

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Horry County

George C. James, Jr., Circuit Court Judge

THOMAS ERNEST WEBB,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001381

APPENDIX

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2 COUNTY OF HORRY) INDICTMENT #06-GS-26-182, 183,
3 184, 185, 186

4
5 THE STATE OF SOUTH CAROLINA,)

6 PLAINTIFF,)

7 -VS-)

TRANSCRIPT OF RECORD

8 THOMAS E. WEBB,)

9 DEFENDANT.)

10 March 3rd, 4th & 6th, 2008
11 Conway, S. C.

12 B E F O R E:

13 HONORABLE EDWARD B. COTTINGHAM, JUDGE, AND A JURY
14

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18 Attorney for the State

19 STUART AXELROD, ESQUIRE
20 and
21 JOSHUA BAILEY, ESQUIRE
22 Attorneys for the Defendant
23
24
25

LINDA W. MCCALL
OFFICIAL REPORTER

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	<u>STATE</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
1				
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EXHIBITSDEFENDANT

NONE

COURT

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REMARKS OF THE COURT

9

1 MONDAY, MARCH 3, 2008

2 THE COURT: Good morning, ladies and gentlemen.

3 Please be seated.

4 REMARKS OF THE COURT

5 THE COURT: Ladies and gentlemen of the jury panel, I want
6 to express to you my appreciation, too, for your appearance here
7 today to serve as a panel of jurors in a General Sessions Term of
8 Court meaning a criminal term.

9 By way of introduction, I am Judge Cottingham from
10 Bennettsville, South Carolina. By way of rotation I have been
11 assigned here as your trial judge through June of this year, and,
12 of course, over the last twenty-five years, I've had the pleasure
13 of being here on many occasions and always look forward to
14 returning to your wonderful county.

15 I'm sure that Judge John in qualifying you this morning told
16 you that we understand, and I like to emphasize, too, that we
17 understand that all of you are here at considerable inconvenience
18 to yourselves, to your families, to your jobs, to your daily
19 pursuits but your presence in a General Sessions Court is
20 absolutely required.

21 Our system of jurisprudence maintains that everybody no matter
22 how serious the charge may be is presumed innocent, and that
23 innocence remains with him throughout until a jury such as you has
24 found him guilty by evidence satisfactory unanimously beyond a
25 reasonable doubt. That concept protects your liberty and with

REMARKS OF THE COURT

10

1 equal importance it protects mine.

2 Now, from your number, Counsel for the State, Mr. Richardson,
3 Counsel for the Defense, Mr. Axelrod, desires from your number
4 twelve jurors and two alternates, twelve folks who say, "Judge, I
5 have no friends to reward, no enemies to punish. I know nothing
6 about the case. I have no preconceived thoughts about the case, no
7 biases or prejudices."

8 A juror who can say, "Judge, if I am selected as one of the
9 twelve jurors in this case, my verdict, either guilty or not
10 guilty, will be based on the law and evidence heard in this
11 courtroom and from no other place."

12 And so it is I'm going to enter into a process now called voir
13 dire to ask of you certain questions to make sure that we receive
14 such a jury as I've just indicated to you, just a fair jury who can
15 say, "I can listen to the evidence in this case, and I can be fair
16 to the State of South Carolina and to the alleged victims, and,
17 equally, I can be fair to the defendant."

18 Now, where is the defendant?

19 MR. AXELROD: May we approach, Your Honor?

20 THE COURT: Yes, sir.

21 (Bench conference in the presence of the jury panel but
22 outside of the hearing of the jury panel.)

23 The Court awaits the arrival of the defendant in the
24 courtroom.)

25 THE COURT: May I hold the indictment, please?

VOIR DIRE

11

1 MR. RICHARDSON: Madame Clerk has it, Your Honor.
2 (Deputy Clerk of Court passes indictment to the Court.)

3 THE COURT: Alright.

4 Let the record reflect that the defendant is in court. The
5 panel is here. We are now ready to proceed, ah, with voir dire.

6 VOIR DIRE

7 THE COURT: Now, ladies and gentlemen, I'm going to ask of
8 you certain questions to insure that both the State and the
9 defendant can receive a fair and impartial juror sworn to try the
10 issues in this case.

11 We will be selecting twelve jurors and two alternates, and
12 we'll start this case at 2:00 this afternoon promptly. As I
13 indicated, it's a case that will probably last maybe two days, and,
14 of course, there will be other cases for your consideration at the
15 conclusion of this case.

16 Alright, Solicitor, call your cases, please.

17 MR. RICHARDSON: Thank you, Your Honor.

18 At this time the State would call 2006-GS-26-0186, The State
19 of South Carolina, County of Horry vs. Thomas E. Webb on the charge
20 of kidnapping;

21 Also, 2006-GS-26-182, The State of South Carolina, County of
22 Horry vs. Thomas E. - - -

23 THE COURT: Wait a minute.

24 The kidnapping I have says 0182.

25 MR. RICHARDSON: I was reading from my notes, Judge.

VOIR DIRE

12

1 THE COURT: Sir?

2 MR. RICHARDSON: I was reading from my notes.

3 Kidnapping, I have 186.

4 THE COURT: Well, this indictment says 182. Now which is
5 it?

6 MR. RICHARDSON: Your Honor, there are two counts of
7 kidnapping. We have 186 and 182.

8 THE COURT: Alright, sir.

9 Proceed.

10 MR. RICHARDSON: 2006-GS-26-182, State of South Carolina,
11 County of Horry vs. Thomas E. Webb, true-billed indictment for
12 kidnapping;

13 2006-GS-26-185, State of South Carolina, County of Horry vs.
14 Thomas E. Webb, a true-billed indictment for armed robbery;

15 2006-GS-26-184, State of South Carolina, County of Horry vs.
16 Thomas E. Webb, a true-billed indictment for armed robbery; and

17 2006-Gs-26-183, State of South Carolina, County of Horry vs.
18 Thomas E. Webb, a true-billed indictment for burglary, first
19 degree.

20 THE COURT: Alright, sir.

21 The defendant is in court represented by Mr. Stuart Axelrod.
22 Is the defendant ready for trial?

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

24 THE COURT: Alright, sir.

25 Ladies and gentlemen, this defendant stands indicted for these

VOIR DIRE

13

1 various charges that the Solicitor has just read to you. Now, to
2 each of these charges, this defendant specifically pleads not
3 guilty thereby placing the burden of proof upon the State of South
4 Carolina of proving him guilty to your satisfaction of these
5 charges beyond a reasonable doubt.

6 Now, during the trial of this case there will be various
7 witnesses testifying as to various issues, and at the conclusion of
8 all the testimony and summations by counsel, I will charge you the
9 issues with regards to the law, and you will take the facts as you
10 find them to be from the various witnesses and such other matters
11 as are introduced into the trial, apply those facts to the law of
12 the case and, thereafter, reach your verdict of either not guilty
13 or guilty.

14 Now, my first inquiry is Thomas E. Webb, please stand and face
15 the jury panel, please.

16 (The defendant stands and faces the jury panel.)

17 THE COURT: Are any of you related by blood or connected by
18 marriage to this defendant, Thomas E. Webb? If so, please stand,
19 give me your name and jury number.

20 Do any of you have any close personal connections in any
21 capacity with this defendant, Thomas Webb?

22 Do any of you even know this defendant in any capacity
23 whatsoever? If so, please stand.

24 Be seated, please.

25 (The defendant resumes his seat at the defense table.)

VOIR DIRE

14

1 THE COURT: The alleged victims in this case, Ms. Fairey
2 Price, Ellis Price, just - - it's two - - two alleged victims?

3 MR. RICHARDSON: Two victims, Your Honor. They're both
4 out of Pennsylvania.

5 THE COURT: Pennsylvania?

6 It's not likely but just out of curiosity, anybody know
7 anything about either Ellis Price or Fairey Price. Will they
8 please stand, please?

9 MR. RICHARDSON: Your Honor, actually, I'd assume we'd be
10 handling these questions. So, they're out in the waiting room
11 right now.

12 THE COURT: Okay, but they reside in Pennsylvania?

13 MR. RICHARDSON: That is correct, Your Honor.

14 THE COURT: Alright, sir.

15 Any of them happen to know anything about them?

16 Alright.

17 Now, ladies and gentlemen, ah, this alleged incident and it's
18 alleged until it's proven that it occurred is said to have happened
19 here in Horry County on October 22nd of 2005, and it is alleged,
20 too, that this incident occurred in Room 117, Boardwalk Motel, 2301
21 North Ocean Blvd. in Myrtle Beach, said to have occurred October of
22 2005.

23 You have may have read or heard something about it. It may
24 have been on tv. It involved an armed robbery at this - - of these
25 alleged victims at this motel, and it is alleged until proven.

VOIR DIRE

15

1 There may have been some publicity about it, may not.

2 Do any of you have any recollection of reading or discussing
3 or hearing or seeing on television an incident in October of that
4 year that would have occurred at that motel? If so, please stand,
5 please.

6 Now, ladies and gentlemen, of course, these crimes or alleged
7 crimes - armed robbery, kidnapping and burglary of the first degree
8 are violent crimes. Ah, sometimes in our past experiences we
9 develop certain biases or prejudiced such that it might impact our
10 ability to be fair.

11 One of the best examples of this occurred in another county
12 with me some years ago when I was preparing to try a young man for
13 driving under the influence, felony, it having been alleged that he
14 killed a young woman while drunk driving.

15 I asked that jury as I'm going to ask you. Does anybody based
16 on prior experience have any biases or prejudices such that you
17 could not give both the State and the defendant a fair trial?

18 One lady got up and said, "Your Honor, I cannot be fair to
19 this defendant in this case because my daughter was killed last
20 year by a drunk driver."

21 In that same panel, a gentleman got up and said, "Judge, I
22 can't be fair to the State of South Carolina. They tried my son
23 three times for the same thing before twelve good folks acquitted
24 him."

25 So, sometimes we have problems with one side or the other.

VOIR DIRE

16

1 Now, based on your prior experiences, have any of you been a
2 victim of a violent crime, a violent crime, such as kidnapping,
3 armed robbery or burglary or such as that? If so, please stand.

4 Are any of you members of such organizations as MADD, SADD, or
5 any such organization of that order that deal with subjects of
6 violence in criminal courts? Any of you members of organizations
7 like that?

8 It doesn't disqualify you. You're entitled to be there for
9 sure but we're entitled to know about it.

10 Let me ask you this.

11 Do any of you have any reason whatsoever that you feel that if
12 you were selected as one of the jurors that you could not give both
13 the State of South Carolina and this defendant a fair and impartial
14 trial?

15 We've got a hundred and something jurors right here this week,
16 and if anybody feels like for any reason you can't be a fair juror
17 and base your verdict on the law and evidence in this case, you
18 please stand, and I'll - - I'll excuse you.

19 JUROR CANNON: Your Honor, if I might say one thing?

20 I did serve as a police officer here for some years a number
21 of years back. My only concern would be if the Prosecution brings
22 the witnesses who are involved in this case that I may happen to
23 know personally.

