED IT AGAIN IMMEDIATELY
5 PRIOR TO TRIAL I ADVISED HIM AS TO WHAT MY OPINION WAS AS
6 TO THE COURSE OF ACTION HE SHOULD TAKE AND HE ELECTED TO GO
7 TO TRIAL

8 I DID NOT -- EXCUSE ME -- I DID NOT SEE HIM AGAIN
9 BETWEEN THE FIRST TRIAL AND THE SECOND TRIAL UNTIL HE WAS
10 BROUGHT BACK TO THE COURTHOUSE THAT IS CORRECT

11 Q AND JUST TO MAKE IT CLEAR, AND I APPRECIATE YOUR ANSWER
12 AND EXPLANATION YOU HAD MET WITH HIM AND I WROTE DOWN
13 AUGUST 10TH, '03, REVIEWED THE CASE AND DISCOVERY OR WAS
14 THAT SEPTEMBER?

15 A NO, NO, I MET WITH HIM ON AUGUST 29TH, 2003, ONCE THEN
16 WENT AND MET WITH MY INVESTIGATORS, PROSECUTORS AND THEN WENT
17 AND MET WITH HIM AGAIN ON AUGUST 29TH I MET WITH HIM TWICE
18 ON THAT DAY

19 Q AND THAT WOULD HAVE BEEN HERE AT THE TIME RICHLAND
20 COUNTY --

21 A DOWNSTAIRS IN THE DETENTION CENTER, CELLS, YES, SIR

22 Q AND ACCORDING TO YOUR FILE, JUST TO RECAP, HE ALSO HAD
23 THE DISCOVERY AND THE CHARGES REVIEWED BY OTHER ATTORNEYS
24 ACCORDING TO THE FILE?

25 A YES, AT LEAST BY MR KING MS MIMS' NOTES DON'T

1 INDICATE WHETHER OR NOT SHE REVIEWED THE DISCOVERY WITH HIM
2 THEY REFLECT COMMENTS ON HIS PART REGARDING THE CASE MR
3 KING'S NOTES REFLECT THE FACT THAT HE REVIEWED THE PROS AND
4 CONS OF THE SITUATION WITH HIM

5 Q AND YOU THEN GOT, NOT ONLY YOUR INTERNAL INVESTIGATOR
6 THAT YOU NORMALLY USE, BUT ALSO AN OUTSIDE -- I THINK YOU
7 CHARACTERIZED HIM AS CRIME SCENE --

8 A YEAH, DON GIRNDT I MEAN HE IS -- FOR A LONG TIME WAS
9 SLED'S CRIME SCENE INVESTIGATOR HE IS NOW IN PRIVATE
10 PRACTICE HE DOES CRIME SCENE FINGERPRINT ANALYSIS, DOES NOT
11 HOLD HIMSELF OUT AS A BALLISTICS EXPERT, BUT KNOWS ENOUGH
12 ABOUT BALLISTICS TO GO AHEAD AND ANALYZE CRIME SCENES SO --
13 AND WE TALKED ABOUT THAT IN SOME DETAIL

14 Q AND I HATE TO RECAP, BUT JUST TO MAKE IT CLEAR IT WAS
15 YOUR STATEMENT THAT -- IT'S YOUR RECOLLECTION ACCORDING TO
16 THE FILE -- THAT HIS CONCLUSION BASICALLY SUPPORTED THE
17 STATE'S INTERPRETATION OF WHAT HAD OCCURRED?

18 A HIS CONCLUSION WAS THAT THE SHOOTING COULD HAVE TAKEN
19 PLACE INSIDE AS DESCRIBED BY THE STATE'S WITNESS THE
20 FACT -- YOU KNOW -- WELL, HIS CONCLUSION WAS THAT THE
21 SHATTERED GLASS IN THE FRONT DOOR ALMOST LOOKED LIKE A BODY
22 HAD FLOWN THROUGH FRONT DOOR IT WAS NOT OF ASSISTANCE TO
23 THE DEFENSE

24 Q THANK YOU AND STRATEGICALLY, IF YOU HAD CALLED HIM TO
25 THE STAND THAT WAS ACTUALLY, BASICALLY GOING TO COME OUT LIKE

1 THAT AND THAT WOULDN'T BE, LIKE YOU SAID, ADVANTAGEOUS TO THE
2 DEFENSE?

3 A THAT'S CORRECT

4 MR JOHNSON YOUR HONOR, OBJECTION LEADING THE
5 WITNESS

6 MR PETRANO I'M JUST RECAPING

7 THE WITNESS IT'S NOT MY HABIT AND CUSTOM TO GO AHEAD
8 AND INTRODUCE EVIDENCE THAT I BELIEVE WILL GO AHEAD AND
9 FURTHER THE STATE'S CASE

10 BY MR PETRANO

11 Q THANK YOU I APOLOGIZE FOR THE LEADING THE APPLICANT
12 STATED THAT THERE WERE SEVERAL OFFERS A FIFTEEN, A TWELVE, A
13 TEN AND THEN AN EIGHT ULTIMATELY IS THAT YOUR RECOLLECTION?

14 A I HAVE NO INDEPENDENT RECOLLECTION OF THAT I'M NOT
15 GOING TO SAY THAT DIDN'T HAPPEN IT'S NOT UNUSUAL I TAKE
16 IT FROM HIS TESTIMONY THAT THAT OCCURRED -- THE FIFTEEN WAS
17 THE OFFER JUDGE KINARD HAD INDICATED THAT HE THOUGHT HE'D
18 GIVE ON A STRAIGHT-UP PLEA I DON'T KNOW HOW LONG -- I DON'T
19 HAVE A RECORD AS TO HOW LONG THE JURY WAS OUT IN THIS CASE

20 WELL, I MAY LET ME SEE IT'S NOT UNUSUAL IF A JURY IS
21 OUT FOR AN EXTENDED PERIOD OF TIME FOR -- FOR THE STATE TO
22 TRY TO SWEETEN THE DEAL AS IT WERE I DON'T HAVE A RECORD AS
23 TO HOW LONG THEY WERE OUT THAT WAS DURING THE SEPTEMBER
24 TRIAL IF I REMEMBER CORRECTLY THE ONE OF WHICH WE TRIED
25 SOLO WE DIDN'T HAVE THE CO-DEFENDANT SO I HAVE NO

1 INDEPENDENT RECOLLECTION AS TO WHETHER THEY KEPT LOWERING THE
2 OFFER OR NOT I WOULD NOT DENY IT

3 Q OKAY AND HE ALSO MENTION YOU DIDN'T REQUEST A
4 CONTINUANCE BEFORE THE FIRST AND THE SECOND TRIAL, I BELIEVE
5 DO YOU RECALL REQUESTING A CONTINUANCE OR NOT?

6 A I DON'T HAVE -- I DON'T HAVE ANY RECOLLECTION OF HAVING
7 REQUESTED ONE AGAIN, I DON'T HAVE THE FULL TRANSCRIPTS IN
8 THE CASE I DON'T SEE WHY I WOULD HAVE I WAS PREPARED TO
9 GO TO TRIAL IN BOTH CASES -- AT BOTH TIMES, RATHER

10 Q AND THE APPLICANT STATED THAT HE WASN'T AWARE OF WHAT
11 YOUR DEFENSE WAS DURING THE FIRST TRIAL WAS HE PRESENT AT
12 THE FIRST TRIAL?

13 A YES, SIR

14 Q ALL RIGHT DO YOU RECALL OR ANYTHING IN THE FILE THAT
15 THE APPLICANT WANTED THE PLEAD? I BELIEVE HE STATED THAT HE
16 DID NOT AND I JUST WANTED TO MAKE SURE THAT THAT WAS THE
17 CASE

18 A HE -- THERE'S A NOTE FROM MR KING -- WELL, THE LAST
19 NOTE FROM MR KING PRIOR TO THE CASE BEING TRANSFERRED TO ME
20 APRIL 15TH, 2003, INDICATED HE WAS ASKING ABOUT AN OFFER IN
21 THE CASE AND ACTUALLY -- BEG THE COURT'S INDULGENCE THERE
22 IS SOMETHING IN HERE

23 MR KING, FROM HIS CONFERENCE MARCH 26, 2003, DISCUSSED
24 THE POSSIBILITY OF A STRONG-ARM PLEA, FIFTEEN SUSPENDED ON
25 THREE AND FIVE YEARS PROBATION SO THAT APPEARED TO BE

1 SOMETHING THAT MR SEARS WAS WILLING TO CONSIDER AT THAT
2 POINT IN TIME

3 Q AND THAT WAS HIS SUGGESTED PLEA?

4 A THAT'S -- I MEAN THESE ARE NOTES TAKEN IN THE COURSE OF
5 A CONVERSATION THAT'S NOT MR KING'S SUGGESTION THAT'S
6 GOING TO BE A RESPONSE FROM MR SEARS REGARDING A SUGGESTION
7 TO EXPLORE PLEA NEGOTIATIONS IN THE MATTER

8 Q THANK YOU AND I'M GOING TO JUMP TO THE APPLICANT'S
9 NUMBER 3 I'LL CALL IT THE JUROR MISCONDUCT HE CLAIMS THAT
10 THE CO-DEFENDANT'S -- WELL, HIS AUNT TESTIFIED TO SEEING A
11 JUROR TALKING WITH THE VICTIM DO YOU RECALL?

12 A I HAVE NO INDEPENDENT RECOLLECTION OF THAT AT ALL IT'S
13 EITHER IN THE TRANSCRIPT OR NOT I DON'T KNOW

14 Q OKAY AND HIS NUMBER 4, BASICALLY RESOLVED AROUND THE
15 SHOES, CLAIMS THAT -- I HOPE I'M GETTING IT RIGHT HERE -- THE
16 SHOES THAT WERE CUT OFF HIM AT THE HOSPITAL WERE WHITE, YET
17 THE VICTIM CLAIMS CLAIMED TO HAVE SEEN BLUE TENNIS SHOES AND
18 THEN YET THERE WERE BLUE TENNIS SHOES AS EVIDENCE IN THE
19 TRIAL TAKEN FROM THE AUNT'S HOME DO YOU RECALL ANYTHING
20 ABOUT THE SHOES? CAN YOU ELABORATE ON THAT?

21 A NO I DON'T REMEMBER

22 Q OKAY AND IF THE RECORD INDICATES THAT YOU DID INDEED
23 CROSS-EXAMINE A WITNESS ABOUT THE SHOES, YOU DON'T HAVE ANY
24 INDEPENDENT RECOLLECTION OF THAT? IT'S JUST WHAT THE
25 RECORD

1 A IF -- WHAT WAS DONE ON THE RECORD IS ON THE RECORD AND
2 IF I CROSSED HIM, I CROSSED HIM IF I ARGUED IT IN CLOSING I
3 DON'T KNOW WHETHER THE CLOSINGS ARE AVAILABLE AS PART OF THE
4 TRANSCRIPT OKAY THEN I ARGUED IT IN THE CLOSING I HAVE
5 NO IDEA ABOUT THAT

6 Q AND -- JUST A MOMENT

7 MR PETRANO COURT'S INDULGENCE

8 BY MR PETRANO

9 Q DID YOU HAVE A COPY OF THE TRANSCRIPT FROM THE FIRST
10 TRIAL DURING THE SECOND TRIAL?

11 A I HAD COPIES OF REQUESTED PORTIONS OF THE TRANSCRIPT AT
12 THE TIME OF THE FIRST TRIAL I MEAN I DID NOT ATTEMPT TO
13 PRESERVE MY CLOSING ARGUMENT FOR POSTERITY I REQUESTED
14 COPIES OF RELEVANT PORTIONS OF THE TRANSCRIPT FROM THE COURT
15 REPORTER

16 Q AND YOU HAD THOSE AVAILABLE TO IMPEACH ANY WITNESS IF
17 YOU THOUGHT THAT WAS NECESSARY?

18 A CORRECT

19 Q AND THAT WAS YOU WHO ACTUALLY HAD REQUESTED THOSE FOR
20 THAT PURPOSE?

21 A CORRECT

22 Q NUMBER 14 ON THE APPLICANT'S APPLICATION WAS THAT ANY
23 STATEMENTS THAT HE HAD MADE AFTER THE -- BEING ARRESTED I
24 GUESS IN THE CAR WHEN HE WAS DRIFTING IN AND OUT OF
25 CONSCIOUSNESS WHERE HE CLAIMS HE ASKED FOR AN ATTORNEY AND I

1 GUESS SOME DISPATCH REPORT OR SOME POLICE REPORT ALSO SUPPORT
2 THAT HE ASKED FOR AN ATTORNEY AT SOME POINT -- ANY STATEMENTS
3 MADE AFTER THAT DID YOU CHALLENGE ANY OF THEM? DO YOU
4 REMEMBER?