24 THE COURT: I'll deal with that at the appropriate time.

25 JUROR CANNON: Okay. Alright.

VOIR DIRE

17

1 THE COURT: Thank you so much.

2 May I have your name, please?

3 JUROR CANNON: My name is John Blake Cannon.

4 THE COURT: Okay.

5 And, ah, may I have your jury number, sir?

6 JUROR CANNON: 56.

7 THE COURT: Okay.

8 We'll deal with that issue but I appreciate you calling it to
9 my attention.

10 Anything else?

11 Alright.

12 The Solicitor's Office here is represented by Deputy Senior
13 Solicitor Brad Richardson. Are any of you related to Brad in any
14 way? Are any of you have had any business with the Solicitor's
15 Office of this Circuit such as witness or anything like that?

16 You may be seated.

17 MR. RICHARDSON: Thank you.

18 THE COURT: The defendant, as I've indicated, is
19 represented by Mr. Stuart Axelrod, an attorney here in Horry
20 County. Any of you clients of Mr. Axelrod or have you been in the
21 immediate past so? If so, please stand?

22 Yes, sir, your name?

23 JUROR LENDRIM: My name is Patrick Lendrim.

24 THE COURT: Yes, sir.

25 JUROR LENDRIM: I have not been a client of Stuart Axelrod

VOIR DIRE

18

1 but I am a personal friend of Stuart Axelrod.

2 THE COURT: Would that interfere with your ability to be a
3 fair juror?

4 JUROR LENDRIM: I don't think so, Your Honor.

5 THE COURT: I don't either. You appear to me to be a fair
6 man, and it's good - - I'm a friend of Mr. Axelrod's, too.

7 JUROR LENDRIM: I'm sorry for you.

8 THE COURT: But that don't mean that I'm not going to give
9 the State of South Carolina.

10 MR. AXELROD: Judge, he said he was sorry for you.

11 THE COURT: Sir?

12 MR. AXELROD: When you said you were a friend of mine, he
13 said he was sorry for you.

14 THE COURT: Well, that's his judgment. Some of them may
15 agree with that.

16 But anyway, ordinarily, unless that would affect your ability
17 to be fair, that would not affect you.

18 I also say that I'm a friend of Mr. Brad Richardson here, too.
19 I've had the pleasure of having both of them in my courtroom on
20 many occasions and enjoy having them.

21 Now, Mr. Richardson?

22 MR. RICHARDSON: Yes, sir, Your Honor.

23 THE COURT: Any further inquiry before we proceed?

24 MR. RICHARDSON: None from the State, Your Honor.

25 I can go through my list of witnesses, though, to see.

VOIR DIRE

19

1 THE COURT: Okay.

2 How about you? Any other inquiry?

3 MR. AXELROD: May we approach, Your Honor?

4 (Bench conference off the record and in the presence of the
5 jury panel but outside the hearing of the jury panel.)

6 MR. RICHARDSON: Thank you, Your Honor.

7 You want me to read it?

8 THE COURT: You go ahead and read it.

9 Now, ladies and gentlemen, there is a potential witness list
10 that we going to read. Some of them may or may not be called.

11 Given the number of them, I'm hoping they're not going to call
12 them all but - - -

13 MR. RICHARDSON: We'll try to shorten it up.

14 THE COURT: But, ah, to the extent that you have any type
15 of personal relationship with these witnesses, we need to know
16 about it. If you just happen to know them casually, I don't need
17 to know that but if you have a close personal relationship with any
18 of these witnesses, let me know, please.

19 MR. RICHARDSON: We've already discussed the Prices.

20 THE COURT: I tell you what. Let's talk about - - since
21 the gentleman made an inquiry, read the list of police officers
22 involved. See if he ever worked with any of them.

23 MR. RICHARDSON: The police officer involved, we have
24 ~~Officer - - Officer Selena Mann who is now with Conway Police~~
25 Department. At the time she was a detective with the Myrtle Beach

VOIR DIRE

20

1 Police Department.

2 We have Sgt. Eric Di Lorenzo. He's with Myrtle Beach Police
3 Department; Officer Robert Ursits, Crime Scene Officer with Myrtle
4 Beach Police Department; Patty Daniels, Christina Van Houten and
5 Peg Neudek, Evidence Custodians for the Myrtle Beach Police
6 Department; Investigator Carol Allen with the City of Myrtle Beach
7 Police Department.

8 THE COURT: Why - - before we go, the witness, please stand
9 and tell me when you were a police officer. Please stand.

10 JUROR CANNON: I was a police officer during the early to late
11 eighties.

12 THE COURT: Here?

13 JUROR CANNON: Yes, sir.

14 I worked for Horry County. So, I don't know any of the
15 officers.

16 THE COURT: That's fine. Okay.

17 You - - you haven't worked as a police officer since the
18 eighties?

19 JUROR CANNON: Just in the real late eighties.

20 THE COURT: Alright, sir. That's fine.

21 MR. RICHARDSON: Your Honor, also, we have Joy E. Hines
22 and Randi Gaunt who will be testifying.

23 THE COURT: Alright, sir.

24 Does that take care of your witness list?

25 MR. RICHARDSON: Yes, sir.

JURY SELECTION

21

1 THE COURT: Alright, sir.

2 Mr. Axelrod, you have any witnesses other than your defendant?

3 MR. AXELROD: Not at this time, Your Honor. No, sir, Your
4 Honor.

5 THE COURT: Sir?

6 MR. AXELROD: No, sir, Your Honor. Not at this time, Your
7 Honor.

8 JURY SELECTION

9 THE COURT: Alright.

10 Are we ready to select a jury?

11 MR. RICHARDSON: The State's ready, Your Honor.

12 THE COURT: The strikes are five and ten.

13 MR. RICHARDSON: Yes, sir, Your Honor.

14 THE COURT: Alright. Let's proceed.

15 Let's - - I want to also select two alternates. The strikes
16 are one and two individually as to each alternate.

17 MR. RICHARDSON: Yes, sir, Your Honor.

18 THE COURT: Alright.

19 Madame Clerk, Christina, call my first potential juror.

20 DEPUTY CLERK OF COURT: When I call your name, please bring
21 your belongs and stand right there and face that way.

22 #362, Mary Stout.

23 What say the State?

24 MR. RICHARDSON: Please present Ms. Stout.

25 DEPUTY CLERK OF COURT: The defense?

JURY SELECTION

22

1 MR. AXELROD: Please excuse the juror from the trial of this
2 case.

3 DEPUTY CLERK OF COURT: Please be seated. You're excused
4 from this particular case.

5 DEPUTY CLERK OF COURT: #339, Alfonzo Simmons.

6 What say the State?

7 MR. RICHARDSON: Please present Mr. Simmons.

8 DEPUTY CLERK OF COURT: The defense?

9 MR. AXELROD: Please swear Mr. Simmons.

10 DEPUTY CLERK OF COURT: Please take a seat in the juror box.
11 #64, Charles Cecala.

12 What say the State?

13 MR. RICHARDSON: Please present Mr. Cecala.

14 DEPUTY CLERK OF COURT: The defense?

15 MR. AXELROD: Please swear Mr. Cecala.

16 DEPUTY CLERK OF COURT: Please be seated in the juror box.
17 #34, Brad Boyles.

18 What say the State?

19 MR. RICHARDSON: Please present Mr. Boyles.

20 DEPUTY CLERK OF COURT: The defense?

21 MR. AXELROD: Please swear Mr. Boyles.

22 DEPUTY CLERK OF COURT: Please be seated in the juror box.
23 #355, Erma Stackhouse.

24 MR. RICHARDSON: What number was that, Madame - - -

25 DEPUTY CLERK OF COURT: #355.

JURY SELECTION

23

1 MR. RICHARDSON: #355? Thank you.

2 DEPUTY CLERK OF COURT: What say the State?

3 MR. RICHARDSON: Please present Ms. Stackhouse.

4 DEPUTY CLERK OF COURT: The defense?

5 MR. AXELROD: Please excuse the juror from the trial of this
6 case.

7 DEPUTY CLERK OF COURT: Please be seated. You're excused
8 from this case.

9 #341, Mary Singleton.

10 What say the State?

11 MR. RICHARDSON: Please present Ms. Singleton.

12 DEPUTY CLERK OF COURT: The defense?

13 MR. AXELROD: Please swear Ms. Singleton.

14 DEPUTY CLERK OF COURT: Please be seated in the juror box.

15 #334, George Sherman.

16 What say the State?

17 MR. RICHARDSON: Please present Mr. Sherman.

18 DEPUTY CLERK OF COURT: The defense?

19 MR. AXELROD: Please excuse the juror from the trial of this
20 case.

21 DEPUTY CLERK OF COURT: Please be seated. You're excused
22 from this particular case.

23 #378, Roger Todd.

24 ~~What say the State?~~

25 MR. RICHARDSON: Please present Mr. Todd.

JURY SELECTION

24

1 DEPUTY CLERK OF COURT: The defense?

2 MR. AXELROD: Please excuse the juror from the trial of this
3 case.

4 DEPUTY CLERK OF COURT: Please be seated. You're excused
5 from this particular case.

6 #114, Robert Duncan.

7 What say the State?

8 MR. RICHARDSON: Please excuse Mr. Duncan from the trial of
9 this case.

10 DEPUTY CLERK OF COURT: Please be seated. You're excused
11 from this particular case.

12 #28, Roger Black.

13 What say the State?

14 MR. RICHARDSON: Please present Reverend Black.

15 DEPUTY CLERK OF COURT: The defense?

16 MR. AXELROD: Excuse the juror.

17 DEPUTY CLERK OF COURT: Please be seated. You're excused
18 from this particular case.

19 #223, Patrick Lendrim.

20 What say the State?

21 MR. RICHARDSON: Please excuse Mr. Lendrim from this
22 particular case.

23 DEPUTY CLERK OF COURT: Please be seated. You're excused
24 from this particular case.

25 #78, Lovell Clevinger.

JURY SELECTION

25

1 What say the State?

2 MR. RICHARDSON: Please present Mr. Clevinger for the trial
3 of this case.

4 DEPUTY CLERK OF COURT: The defense?

5 MR. AXELROD: Excuse the juror.

6 DEPUTY CLERK OF COURT: Please be seated. You're excused
7 from this particular case.

8 #276, Pamalan Nettleton.

9 THE COURT: What was the last one?

10 DEPUTY CLERK OF COURT: #276, Judge.

11 What say the State?

12 MR. RICHARDSON: Please present Ms. Nettleton.

13 DEPUTY CLERK OF COURT: The defense?

14 MR. AXELROD: Please swear Ms. Nettleton.

15 DEPUTY CLERK OF COURT: Please be seated in the jury box.

16 #216, Catherine Lane.

17 What say the State?

18 MR. RICHARDSON: Please present Ms. Lane.

19 DEPUTY CLERK OF COURT: The defense?

20 MR. AXELROD: Swear Ms. Lane.

21 DEPUTY CLERK OF COURT: Please be seated in the jury box.

22 THE COURT: Ms. Lane, I'm going to ask that you accept the
23 Foreperson's chair for me, please, ma'am.

24 DEPUTY CLERK OF COURT: #193, Kathleen Johnson.

25 What say the State?

JURY SELECTION

26

1 MR. RICHARDSON: Please present Mrs. Johnson or Miss
2 Johnson.

3 DEPUTY CLERK OF COURT: The defense?

4 MR. AXELROD: Please swear Miss Johnson.

5 DEPUTY CLERK OF COURT: Please be seated in the jury box.

6 #277, John Noel.