5 A I DON'T KNOW I ASSUME THERE'S A TRANSCRIPT IT WOULD
6 BE MY HABIT AND PRACTICE TO CONDUCT A JACKSON V DENNO
7 HEARING REGARDING STATEMENTS MADE BY A DEFENDANT

8 Q AND NUMBER 16, DO YOU RECALL WHETHER YOU REQUESTED OR
9 DID NOT REQUEST A SELF-DEFENSE CHARGE?

10 A YOU KNOW, I'VE LOOKED THROUGH ANY FILE AND UNFORTUNATELY
11 I USUALLY KEEP A COPY OF MY REQUESTS TO CHARGE AND I DID NOT
12 FIND A COPY IN MY FILE I USUALLY FILE A COPY OF MY REQUESTS
13 TO CHARGE WITH THE COURT IF I MAKE ANY -- WITH THE COURT
14 REPORTER AND WITH THE CLERK OF COURT IF I MAKE ANY SPECIAL
15 REQUESTS

16 IF I CAN, PLEASE, LET ME JUST GO BACK TO YOUR PREVIOUS
17 QUESTION I WAS LOOKING THROUGH MY COVER SHEET FOR MY NOTES
18 ON THE TRIAL AS TO THE STATEMENTS I ALWAYS DO A -- THE
19 FIRST THE VERY FIRST PAGE ON MY LEGAL PAD IS A SERIES OF
20 PRETRIAL ISSUES THAT I SEE THAT NEED TO BE DEALT WITH AND I
21 SEE SPECIFICALLY -- I SEE NEIL V BIGGERS, I SEE NUMBER FIVE
22 JACKSON V DENNO, SUBS HOSPITAL AND WRITTEN

23 I DON'T KNOW IF THERE'S A TRANSCRIPT AROUND AS TO EITHER
24 ONE OF THESE TRIALS, BUT AGAIN IT'S MY HABIT AND PRACTICE TO
25 COVER STATEMENTS MADE BY THE DEFENDANT TO LAW ENFORCEMENT AND

1 I HAVE CONTEMPORANEOUS NOTES INDICATING THAT THAT WOULD BE
2 WHAT I DID IN FACT, I HAVE ANOTHER I'VE GOT A CHECK MARK BY
3 THEM INDICATING THAT THEY WERE DONE NOW I'M SORRY I LOST
4 MYSELF WHAT WAS YOUR QUESTION

5 Q NO I APPRECIATE THAT FOLLOW-UP BACK TO THE CHARGE
6 FOR THE SELF-DEFENSE CHARGE, JUST GENERALLY SPEAKING AS A
7 DEFENSE ATTORNEY WITH TWENTY-FIVE PLUS YEARS EXPERIENCE, IS
8 IT YOUR OPINION THAT A SELF-DEFENSE CHARGE WOULD BE
9 APPROPRIATE IN THIS CASE?

10 A COULD I HAVE ASKED FOR IT? YES WOULD IT HAVE BEEN
11 GRANTED? NO HE WAS NOT WITHOUT FAULT IN APPEARING AT THE
12 INCIDENT HE CAME TO COLLECT A DRUG DEBT, NOT HIS DRUG DEBT,
13 ANOTHER'S DRUG DEBT, ARMED HIMSELF UPON GETTING OUT OF THE
14 CAR, SEEING THE OTHER PERSON WITH A GUN, ACCORDING TO HIS
15 TESTIMONY I DO NOT REMEMBER WHETHER OR NOT -- WHETHER I
16 REQUESTED ONE OR NOT AGAIN, IT SHOULD BE IN THE RECORD IF I
17 DID

18 Q AND, FINALLY, THE APPLICANT CLAIMS THAT YOU BASICALLY
19 DEVELOPED NO VIABLE DEFENSE STRATEGY WHAT WAS YOUR DEFENSE?
20 WHAT WAS HIS DEFENSE?

21 A BASICALLY WHAT HE'S SAYING, THAT THE VICTIM'S STORY IN
22 THIS CASE WAS UNBELIEVABLE AGAIN, I DON'T KNOW IF THERE'S
23 IF THE CLOSING ARGUMENTS IN THESE TWO TRIALS ARE AVAILABLE,
24 BUT I HAVE MY NOTES OR AT LEAST OUTLINE OF MY NOTES FROM BOTH
25 OF THEM

1 ON SEPTEMBER 25TH -- LET'S SEE WHAT'S TRUTH IN THE
2 CASE? WHAT'S REASONABLE? WHAT'S UNREASONABLE? LET ME GET
3 STRUCK BY LIGHTENING, THE EARTH DESTROYED -- SCENE TAMPERED
4 WITH BECAUSE NO SHELL CASINGS OUTSIDE, DIDN'T HAPPEN AS THE
5 STATE CLAIMED IT DID, AND WE DON'T HAVE TO PROVE IT HAPPENED,
6 SO OUT OF THE WAY, THE SCENE, BLOOD, WAS THERE ANY INSIDE?
7 DO ANY TESTING FOR DNA ON THE BULLETS?

8 DEMETRIO GOT SHOT AND RAN ALL THE WAY TO THE VAN GOT IN
9 AND IF THAT WASN'T WILD ENOUGH DIDN'T BLEED ALONG THE WAY
10 KIND OF ARGUED THE SAME THING HE'S TALKING ABOUT IT'S
11 UNDISPUTED I PUT DOWN HE GOT SHOT EIGHT TIMES I GOT WRAPPED
12 UP IN THE MOMENTS I DO HAVE THE ENTIRE MEDICAL RECORDS,
13 WHICH I DID REVIEW PRIOR TO TRIAL DIDN'T GET THOSE FROM THE
14 STATE, GOT THOSE OURSELVES TOOK THIRTY UNITS OF BLOOD OVER
15 TIME HAVE THE STATE BRING IN A DOCTOR TO GO AHEAD AND SAY
16 OTHERWISE YOU KNOW IT'S UNDISPUTED THAT'S WHAT HE DID
17 NO GLASS, NO CUTS ON HIM IF HE BLEW THROUGH THE DOOR AS THE
18 STATE CLAIMED SAFETY GLASS -- THERE'S NO EVIDENCE OF SAFETY
19 GLASS JOHN MEDDERS TRIED TO GO AHEAD AND INJECT VIA
20 TESTIMONY ON HIS OWN PART ANY EVIDENCE OF ROBBERY AS A
21 MOTIVE, JUST ONE WITNESS'S, YOU KNOW -- CAR, BULLET HOLES,
22 DIFFERENCES IN THE STATEMENTS ON HIS PART NOTHING OF
23 SUBSTANCE STATE OBJECTED IN THE OPENING WHEN I REFERENCED
24 TO THE CASE BEING DRUG RELATED SAYING THERE WAS NO EVIDENCE
25 OF IT AND LO AND BEHOLD IN THE COURSE OF THE TRIAL, IT TURNS

1 OUT THERE IS EVIDENCE OF IT

2 ANYWAY THEY MADE A MOUNTAIN OUT OF HOLE HILL, THERE'S NO
3 EVIDENCE THERE WAS A ROBBERY YOU KNOW, BASICALLY WHAT HE
4 SAYS WAS MY THEORY OF DEFENSE

5 AND THEN ON THE 9TH OF -- AGAIN, I'M SORRY JUST TO
6 CORRECT ONE MATTER THE TRIAL IN THIS CASE, THE FIRST TRIAL
7 WAS FROM SEPTEMBER 23RD THROUGH SEPTEMBER 25TH AND THE SECOND
8 TRIAL WAS JANUARY 5TH THROUGH JANUARY 9TH OF 2004 AND NOW
9 THE SECOND TRIAL, I PRETTY MUCH ARGUED THE SAME THING SO MY
10 THEORY OF DEFENSE WAS HIS THEORY OF DEFENSE

11 MR PETRANO THANK YOU NOTHING FURTHER AT THIS TIME,
12 YOUR HONOR

13 THE COURT ANY CROSS?

14 MR JOHNSON THANK YOU, YOUR HONOR MAY IT PLEASE THE
15 COURT?

16 CROSS-EXAMINATION

17 BY MR JOHNSON

18 Q MR STRICKLER, JUST FOR CLARIFICATION -- SO IN LOOKING
19 AT YOUR RECORDS YOU SAW HIM ONCE PRIOR TO TRIAL AND THEN YOU
20 SAW HIM THE DAY OF THE TRIAL, IS THAT CORRECT?

21 A I SAW HIM TWICE ON ONE DAY PRIOR TO TRIAL, YEAH IF YOU
22 WANT TO CALL THAT ONCE I SAW HIM ONCE

23 Q AND TOLD HIM I THINK YOU SAID POINT EIGHT WHEN THE FIRST
24 TIME AND WHAT WAS THE SECOND TIME?

25 A ABOUT THREE TENTHS OF AN HOUR THE SECOND TIME

1 Q ABOUT THREE TENTHS OF AN HOUR?

2 A A LITTLE OVER AN HOUR, I SAW HIM FOR

3 Q SO ROUGHLY A LITTLE OVER AN HOUR?

4 A CORRECT

5 Q AND THEN YOU WENT TO TRIAL?

6 A CORRECT

7 Q AND THEN ON THE SECOND TRIAL -- THE FIRST TRIAL WAS A
8 HUNG JURY THEN ON THE SECOND TRIAL YOU DIDN'T SEE HIM AT ALL
9 UNTIL THE DAY OF TRIAL?

10 A I SAW HIM THE DAY OF TRIAL, CORRECT

11 Q WITHIN AN HOUR YOU WERE ABLE TO GET ENOUGH INFORMATION
12 FROM YOUR CLIENT TO PREPARE FOR THE TRIAL?

13 A I WAS PRIVY TO ALL THE INFORMATION HE HAD GIVEN ALL THE
14 OTHER ATTORNEYS I KNEW EXACTLY WHAT HE HAD TO SAY ABOUT
15 WHAT HAPPENED AND WHAT HIS POSITION WAS ON IT, AND WITHIN
16 THAT COURSE OF TIME I WAS ABLE TO GO AHEAD AND CONFIRM THE
17 FACT OF MY UNDERSTANDING OF WHAT HIS POSITION WAS AS I -- AS
18 I TOOK IT FROM THE PRIOR ATTORNEYS' NOTES OF THEIR
19 REPRESENTATION WAS CORRECT SO, YES, IT WAS PLENTY OF TIME
20 TO GET THAT ACCOMPLISHED

21 Q BUT YOU WERE PRIVY TO WHAT THEY HAD WRITTEN DOWN, SO YOU
22 DON'T KNOW IF THEY WROTE EVERYTHING DOWN OR NOT DO YOU?

23 A OF COURSE NOT

24 Q DO YOU KNOW WHEN THEY ACTUALLY RECEIVED DISCOVERY IN
25 THIS MATTER?

1 A PRIOR TO HIM MEETING -- PRIOR TO MR KING MEETING WITH
2 DEMETRIO AND REVIEWING DISCOVERY WITH HIM, I WOULD BELIEVE ON
3 MARCH 26TH, SINCE WE WERE GETTING INFORMATION ON OUR OWN IN
4 THAT REGARD AT THAT POINT IN TIME LET ME SEE HERE

5 Q SO YOU THINK SOME TIME AROUND MARCH?

6 A NO, I DON'T THINK IT'S SOMETIME AROUND MARCH WE WOULD
7 HAVE FILED FOR DISCOVERY IN THIS CASE WITHIN A COUPLE OF DAYS
8 OF IT BEING OPENED BY OUR OFFICE THAT IS DONE
9 AUTOMATICALLY WHEN I ASSIGN A CASE TO AN ATTORNEY, THE
10 PAPERWORK IS GENERATED THAT MORNING THE ATTORNEY SIGNS IT
11 AND IT'S FILED SO THE CASE WAS OPENED ON OCTOBER 23RD,
12 2002 I ASSIGNED IT TO MS MIMS ON OCTOBER 24TH, 2002 SHE
13 INDICATES SHE HAD "SIGNED THE RULE 5 ON OCTOBER 21ST AND
14 PLEASE FILE THE DISCOVERY AT THAT POINT IN TIME " SO WE
15 REQUESTED IT BY OCTOBER 25TH, 2002

16 THE SECOND APPEARANCE IN THIS CASE WAS SECOND SCHEDULED
17 FOR MARCH 27TH, 2003 WE WOULD HAVE HAD HAD DISCOVERY BY
18 THAT POINT IN TIME MR KING, FROM HIS NOTES HAD DISCOVERY,
19 I WOULD THINK PRIOR TO MARCH 13TH, 2003

20 Q OKAY AND MR KING -- IN MR KING'S NOTES, HOW MUCH
21 TIME DID HE SAY HE SPENT?

22 A HE DOESN'T WRITE DOWN THE AMOUNT OF TIME HE SPENDS

23 Q OKAY

24 A THAT'S MY HABIT AND NOT HIS

25 Q OKAY WELL, YOU SAY THIS CASE ABOUT CREDIBILITY OF

1 WITNESSES BECAUSE THERE WASN'T A LOT OF PHYSICAL EVIDENCE
2 INVOLVING THIS?

3 A SURE

4 Q WOULD YOU ALSO AGREE THEN, THAT I GUESS, IN CREDIBILITY
5 OF THE WITNESSES, THAT IT'S IMPORTANT TO USE EVIDENCE THAT
6 CAN IMPEACH WITNESSES THAT -- THAT THERE ARE -- THAT ARE
7 AGAINST YOUR CLIENT?