7 What say the State?

8 MR. RICHARDSON: Please present Mr. Noel - - Noel or Noel?
9 Noel.

10 DEPUTY CLERK OF COURT: The defense?

11 MR. AXELROD: Please excuse Mr. Noel from the trial of this
12 case.

13 DEPUTY CLERK OF COURT: Please be seated. You're excused
14 from this particular case.

15 #100, Carolyn Davis.

16 What say the State?

17 MR. RICHARDSON: Please present Ms. Davis.

18 DEPUTY CLERK OF COURT: The defense?

19 MR. AXELROD: Swear Ms. Davis.

20 DEPUTY CLERK OF COURT: Please be seated in the jury box.

21 #325, Tammy Scott.

22 What say the State?

23 MR. RICHARDSON: Please present Ms. Scott.

24 DEPUTY CLERK OF COURT: The defense?

25 MR. AXELROD: Please excuse Ms. Scott.

JURY SELECTION

27

1 DEPUTY CLERK OF COURT: Please be seated. You're excused
2 from this particular case.

3 #186, Pamela Jarvis.

4 What say the State?

5 MR. RICHARDSON: Please present Ms. Jarvis.

6 DEPUTY CLERK OF COURT: The defense?

7 MR. AXELROD: Please swear Ms. Jarvis.

8 DEPUTY CLERK OF COURT: Please be seated in the juror box.

9 #129, Brian Fessler.

10 MR. AXELROD: That was #129?

11 DEPUTY CLERK OF COURT: #129.

12 MR. AXELROD: Your Honor, if I may inquire? I was unable to
13 hear this gentleman's occupation when the voir dire occurred.

14 THE COURT: I'll be glad to -- may I have your occupation,
15 please, sir?

16 JUROR FESSLER: Architect.

17 THE COURT: Architect, and may I have your wife's
18 occupation?

19 JUROR FESSLER: I'm single.

20 THE COURT: Thank you.

21 DEPUTY CLERK OF COURT: What say the State?

22 MR. RICHARDSON: Please present Mr. Fessler.

23 DEPUTY CLERK OF COURT: The defense?

24 MR. AXELROD: Please swear Mr. Fessler.

25 DEPUTY CLERK OF COURT: Please be seated in the juror box.

JURY SELECTION

28

1 #240, Kathleen Manuel.

2 What say the State?

3 MR. RICHARDSON: Please present Ms. Manuel.

4 DEPUTY CLERK OF COURT: The defense?

5 MR. AXELROD: Please swear Ms. Manuel - - Ms. Manuel.

6 DEPUTY CLERK OF COURT: Please be seated in the juror box.

7 #65, Darren Ceran.

8 What say the State?

9 MR. RICHARDSON: Please excuse Mr. Ceran from the trial of
10 this case.

11 DEPUTY CLERK OF COURT: Please be seated. You're excused
12 from this particular case.

13 #59, Philip Carr.

14 What say the State?

15 MR. RICHARDSON: Please excuse Mr. Carr from the trial of
16 this case.

17 DEPUTY CLERK OF COURT: Please be seated. You're excused
18 from this particular case.

19 #391, Kelli Wadsten.

20 What say the State?

21 MR. RICHARDSON: Please present Ms. Wadsten.

22 DEPUTY CLERK OF COURT: The defense?

23 MR. AXELROD: Your Honor, Court's indulgence for one second.
24 Excuse the juror.

25 DEPUTY CLERK OF COURT: Please be seated. You're excused

JURY SELECTION

29

1 from this particular case.

2 #22, Reggi Bellamy.

3 What say the State?

4 MR. RICHARDSON: Please excuse Mr. Bellamy from the trial.

5 DEPUTY CLERK OF COURT: Please be seated. You're excused
6 from this particular case.

7 #12, Robert Balzotti.

8 What say the State?

9 MR. RICHARDSON: Please present Mr. Balzotti.

10 DEPUTY CLERK OF COURT: The defense?

11 MR. AXELROD: Swear Mr. Balzotti.

12 DEPUTY CLERK OF COURT: Please be seated in the juror box.

13 THE COURT: Alright, gentlemen, that will constitute the
14 jury. We'll now have, ah, two alternates. The strikes are one
15 and two as to each alternate.

16 MR. RICHARDSON: Yes, sir.

17 DEPUTY CLERK OF COURT: #162, Judith Hardin.

18 What say the State?

19 MR. RICHARDSON: Please present Ms. Hardin.

20 DEPUTY CLERK OF COURT: The defense?

21 MR. AXELROD: Please excuse Ms. Hardin from the trial of this
22 case.

23 DEPUTY CLERK OF COURT: Please be seated. You're excused
24 from this particular case.

25 #83, Frank Corda.

JURY SELECTION

30

1 What say the State?

2 MR. RICHARDSON: Please present Mr. Corda.

3 DEPUTY CLERK OF COURT: The defense?

4 MR. AXELROD: Please swear Mr. Corda.

5 DEPUTY CLERK OF COURT: Please be seated in the juror box.

6 #257, Rita Meggs.

7 What say the State?

8 MR. RICHARDSON: Please present Ms. Meggs.

9 DEPUTY CLERK OF COURT: The defense?

10 MR. AXELROD: Please excuse the juror.

11 DEPUTY CLERK OF COURT: Please be seated. You're excused
12 from this particular case.

13 #138, David Frederick.

14 What say the State?

15 MR. RICHARDSON: Please present Mr. Frederick.

16 DEPUTY CLERK OF COURT: The defense?

17 MR. AXELROD: Swear the juror.

18 DEPUTY CLERK OF COURT: Please have a seat in the juror box.

19 THE COURT: Alright.

20 Madame Foreman, during the trial of this case, you will, of
21 course, occupy that seat at all times.

22 The two alternates will occupy the seats where you are now
23 seated.

24 The rest of you may sit as you choose.

25 Please have the jury go to the jury room just a moment,

JURY SELECTION

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1 please.

2 (The jury retires to the jury room at 12:36 p.m.)

3 THE COURT: Alright.

4 Outside of the jury's presence, any issues regarding the
5 composition of the jury?

6 MR. RICHARDSON: None from the State, Your Honor.

7 THE COURT: What says the defendant?

8 MR. AXELROD: Nothing, Your Honor.

9 THE COURT: Alright.

10 The jury as selected will stand.

11 Ladies and gentlemen, I appreciate your patience here this
12 morning. I'm instructed by the Administrative Judge that there
13 well may be some cases starting in the morning, and I respectfully
14 request that you return to the jury room downstairs at 9:30 in the
15 morning.

16 Is that the instructions we received?

17 You are now excused to report downstairs in the morning at
18 9:30.

19 Thank you so much.

20 (The remaining jury panel departs the courtroom to report back
21 to the jury pool room at 9:30 on Tuesday morning.)

22 THE COURT: Alright.

23 You may proceed.

24 ~~Bring the jury back for me.~~

25 I'm going to start back at 2:30 - -

JURY SELECTION

32

1 MR. RICHARDSON: 2:30, yes, sir.

2 THE COURT: - - since we've got these issues.

3 MR. AXELROD: Judge, why don't we go to three because I'd
4 like to each lunch.

5 THE COURT: No. I ain't going to take until 3:00. We
6 going to start.

7 You already starting want to delay things. Let's move on with
8 this trial.

9 Alright. Bring the jury in, please.

10 If we not finished with our business, we'll start at 3:00 but
11 I'm going to be ready to start earlier than that if necessary.

12 MR. AXELROD: Yes, sir, Your Honor.

13 THE COURT: You welcome.

14 What issue do you want to deal with first when I's letting the
15 jury go? What is it - - which is it?

16 MR. RICHARDSON: Dealer's choice, Your Honor. Either one
17 you want. I've got the search warrant here.

18 THE COURT: No, let's do - - let's deal with the Blair
19 issue first.

20 Sir?

21 MR. RICHARDSON: May I approach with the defendant at this
22 time?

23 THE COURT: Sir?

24 MR. RICHARDSON: May I approach with the defendant at this
25 time?

REMARKS OF THE COURT

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1 THE COURT: Yes, sir.

2 (The jury returns to the courtroom at 12:38 p.m.)

3 REMARKS OF THE COURT

4 THE COURT: Ladies and gentlemen, it is anticipated that we
5 can start this case promptly at 2:30 this afternoon. One of the
6 witnesses that we'll need may be a little late but I hope that we
7 can start at 2:30.

8 When you return this afternoon, please return to your jury
9 room that you just left and not to this courtroom.

10 Now, during the trial of this case and beginning this moment,
11 do not discuss this case with anyone. Let no one discuss it with
12 you. Make no independent inquiry, and during the trial of the case
13 permit no discussion among yourselves in or out of the jury room on
14 any issue involving this case until I have given you the case for
15 your deliberation.

16 There are several reasons that we ask you not to discuss the
17 case because as finders of the facts you need to hear all of the
18 witnesses and the law and the final summations before beginning
19 your deliberative process.

20 Sometimes when we break for lunch, jurors two or three of them
21 will be gathering around the car, and they'll talk about some issue
22 in the case. That is improper for the following reason. Where
23 ever your decision will be ultimately, it must be the unanimous
24 ~~decision of all twelve of you, and if several of you are discussing~~
25 some issue in the case, you are depriving your fellow jurors of

MOTIONS AND RULING OF THE COURT

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1 your thought process, and they're entitled to that.

2 And, therefore, Madame Foreman, we say that all discussions
3 must be in the jury room and no other place and permit absolutely
4 no discussion in the jury room about any issue in this case.

5 You can discuss the weather or football or whatever else you
6 want to but not about this case.

7 And, so, you are excused now to return to your jury room at
8 2:30, and we're going to make every effort to start at that time.

9 (The jury is released at 12:41 p.m. for lunch to return at
10 2:30 p.m.)

MOTIONS AND RULING OF THE COURT

11
12 THE COURT: Alright, gentlemen, I want to be back in this
13 courtroom at quarter till two ready to go.

14 MR. RICHARDSON: Yes, sir, Your Honor.

15 THE COURT: With all the witnesses in every issue pre-
16 trial.

17 I want to make sure that that defendant is here in this
18 courtroom when I get on here at 2:15.

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: Mr. Axelrod, as I understand it, you have
21 requested and appropriately, a Blair hearing. Is that correct?

22 MR. AXELROD: Yes, sir, Your Honor.

23 THE COURT: And you've also requested a search warrant
24 issue. Is that right?

25 MR. AXELROD: Yes, sir, Your Honor.

MOTIONS AND RULING OF THE COURT

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1 And I have - - is our jury sworn at this point?