8 A SOMETIMES DEPENDS ON WHAT THE EVIDENCE IS

9 Q FROM LISTENING TO MY CLIENT WHEN HE WAS ON THE STAND AND
10 THE SPECIFIC THINGS THAT HE POINTED OUT, CAN YOU UNDERSTAND
11 THEN WHY HE BELIEVED THAT HE HAD CERTAIN THINGS THAT COULD
12 SHOW INCONSISTENCY OF THE VICTIM OR THE WITNESS IN THIS CASE

13 A I WASN'T LISTENING THAT CLOSE TO WHAT YOUR CLIENT HAD TO
14 SAY

15 Q DO YOU HAVE ANY RECOLLECTION OF USING ANY OF THOSE
16 THINGS THAT -- ANYTHING TO QUESTION THE CREDIBILITY OF THE
17 VICTIM IN THIS CASE?

18 A I HAVE NO RECOLLECTION AS TO WHETHER ANY OF THOSE THINGS
19 EXIST

20 Q IF THOSE THINGS DID EXIST, SUCH AS THE LETTER --

21 A OH, THE LETTER? OKAY YOU'RE GETTING INTO SPECIFICS
22 I'VE ALREADY TESTIFIED I WAS AWARE OF THE LETTER THAT WAS
23 PASSED ON TO ME ON I KNEW ABOUT THAT THE MAN TESTIFIED
24 ACCORDING TO THE LETTER NO, I DID NOT FEEL -- I COULDN'T
25 IMPEACH HIM

1 Q I UNDERSTAND

2 A HE'S TESTIFYING IN ACCORDANCE TO WHAT THE LETTER SAID
3 YOU KNOW, COULD I ATTACK THE STATE FOR TRYING TO STRONG ARM
4 HIM? I SUPPOSE, BUT I'VE -- I'VE GOT A MAN TESTIFYING THE
5 WAY I WANTED HIM TO TESTIFY I DON'T FEEL LIKE IRRITATING
6 HIM, THANK YOU

7 Q I UNDERSTAND ON THE VICTIM'S TESTIMONY, THERE WAS SOME
8 QUESTION ABOUT THE SHOOTING OCCURRING INSIDE THE BUILDING AND
9 OUTSIDE THE BUILDING

10 A RIGHT

11 Q WERE YOU ABLE TO GET ANY INDEPENDENT MEDICAL
12 EXAMINATION, MEDICAL RECORD, TO DETERMINE THE SHOTS -- AS FAR
13 AS THAT ONE SHOT IN THE SHOULDER, WHETHER IT WAS THE BACK FOR
14 FRONT FOR THE INJURY?

15 A NO AND IT REALLY DOESN'T MATTER I CAN CONFIGURE MY
16 BODY TO GO AHEAD WITH -- YOU'VE GOT -- IT'S THE INTERSECTION
17 OF TWO DIFFERENT PLAINS YOU'VE GOT A BULLET TRAVELING IN A
18 PARTICULAR PLAIN IT MAY LEAVE -- IT MAY BE STRAIGHT
19 THROUGH IT I MAY LOOK THIS WAY, YOU TURN THIS WAY IT MAY
20 LOOK THIS WAY, YOU TURN THIS WAY, IT MAY LOOK THIS WAY I
21 TALKED WITH MR GIRNDT ABOUT THAT I SAID, YOU KNOW, HOW
22 DOES THIS HAPPEN? HOW DOES -- HOW DOES HE MANAGE TO MISS THE
23 OTHER TWO PEOPLE IN THE STORE HE SAID BECAUSE HE'S SHOOTING
24 LIKE THEY DO ON TV HAND OVER AND ARMED OVER HIS EYE, FIRING
25 BLINDLY AWAY THAT'S HOW THE GANGSTERS OF TODAY PLAY IT'S

1 NOT LIKE THEY'RE DISCIPLINED MILITARY FORCE

2 SO THEY'RE SPRAYING ALL OVER THE PLACE THEY DON'T HIT

3 ANYTHING AND THEN SOMEONE STARTS MOVING, SOMEONE STARTS

4 RUNNING THE BULLETS, YOU KNOW, ENTER AT ALL DIFFERENT

5 ANGLES YOU CAN PUT ANYONE ON THAT -- MEDICAL EXPERT,

6 FORENSIC PATHOLOGIST ON THE STAND AND YOU MAKE NO HEADWAY ON

7 ANGLES OF BULLET AND TRAJECTORIES AS FAR AS GUNSHOT WOUNDS ON

8 THE FACE OF THE EARTH BECAUSE --

9 Q I UNDERSTAND THAT

10 A -- ONCE YOU GET THOSE TWO DIFFERENT THINGS AT WORK,

11 ANYTHING IS EXPLAINABLE

12 Q IN THE TRANSCRIPT THOUGH, THE VICTIM STATES THAT THE

13 DEFENDANT WAS LOOKING STRAIGHT AT HIM AND FELL STRAIGHT BACK

14 OUT THE DOOR THAT WAS PART OF THE DESCRIPTION IN THE

15 TRANSCRIPT

16 A OKAY

17 Q THEREFORE, THERE WAS NO TESTIMONY ABOUT ANY WILD

18 SHOOTING OR ANYTHING OF THAT NATURE SO WHILE I UNDERSTAND

19 WHAT YOU'RE SAYING, BUT BASICALLY THAT'S SPECULATION

20 A WELL, HE FALLS OUT THE DOOR AND THEN RUNS TO THE CAR AND

21 THEN GETS HIT THROUGH THE SHOULDER I MEAN, IT'S JUST -- NO

22 YOU STARTED YOUR QUESTION WITH, DID I HAVE ANYONE INDEPENDENT

23 TO EXAMINE IT NO, BECAUSE I KNOW WHAT THEIR ANSWER --

24 HONEST ANSWER WOULD BE TO THAT

25 Q WELL, YOU DON'T NECESSARILY KNOW, BUT YOU'RE PROJECTING

1 WHAT YOU BELIEVE IT WOULD BE?

2 A ALL RIGHT THANKS FOR CORRECTING ME ON MY STATEMENT

3 I'M OF THE OPINION THAT THEIR TESTIMONY WOULD HAVE BEEN BASED

4 ON TWENTY-FIVE YEARS WORTH OF TRYING HOMICIDE CASES AND EACH

5 OF WHICH I'VE HAD THE OPPORTUNITY TO GO AHEAD AND EXAMINE THE

6 PATHOLOGIST AND MANY OF WHICH I'VE THAT HAD OPPORTUNITY TO GO

7 AHEAD AND QUESTION THEM ABOUT THIS VERY SUBJECT THAT ANY

8 KNOWLEDGEABLE EXPERT IN THAT FIELD WOULD NOT BE ABLE TO RULE

9 OUT OR NOT BE ABLE TO STATE TO A REASONABLE DEGREE OF MEDICAL

10 CERTAINTY THAT THE WOUNDS WOULD NOT HAVE OCCURRED AS THE --

11 AS WAS TESTIFIED TO OR I JUST DIDN'T THINK ABOUT DOING IT

12 AND, I MEAN, IN WHICH CASE I DIDN'T THINK ABOUT DOING IT AND

13 SHOULD HAVE

14 Q I DON'T HAVE --

15 (OFF THE RECORD)

16 MR JOHNSON I HAVE NO OTHER QUESTIONS, YOUR HONOR

17 THE COURT ANYTHING FURTHER?

18 MR PETRANO NO, YOUR HONOR

19 MR JOHNSON YOUR HONOR, I WOULD LIKE TO CALL --

20 THE COURT YOU MAY STEP DOWN

21 MR JOHNSON -- MR SEARS AGAIN JUST AS A -- FOR A

22 REBUTTAL TO SOME OF THE THINGS THAT WAS JUST BROUGHT UP

23 MR PETRANO YOUR HONOR, MAY THE WITNESS BE EXCUSED?

24 MR STRICKLER

25 THE COURT ANY OBJECTION

1 **MR JOHNSON** I HAVE NO OBJECTION, YOUR HONOR

2 **THE COURT** YOU MAY BE EXCUSED THANK YOU

3 **MR STRICKLER** THANK YOU, YOUR HONOR

4 **THE COURT** YES, SIR

5 **MR JOHNSON** JUST BRIEFLY, I'D LIKE TO CALL MR SEARS
6 TO THE STAND

7 **THE COURT** AND MR SEARS I'LL REMIND YOU THAT YOU'RE
8 STILL UNDER OATH TO TELL THE TRUTH IN THIS MATTER

9 **THE WITNESS** YES, MA'AM

10 DIRECT EXAMINATION

11 BY MR JOHNSON

12 Q MR SEARS, THERE WAS -- MR KING IS ANOTHER ATTORNEY
13 THAT CAME TO LIGHT SINCE WE'VE BEEN SITTING HERE DID HE
14 COME TO SEE YOU?

15 A HE CAME TO SEE ME, BUT HE DIDN'T TALK ABOUT ANYTHING
16 ALL HE SAID IS THAT HE IS GETTING READY TO LEAVE AND THAT
17 SOMEBODY ELSE WOULD BE ASSIGNED TO MY CASE HE DIDN'T
18 DISCUSS ANY DISCOVERY WITH ME I DIDN'T GET MY DISCOVERY
19 UNTIL AFTER I GOT CONVICTED

20 Q HE DIDN'T SHOW YOU ANY DISCOVERY?

21 A HE DIDN'T SHOW ME ANYTHING HE DIDN'T GO OVER ANYTHING
22 WITH ME HIM AND MS MIMS BOTH SAID THAT, YOU KNOW, THEY
23 DIDN'T HAVE THE PAPERWORK WITH THEM FOR PAPERWORK OR ALL THE
24 DISCOVERY WASN'T READY AND I KEPT REQUESTING IT, BUT IT WAS
25 JUST NEVER GIVEN TO ME I FIGURED THEY WOULD MAIL IT TO ME

1 WHEN I WENT TO TURBEVILLE OR WHATEVER

2 Q NOW, MR STRICKLER WHEN HE BROUGHT YOU HERE AND YOU MET
3 WITH HIM --

4 A UH-HUH

5 Q PRIOR TO THE TRIAL?

6 A YES

7 Q WHAT DID YOU DISCUSS?

8 A HE DISCUSSED ACCEPTING A PLEA DEAL FOR A GUN CHARGE HE
9 SAID BECAUSE I HAD ALREADY ADMITTED TO SHOOTING IT AND HAVING
10 THE POSSESSION OF A GUN HE ASKED ME IF I WAS WILLING TO
11 ACCEPT ONE YEAR FOR A GUN CHARGE AND THAT HE WOULD SEE IF THE
12 SOLICITOR WOULD ACCEPT THAT AND I SAID, WELL, YOU KNOW, THEY
13 DIDN'T GET NO GUN FROM ME, BUT I ADMIT THAT I WAS SHOOTING
14 AND I ADMIT THAT I HAD A GUN, SO I DIDN'T HAVE A PROBLEM WITH
15 THAT AND ON THAT NOTE, THAT'S WHEN I LEFT AND WENT BACK TO
16 TURBEVILLE THEN WHEN I CAME BACK THREE WEEKS LATER, THAT'S
17 WHEN THEY WERE SAYING, WELL, THAT'S WHAT WHEN HE WAS TELLING
18 TO PLEAD GUILTY TO TWENTY -- I MEAN FIFTEEN YEARS

19 Q BUT DID HE EVER GO OVER THE DISCOVERY WITH YOU?

20 A HE NEVER WENT OVER DISCOVERY NONE OF THEM EVER WENT
21 OVER DISCOVERY WITH ME MS MIMS, SHE CAME AND TALKED TO ME
22 AT FIRST, BUT SHE DIDN'T REALLY KNOW ANYTHING I DIDN'T
23 REALLY KNOW WHAT I WAS CHARGED WITH UNTIL -- REALLY WHEN MR
24 STRICKLER CLAIM CAME TO SEE ME BECAUSE I HAD TWO INDICTMENTS
25 ONE WAS FOR ATTEMPTED ROBBERY AND WAS FOR ARMED ROBBERY AND

1 THEY -- I GUESS AFTER A WHILE THEY DECIDED TO -- NOT TO GO
2 WITH THE ARMED ROBBERY OR THERE WASN'T EVIDENCE FOR ARMED
3 ROBBERY AND THEY WENT WITH THE ATTEMPTED ROBBERY

4 I DIDN'T KNOW WHAT I WAS CHARGED WITH OR WHAT MY -- WHAT
5 I WAS GOING THE TRIAL FOR, WHAT I WAS -- WITH THE -- WHAT THE
6 CHARGES WERE AGAINST ME UNTIL, YOU KNOW, I ASKED STRICKLER
7 DIRECTLY WHEN WE WAS DOWNSTAIRS IN THE COURTROOM AND --

8 Q HE DIDN'T DISCUSSED ANY OF THE PARTICULARS CASE WITH
9 YOU

10 A NO HE ASKED ME WHAT I WANTED TO TALK ABOUT ON THE DAY
11 OF TRIAL WHEN I ASKED IF HE CAN REQUEST A CONTINUANCE, BUT,
12 YOU KNOW, I MEAN -- I DIDN'T KNOW WHAT ANYBODY WAS SAYING SO
13 I COULDN'T REALLY ASK -- SAY WHAT I WANTED TO GO OVER I
14 SAID, MAN I KNOW SOMEBODY HAS TO SAY SOMETHING FOR ME TO BE
15 HERE IN THIS COURTROOM GOING TO TRIAL, BUT, YOU KNOW, I
16 DIDN'T KNOW WHAT SLED REPORTS OR WHAT THE POLICE REPORTS -- I
17 DIDN'T KNOW ANY OF THAT

18 MR JOHNSON I HAVE NO OTHER QUESTIONS YOUR HONOR

19 THE COURT ANY CROSS?

20 CROSS-EXAMINATION

21 BY MR PETRANO

22 Q JUST BRIEFLY I HAVE THE TWO INDICTMENTS, ACCORDING TO
23 THE RECORDS -- AND I'M SHOWING TWO ATTEMPTED ARMED ROBBERIES
24 BUT I THINK YOU JUST STATED THAT ONE WAS AN ARMED ROBBERY
25 IS THAT WHAT I HEARD?

1 A YEAH WHEN I FIRST -- WHEN I FIRST CAME, MR -- I MEAN
2 WHEN I WAS FIRST IN JAIL, MS MIMS AND MR KING HE TOLD ME
3 THAT MY CHARGE WAS ARMED ROBBERY AND I HAD AN INDICTMENT FOR
4 ARMED ROBBERY AND I GUESS LATER ON THEY JUST CHANGED IT TO
5 ATTEMPTED ROBBERY BECAUSE, YOU KNOW -- I DON'T KNOW WHAT THEY
6 DID, BUT THEY CHANGED TO IT ATTEMPTED ROBBERY AT FIRST IT
7 WAS ARMED ROBBERY AND I DIDN'T KNOW WHAT THE CHARGE WAS, IF I
8 HAD BOTH OF THEM OR IF IT WAS JUST A LESSER-INCLUDED OFFENSE
9 OR I DIDN'T KNOW WHAT IT WAS BUT

10 Q I'M NOT TRYING TO PUT WORDS IN YOUR MOUTH RIGHT NOW, I'M
11 JUST TRYING TO FOLLOW UP ON WHAT YOU SAID SO YOU HAD AN
12 INDICTMENT FOR ARMED ROBBERY, MEANING YOU HAD THE COPY?

13 A YEAH, I HAD THE COPY AS A MATTER OF FACT, THE LAST
14 TIME I WAS HERE, YOU SAID -- WHEN YOU WERE CALLING OUT THE
15 CASE I THINK YOU READ FROM IT BECAUSE YOU WERE SAYING ARMED
16 ROBBERY THAT WAS MY THAT WAS MY -- WHAT THE -- WHAT THEY
17 INDICTED ME WITH THE FIRST TIME BUT AS FAR AS MR KING
18 TALKING OR CONSULTING WITH ME OR GOING OVER MY DISCOVERY WITH
19 ME, HE NEVER DID THAT THE ONLY THING HE DID WAS, YOU KNOW,
20 LET ME KNOW THAT ANOTHER ATTORNEY WAS GOING TO BE ASSIGNED TO
21 MY CASE

22 Q OKAY

23 A AND THAT WAS LIKE IN MARCH AND IN MAY, JUNE, JULY,
24 AUGUST AND SEPTEMBER I WAS WRITING THEM AND I NEVER GOT A
25 RESPONSE BACK FROM ANYBODY I DIDN'T KNOW WHO MY ATTORNEY

1 WAS AT THAT TIME AND THAT'S WHEN MR STRICKLER CAME BACK --
2 THE ONLY PERSON THAT TALKED TO ME THAT WE HAD ANY SORT OF
3 MEANINGFUL CONVERSATION WITH WAS THE INVESTIGATOR FROM THE
4 PUBLIC DEFENDER'S OFFICE EVERYBODY ELSE, THEY WERE JUST
5 LIKE, WE'RE LEAVING OR SOMEBODY ELSE WILL BE ASSIGNED TO YOUR
6 CASE YOU KNOW, BY THE TIME I GUESS THEY FIGURED OUT WHO WAS
7 GOING TO BE ASSIGNED TO MY CASE I WAS ALREADY IN TURBEVILLE

8 Q THANK YOU FOR ANSWERING THE QUESTIONS I APPRECIATE IT

9 MR PETRANO I HAVE NOTHING FURTHER, YOUR HONOR

10 MR JOHNSON WE HAVE NOTHING FURTHER, YOUR HONOR

11 THE COURT YOU MAY STEP DOWN THANK YOU

12 THE WITNESS THANK YOU

13 MR JOHNSON YOUR HONOR, I WOULD LIKE TO ADDRESS THE
14 COURT

15 THE COURT YES, SIR

16 MR JOHNSON YOUR HONOR, AS IT'S OUR POSITION THAT THE
17 RECORDS AND THE EXHIBITS THAT WAS PREPARED FOR THE COURT
18 DEMONSTRATE THAT THERE WERE NUMEROUS ERRORS DONE BY THE
19 DEFENSE COUNSEL IN THIS MATTER THE DEFENSE COUNSEL
20 STATED -- OR MR STRICKLER STATED THAT HE MET WITH THE
21 DEFENDANT ONCE PRIOR TO TRIAL FOR APPROXIMATELY ONE HOUR,
22 THAT HE THEN WENT TO A TRIAL IN WHICH THERE WAS A HUNG JURY,
23 THAT HE DID NOT MEET WITH THE DEFENDANT AGAIN UNTIL THE START
24 OF THE SECOND TRIAL, WHICH WE BELIEVE INDICATES THAT IT WAS
25 IMPROPER PREPARATION AND INEFFECTIVE ASSISTANCE OF COUNSEL

1 WE FEEL THAT THERE IS CLEAR EVIDENCE GIVEN TO THE COURT
2 TODAY IN EXHIBITS AND THINGS THAT WERE BROUGHT OUT THAT WOULD
3 INDICATE THAT IF PROPER PREPARATION HAD BEEN DONE BY THE
4 DEFENSE COUNSEL THAT THERE'S A GREAT LIKELIHOOD THAT THE
5 OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT THERE IS NO
6 EVIDENCE, WE FEEL, THAT WOULD INDICATE THAT TRIAL COUNSEL DID
7 ANYTHING OTHER THAN READ WHAT SOMEONE ELSE WROTE, MET WITH
8 THE DEFENDANT FOR APPROXIMATELY ONE HOUR IN WHICH THE
9 DEFENDANT'S TESTIMONY IS THAT HE DID NOT RECEIVE DISCOVERY,
10 DID NOT DISCUSS ANYTHING RELATED TO THIS CASE, AND AS A
11 RESULT THERE'S NO WAY THAT DEFENSE COUNSEL COULD HAVE BEEN
12 PROPERLY PREPARED TO TRY THIS CASE BUT THERE IS SUFFICIENT
13 EVIDENCE THAT WOULD CALL INTO CREDIBILITY THE WITNESS'S
14 TESTIMONY AND THAT EVIDENCE WAS NOT USED DURING THE SECOND
15 TRIAL

16 THERE'S SOME INDICATION ABOUT IT BEING A HUNG JURY, THE
17 FIRST TRIAL, THAT THERE ARE SOME QUESTIONS ABOUT THIS CASE
18 AND IT'S NOT JUST ONE OF THOSE CASES WHERE THERE IS A
19 SLAM-DUNK CASE AS THE SOLICITOR'S OFFICE NORMALLY CALLS IT
20 AS A RESULT, YOUR HONOR, WE FEEL THAT WE HAVE MET THE BURDEN
21 OF INEFFECTIVE ASSISTANCE OF COUNSEL AND ALSO MET THE SECOND
22 BURDEN IN LOOKING AT THE TOTALITY OF ALL OF THE MISTAKES MADE
23 BY THE COUNSEL IN THIS IN THE TRIAL, THAT THERE'S A GREAT
24 LIKELIHOOD THAT THE OUTCOME OF THE TRIAL WOULD HAVE BEEN
25 DIFFERENT, IF NOT FOR THE INEFFECTIVE ASSISTANCE OF TRIAL

1 COUNSEL

2 **THE COURT** YES, SIR, MR PETRANO

3 **MR PETRANO** THANK YOU, YOUR HONOR I GUESS WE'LL
4 START WITH THE DISCOVERY THAT'S JUST GOING TO BE A MATTER
5 OF CREDIBILITY WE'VE GOT THE PUBLIC DEFENDER SAYING THAT IT
6 WOULD HAVE BEEN PROVIDED TO HIM, AND ACCORDING TO THE NOTES
7 IT WAS, AND THAT HE HIMSELF HAD GONE OVER IT WITH HIM A
8 SECOND TIME, YET THE APPLICANT CLAIMS DIFFERENT SO THAT'S
9 YOUR DETERMINATION THERE

10 AS FAR AS MEETING BEFORE THE HUNG JURY, I DON'T SEE HOW
11 THERE'S ANY PREJUDICE FOR NOT MEETING BEFORE THAT AND THEN
12 REGARDING THE NOT MEETING BETWEEN THE SECOND TRIAL, I DON'T
13 SEE WHAT -- WHAT HE WOULD HAVE MISSED HE WAS AT THE FIRST
14 TRIAL HE SAW EVERYTHING THAT THE STATE WAS GOING TO
15 PRESENT, HE SAW THE ARGUMENTS AND ALL OF THE LITTLE
16 INCONSISTENCIES WERE MOST, IF NOT ALL, ADDRESSED AND AS TRIAL
17 COUNSEL TESTIFIED FOR STRATEGIC PURPOSES, HE WOULDN'T ALWAYS
18 SPECIFICALLY ADDRESS CERTAIN THINGS BECAUSE YOU DON'T WANT TO
19 DRAW ATTENTION TO THEM AND I DON'T KNOW IF HE USED THOSE
20 WORDS, BUT THAT'S WHAT -- THOSE ARE MY WORDS

21 AND FOR INSTANCE, THERE WAS NOTHING TO IMPEACH REGARDING
22 THE COUSIN'S STATEMENT WITH THE LETTER THAT'S EXACTLY WHAT
23 HE TESTIFIED TO THERE WOULD BE NO REASON TO ASK AND ANSWER
24 REGARDING THAT REGARDING THE TENNIS SHOES, THE STATE
25 WOULD -- IF HE WAS GOING THE DRILL THE VICTIM REGARDING WHAT

1 COLOR THE SHOES WERE BASICALLY WHAT HE WAS GOING TO BE DOING
2 WAS FOCUSING THE ATTENTION ON THE POINT IN TIME WHERE THE
3 VICTIM CLAIMS HE HAD A GUN HELD TO HIS HEAD AND HE WAS LYING
4 ON THE GROUND LOOKING AT SHOES AND SO, OH WERE THEY BLUE
5 AND WHITE OR WHILE AND BLUE OR DID THEY HAVE STRIPES I FAIL
6 TO SEE THE PREJUDICE IN THAT AND STRATEGICALLY I CAN
7 CERTAINLY SEE WHY THE TRIAL COUNSEL WOULDN'T WANT TO FOCUS ON
8 SUCH A DRAMATIC -- TRAUMATIC EVENT