2 THE COURT: No, sir.

3 MR. AXELROD: Well, I wish we had sworn them.

4 THE COURT: Why?

5 MR. AXELROD: Well, I - - -

6 MR. RICHARDSON: Your Honor, the State would move that any
7 motions be heard before the jury being sworn.

8 THE COURT: Oh, I'm not going - - I'm not going to do that.

9 MR. AXELROD: Alright.

10 THE COURT: I'm not going to do that.

11 MR. AXELROD: I have one motion just to, ah, I guess it would
12 be an opportune time to put it on the record now.

13 In some of the co-defendants' - - in some of the co-
14 defendants' statements they speak about Tommy being incarcerated in
15 jail at - - at different points, and I would ask that any - - any
16 mention that the State caution their - - their witnesses any
17 mention about his incarceration.

18 THE COURT: Unless it be an integral part of their
19 testimony. I don't know.

20 What you say, Mr. Richardson?

21 MR. RICHARDSON: Your Honor, I have informed the witnesses
22 they need to stay away from any mention of - -

23 THE COURT: Okay. That's fine.

24 MR. RICHARDSON: - - his being previously incarcerated.

25 THE COURT: Alright.

MOTIONS AND RULING OF THE COURT

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1 MR. AXELROD: And that will be fine, and, you know, if it
2 comes out, I think it's going to damage my client's credibility for
3 this trial, and I would move at that point for a mistrial.

4 THE COURT: Well, if it pops out inadvertently, I'll deal
5 with it as appropriately - - but we'll certainly try to keep it
6 out.

7 MR. RICHARDSON: I'll admonish them once again, Your Honor.

8 THE COURT: Sir?

9 MR. RICHARDSON: I will admonish them once again.

10 THE COURT: Okay. We'll do that.

11 Now, let's be back promptly at quarter till two.

12 What else you got, Mr. Axelrod?

13 MR. AXELROD: Just that there's some statements also from the
14 co-defendants that are going to testify concerning my client using
15 some type of drugs, crack cocaine or - - I mean, there's no drugs
16 involved in this case, and I think that - - I don't think the co-
17 defendants should mention drugs at this point.

18 MR. RICHARDSON: Your Honor, part of the res gestae is that
19 I believe Joy Hines had indicated she was using drugs that night,
20 and it appears that Mr. Gaunt and Mr. Webb were out drinking that
21 night. It is part and parcel of the story.

22 MR. AXELROD: She can say that she was using drugs but no
23 mention of my drugs.

24 MR. RICHARDSON: Your Honor, whatever she observed she can
25 say.

MOTIONS AND RULING OF THE COURT

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1 THE COURT: Whatever she observed, she can testify to.
2 If you have an objection, state it at that time, and I will
3 rule on it.

4 MR. AXELROD: Yes, sir.

5 THE COURT: Alright.

6 Alright. Be back at 2:15, and I put it on the Solicitor to
7 make that defendant is in the courtroom.

8 MR. RICHARDSON: Yes, sir, Judge.

9 MR. HUMPHRIES: Judge is it 2:15 or quarter till two
10 because you said both?

11 THE COURT: I'm sorry. Quarter till two. I'm sorry.
12 Ma'am, come forward.

13 (The Court adjourns the trial of this case for a lunch break
14 and thereafter resumes the trial of this case.)

15 THE COURT: Be seated. Be seated, please.
16 Alright.

17 I assume Mr. Axelrod has looked at them.

18 You've seen these, Mr. Axelrod?

19 MR. AXELROD: I have, Your Honor.

20 Well, I could just look at those pictures again.

21 THE COURT: Has he been previously provided with these
22 pictures?

23 MR. RICHARDSON: He's got copies of the pictures, Your
24 Honor.

25 THE COURT: Mr. Axelrod, you've already seen them.

BLAIR HEARING

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1 MR. AXELROD: I have to review them.

2 I haven't seen them this big, Judge.

3 (Attorneys review photographs.)

4 BLAIR HEARING

5 THE COURT: Alright.

6 Let's go ahead with the Blair hearing first, please.

7 MR. RICHARDSON: Yes, sir, Your Honor.

8 THE COURT: Alright, Mr. Richardson, let's proceed, please.

9 MR. RICHARDSON: Thank you, Your Honor.

10 Your Honor, at this time the State would report on the Blair
11 hearing as stated previously.

12 Ah, the defendant - - the defendant was evaluated pursuant to
13 order of this Court. This Court ordered the defendant to be
14 evaluated to ascertain his competency to assist counsel in trial.
15 That order was clocked in December 18, 2007.

16 We are in possession at this time the report as well. The
17 report is dated January 23, 2008, from - - -

18 MR. AXELROD: What's the date of that?

19 MR. RICHARDSON: The date on the evaluation, January 23,
20 2008.

21 THE COURT: Have you provided, ah, defense counsel with a
22 copy of this report?

23 MR. RICHARDSON: A copy of the report actually goes to
24 defense counsel from William Hall.

25 MR. AXELROD: I believe I saw it, Your Honor.

BLAIR HEARING

39

1 THE COURT: Okay.

2 Alright.

3 Don't believe it, now. You either saw it or you didn't.

4 MR. AXELROD: Well, let me see - - let me see it.

5 MR. RICHARDSON: It indicated that he sent a copy of this
6 to Mr. Axelrod.

7 THE COURT: Alright.

8 Let me just go down to the last paragraph.

9 MR. RICHARDSON: Your Honor, the, ah, the examining doctor
10 in this case, Dr. Michael, Ferlauto, and I'll spell that name for
11 the record.

12 The last name is F-e-r-l-a-u-t-o, Medical Doctor, attending
13 psychiatrist.

14 THE COURT: Is that his report that you have?

15 MR. RICHARDSON: This is his report, Your Honor.

16 THE COURT: Did you propose to call him or rely on the
17 report?

18 MR. RICHARDSON: I would intend to rely on the report, Your
19 Honor. Dr. Ferlauto stated earlier he had a medical emergency in
20 his family and is unable to be with us today.

21 I've contacted him at his number. I believe he has his
22 family member at the doctor at this time.

23 THE COURT: Alright, sir.

24 MR. RICHARDSON: Ah, I would submit to the Court that the -
25 - the final paragraph on page 5 indicates that in conclusion Mr.

BLAIR HEARING

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1 Webb presents with low frustration tolerance, irritability,
2 distrust of the criminal justice system and potential knowledge
3 deficits. That this likely reflects chronic
4 "institutionalization", and/or the symptoms of a personality
5 disorder. Despite these limitations, Mr. Webb demonstrated a
6 factual and rational understanding of the proceedings against him
7 and the ability to assist in his own defense. He also demonstrated
8 an ability to learn new information in areas where his knowledge
9 was either deficient or inaccurate.

10 He indicates that he is competent to stand trial.

11 THE COURT: Okay.

12 MR. RICHARDSON: I believe a copy has been clocked in and
13 should be in the Court's file.

14 THE COURT: Alright.

15 Mr. Axelrod, you have, of course, been - - had a full
16 opportunity to review this file.

17 Solicitor, let me tell you - - ask you this.

18 Does the defendant have any type of history of mental
19 difficulties?

20 MR. AXELROD: Yes, sir, he does.

21 THE COURT: What are they?

22 MR. AXELROD: He's been - - he's been in mental hospitals.
23 When he was a child, he was in mental hospitals, Your Honor, and I
24 believe that they had those, ah, documents there.

25 THE COURT: Okay.

BLAIR HEARING

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1 MR. AXELROD: There's a history of mental illness. That's
2 why we had him evaluated.

3 THE COURT: Alright.

4 Do you have any evidence contra to this report that's found
5 him competent, ability to stand trial and meets all the issues
6 required?

7 MR. AXELROD: Yes, I do. I think under the Sixth Amendment,
8 I'm entitled to meaningful cross examination. Also, it's been
9 stated in the record, I believe. My client cannot read, and my
10 client cannot write. He can't do either of the two, and I think -
11 - -

12 THE COURT: Cannot - - cannot do what?

13 MR. AXELROD: He can't read or write, Your Honor.

14 THE COURT: Alright.

15 MR. RICHARDSON: Your Honor.

16 THE COURT: Sir?

17 MR. RICHARDSON: I - - I'll wait for Mr. Axelrod.

18 MR. AXELROD: No, you go right ahead.

19 THE COURT: No. You go ahead, and let me - - let's go on
20 with it.

21 MR. AXELROD: I would like - - I would like to be able to
22 cross-examine the doctor on the report, Your Honor.

23 THE COURT: Go ahead - - go ahead, Mr. Richardson.

24 MR. RICHARDSON: Your Honor, with regard to the defendant's
25 literacy, I can produce for the Court several letters written to

BLAIR HEARING

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1 the Solicitor's Office that are signed by Thomas Webb.

2 MR. AXELROD: Your Honor, it's my understanding that on those
3 letters that my client has people actually write the letters for
4 him. My client is unable to read or write.

5 THE COURT: Alright.

6 Let me review this a moment.

7 You understand that the author of this report because of an
8 emergency in his family cannot be here today?

9 MR. AXELROD: I understand, Your Honor, and I'm willing to -
10 - to allow that cross examination to occur at the first opportune
11 time that it can. I'm not going to ask the Court to continue this
12 trial for the psychiatrist's schedule. That would just be a waste
13 of judicial - -

14 THE COURT: Alright. That's fine.

15 MR. AXELROD: - - time, and it would be - - -

16 THE COURT: Alright.

17 Ah, - - -

18 MR. AXELROD: I'll - - if the psychiatrist does - - as an
19 example, say we conclude this trial, and the trial is not favorable
20 for the defense, and the psychiatrist testifies today or tomorrow
21 or the next week that, in fact, Mr. Webb is not competent to stand
22 trial and is not capable of assisting his attorney, then we would
23 ask the Court to, you know, reopen the case and grant a mistrial.

24 THE COURT: Well, the Court will deal with that issue at
25 the appropriate time if it becomes necessary but this is a Blair

BLAIR HEARING

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1 hearing, and even as I indicated pretrial, even in the Blair
2 hearing, he had not had a trial prior to his conviction, was sent
3 back and had the examination that you talking about.

4 Anyway, since the doctor had recently been subpoenaed, cannot
5 be here because of a household emergency, we are going forward with
6 the understanding that I will permit you to cross-examine the
7 doctor later on in the week or next week on this issue so that the
8 record will be complete.

9 MR. AXELROD: I would just ask within - - within the next
10 thirty days, Your Honor. I'm not going to hold the Court hostage
11 there. You know, at the earliest time that's convenient for this
12 court and the doctor.

13 THE COURT: Well, if at all possible, I want to have all
14 issues resolved in this case resolved this week. So, my intention
15 is just as soon as his emergency is over if it be this week, we
16 going to bring him back if you still want him.

17 Now - - -

18 MR. AXELROD: Your Honor, does the Solicitor know if the
19 doctor is available tomorrow, and we can do this hearing tomorrow
20 with him?

21 THE COURT: We'll make arrangements to do it as quick as we
22 can.

23 I want to do it not only for you but I also want to do it for
24 the victims, too, who are entitled to some closure in this matter.

25 MR. AXELROD: Absolutely, Your Honor.

RULING OF THE COURT

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1 THE COURT: I can tell you that we will expedite that
2 process.