9 OH, AND I WOULD ALSO LIKE TO ADD THAT ON THE ORIGINAL
10 APPLICATION -- I SHOULD HAVE DONE THIS EARLIER, THERE WAS
11 ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
12 AND I DIDN'T HEAR ANY ARGUMENTS MADE TO SUPPORT THAT AND I
13 WOULD LIKE TO HAVE THAT SUMMARILY DISMISSED, AS FAR AS THE
14 INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL IT WAS IN THE
15 ANDERS BRIEF IT'S THE STATE'S POSITION THERE'S SOME CASE
16 LAW THAT SAYS THERE IS NO INEFFECTIVE ASSISTANCE OF APPELLATE
17 COUNSEL WHEN IT'S AN ANDERS BRIEF BECAUSE THE BURDEN FALLS TO
18 THE APPELLATE COURT TO REVIEW THE TRIAL IN FULL ANYWAY
19 SORRY ABOUT THAT OUT OF ORDER THERE

20 BACK TO THE ACTUAL TRIAL ONCE AGAIN, I THINK THAT
21 TRIAL COUNSEL DEMONSTRATED STRATEGIC REASONS FOR MOST, IF NOT
22 IF NOT ALL OF THE, I GUESS, WAYS HE COULD HAVE CHALLENGED THE
23 CREDIBILITY OF WITNESSES OR EVIDENCE HE ALSO WENT THROUGH
24 THAT HE HAD AN EXPERT REGARDING THE BALLISTICS AND THAT THE
25 EXPERT WAS GOING TO ULTIMATELY TESTIFY -- AT LEAST WHAT WE

1 HEARD -- AND SUPPORT THE STATE'S THEORY AND THAT WOULD NOT BE
2 BENEFICIAL AND IF HE HAD DONE THAT AND HAD HIS WITNESS SAY
3 THE SAME THING, WE WOULD BE HERE ON A DIFFERENT PCR
4 APPLICATION

5 AND ONCE AGAIN, THERE IS NO IN INEFFECTIVE ASSISTANCE OF
6 COUNSEL THERE AND I DON'T SEE HOW THE PREJUDICE WOULD FALL
7 AFTER THAT AND SORRY FOR THE OUT OF ORDER AND I HAVE GOT
8 NOTHING FURTHER ON THAT THE STATE RESTS THANK YOU

9 **THE COURT** COUNSEL, WHAT I'D LIKE FOR YOU TO DO IS TO
10 PRESENT PROPOSED ORDERS FOR MY CONSIDERATION AND IF YOU WILL
11 SUBMIT THEM IN ELECTRONIC FORMAT BY FRIDAY, FEBRUARY THE --
12 I'M SORRY FRIDAY, MARCH THE 21ST, AND IN ELECTRONIC FORMAT
13 THEY SHOULD BE ON WORD FORMAT AND THEN I'LL REVIEW THEM AT
14 THAT PARTICULAR POINT

15 **MR PETRANO** YOUR HONOR?

16 **THE COURT** YES

17 **MR PETRANO** IF I MAY, I'LL BE IN TORT COURT THAT WEEK
18 WITH JUDGE BARBER FOR PCR, COULD I REQUEST ADDITIONAL LEAVE

19 **THE COURT** UNTIL THE 8TH

20 **MR PETRANO** THAT WOULD JUST BE WONDERFUL THANK YOU

21 **THE COURT** OKAY AND I DON'T KNOW WHETHER THERE'S
22 ADDITIONAL INFORMATION IN THE FORM OF TRANSCRIPTS THAT ARE
23 AVAILABLE I DON'T THINK THE TRANSCRIPTS CONTAIN -- I TAKE
24 IT BACK, THE CLOSING ARGUMENTS ARE IN THE TRANSCRIPT

25 **MR JOHNSON** YES, THEY ARE

1 **THE COURT** AND I BELIEVE THERE IS -- THERE IS
2 DISCUSSION IN THE RECORD ABOUT THE REQUESTS TO CHARGE I
3 THINK THERE'S -- YES, THERE IS IF I FIND -- WHEN I REVIEW
4 THE TRANSCRIPT IF I FIND ANYTHING THAT I THINK MAY BE HELPFUL
5 NOW THAT I'VE HEARD THE TESTIMONY TODAY, I MAY CONTACT YOU
6 ALL TO SEE IF YOU'D LIKE -- IF THERE'S A WAY TO BE ABLE TO
7 RETRIEVE SOME OF THAT INFORMATION

8 **MR JOHNSON** THAT WILL BE FINE, YOUR HONOR

9 **MR PETRANO** THANK YOU, YOUR HONOR

10 **THE COURT** IS THERE ANYTHING ELSE WE NEED TO TAKE UP?

11 **MR JOHNSON** NOTHING ELSE, YOUR HONOR

12 **THE COURT** OKAY ALL RIGHT THANK YOU

13 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED)

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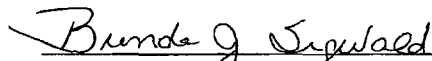
1 STATE OF SOUTH CAROLINA)
2 COUNTY OF AIKEN) CERTIFICATE OF TRANSCRIPTION

3
4
5
6 I, THE UNDERSIGNED, BRENDA J SIGWALD, DO HEREBY CERTIFY
7 THAT I TRANSCRIBED THE PROCEEDINGS IN THE CAPTIONED CASE THAT
8 WERE REPORTED BY DAPHNE HELMS, CIRCUIT COURT REPORTER FOR THE
9 STATE OF SOUTH CAROLINA, IN THE COURT OF GENERAL SESSIONS IN
10 AND FOR THE STATE OF SOUTH CAROLINA ON THE 20TH DAY OF
11 FEBRUARY, 2008

12 I FURTHER CERTIFY THAT THE FOREGOING PAGES, NUMBERED 3
13 THROUGH 98, CONSTITUTE A TRUE, ACCURATE AND COMPLETE
14 TRANSCRIPT OF SAID HEARING

15 I FURTHER CERTIFY THAT I AM NEITHER KIN, COUNSEL, NOR OF
16 INTEREST TO ANY PARTY HERETO

17 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL
18 AT AIKEN COUNTY, THIS 26TH DAY OF JUNE, 2010

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22 BREND A J SIGWALD,
23 COURT REPORTER
24 AND NOTARY PUBLIC FOR THE
25 STATE OF SOUTH CAROLINA
MY COMMISSION EXPIRES
JANUARY 4, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Demetrio Sears, 271284,)
Applicant,)
v)
State of South Carolina,)
Respondent)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO 2006-CP-40-1598

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2009 DEC 22 AM 10 19
JANETTE W. MCDONALD
CLERK OF COURT

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 20, 2006. The Respondent made its Return on January 4, 2007.

The Applicant submitted several typed amendments:

Amendment 1 – May 31, 2007

Amendment 2 – May 31, 2007

Amendment 3 – May 31, 2007

Amendment 4(A) – May 31, 2007

Amendment 4(B) – November 21, 2007

Amendment 5 – submitted the day of the PCR hearing

An evidentiary hearing into the matter was convened on February 20, 2008 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Charlie J. Johnson, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant's trial counsel, Douglas Strickler, Esquire, also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, and the Applicant's records from the South Carolina Department of Corrections.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was indicted at the December 2002 term of the Court of General Sessions for Richland County for attempted armed robbery (02-GS-40-10992). He was represented by Douglas Strickler.

Esquire The first trial occurred September 23, 2003 and resulted in a mistrial after a deadlocked jury On January 5, 2004, the Applicant proceeded to trial for a second time after which he was found guilty of attempted armed robbery He was sentenced by the Honorable G Thomas Cooper, Jr, to confinement for a period of eighteen (18) years

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected The South Carolina Court of Appeals dismissed Applicant's appeal State v. Sears, Op No 2006 UP-126 (S C Ct App filed February 24, 2006) Thereafter, Applicant filed the current application for post conviction relief

As stated earlier, Applicant filed an original application and several amendments The previous amendments are all consolidated into Amendment 5 which was presented to the court at the hearing Amendment 5 is the document used to address all the claims of Applicant At the hearing, the Court inquired to assure that all of Applicant's issues were raised in Amendment 5 Each of the 18 items in this amendment is addressed below Many of the Applicant's issues overlap, nevertheless this Court will attempt to address them in the order presented Accordingly, some of the findings of fact and conclusions of law contained herein may be duplicated in part or in whole amongst other individually listed issues

STANDARD FOR POST CONVICTION RELIEF

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application Rule 71 1(e), SCRPC, Lounds v. State, 380 S C 454, 670 S E 2d 646 (2008), Butler v. State, 286 S C 441, 334 S E 2d 813 (1985) Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result" Strickland v. Washington 466 U S 668, 104 S Ct 2052, 2064, 80 L Ed 2d 674, 692 (1984), Palacio v. State, 333 S C 506, 511 S E 2d 62 (1999), Butler, supra

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment Brown v. State, 375 S C 464, 652 S E 2d 765 (Ct App 2007), Butler, supra The Applicant must overcome this presumption to receive relief Fernandez v. State, 306 S C 264, 411 S E 2d 426 (1991), Cherry v. State, 300 S C 115, 386 S E 2d 624 (1989)

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Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Brown, supra, 375 S C at 468, 385 S E 2d at 767, see Strickland, supra. 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. Id. In order to obtain relief on a claim of ineffective assistance, the applicant must demonstrate both that counsel's performance fell below professional norms, and that the applicant suffered prejudice as a result of counsel's deficient performance. Prejudice is defined as a reasonable probability that had trial counsel not been deficient, the result at trial would have been different. E.g., Miller v. State, 379 S C 108, 665 S E 2d 596 (2008).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the transcript of the second trial that resulted in the conviction in its entirety and has heard the testimony at the post-conviction relief hearing. The transcript from the first trial was not presented or considered except as raised and provided by the Applicant in his amended applications. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S C Code Ann § 17-27-80 (Rev 2003).

Summary of testimony

The Applicant testified that he was "locked up" before trial and saw trial counsel around September of 2003. Originally, he was assigned a different attorney from the public defender's office, and he had met with an investigator and one of the other assigned attorneys. The Applicant often wrote to trial counsel's office requesting a copy of his file. When he did meet with trial counsel, he was informed that his file was not complete. Trial counsel inquired as to how the Applicant would feel about lesser charges, i.e. a gun charge. Applicant was told trial counsel would meet at a later time to further discuss the case. The Applicant was told by trial counsel that a plea to fifteen (15) years was better than twenty (20) years after a trial. The Applicant testified that he was not comfortable going to trial after only an hour or so of going over materials and that he was never presented with his discovery materials. After the first trial ended in a hung jury, the Applicant never saw trial counsel before the second trial. He testified

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he was offered several plea deals 15, 12, 10, and then 8 years, but that no deal is a good deal if innocent. The Applicant testified that trial counsel seemed mad that Applicant would not plea.

The Applicant testified that he and the others were in a minivan and pulled up to the store to see the owner standing outside with a gun, the Applicant reached for a gun and a gun fight erupted, outside the store. The Applicant was shot. The Applicant did fire shots at the store owner, but that there was never an attempted armed robbery. The Applicant could not plea to something he did not do. Before the second trial, Applicant wanted a continuance and even attempted to ask the judge himself. He never had an opportunity to meet with trial counsel to discuss the case, trial counsel only wanted to talk about a plea.

About the second trial, Applicant testified that nothing was done regarding a situation when a juror was observed speaking to one of the victims. The Applicant testified that the solicitor had blue tennis shoes taken from his [Applicant] Aunt's house, that the victim testified that the Applicant had blue tennis shoes on when the Applicant put a gun to his head. The Applicant explained that there was discrepancy between the victim's statements at the first trial and the second regarding the shoes but that trial counsel was not effective in fully cross-examining the victim regarding the shoes. The Applicant testified that the State was aware that his shoes were taken at the hospital and were not the same ones taken from the Aunt's house. The State knew he did not live at the Aunt's house. The Applicant testified that trial counsel also failed to properly utilize the bullet or shell casing found in the parking lot which supported the Applicant's version of events, i.e. the shooting occurred outside. Trial counsel simply did not do enough to reveal inconsistencies in the testimony of the victims and because this trial mainly concerned credibility of the victims' story versus that of the Applicant and co-defendant, the ineffectiveness of trial counsel's failure to reveal weaknesses/inconsistencies prejudiced him.

Trial counsel, Doug Strickler, testified that originally this case was assigned to different attorneys within the Public Defender's Office. Notes indicate discovery materials were reviewed with the Applicant by his then assigned attorney Jason King sometime in March 2003. Another one of the Applicant's original attorneys had a conflict, but the file notes indicate she also went over the discovery materials with the Applicant sometime in March 2003. Trial counsel testified that as chief public defender he is responsible for all Richland County public defenders. According to the notes in the file, the Applicant inquired about a plea deal in April 2003. Trial counsel was later assigned the case in May 2003. The notes in the file indicated that the

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potential issues for trial included the statements from the cousin (the co-defendant) and the lack of blood. Trial counsel recognized that an investigator was needed and utilized the services of both the "in-house" investigator at the public defender's office as well as another crime scene expert (Don Gumbt). Trial counsel testified that he met with the Applicant to discuss the case and review discovery materials on August 29, 2003. He conferred with the investigator, the crime scene expert, the prosecutors, and the applicant. In his opinion, "the evidence didn't look that hot" for Applicant.

Trial counsel testified that he met again with the Applicant on the day of the trial in September 2003. During the first trial, Trial counsel did not attempt to elicit testimony from his investigator because it supported the State's version. Regarding plea offers, trial counsel testified that due to two prior convictions for strong armed robbery the Applicant would be looking at fifteen years with a straight-up plea. Trial counsel testified that it was not unusual for the solicitor to offer a better deal when the jury is deliberating for long periods. Trial counsel testified that Applicant at one point inquired about the possibility of an offer to strong armed robbery for fifteen (15) years, suspended on three (3) years with five (5) years probation. Trial counsel testified that he was prepared for the first trial. He met with Applicant for about an hour and the notes in the file were enough. Trial counsel testified that a discovery request is automatically done when the case is first assigned. This case was first assigned on October 24, 2002.

Trial counsel agreed that the case was ultimately about the credibility of witnesses. There was nothing to impeach the cousin (co-defendant) concerning the letters he wrote from jail because the co-defendant testified consistent with the letter. Trial counsel testified that the angles of the bullets can be argued to support any theory when people are moving around. Based upon his twenty-five (25) years of experience trying homicide cases and based on his judgment, analysis and conversations with the investigator(s), he "knows" that he would be unable get any knowledgeable expert to state with any degree of certainty that the shots happened in a way other than the State's version.

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PCR APPLICATION AMENDMENT 5**Issue 1. Counsel failed to adequately consult or communicate, prepare for trial, or attempt to have a working relationship with Applicant**

Applicant testified that Trial Counsel failed to consult with him before the first trial in late September 2003. He first saw Trial Counsel in September 2003. Initially, another attorney from the Public Defender's office represented Applicant. He spoke to this attorney once and also talked with the investigator twice between March 2003 and September 2003. Applicant states he never received the discovery prior to the first trial in September. He learned about the evidence and the witnesses during the first trial.

Between the first trial and the second trial in January 2004, he did not see Trial Counsel. At the second trial, he was tried with his cousin, the co-defendant. He states that Trial Counsel was very upset when Applicant would not accept a plea for 8 years. His attorney never discussed the case with him or asked him what happened. He admits he was in possession of a gun but he objected to the attempted armed robbery.

Trial Counsel testified that he had no independent recollection of the representation and referred to notes maintained in his office. In October 2002, the file was opened and Applicant was assigned an attorney who first met with him in November 2002 at the jail. She met with Applicant on at least two other occasions in November and February 2003. Another attorney was assigned in February and in March 2003 because the initial attorney left the office and there was a conflict with the other attorney. In March 2003, the attorney Jason King met with Applicant to discuss the plea offers. This attorney's notes reflect that he reviewed with Applicant the pros and cons going to trial and the evidence available to him. This attorney left the office in May 2003 and Trial Counsel took over the representation.

The notes of the attorneys in the file reveals that there was discussion about the letter received from Applicant's cousin, the lack of blood at the scene, shell casings on the ground, and statements given. Trial Counsel also reviewed the notes of the other attorneys. These notes indicated that an investigation needed to be done. The in-house investigator at the Public Defender's office was contacted. Trial Counsel met with the investigator to review the file. Arrangements were made to hire a crime scene expert.

In August 2003 before the trial, Trial Counsel met with Applicant to discuss the discovery, shots fired at Applicant, and his injuries. They also discussed his cousin's statement.

including the statement that if Applicant died, the cousin would be charged with murder. On the same day, Trial Counsel conferred with the prosecutors and the investigator. He came to the conclusion that the evidence "does not look that hot for us." He reviewed the ballistics and other lab reports. He met again with Applicant to discuss what he had learned. He also discussed that the crime scene expert (Don Girndt) supported the State's theory of what occurred.

This court finds, further, that the Applicant's allegation that trial counsel did not conduct an adequate pre-trial investigation is without merit. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Harris v. State, 377 S.C. 66, 659 S.E.2d 140, quoting Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984), U.S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant could not point to any specific matters counsel failed to discover aside from his other allegations of ineffective assistance of counsel, for failing to utilize certain theories presented by the Applicant, and other speculative issues. As discussed herein, this Court finds those allegations without merit, and therefore, this allegation is also without merit. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771 (2008), quoting Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998).

2 Counsel was ineffective in failing to request a continuance (at the second trial)

Applicant testified that he did not know anything about the case. Trial Counsel should have reviewed discovery with him. He was never consulted about any of the evidence.

Trial Counsel did not see Applicant between the first and second trials. He has no recollection of requesting a continuance or being asked to request a continuance. Trial Counsel did not believe a continuance was necessary because he was prepared for trial on both occasions. All of the evidence has been presented at the first trial and there was no need for a continuance at the second trial.

Applicant is not credible on this issue or the issue about the discovery. The records of the attorneys clearly reflect that evidence and discovery was discussed with him. Trial Counsel's efforts yielded a hung jury in the first trial and the State's trial tactics were exposed for Trial

Counsel to prepare for the second trial. "Where there is no showing that any other evidence on behalf of the [Applicant] could have been produced, or that any other points could have been raised had more time been granted for the purpose of preparing the case for trial," a continuance is unnecessary. State v. Colden, 372 S C 428, 641 S E 2d 912 (ClApp 2007), quoting State v. Williams, 321 S C 455, 459, 469 S E 2d 49, 51-52 (1996). The Applicant does not claim that he was denied access to witnesses or lacked time to prepare a specific defense. Furthermore, the Applicant must show actual prejudice from the denial of a continuance. State v. Colden, supra, Skeen v. State, 325 S C 210, 213-14, 481 S E 2d 129, 130-32 (1997) (Absent showing that additional preparation would have benefited defense, counsel's failure to request continuance did not result in ineffective assistance). Accordingly, since it has not been demonstrated what the additional preparations would have yielded, the Applicant has not shown counsel's failure to request a continuance was ineffective assistance. Skeen, 325 S C at 214-15, 481 S E 2d at 132. This Court dismisses any claims of ineffective assistance of counsel regarding a purported failure to request a continuance before the second trial.

3 Counsel provided deficient performance in failing to object to alleged juror misconduct and failing to object to trial court's failure to investigate such

Applicant testified that one of the jurors was seen talking to one of the victims outside of the courtroom. She was seated on the jury in the second trial. Applicant's aunt testified about the conversation she heard between them. The matter was never pursued any further. According to Applicant, the judge said he would question the juror but he did not. Trial Counsel has no independent recollection of this event and whatever the record reflects is what action he took.

The record reflects that after jury selection a juror sent a note and revealed that she had a cousin who was a sheriff deputy working courthouse security. Trial Counsel informed the court that had he known this information, his consideration of the juror would be different. At the time of the selection of the juror, Trial Counsel could have exercised a strike not to seat the juror, and he requested that she be excused. Counsel for the co-defendant added that a juror (they believed it was the same juror) was seen talking with one of the victims in the hallway. Applicant's aunt was called to testify about the matter. She testified that prior to jury selection when the juror was coming into the courtroom the juror said hello to the victim and they walked into the courtroom together. According to her testimony the only conversation was that they said hello to each other and then they walked in together. The aunt's impression was that they knew each other. She did

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not know the juror's name but described what the juror was wearing. The record does not reflect any additional identifying information about which juror was being described.

After the aunt testified, the court asked the juror who sent the note to come into the courtroom. He questioned her about her cousin who was a deputy at the courthouse. After questioning by the court, there was a bench conference with the attorneys before the juror left. The court asked one additional question about the relative and then dismissed the juror from the courtroom. The court found her to be a fair and impartial juror and denied the motion to excuse the juror. Nothing further was discussed about the juror. Trial Counsel acted appropriately and a record was made for appeal.

Regarding any potential issues and the purported contact between the victim and a juror, the trial court gave proper instruction to the jury regarding what information could or could not use to make their decisions. Jurors are presumed to follow the instructions of the trial court. State v. Northcutt, 372 S.C. 207, 641 S.E.2d 873 (2007), State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975). Additionally, there is no evidence to show there was any improper conduct between the juror and the victim.

4 Trial counsel provided ineffective assistance of counsel in failing to present favorable existing evidence and pursue favorable line of questioning (shoe report)

5 Trial counsel provided ineffective assistance of counsel in failing to object to prosecutor misconduct (presentation of shoes)

The solicitor at trial said Applicant was wearing blue tennis shoes. According to Applicant, white shoes were taken from his aunt's house. Applicant asserts this is important because the victim testified he was on the floor with a gun held to his head and all he could see were the shoes of the person holding the gun. Applicant states that Trial Counsel asked about the shoes during cross examination but failed to follow through to impeach the victim. The property records in the sheriff's office could have been used to impeach the witness. Trial Counsel has no recollection of the shoe issue. Whatever the record reflects is what he did.

Applicant claims the victim's testimony was that the person holding the gun to his head was wearing blue shoes. Copies of the pages attached by Applicant state that the person with the gun was wearing blue and white shoes. The property report form of the shoes taken from Applicant at the hospital states the shoes were white and gray Nike shoes. The consent to search form signed to allow the search of the co-defendant's home contains a description of the property to be searched (emphasis added) "guest room, white/blue Nike shoes, black shorts, and gray

sweatpants** This does not appear to be a description of the property actually recovered during the search as Applicant suggests

A review of the trial transcript does not show any misconduct on the part of the solicitor. The shoes were not introduced at trial. The solicitor did not ask the victim about the color of the shoes. The witnesses did not testify that the shoes were blue. Again the victim's testimony was that the shoes were blue and white. Whether the shoes were blue and white or gray and white is not significant without a visual reference to the shoes. The trial testimony has always been consistent that the shoes were blue and white. The document referred to by the victim during his testimony was a robbery questionnaire containing the information provided to the police that day. Shortly after the incident occurred that day, the description given of the person, who pushed the victim to the floor, put a gun to his head, and dragged him, was a gray shirt, white and blue shoes - court shoes. Any discussion by the Solicitor about the shoes in opening or closing statements is not evidence and the jury was instructed accordingly. There was no prosecutorial misconduct and it was not ineffective for Trial Counsel not to object.

Additionally, this Court finds no resulting prejudice from trial counsel's purported failure to fully examine whether the shooter's shoes were gray and white or blue and white. It was trial counsel who cross-examined the victim regarding the color of the shoes. The Applicant's PCR application and arguments raise allegations that trial counsel failed to properly cross-examine the victim when he claimed that the Applicant was wearing "blue" shoes. According to the Applicant, other evidence exists to show that he was wearing white shoes. At first blush this appears to be a significant issue: a victim testifying the Applicant was wearing blue shoes and trial counsel not utilizing a report indicating the shoes were white. However, a full review reveals that the victim actually testified the Applicant was wearing blue and white shoes (not just blue), while the evidence purportedly not exploited by trial counsel shows that the Applicant was wearing gray and white shoes (not just white). It was trial counsel who questioned the victim about the shoe color and brought this evidence to the jury's attention. Accordingly, this claim is without merit.