3 MR. AXELROD: I appreciate that, sir.

4 THE COURT: Alright.

5 MR. AXELROD: Thank you.

6 RULING OF THE COURT

7 THE COURT: I have reviewed this report and find, ah, that
8 he is obviously able to work with his attorney. He has been found
9 to, ah, competent to stand trial, and I conclude upon review of
10 this report that each and every finding as in this report is
11 specifically made a finding by the Court, and this report is
12 adopted in toto and made a part of the record.

13 Now, if later you conclude that you would have - - you would
14 like to cross-examine the psychiatrist who wrote this report on
15 these issues, I'm going to make him available to you.

16 MR. AXELROD: I would like that, sir, yes, sir.

17 THE COURT: Alright. Well, we'll see how it goes.

18 THE COURT: Now, what's your next issue?

19 MR. RICHARDSON: Your Honor, if we - - Your Honor, we need
20 to identify that as a Court's Exhibit, I believe.

21 THE COURT: Yes, sir, I just did.

22 COURT REPORTER: That's Court's Exhibit #1, Your Honor.

23 THE COURT: Yes, ma'am.

24 COURT REPORTER: If I could have that.

25 Thank you, Your Honor.

MOTIONS AND RULING OF THE COURT

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1 THE COURT: Okay.

2 MR. AXELROD: No objection, Your Honor.

3 THE COURT: Okay.

4 (The Court Reporter accepts the SCDMH Evaluation Report as
5 Court's Exhibit #1.)

6 MR. RICHARDSON: Your Honor, I believe the next - - -

7 THE COURT: Now, you indicated you had no reply testimony
8 at this time?

9 MR. AXELROD: Yes, sir, Your Honor.

10 THE COURT: Alright.

11 Go ahead.

12 MOTIONS AND RULING OF THE COURT

13 MR. RICHARDSON: Your Honor, I believe Mr. Axelrod has a
14 motion on the search warrant involved.

15 MR. AXELROD: Yes, sir, Your Honor.

16 THE COURT: What's your motion on that, Mr. Axelrod?

17 MR. AXELROD: The State's got to put up probable cause for
18 the execution of the search warrant, and based on what I've read,
19 I think we need to have some testimony on this.

20 THE COURT: Alright, sir.

21 Somebody give me a copy of the search warrant.

22 MR. RICHARDSON: Your Honor, I'll get you a copy of it. We
23 have the original right here.

24 ~~THE COURT: You have the witnesses available on this issue,~~
25 Mr. Richardson?

OFFICER MANN - DIRECT EXAM. BY MR. RICHARDSON (IN CAMERA)

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1 MR. RICHARDSON: Officer Mann, Your Honor.

2 THE COURT: Good.

3 Have her come around.

4 Swear the witness

5 (The witness takes the witness stand.)

6 MR. RICHARDSON: Your Honor, all I can provide is the
7 original at this time. I'll get it marked as a Court's Exhibit
8 first.

9 THE COURT: Okay.

10 MR. RICHARDSON: I have an exact copy, Your Honor.

11 THE COURT: Alright, sir.

12 File this as Court's Exhibit #2.

13 (Court Reporter accepts search warrant as Court's Exhibit #2.)

14 OFFICER SELENA MANN, being duly sworn,
15 testifies as follows: (IN CAMERA)

16 DEPUTY CLERK OF COURT: Please state your name for the
17 record.

18 OFFICER MANN: Selena Mann.

19 MR. RICHARDSON: You want a moment, Your Honor?

20 THE COURT: Yes, sir.

21 No, go ahead.

22 DIRECT EXAMINATION BY MR. RICHARDSON:

23 Q. Officer Mann, would you tell us where you were employed back
24 in October of 2005?

25 A. Myrtle Beach Police Department.

OFFICER MANN - DIRECT EXAM. BY MR. RICHARDSON (IN CAMERA)

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1 Q. And in what capacity?

2 A. As a Detective.

3 Q. And were you involved in obtaining the search warrant for the
4 residence of Joy Hines?

5 A. Yes, I was.

6 Q. What was the address of that?

7 A. If you have the copy?

8 Q. Would you like to see it?

9 A. Yes, if I could, please.

10 Q. Well, let me just hand you -- can you identify what that is?

11 A. Yeah, that's my report that I filed in the case.

12 Q. And how can you identify that item?

13 A. Because it's a form -- the way I always do, I always put my
14 name on it and then put the date and the actual location.

15 Q. And would reviewing that report, would that help refresh your
16 recollection?

17 A. Yes.

18 Q. Would you refresh your recollection, please?

19 A. The address that the search warrant was for was
20 Avenue North in Myrtle Beach, South Carolina.

21 Q. I hand you up a copy of an item. Do you recognize that?

22 A. Yes.

23 Q. What do you recognize that item to be?

24 A. ~~That's the search warrant that I signed on October 26th of~~
25 2005.

OFFICER MANN - DIRECT EXAM. BY MR. RICHARDSON (IN CAMERA)

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1 Q. That's actually a copy?

2 A. Yes, it's a copy.

3 Q. And have you reviewed the original search warrant?

4 A. Yes.

5 Q. And that's the address that you provided to the judge?

6 A. Yes, it is.

7 Q. And that - - are those two the same?

8 A. Yes.

9 Q. Alright.

10 The Affidavit portion of that search warrant, do - - do you
11 know what page that's on?

12 A. Yes.

13 Q. And as to the probable cause, are you the Affiant on that?

14 A. Yes, I am.

15 Q. And would you please tell the Court about the probable cause
16 you had for obtaining this search warrant?

17 A. Um, on October 22nd of 2005 was when I report - - was when I
18 responded to the original incident of armed robbery that occurred
19 at 2301 North Ocean Blvd, Room 117.

20 During the investigation we had learned that several items
21 were stolen to include, um, some credit cards that belonged to, um,
22 the victims in this case.

23 I spoke with the victims. We called the credit card company.
24 Um, we learned that the card had been used - - the credit card had
25 been used at Wal-Mart in Surfside, and it had been used within - -

OFFICER MANN - DIRECT EXAM. BY MR. RICHARDSON (IN CAMERA) 49

1 shortly within about forty-five minutes or so after the actual
2 robbery.

3 Um, after reviewing the video, we saw three subjects in the
4 video. I recognized two of the subjects and was later able to
5 within a few days we got their names because I had had incident to
6 be involved with Joy Hines and Thomas Webb.

7 Um, at that time when we were able to identify them in the
8 video, um, was on October 26th of 2005. So it was within four days.
9 That's when I actually executed and got the search warrant, and
10 before I got the search warrant, I rode by the residence at

11 Avenue. I observed Ms. Hines go in and out of the
12 residence. She still looked the same then as she did on the video
13 in Wal-Mart. She stayed in the residence for a while. One of the
14 vehicles out front was registered to her, and at that time I went
15 ahead and sought the search to see if there were any of the
16 victims' belongings still inside the residence.

17 I went to the residence on the 26th and actually executed it.
18 Um, we executed. I executed it around 21:10 hours, so about 9 - -
19 about 9:10 p.m.

20 Q. Did your Affidavit state what you expected to find at that
21 residence?

22 A. Yes, it did.

23 Q. What was that?

24 A. ~~Um, reason to believe - - let me see right here.~~

25 Right here under the property sought, "Any and all evidence no

OFFICER MANN - DIRECT EXAM. BY MR. RICHARDSON (IN CAMERA)

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1 matter how large or small."

2 It was to include anything that would have been stolen during
3 the robbery.

4 It goes into a list of details of, you know, hair, saliva, um,
5 any instruments, objects which may have been used to commit the
6 offense of armed robbery, kidnapping or used to identify any person
7 or persons involved in the case.

8 Q. In your experience as law enforcement within a matter of four
9 - - four to five days of the robbery taking place, the burglary,
10 would you normally expect to find those items stolen during the
11 burglary at that residence?

12 A. Yes.

13 Q. And that was the purpose of this search warrant?

14 A. Yes.

15 Q. And, in fact, did you find any additional sworn testimony to
16 the issuing Magistrate?

17 A. No, just what was in the Affidavit.

18 Q. And a Magistrate or a Municipal Judge signed off on it?

19 A. Yes.

20 Q. When was that?

21 A. It was signed off on October 26th of 2005.

22 Q. When did you execute that search warrant?

23 A. Let's see.

24 It's stating October 26th at 21:10 hours.

25 Q. Did you file a return at that time?

OFFICER MANN - DIRECT EXAM. BY MR. RICHARDSON (IN CAMERA)

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1 A. I'm sorry?

2 Q. Did you file a - -

3 A. Yes.

4 Q. - - return?

5 A. Yes.

6 Q. And what is listed on the return?

7 A. Um, a 35 mm. camera, a Taurus Revolver 38 Special and
8 photographs.

9 Q. And the basis for the probable cause is or it's my
10 understanding it was, one, you were able to identify the persons
11 using the stolen credit cards of Mr. and Mrs. Price. They used
12 those items within - - well, say within one hour of the burglary
13 being reported.

14 A. Correct.

15 Q. They were caught on video at Wal-Mart.

16 A. Correct.

17 Q. You identified them?

18 A. Yes.

19 Q. You established the address at which at least one of those
20 persons lived?

21 A. Correct.

22 Q. And that's the basis for the search warrant?

23 A. Yes.

24 Q. Thank you.

25 No further questions.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD (IN CAMERA) 52

1 THE COURT: Mr. Axelrod.

2 MR. AXELROD: Thank you.

3 CROSS EXAMINATION BY MR. AXELROD:

4 Q. Is it Detective or Officer now?

5 A. Officer.

6 Q. Okay.

7 Q. You say you executed the search warrant at 21:10?

8 A. That's what - - that's what I have written in the report.

9 Q. On page 4.

10 A. Yes.

11 Q. You have on the bottom 21:20. Can you explain the
12 discrepancy there?

13 A. That - - I didn't write that actual time there. What happens
14 is is this location is literally about a minute and a half from the
15 police department. So, I don't know what the time - - that's the
16 time that she must have had on whatever she was clocking.

17 I'm assuming that was from Ms. Kirkson. That's not my
18 handwriting.

19 Q. Did you take it back to her at 21:10?

20 A. 21:10?

21 Q. 21:20?

22 A. No. I can't - - I can't explain why she wrote that down
23 there. I don't know.

24 Q. So, you don't know why that's there?

25 A. Correct.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD (IN CAMERA) 53

1 Q. That'd be incorrect, really?

2 A. It would be incorrect? I can tell you that I executed the
3 search warrant by my watch at 21:10 hours is what I know.

4 Q. Okay. Okay.

5 And you said you recognized Tommy and Joy - - from - - from a
6 case you were working?

7 A. Yes.

8 Q. What case were you working?

9 A. They were victims, I believe, like it's an arson. Someone
10 throwing a fire, you know, like someone throwing a Molitoff
11 cocktail through a window.

12 Q. Okay.

13 And you had independent knowledge of who they were when you
14 saw the Wal-Mart video?

15 A. When I saw - - yeah. When I saw the Wal-Mart video, I knew I
16 recognized them, and I knew it had been with a certain corporal on
17 a case but I couldn't like, actually, pull their names to my memory
18 then, and then after asking some people, I said, "I know we were on
19 a call." I said, "Do you remember what, you know, who they are?"
20 I showed the video.