6 ineffective assistance of counsel in failing to realize and impeach with numerous inconsistent statements and contradictions of the alleged victims and to make note of favorable evidence. Specifically involving (a) bullet in parking lot, (b) going to bank, (c) conversation with alleged perpetrators, (d) skin complexion and gloves; (e) van pursuit; (f) facial description, (g) Kassim Hosendove identification & Inv McDonald's credibility

The nature and scope of cross-examination is inherently a matter of trial tactics United States v Nerseyan, 824 F 2d 1294, 1321 (2nd Cir 1987) "[A] defendant has a 'burden of supplying sufficiently precise information', of the evidence that would have been obtained had his counsel undertaken the desired investigation and of showing 'whether such information would have produced a different result'" United States v Rodriguez, 53 F 3d 1439, 1449 (7th Cir 1995) The Applicant did not proffer any questions counsel allegedly failed to ask, and did not present any testimony showing that the witnesses' answers at trial would have been materially different Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense While a second trial is certainly advantageous to a defendant in that there has been a preview of exactly what to expect at the second trial, this Court notes that a mistrial, and subsequent retrial, can also present a difficult situation for defense counsel Given a second opportunity to try a case, the State is able to see what technique and testimony were effective in the prior trial and bolster and strengthen their case during the second trial

In each of the enumerated instances mentioned above the Applicant points out an inconsistency in the testimony between the first trial and the second trial

(a) bullet in parking lot A projectile (bullet or shell casing) was found in the parking lot, but the testimony of the victims was that all of the shooting occurred inside the location The glass door to the premises was shattered and there was glass inside and outside of the location Crime scene photos were introduced and there was testimony about where projectiles and bullets were found in and around the premises Applicant argues that Trial Counsel did not use this evidence to his advantage He believes this evidence supports that the shooting occurred outside not inside However, the testimony shows that projectiles and casings were also found inside the premises

(b) going to the bank The victims' testimony did not match about when one of them went to the bank This inconsistency is not material to the subsequent events While it may

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demonstrate some inconsistency, it is not material to what occurred when the defendant arrived on the scene

(c) conversation with alleged perpetrators The testimony of the victims was inconsistent about whether there was conversation with or between the perpetrators or no conversation at all when the shooting began. Again, while this seems to be important, the difference in the testimony is minuscule. The testimony was clear about where the shooting occurred and the actions of the persons committing the offense.

(d) skin complexion and gloves Victim does not recall if gloves were worn, but described the perpetrator as being light skinned because he saw the back of his hands. Investigator testifies it's possible there are no fingerprints on one of the guns because gloves were worn. There is no inconsistency here. There were several people involved in the incident. The witnesses testified about the possible use of gloves. No one stated that all of the perpetrators were or were not wearing gloves. Applicant has failed to demonstrate how further cross examination on this issue would have had a material impact on the result of this case.

(e) van pursuit One victim testified in first trial he could see the van pull out of the parking lot. In the second trial, he said the van was gone. Specifically, the transcript reflects the victim hears the doors close and is able to see the van leaving the parking lot. By the time he gets to the parking lot, the van is going down the road and some other cars are behind them. At the second trial, the victim testified that he heard the car pull out, he looked out the window and the van was gone. Later, he testifies that he could see the van going down the street and cars pulling up behind them. They were already on the road. This is also not a material inconsistency.

(f) facial description Applicant believes there is an inconsistency regarding how one of the victims was able to identify the perpetrator. The statements and testimony go only to a description of one of the alleged perpetrators as being "light skinned". The victim testified that when the person got out of the van he had his hand "kind of like over his face. I don't know if he was pulling it up or he was just holding it up." The investigator's notes state that the victim described one of the men as a light complexion Hispanic or Asian, he saw his face before he put a rag over his face. The other two males were both black males. There is no inconsistency in this testimony.

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(3) Kassim Hosendove identification Applicant wanted to impeach Investigator McDonald's testimony about how Hosendove came to be a suspect and the fact that he was in Florida when the incident occurred and not at the location. McDonald testified about the victim stating that Applicant and Hosendove were at the store the previous day looking at merchandise Trial Counsel objected to the testimony and after a side bar conversation, the court sustained the objection Whatever objection Trial Counsel had about the testimony, the Court sustained the objection, and there was no harm to the Applicant Trial Counsel was protecting Applicant's interest

7 Trial counsel provided deficient performance in failing to present or utilize favorable evidence (dispatch records)

Applicant believes the dispatch records would impeach the witnesses about where the shooting occurred. The dispatch records show that a description of the van included possible back glass shot out According to Applicant, if the shooting occurred inside there is no necessity to describe the back glass as being shot out According to the Applicant's testimony at trial, he claims he was shot when he was standing outside by the van The main witness for the state testified that Applicant came and shot at him therefore he returned fire Other witnesses said they heard no shots fired and did not know what happened before the van left the location.

Dispatch records are hearsay and cannot be offered for the truth of the matter asserted S C Evid R 804(8) These records can only be used to show a call was received at a certain date and time or to demonstrate what actions the police took See State v Kirby, 325 S C 390 481 S E 2d 150 (Ct App 1996) (testimony about a police dispatch call was not hearsay as it was not offered for the truth but to demonstrate the basis for police investigation) The records do not prove or disprove that shooting took place inside or outside The dispatch operator was not called as a witness Further, the records would not reveal who placed the call to police and is not reliable for establishing the truth of what was stated

This Court finds any allegations of ineffective assistance of counsel for trial counsel's purported failure to utilize differing statements made by witnesses and victims during the incident to be without merit Trial counsel attacked the credibility of the State's case during closing arguments by utilizing the different statements made by witnesses and victims during the incident

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2 Trial counsel provided ineffective assistance in failing to obtain a crime scene expert to analyze the scene and in failing to challenge the allege victim's version of events in regards to the manner in which he shot Applicant.

According to Applicant, the victim testified at trial that he could only see part of Applicant's body because he [Victim] was behind a partition in the shop. Applicant questions, then, how he was able to get shot below the belt in the pubic area. Further, Applicant states there were no bullet holes in the partition according to the officer.

Trial Counsel testified he consulted with Don Girndt, a crime scene expert. In addition, a Public Defender investigator conducted an investigation. According to the crime scene expert, he would not be able to definitively dispute the state's version of how the shots were fired or how Applicant was able to be wounded. Since the expert would not be able to rule out the possible scenario espoused by the State it would not be beneficial for the defense to obtain one or have Mr. Girndt testify. Trial Counsel made a tactical decision based upon his years of experience and the information presented to him by the crime scene expert not to present testimony from an expert on this point.

The Applicant has not shown that counsel was deficient in that choice of tactics. Trial counsel testified that based upon his years of experience he would not be able to find an expert to reliably refute the State's version of events. Finally, the Applicant did not present any expert testimony at the PCR hearing to refute the State's conclusions and therefore, there can be no prejudice based on trial counsel's purported failure to do the same. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992), Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what another expert witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993), Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An 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. Dalton v. State, 376 S.C. 130, 654 S.E.2d 870 (Ct. App. 2007), Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Therefore, it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense. See Dempsey v. State, 363 S.C. 365, 369, 610

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S E 2d 312, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence."), see also Porter v State, 368 S C 378, 386, 629 S E 2d 353 358 (2006) ("Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR "), Lorenzen v State, 376 S C 521, 657 S E 2d 771 (2008)

This Court recognizes that indeed in all cases, perhaps trial counsel could have done some things slightly different, but this Court cannot sit to second guess trial counsel's decisions made during the pressures of trial and speculate that other tactics would have been more successful. Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Brown v State, 383 S C 506, 680 S E 2d 909 (2009), Whitehead v. State, 308 S C 119, 417 S E 2d 530 (1992), see also Dempsey v State, 363 S C 365, 610 S E 2d 812 (2005), McLaughlin v State, 352 S C 476, 575 S E 2d 841 (2003). Trial counsel articulated valid strategic reasons for not presenting testimony from his crime scene expert (it supported the victim's), or focusing the jury's attention on the potentially different colored shoes that the victim saw while a gun was pressed against his head, or that the co-defendant's statement occurred partially while the codefendant was under the impression that a fatality had occurred, etc.

9 Counsel provided ineffective assistance in failing to advocate Applicant's defense and attempt to establish victim's version of events as impracticable and implausible

Applicant states that the victim, Sterling Patterson, testified at trial that two gunmen entered the shop before Applicant. Patterson exchanged gunfire with them before directing his gunfire at Applicant. The gunmen were about ten feet away. Applicant complains that Trial Counsel should have attacked the plausibility of the testimony that Patterson fired multiple shots at two people only ten feet away and missed. During all of this, Applicant with a loaded firearm waited for Patterson to cease firing at the other two before Applicant then started shooting at Patterson. This is unreasonable and if Trial Counsel had challenged the testimony of Patterson, the outcome would have been different.

A review of the transcript reveals that Applicant has misconstrued the testimony. Patterson testified consistently during direct and cross examination by both defense attorneys.

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about what occurred. His testimony was that he saw three individuals get out of the van. Two of them had weapons and all three had masks. Patterson went to the office to retrieve his gun. He heard the men enter the shop and one instructed Stokes (the other victim) to get on the ground and not to move. As he came out of the office, Patterson made eye contact with the gunmen and began firing. As he fired, two of the men ran out the shop. The remaining gunman (Applicant), who was holding a gun to Stokes, lifted his arm to point the gun at Patterson and Patterson continued to shoot. Applicant was struck. The testimony revealed that all of this occurred within a brief period of time. The testimony elicited by Trial Counsel during cross examination of the witness did not change the testimony of Patterson. Trial counsel was not ineffective. The jury is the ultimate fact finder in the trial. Clearly, the jury did not find the testimony of the victim to be inconsistent.

10 Ineffective assistance of counsel in failing to present favorable (Blood transfusion report) and in failing to adequately cross-examine Dr. Bynoe regarding this evidence

11 Ineffective assistance of Trial Counsel in failing to obtain a second opinion or an expert to counter Dr. Bynoe's narrow and conclusively stated opinions, or to object to these opinions as outside the scope of his expertise, regarding the lack of blood evidence at the scene of the incident and in failing to adequately cross-examine Dr. Bynoe regarding such

The transcript testimony does not support Applicant's assertion. Dr. Bynoe testified that "initially in the trauma room he received two units of blood. And from there we gave him - we said his blood loss was two liters." On cross examination by Trial Counsel, Dr. Bynoe was asked, "So he lost two units of blood?" Dr. Bynoe answered, "I said two liters. He got two when he came in. But he lost two liters of blood in his abdomen when we opened him up." The doctor went on to testify during questioning that two liters of blood would be 67 units. Trial Counsel questioned Dr. Bynoe in great detail about Applicant's internal injuries to the lung, abdomen, pelvis, and colon (intestines).

The doctor testified that most of the bleeding that occurred was internal. "The longer you sit the more you are going to bleed." With Applicant's injuries, there were no "vascular structures that are easily accessible to the outside of the body" that were struck to cause external bleeding. Dr. Bynoe was qualified as an expert in trauma, critical care, specifically trauma surgery. Additionally, Dr. Bynoe testified about his treatment of Applicant at the hospital. It was not ineffective for an expert in trauma surgery to testify about the injuries sustained and the effect those injuries would have on internal and external bleeding or blood loss.

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This Court finds the above issue to be without merit, the fact that the Applicant lost significant quantities of blood was not an issue at trial. The Applicant is attempting to use the fact that he received a blood transfusion to support his claim that he must not have been shot in the store because there was no blood found in the store. The Applicant presented no evidence or testimony (expert or otherwise) that would serve to dilute the State's expert who concluded the blood (or lack thereof) was consistent with the facts as presented by the victims. Dr. Bynoe testified that the bleeding experienced by Applicant was mostly internal. They could not identify any external bleeding source when Applicant arrived at the hospital. Further, Dr. Bynoe testified no arteries or veins were hit by the bullets and based upon the nature of his injuries, he may not have left any blood at the scene. Dr. Bynoe testified his total blood loss was two liters. Trial counsel cross examined the doctor in great detail about Applicant's blood loss and transfusion.

Trial Counsel was not ineffective in cross examining Dr. Bynoe and was able to specifically show that Applicant lost a lot of blood as a result of being shot and that his injuries were not superficial. Finally, this Court notes that trial counsel used the blood transfusion evidence throughout his closing argument. Any allegation that trial counsel did not exploit the blood transfusion evidence is wholly without merit.

12 Ineffective assistance of Trial Counsel in failing to obtain an expert to examine the trajectory of the projectiles fired and the wounds suffered by Applicant, or in failing to adequately cross examine Dr. Bynoe regarding the wounds.

This argument focuses on the injury to the upper left shoulder. Dr. Bynoe testified in great length about the wounds, injuries, and treatment of Applicant. Dr. Bynoe could not state which wounds were entry or exit wounds. According to Applicant, the testimony by the victim indicated that Applicant was standing when he was shot. This would preclude a downward trajectory of the bullet entering Applicant's shoulder. Applicant claims he was bending over to get into the car when he was shot and the entry of the projectile into his back and exit at the shoulder is consistent with his testimony. An expert would have supported his testimony. According to trial counsel, all of these claims (the bullets, angles of the bullets, and medical information) were discussed with Don Girndt. Expert testimony would not be able to conclusively establish that the wounds occurred only as espoused by Applicant, but that an expert would also confirm that the wounds could have occurred in a manner consistent with the

evidence presented by the State Counsel made a tactical decision not to hire an independent expert for that reason

The Applicant's mere speculation as to what another expert witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993), Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). As previously addressed, an 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 Dalton v. State, *supra*, Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Therefore, it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense. See Dempsey v. State, *supra*, see also Porter v. State, *supra*.