21 And then I also got a phone call that said, "It might be - -
22 the lady in the video is probably Joy."

23 And I said, "Yes."

24 Because right then I knew Joy Hines and Tommy Webb from the
25 case I had worked, like, about two weeks prior I believe.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD (IN CAMERA) 54

1 Q. Okay, and you recovered a gun, took some photographs - -

2 A. Yes.

3 Q. - - and you - - you got a camera?

4 A. Yes.

5 Q. And was that the camera that had been stolen from the victims?

6 A. Yes.

7 Q. Did you develop the pictures on that camera?

8 A. No.

9 When we had - - initially had the camera, I gave it to crime
10 scene, and they could not get into the camera is what I was told,
11 and then the way I understand it is once the victims got the camera
12 back, they were - - they replaced batteries and were actually able
13 to get to the film.

14 Q. Did you ever try to fingerprint the camera?

15 A. No.

16 Q. And when you met Joy Hines, was she the person you remembered
17 her to be?

18 A. Yes.

19 Q. And when you met Mr. Webb, was he the person you remembered
20 him to be?

21 A. Yes.

22 Q. No doubt about it?

23 A. No doubt.

24 MR. AXELROD: Nothing further, Your Honor.

25 THE COURT: Alright, sir.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD (IN CAMERA) 55

1 You may come down.

2 (The witness leaves the witness stand.)

3 THE COURT: Have any other witnesses on this particular
4 issue?

5 MR. RICHARDSON: No, sir, Your Honor.

6 THE COURT: Mr. Axelrod, you have any witnesses?

7 MR. AXELROD: No, sir, Your Honor.

8 THE COURT: You want to tell me what your objection is to
9 that search warrant? I fail to see it.

10 MR. AXELROD: Well, Your Honor, what I needed to establish -
11 - what I needed to establish on the record is the Detective's
12 testimony, and we've established it quite well, I believe, Your
13 Honor.

14 THE COURT: I do, too.

15 I can't imagine any judge in this world not finding probable
16 cause based on that testimony.

17 Three individuals who had just robbed were found on a video in
18 Wal-Mart. She saw it. Recognized one of them. Determined where
19 that one lived. Had surveillance and saw the rest on the Wal-Mart
20 walking in and out.

21 That's - - that's all the evidence anybody in this world would
22 need as to probable cause.

23 So, I - - I conclude that, certainly, there was probable cause
24 there to issue the search warrant.

25 MR. AXELROD: Thank you, sir.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD (IN CAMERA) 56

1 THE COURT: You're welcome.

2 Alright, sir.

3 Anything further.

4 MR. RICHARDSON: Nothing from the State, Your Honor. The
5 State is ready to proceed at this time.

6 MR. AXELROD: Your Honor, I would like to sequester all
7 witnesses to this trial.

8 THE COURT: Well - -

9 MR. RICHARDSON: Your Honor - - -

10 THE COURT: - - obviously, the - - the victims are entitled
11 to be here, certainly.

12 MR. RICHARDSON: And my team investigator, Your Honor.

13 THE COURT: And the lead investigator is entitled to be
14 here.

15 MR. AXELROD: I think we have several other police officers
16 here right now also.

17 THE COURT: Once you have testified, you may remain in the
18 courtroom.

19 The victims, obviously, and the lead investigator are
20 certainly entitled to be here.

21 COURT REPORTER: Your Honor, the search warrant is marked
22 as a Court's Exhibit. Do you have the exhibit?

23 THE COURT: Yes, ma'am. I have it, and I'll give it to
24 you.

25 (Court Reporter accepts search warrant already in evidence.)

JURY SWORN/REMARKS OF THE COURT

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1 THE COURT: Alright. Let me know if my jury is here,
2 please.

3 Alright. Okay.

4 I'm told that the jury is here.

5 Bring them out and let's swear them and get started.

6 Thank you.

7 (The jury returns to the courtroom at 2:26 p.m.)

8 THE COURT: Alright.

9 Swear the jury, please.

10 (Deputy Clerk of Court swears the jury.)

11 JURY SWORN

12 REMARKS OF THE COURT

13 THE COURT: Ladies and gentlemen of the jury, recognizing
14 that for some of you and, perhaps, all of you, this is the first
15 time you've had the opportunity to be a jury in a criminal, so let
16 me tell you generally how we will proceed.

17 First and foremost, this defendant is charged with these
18 various crimes that have been identified for you: Armed robbery,
19 burglary and kidnapping as against two individuals.

20 Now, I charge you that to these charges he specifically pleads
21 not guilty thereby placing the burden of proof upon the State of
22 South Carolina of proving him guilty if they can to either some or
23 all of these charges to your satisfaction by evidence beyond a
24 reasonable doubt.

25 Now, this defendant and all defendants comes into this

REMARKS OF THE COURT

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1 courtroom under an absolute presumption of innocence, and that
2 presumption remains with all defendants from the moment this case
3 was started throughout the trial and until you, the jury, have
4 found sufficient evidence, if at all, to convict him beyond a
5 reasonable doubt.

6 And so it is the burden is upon the State. The defendant and
7 this defendant does not have to prove anything. The State has got
8 to prove him guilty.

9 Now, in this case Mr. Brad Richardson, Senior Deputy
10 Solicitor, will make an opening statement to you as to what he says
11 this case is about.

12 This is to help you follow the introduction of the testimony,
13 kind of like guidelines.

14 Mr. Axelrod in representing the defendant will make a short
15 opening statement to you as to his position.

16 Now, what the lawyers tell you now and later is not evidence.
17 Evidence comes from this witness stand under oath but they're
18 entitled to explain to you what their positions are, and this is
19 going to be short opening statements.

20 After these opening statements, we will begin to take the
21 testimony of various witnesses who may be called, and there may be
22 other documents introduced in the trial of the case.

23 When I introduce a document, they may choose to publish at
24 this time or may wait. It will be with you in the jury room during
25 your deliberations.

REMARKS OF THE COURT

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1 Now, I've told you that you are the finders of the facts, the
2 sole finders. I am not entitled to a factual opinion, and I have
3 none.

4 In that regard, I want to emphasize to you. If during the
5 trial of this case any word, ruling, mannerism of mine might tend
6 to indicate to any of you how I feel about any factual situation
7 between these litigants, please disregard that. I am not entitled
8 to a factual opinion, and I have none.

9 As jurors, you may say, "Well, Judge, how is it that we are to
10 know what the facts are?"

11 Well, there will be various witnesses on various issues under
12 oath on this witness stand. You will judge their credibility and
13 believability. You will decide for yourself whether you want to
14 believe all of what they say, some of it or none of it.

15 You know, we bring twelve folks in on - - like you off the
16 street, and we say to you, "You listen to the facts, and you tell
17 us what happened here."

18 Well, in doing that you will rely as we do on your common
19 sense in everyday life. We all know when folks tell us things
20 being it raising our children, at work or whatever we do, when
21 people tell us things we size them up, and we say to ourselves, "Do
22 they know what they talking about? Why are they telling me one
23 thing or another? Is there some reason that they would want me to
24 believe one thing or another, and, otherwise, are they biased or
25 prejudiced?"

OPENING STATEMENT BY MR. RICHARDSON

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1 So, you judge the credibility and believability of every
2 witness who testifies.

3 You can think of other tools that you might use.

4 For instance, one of the tools we say. "Was a witness'
5 testimony consistent or inconsistent with other testimony?"

6 As I've indicated earlier, you can believe all a witness says
7 or none. You may believe one witness against that of many or the
8 other way around.

9 In judging credibility and believability of any witness you
10 have but one single objection, and that is to find and seek the
11 truth from their testimony, to find and seek the truth.

12 You may have your opening statement.

13 OPENING STATEMENT BY MR. RICHARDSON

14 MR. RICHARDSON: Thank you, Your Honor.

15 Folks, I wonder if anybody here has ever seen a hyena, a dog-
16 like creature, wild, feral, a scavenger, a predator. Not terribly
17 bright, not king of the jungle but it's vicious, malevolent, and it
18 hops on weak, easy prey, a mean little thing.

19 And I asked you that question because that's what this case
20 reminds me of. You're going to hear during the course of this
21 trial that on October 22, 2005, Mr. and Mrs. Price right here had
22 come down to Myrtle Beach, the first time they were ever here.
23 They'd gone to sleep in their motel room, the Boardwalk Motel, and
24 that's where they were at 4:30, 4:50 in the morning.

25 (Solicitor knocks on jury box - knock, knock, knock, knock,

OPENING STATEMENT BY MR. RICHARDSON

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1 knock.)

2 They get a knock at the door, and Mr. Price will tell you. He
3 was a little bit groggy but he heard a knock at the door, and he
4 was laying in his head down, and he was awakened.

5 So, he groggily gets up, goes to the door. Looks through the
6 peep-hole and sees two men.

7 He says, "Can I help you?"

8 And they say, "Maintenance, maintenance. We're here to fix
9 a leak. You're leaking down on the floor below you."

10 Mr. Price is still groggy, and it makes sense to him.

11 You know, "I'm in a motel, and maybe there is a leak."

12 So, he goes to open the door.

13 That's when those wild animals strike.

14 They want what they want. They have to have it right then,
15 and they rush in the room.

16 Mr. Price will give you a description of exactly what
17 happened. Two men, white men tattooed. One has long hair, longer
18 than the other. The other one has shorter hair, and the one with
19 the long hair and tattoo on his arm had a gun pointed right at him.

20 "Give me everything you got or I'm going to blow your 'F'ing'
21 head off.

22 Give me everything you got."

23 He has to have what he wants right then right now.

24 Mr. Price did the smart thing because he knew he was facing
25 down the barrel of the gun. He was concentrating on that gun, and

OPENING STATEMENT BY MR. RICHARDSON

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1 he gave everything he had - jewelry, credit cards, camera,
2 everything they had.

3 "Just take it, take it, please. Just don't harm us."

4 And they were held there until the defendant decides to leave.

5 Called the police about 4:50, 5:00 in the morning, and they
6 arrived.

7 Mr. Price gives out a description, the description I just told
8 you and what these defendants looked like.

9 Told the police, "Our credit cards were taken."

10 So, the police begin to do police work to look for these wild
11 animals, and they called the credit card company and said, "Has
12 Mrs. Price's credit card been used lately?"

13 And they said, "Sure enough. Somebody tried to use it at Wal-
14 Mart right down on 544, Surfside."

15 "Really? What time was that?"

16 "5:30 in the morning."

17 Merely forty-five minutes to an hour after these wild animals
18 robbed - - -

19 MR. AXELROD: Your Honor, I'm going to object. You know, the
20 Solicitor is characterizing at least Tommy as a wild animal. He's
21 a person. I think it's just inflaming the passion of the jury.

22 THE COURT: Well, no, he wasn't referring to this
23 individual at all. He was referring to an act of someone.

24 MR. AXELROD: No, he said, "these wild animals."

25 He's referring to my client and - - and - - -

OPENING STATEMENT BY MR. RICHARDSON

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1 THE COURT: Wait a minute.

2 MR. RICHARDSON: I'll just say "armed robbers."

3 THE COURT: I have permitted this. He's not talking to
4 him. He's talking generally as to folks who might do this. He has
5 not indicated him.

6 Go ahead.

7 MR. RICHARDSON: These two burglars and armed robbers,
8 these gunmen were using the credit cards.

9 So, the police called them and say, "Do you have video?"
10 Wal-Mart says, "Sure enough."

11 And we get a video of people trying to use the credit card of
12 Mr. Price forty-five minutes to an hour after it is taken from him
13 by force with a gun.

14 The police look at that video, and at the time Detective
15 Selena Mann looked at the video, and she's able to identify, "I
16 know that person. I know Joy Hines."

17 That's the woman you'll meet.

18 "And I know the guy."

19 Detective Mann will tell you exactly who she thought the guy
20 was.

21 And she'll tell you that they went. They executed a search
22 warrant on the home of Joy Hines based off this information.

23 And then when they got there, they were able to contact Joy
24 Hines. She came in.

25 Then Detective Mann read Joy her rights, and Joy decided to

OPENING STATEMENT BY MR. RICHARDSON

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1 make a statement. She told them exactly what had happened. How
2 it was Tommy's idea to drive from hotel to hotel knocking on doors,
3 and she was in the car, and he went up to a hotel with his
4 defendant, Randi Gaunt, and how when he came back, he had a gun in
5 his lap. He had jewelry. He had credit cards, and he told her
6 where to go.

7 She noticed the gun. It was hers. Had been hers. So, she
8 knew which gun it was.

9 And whose hand was it in? The defendant freshly from
10 committing the robbery on these poor people.

11 But that's not all. You'd think that's enough but that's not
12 all because while Detective Mann was talking to Joy Hines, Joy gets
13 a phone call, and who is on the other end of the line? The
14 defendant.

15 He tells her, "Bring me my thing. I'm at the motel."

16 She said, "What thing?"

17 He said, "My gun."

18 Not her gun anymore. "My gun."

19 He told her to find it, and where did the police find that
20 gun? Exactly where Tommy Webb says it's located.

21 And then the police do go to arrest the defendant, and when
22 they do arrest him they find guess what? Mrs. Price's jewelry
23 stolen from her the morning of October 22, 2005.

24 Folks, you're going to have the evidence in front of you.
25 You're going to know exactly what happened. The State will be able

OPENING STATEMENT BY MR. AXELROD

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1 to prove the case.

2 The defendant broke into the dwelling, the motel room of the
3 Prices armed with a gun. Stuck the gun to them and took items by
4 force and held them against their will there.

5 You decide whether they're like the hyenas, and if they are,
6 you cage them. You put them away.

7 Thank you.

8 THE COURT: Mr. Axelrod.

9 MR. AXELROD: Thank you, Your Honor.

10 OPENING STATEMENT BY MR. AXELROD

11 MR. AXELROD: Good afternoon.

12 Being a juror is a memorable experience. You're never going
13 to forget this.

14 If you have had - - if you have an opinion as to whether Tommy
15 is guilty of anything at this point, then you've already disavowed
16 your vow. You took a vow to hear all the evidence, evidence from
17 this side, evidence from where ever it comes from, and then you
18 make a decision. Then you make a decision. Not until then.

19 Tommy comes into this trial cloaked in innocence. He's not
20 guilty until they prove it beyond a reasonable doubt.

21 The Solicitor made one statement. That's true. Tommy has the
22 jewelry on the 28th. He definitely has the jewelry on him.

23 Maybe he's guilty of receiving stolen goods but they're not
24 trying that case today. They'll try that case on another day on
25 another time with another jury if they choose to try it.

OPENING STATEMENT BY MR. AXELROD

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1 Whether he has the jewelry on him or not is not important as
2 you look at whether he is guilty of the crime of armed robbery,
3 kidnapping and burglary. Because somebody has jewelry on them does
4 not make them guilty of that.

5 You are going to hear testimony from eye-witnesses that
6 contradicts logic that Tommy was there. It just does.

7 You're going to hear testimony. It's in the police report
8 that one of the victims says, "Two people come into the room.
9 Then, they're looking around, and one goes out and he comes back
10 in, and he's brandishing a gun."

11 You're going to hear the co-defendant tell you that Tommy
12 comes in with the gun automatically.

13 Tommy wasn't there.

14 You're going to hear testimony from the witness - - the
15 victims. They're going to tell you that we're sure the man had the
16 gun. That's what they're going to tell you.

17 Tommy's taller than the man who is going to testify against
18 him.

19 The co-defendants are going to testify against Tommy. They're
20 testifying for the benefit of themselves whether they got a deal
21 cut or whatever happened. They're going to point the finger, and
22 they're going to say Tommy but, ultimately, when you - - when this
23 flushes out and you hear all of the facts, you're going to say, "My
24 God! It might not have been Tommy. It might not have been Tommy."

25 And you took the oath, and this was the oath that you took.

OPENING STATEMENT BY MR. AXELROD

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1 You - - you - - if you have any doubt - - if you have any doubt and
2 say, "Well, I'm not sure if that was Tommy," you have to come back
3 not guilty. You have no choice whether you like it or not.

4 No matter how they want to stack the facts of this case up
5 when it flushes out, Tommy was not there, was not there.

6 They pick Tommy up. They take him to Wal-Mart.

7 You're going to hear testimony from the co-defendant that
8 Tommy's wearing a camouflage jacket. When he was in the Wal-Mart,
9 he has on a blue jacket.

10 You're going to hear testimony from the co-defendant that they
11 went to this gas station first. Then another co-defendant is
12 going to tell you they went to this gas station first but they're
13 all going to tell you Tommy did everything.

14 That's what they're going to tell you. Tommy did everything.

15 Tommy is their patsy. Tommy was not in that room.

16 You're going to hear testimony from the victims saying that -
17 - and this is all in the reports. It's going to come out that - -
18 that the two people, one had short hair, and one had hair a little
19 bit longer, a little bit longer, about four inches.

20 Well, you're going to see pictures. The State's going to put
21 in pictures that Tommy's hair is down his back, half-way down his
22 back. Now, when they asked the victims, "Did - - did the man have
23 long hair?"

24 She says, "No."

25 I think that's important. When the eye-witness tells you

OPENING STATEMENT BY MR. AXELROD

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1 that the hair is only a couple of inches and Tommy has hair down
2 his back - - -

3 THE COURT: Wait - - wait a minute, now. Let's don't go
4 into the testimony of witnesses. Just give them a general idea of
5 what your position is, and let's let the witnesses testify, please.
6 Go ahead.

7 MR. AXELROD: I'm sure they will.

8 THE COURT: I'm sure they will, too.

9 MR. AXELROD: I'll go on.

10 THE COURT: Alright.

11 MR. AXELROD: This is a serious matter because Tommy comes in
12 here and says he's not guilty and because he was charged, you can't
13 look at him and say, "Oh, he must have done it."

14 You have to put yourself in a vacuum, and it's hard to do
15 because we're human beings.

16 If we go outside and it's cloudy, it's cloudy today, we say,
17 "Well, maybe it's going to rain tonight. Maybe it's going to rain
18 tomorrow."

19 Because we know that when it is cloudy, maybe it's going to
20 rain, and then when it's sunny, you know, you get a hot day maybe.

21 We all form - - we all have prejudices. We have opinions.
22 They're internal as being human. You have to put them aside.

23 That's what's going to make this so hard because you're
24 sitting here. It's a wonderful system we have here. It is.

25 I mean, Tommy has asked for a trial. He said he's not guilty.

MR. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 He has twelve jurors, his peers, people in the community to come in
2 and hear the facts of the case. This is what separates us from
3 anarchy. It separates us from the Third World. It separates us
4 from the dictators in South America. It's just - - it's a good
5 system.

6 And the only way the system can work if you listen to the
7 facts of the case, and as the Judge told you. Seek the truth and
8 judge the witnesses.

9 I want you to judge these co-defendants for their credibility
10 and their believability, and I'm sure that when it's all finished,
11 you'll realize Tommy's not guilty of the armed robbery, kidnapping
12 and the burglaries.

13 We're not here on stolen jewelry today. Remember that.

14 Thank you.

15 THE COURT: Thank you, Mr. Axelrod.

16 Call your first witness, please.

17 MR. RICHARDSON: Thank you, Your Honor.

18 The State would call Mr. Ellis Kramer Price.

19 (The witness takes the witness stand.)

20 ELLIS KRAMER PRICE, JR., being duly
21 sworn, testifies as follows:

22 DEPUTY CLERK OF COURT: Please state your name for the Court.

23 MR. PRICE: Ellis Kramer Price, Jr.

24 DIRECT EXAMINATION BY MR. RICHARDSON:

25 Q. Good afternoon, Mr. Price. I was about to say good morning.

MR. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Could you tell us a little bit about yourself? Where do you
2 live? What your occupation is, whatnot?

3 A. I live in Bedford, Pennsylvania. I'm retired.

4 Q. What was your former occupation?

5 A. How is that?

6 Q. What was your former occupation?

7 A. I worked the U - - the steel mill.

8 Q. Like all Pennsylvanians.

9 Ah, and your lovely bride, Mrs. Fairey Price?

10 A. Right.

11 Q. How long have y'all been married?

12 A. Ah, be seven years in April.

13 Q. So, you and Mrs. Price, y'all live in Bakers, Pennsylvania?

14 A. Bedford.

15 Q. Bedford, Pennsylvania.

16 And you've been there for a while now?

17 A. Yeah. We've lived there for a while.

18 Q. And have you ever had the opportunity to visit Horry County
19 and Myrtle Beach?

20 A. Yeah, two years - - two an a half years ago almost. Yeah.

21 Q. And do you remember the approximate date of that visit?

22 A. Ah, probably about the 18th we pulled in here or the 19th,
23 something like that, I guess.

24 Q. Of October?

25 A. Yeah. Uh-huh.

MR. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. And that was 2005?

2 A. Yeah. Uh-huh.

3 Q. So, you and Mrs. Price traveled down by car?

4 A. Yes.

5 Q. And whenever you arrived here in Myrtle Beach, where did you
6 stay?

7 A. Ah, I forget the name of the place now.

8 Ah - - -

9 Q. Where was it located?

10 A. It's on, ah, around 23rd Street in Myrtle Beach.

11 THE COURT: You may refresh his memory as to the name of
12 the motel.

13 Q. Boardwalk, was it the Boardwalk?

14 A. Boardwalk, yeah, that's it.

15 Q. Down on the north end of Myrtle Beach?

16 A. I don't know where the north end is.

17 Q. Okay.

18 A. But it's right off of Route 17.

19 Q. Okay.

20 A. On the left, yeah.

21 Q. Do you remember what room number you stayed in?

22 A. 117.

23 Q. Room 117.

24 ~~So, you and Mrs. Price came down here late October, 2005?~~

25 A. Right.

MR. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. You stayed at the Boardwalk Motel in Room 117?