Because the Applicant did not present any expert testimony at the PCR hearing concerning any expert testimony of bullet trajectory there can be no prejudice based on trial counsel's purported failure to do the same. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992), Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what another expert witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993), Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An 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 Dalton v. State, *supra*, Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Therefore, it is merely speculative that these allegedly favorable expert witnesses would have aided in his defense. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence"), see also Porter v. State, 368 S.C. 378, 386, 629 S.E.2d 353, 358 (2006) ("Mere speculation of what a witness' testimony may be is insufficient to satisfy the burden of showing prejudice in a petition for PCR.")

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13 Ineffective assistance of Trial Counsel in failing to review Applicant's medical records prior to trial and misstating facts as a result thereof

Applicant claims that Trial Counsel's misstatement in opening statement before the jury about the number of times Applicant was shot conflicted with the testimony of Dr Bynoe and therefore diminished the credibility of the defense particularly about the lack of blood at the scene

Based upon all the testimony in this case, this claim is without merit. Any comments made in opening statements to the jury are not evidence. The opening statement serves to inform the jury of the general nature of the action and the issues involved so they can better understand the evidence presented. State v Brown, 277 S C 203, 284 S E 2d 777 (1981). The evidence that was presented during the course of the trial reveals there were numerous differences in the number of times Applicant was shot, the number of injuries as a result of being shot and the number of bullets and projectiles recovered. Even if Applicant was only shot five times (instead of the eight stated by Trial Counsel in opening), the medical testimony showed the severity of the injuries, the number of internal organs that were damaged by the bullets, the critical nature of the injuries, and the lengthy hospital stay. All of this testimony certainly lent credibility to the defense employed in the case. Trial Counsel testified he had copies of the medical records and had reviewed them. He was prepared for the examination of the physician who treated Applicant. Any misstatement by Trial Counsel was harmless.

14 Trial Counsel was deficient in failing to present evidence that Applicant had invoked his right to have counsel present during questioning

When Applicant was found bleeding in the van shortly after the incident he informed the officers of his name and requested an attorney. Applicant was immediately transported to the hospital and no questioning was conducted at that time. Applicant states that he was in and out of consciousness. Several weeks later, Applicant was questioned about the incident. He was advised of his Miranda rights prior to any questioning and waived all of his rights. At the Jackson v Dcnno hearing before trial, the officer was asked, "Prior to interrogating him also, this defendant had never invoked any of his rights prior to you coming into contact with him on that date, right?" The response was "No, he had not." Applicant claims this was error.

This claim is without merit. The officer who testified was not the officer at the scene several weeks prior when Applicant requested a lawyer. Further, the question was limited to the

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specific date on which the officer interrogated him. Even if the request for an attorney several weeks previously could be construed as an ongoing request, Applicant never reasserted his desire to have an attorney present or to speak with an attorney at the time the officers initiated contact with him on the date of the statement. During Applicant's testimony, he testified that he was aware of his rights and waived those rights at the time the officers questioned him and he made the statement. Additionally, Trial Counsel made numerous objections throughout the course of the trial to the admissibility of the statement.

This Court finds the issue relating to trial counsel's purported ineffectiveness to present evidence that the Applicant invoked his right to remain silent to be without merit. A full review of the record reveals that trial counsel made numerous objections to the use/introduction of the statements made by the Applicant to the police. Specifically, during the testimony of the Applicant himself at trial, trial counsel made the proper objections to the introduction (renewal of previous objections) of the Applicant's statements.

15 Ineffective assistance of counsel in failing to present evidence that co-defendant's statement was unreliable and product of coercion and duress

Applicant states that the co-defendant gave three statements. Only the third statement implicates Applicant. At the pre-trial hearing regarding the statement, the Co-Defendant stated he was coerced and threatened to make the statement. Applicant argues that counsel should have admitted the letters the co-defendant wrote to Applicant while in jail to corroborate the co-defendant's testimony that he was threatened. The co-defendant testified at trial that he was coerced and threatened into making the statement. His testimony was consistent with the information contained in the letters and is simply cumulative and self-serving information. The letters are not independent corroboration of any coercion. Further, a review of the other information contained in the letter could be construed to implicate both defendants. It was not ineffective for counsel not to discuss the letters or to introduce them as evidence to support the coercion. This Court finds this issue to be without merit. Trial Counsel did expose the examples of alleged coercion, he did not need to introduce any letters to cumulate the issue.

6 Trial Counsel was ineffective in failing to request self-defense charge and request jury be instructed that Applicant had a right to arm himself in self-defense if he reasonably believed he was acting in self-defense

Applicant's testimony is that he armed himself after seeing the victim with the gun preparing to shoot. He had no intention of robbing anyone. Trial Counsel testified that there was not a basis to seek a self defense charge. Part of self defense is to establish that the defendant was without fault in bringing on the difficulty. Trial Counsel testified that the theory was the defendants were at the scene to collect a drug debt and had armed themselves for that purpose. Self-defense was not part of the defense at trial. Trial Counsel testified the defense strategy was that the Victims' statements were unbelievable and the other evidence presented supported their fabrication. The self defense issue was the sole basis for the direct appeal. The Court of Appeals reviewed the entire record and the brief pursuant to Anders and dismissed the appeal. It was not ineffective for Trial Counsel not to raise this issue.

For a defendant to be entitled to a jury instruction on a lesser-included offense there must be some evidence in the record that would tend to show that the defendant is guilty of the lesser rather than the greater offense. State v. Suber, 371 S.C. 554, 640 S.E.2d 884 (2007), State v. Fields, 356 S.C. 517, 589 S.E.2d 792 (Ct. App. 2003), State v. Funchess, 267 S.C. 427, 229 S.E.2d 331 (1976). The possibility that the jury might believe some of the State's case and not the rest is an insufficient argument for a lesser included offense instruction. State v. Geiger, 370 S.C. 600, 635 S.E.2d 669 (Ct. App. 2006). Funchess, 267 S.C. at 430, 229 S.E.2d at 332. In the case at hand, the Applicant claims that he should be entitled to a lesser-included offense, such as a gun charge, is without merit.

Furthermore, the Applicant's defense was that there was no armed robbery at all. In such circumstances, a lesser-included offense instruction would not be warranted. Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) (where there was no evidence that the defendant committed assault and battery of a high and aggravated nature as opposed to criminal sexual conduct, a defendant is not entitled to abate as a lesser included charge of CSC), see e.g. Moultrie v. State, 354 S.C. 646, 583 S.E.2d 436 (2003) (where defendant's defense was that he never assaulted the victim at all, a lesser included offense charge was not warranted).

17 Ineffective assistance of Trial Counsel in failing to develop viable defense strategy

Trial Counsel developed a defense strategy that was viable. The strategy employed resulted in a hung jury during the first trial and provided the opportunity to hear all of the testimony to be offered by the State. Trial Counsel articulated valid strategic decisions and the reasons for the decisions made. Considering that Applicant defense was that he was innocent and did not know why the events occurred, the main strategy was to put the State to its burden of proof and to create a reasonable doubt in the minds of the jurors.

Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Brown v. State, 383 S.C. 506, 680 S.E.2d 909 (2009), Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992), see also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). [Attorney] articulated valid strategic reasons for [p]. The Applicant has not shown that counsel was deficient in that choice of tactics. In addition, Trial Counsel testified and the record reflects that the strategy was to "poke holes" in the State's case to create reasonable doubt. Considering the burden of proof, this Court finds nothing ineffective regarding trial counsel's tactics nor was the Applicant prejudiced.

18 Denial of effective assistance of counsel in cumulative effect of counsel's errors

The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (Rev. 2003), Miller v. State, 377 S.C. 99, 659 S.E.2d 492 (2008), Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965), Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is vague. Since the Applicant has not made the minimum prima facie showing, the Court should dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act. In addition, there is no current precedent to support the theory that cumulative errors that are by themselves not prejudicial can be used as a whole to establish prejudice. Lorenzen v. State, supra.

This Court has reviewed the record in whole and has read the transcript of record numerous times reviewing not only the testimony of the witnesses discussed by Applicant but all of the witnesses. In considering the testimony of trial counsel and the failure of the Applicant to introduce any expert testimony during the PCR hearing, this Court finds this issue to be without

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merit, the Applicant has not presented any factual evidence that he is indeed "actually innocent" and that but for trial counsel's ineffectiveness the outcome of the trial would have been different. In making a case for "actual innocence," the evidence would need to show 'factual innocence, not mere legal insufficiency' Bousley v. United States, 523 U.S. 614, 623 (1998)

CONCLUSION

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed. As stated above, this Court finds that most, if not all, of the Applicant's allegations are framed around trial counsel's failure to elicit testimony or present evidence to support the Applicant's version of events that there was no armed robbery, that the shootout occurred outside, as opposed to the victim's claims that the shootout occurred inside during the course of a robbery. The Applicant does not dispute that a shootout occurred, that he armed himself and fired shots at the victim. This Court finds that the Applicant has failed to meet his burden of proof and convince this Court that trial counsel could have done more to convince the jury that the victim's were lying about both where the shooting took place and the existence of the armed robbery.

This Court finds Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf.

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Applicant and counsel are directed to Rules 203, 208, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED

- 1 That the Application for Post-Conviction Relief must be denied and dismissed with prejudice, and
- 2 The Applicant must be remanded to the custody of the Respondent

AND IT IS SO ORDERED


ALISON RENEE LEE
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina
December 22, 2009

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WITNESSES**Ewing, RCSD** */ASOL*Sterling Patterson
3101 B Percival Road
Columbia, SC 29223**ARREST WARRANT NUMBER****H-012678****ACTION OF GRAND JURY****TRUE BILL****TRUE BILL***Will Seal*
Foreperson of Grand Jury
Date**VERDICT***Guilty***DOCKET NO 2002-GS-40-10892****The State of South Carolina****County of Richland****COURT OF GENERAL SESSIONS****DECEMBER TERM 2002****11****THE STATE
vs.****DEMETRIO SEARS****AMENDED Indictment for****ATTEMPTED ARMED
ROBBERY**SC Code 16-11-330(B)
CDR Code 0026
Class FEL-C(V), 20Y

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness

CCC PLS AND GS

ATTENTION
A TRUE COPY*Barbara C. Sears*

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 11, 2002, the Grand Jurors of Richland County present upon their oath

ATTEMPTED ARMED ROBBERY

That Demetrio Sears did in Richland County on or about October 8, 2002 did attempt to commit robbery by feloniously taking from the person or presence of Ntense Kustoms and Car Audio by means of force or intimidation goods or monies of Ntense Kustoms and Car Audio, such goods or monies being described as United States Currency with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, this being in violation of §16-11-330, 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.



WARREN B GIESE, SOLICITOR

WITNESSES

S. McDonald, RCSD / ASOL

Sgt. S. C. McDonald

ARREST WARRANT NUMBER

H-215289

ACTION OF GRAND JURY

TRUE BILL*W. D. L.*
Foreperson of Grand Jury
Date:

VERDICT

*Guilty**John J. Jasser*
Foreperson of Petit Jury

DOCKET NO 2002-GS-40-10624

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

DECEMBER TERM 2002

11

THE STATE
vs.

WILLIE LLOYD ALEXANDER

Indictment for

ATTEMPTED ARMED
ROBBERY
SC Code 16-11-330(B)
CDR Code. 0026
Class FEL-C(V), 20Y

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness

CCC PLS AND GS

ATTORNEY
A TRUE COPY*Burkard C. Scott*

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on December 11, 2002, the Grand Jurors of Richland County present upon their oath

ATTEMPTED ARMED ROBBERY

That Willie Lloyd Alexander did in Richland County on or about October 8, 2002 did attempt to commit robbery by feloniously taking from the person or presence of ^{owner of} Ntense Kustoms and Car Audio by means of force or intimidation goods or monies of ^{QIC} Ntense Kustoms and Car Audio, such goods or monies being described as United ¹⁻⁵⁻ States Currency with the intent to deprive the owner permanently of such property, ⁽²⁴⁾ while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, this being in ^{Acron} violation of §16-11-330, 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

Warren B Giese
WARREN B GIESE, SOLICITOR