2 A. Right.

3 Q. And, I think you said you got here 18th, 19th?

4 A. Something like that, yeah.

5 Q. Were you still here the night of October 21st?

6 A. Yeah, uh-huh. Yeah.

7 Q. And do you recall what you did that night?

8 A. Yeah. We went to a show.

9 Q. One of these theater shows we have here?

10 A. Yeah, one of the theater shows, yeah.

11 Q. And do you recall what time you got in?

12 A. Probably about 10:30 or 11:00, something like that. Right
13 after the show.

14 Q. And when you and Mrs. Price got back to the hotel room, Room
15 117, what did you do?

16 A. I showered and went to bed.

17 Q. A little tired?

18 A. Right.

19 Q. Now, after you went to sleep, you go to sleep way in the
20 evening of October 21, 2005. Hit the covers, hit the pillow,
21 you're asleep.

22 A. Right.

23 Q. Did you wake up naturally that next morning or did anything
24 happen to wake you?

25 A. No. No, there was banging on the door, and when I went to the

1 door, they said they was maintenance of the hotel, and water was
2 running down through the floors, and they wanted to check our room.

3 Q. Is that on October 22nd?

4 A. Right. That was on Saturday.

5 Q. About what time was that or do you know?

6 A. Well, 5:00 or something, real early.

7 Q. Real early in the morning?

8 A. Right.

9 Q. It's awoken you from a sound sleep.

10 A. I was sound asleep, yeah.

11 Q. When you went to the door, were you a bit groggy?

12 A. Yeah, I was, yeah.

13 Q. Okay.

14 And you said somebody knocks on the door.

15 (Solicitor knocks on the table. Knock, knock, knock.)

16 A. That's right, yeah.

17 Q. They say they're maintenance?

18 A. That's right.

19 Q. Do you know if there was a peep-hole or anything?

20 A. No. I hollered out through the door.

21 Q. And that's when they responded.

22 Could you tell how many people were outside?

23 A. When I opened the door two of them.

24 Q. ~~So, there was two people.~~

25 Can you - - could you describe those two people?

2 A. There were two guys, two males, and one - - one was thinner
than the other. The other was - - was chunky, heavy-set.

3 Q. You say one was chunky and heavy-set.

4 A. Right.

5 Q. What race were they? Could you tell?

6 A. White, white guys, yeah.

7 Q. Is there any other description you could give of them?

8 A. Well, I just remember that gun that guy was holding.

9 Q. Now, you say a guy was holding the gun. Which guy was holding
10 it?

11 A. He was the heavier of the two.

12 Q. Okay. Was there any other description, anything at all such
13 as their hair or anything?

14 A. Well, they had dark hair.

15 Q. Both of them had dark hair?

16 A. Yeah.

17 Q. So, these two - - these two white males come in.

18 A. Right.

19 Q. They tell you they're maintenance.

20 A. Right.

21 Q. And I think you said one of them produced a gun.

22 A. Well, at first they just come in and looked around. Then the
23 heavier guy, he went out and got the gun.

24 Q. Heavier, bigger guy.

25 A. Yeah, uh-huh.

MR. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. And once they got the gun, what were you concentrating on?

2 A. Staying alive.

3 Q. And when you saw that gun, did either one of these gentlemen
4 make any statements to you?

5 A. Yeah.

6 The one with the gun told me to lay down on the floor or he
7 was going to blow my head off.

8 Q. Okay.

9 Is that exactly what he said? He was going to blow your head
10 off?

11 A. That was about it, yeah.

12 Q. And what demands - - were there any demands made?

13 A. Yeah. They wanted the money, and they wanted the wife's
14 wallet, and we didn't really know where it was, and, ah, finally,
15 the other guy, not the one with the gun but the other guy found her
16 wallet on the table in her - - in her purse and took it.

17 They was accusing us of lying to them about the money.

18 Q. Lying to you about the money?

19 A. Yeah. They - - -

20 Q. Because you said you didn't know where it was?

21 A. Yeah. Right.

22 Q. And both of them were accusing you of that?

23 A. Nah. I think just the one with the gun.

24 Q. The one with the gun.

25 No doubt about it, they were together?

MR. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Oh, yeah, yeah. They come right in together. Yeah.

2 Q. And I know this is going to sound like somewhat of a stupid
3 question but you heard a knock at the door.

4 (Solicitor knocks on table. Knock, knock.)

5 And they say they were maintenance. If they would have said
6 instead of maintenance here to fix a leak, they would have said,
7 "We're two burglars here to rob you," would you have let them in?

8 A. No, no.

9 Q. So, they tricked you?

10 A. Yeah.

11 Q. That's the only way you let them in by trickery?

12 A. That's right. Yeah.

13 Q. What was your frame of mind at this point?

14 A. Just - - I was scared. I was just wanting to get them out of
15 there. That's all.

16 Q. So, that was your main concern to get them out of there. The
17 safety of your wife.

18 A. That's right.

19 Q. And your own.

20 Do you recall - - you said they found your wife's wallet.

21 A. Wallet on the table.

22 Q. Is that all that was taken?

23 A. No.

24 They took my wallet, and they took, ah, jewelry that she had.
25 They took a brand new blouse she bought, and they took her wedding

MR. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 ring, engagement ring and a camera.

2 Q. And a camera?

3 A. Yeah.

4 Q. And you said they took your wallet.

5 A. My wallet, yeah.

6 Q. What was in your wallet?

7 A. Well, it was about a hundred and eighty or ninety dollars.

8 There was a Visa Card, charge card. There was an ATM Machine
9 Card, social security card, hospital card, Medicare Card.

10 Q. All your identification?

11 A. Yeah. Driver's license, yeah.

12 Q. And they took an ATM Card?

13 A. Yeah.

14 Q. And a Visa Card.

15 A. Right. Uh-huh. Yep.

16 Q. How long were these two robbers there?

17 A. How long were they in there?

18 Q. Yes, sir.

19 A. Oh - - -

20 Q. It probably seemed like a long time.

21 A. I don't know. Maybe five minutes.

22 Q. And - - maybe five, ten minutes. Not very long.

23 Q. Now, they get your wallet, your wife's jewelry, your wife's
24 wallet, a camera, all your personal identification. What happens
25 after that?

MR. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. They left. The one with the gun told me not to come out - -
2 out the door.

3 Q. Did you follow his - -

4 A. No.

5 Q. - - instructions?

6 Well, what did you do?

7 A. Well, he pulled the wire - - the phone wire out of the wall,
8 and I had to go over to the office and report - - call the
9 authorities.

10 Q. Okay.

11 Did you immediately like that call the cops or did you wait a
12 little while?

13 A. No.

14 I had to get dressed. So it took me probably at least ten
15 minutes before I got over there or maybe a little more - -

16 Q. And - -

17 A. - - after they left.

18 Q. - - and when you went to the office, who did you call?

19 A. I called the police.

20 Q. And they responded?

21 A. Yeah. They were there ten minutes or something I guess.

22 Q. A lot of police come?

23 A. Yeah. They were - - a couple, I guess one or two police, and
24 then the detective there come afterwards, a little bit afterwards.

25 Q. But you remember speaking to Detective Mann?

MR. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Yeah.

2 Q. Do you recall if you gave a statement to Detective Mann?

3 A. Yeah, uh-huh, yeah.

4 Q. And that statement was recorded?

5 A. Yeah.

6 Q. And you've reviewed that statement?

7 A. Yeah.

8 Q. And that - - that's pretty much the same statement you're
9 giving us today?

10 A. Yeah, similar as could be.

11 Q. You gave a description of the burglars, robber to Detective
12 Mann?

13 A. Yeah, uh-huh.

14 Q. You told the police what items were stolen?

15 A. Yeah.

16 Q. You told them your Visa Card was stolen?

17 A. Yeah, but at that time I didn't know they'd taken my wife's
18 jewelry.

19 Q. You didn't know they'd taken the jewelry but you knew they
20 took your Visa Card?

21 A. Oh, yeah. My wallet and her wallet, I knew that but I didn't
22 know they took the jewelry until a couple of minutes later after
23 they left.

24 Q. Did you ever report that jewelry stolen?

25 A. Oh, yeah. Uh-huh.

MR. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. And you reported that to the police?

2 A. Uh-huh.

3 Q. The Visa Card that was in your wallet, did you ever learn if
4 anyone had attempted to use your Visa Card other than you?

5 A. Yeah. Somebody bought gas.

6 Q. And where did you get that information from?

7 A. Ah - - -

8 Q. From your billing statement?

9 A. Yeah, billing, yeah. I called them. From billing, I called
10 them, too. Yeah, uh-huh.

11 Q. So, you were informed your Visa Card was used?

12 A. Yeah.

13 The ATM Machine Card was used also.

14 Q. And that wasn't by you?

15 A. No, it wasn't by me.

16 No. They used it at 1:00 in the afternoon or something, and
17 they robbed me in the morning.

18 Q. So, it was used after it was stolen from you?

19 A. Oh, yes, certainly.

20 Q. No doubt about it?

21 A. No doubt about it.

22 Q. And you said y'all had come down to Myrtle Beach earlier in
23 the week?

24 A. Right.

25 Q. This occurred on a Saturday morning early in the morning?

1 A. Early in the morning, yeah.

2 Q. Alright.

3 You're from Pennsylvania.

4 A. Right.

5 Q. What were your intentions at that time? Were you intending
6 to stay on here in Myrtle Beach or - - -

7 A. Well, we had planned on doing some more traveling.

8 MR. AXELROD: Your Honor, I object to the relevancy.

9 THE COURT: Sir?

10 MR. AXELROD: I object to the relevance of what their plans
11 were from here on out.

12 THE COURT: No. I'll let him generally testify to that - -
13 if it's relevant. Go ahead.

14 Q. What were your plans?

15 A. Well, we'd planned on staying here, and then - - we were
16 staying in Myrtle Beach and then going to Charleston, and then I
17 didn't know where all we was going to go.

18 After they took my money, then I had to cut the trip short.
19 My driver's license and everything was gone.

20 Q. So, you headed on back home?

21 A. Well, we went to Charleston and then headed on back home.

22 Q. But you left Myrtle Beach?

23 A. Oh, yeah.

24 Q. Was it on - - -

25 A. We left the next morning, the next morning.

That was Sunday morning.

A. 'Cause we had bought tickets for a show Saturday night.

Q. Those weren't stolen?

A. Pardon me?

Q. Those were not stolen?

A. No, no, no.

Q. So, you guys left on Sunday morning?

A. Sunday morning, yeah.

Q. Did y'all ever have the opportunity to look at a, ah, a line-up or photo array?

A. No.

Q. Of any suspects?

A. Nah.

Q. That was never provided to you?

A. No.

Q. And you left pretty quickly after the robbery?

A. Yeah, within maybe thirty hours or something. Yeah.

Q. And one thing, could you just describe for the jury the two defendants - - the two robbers?

A. You mean what they looked like or - - -

Q. Yes, sir, yes, sir, what you saw of them.

A. Well, one was heavier. The one with the gun was heavier.

Q. He was heavier.

A. The other one, he was thinner.

Q. He was thinner?

MR. PRICE - CROSS EXAMINATION BY MR. AXELROD

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1 A. More slender, yeah.

2 Q. And was there any - - that's enough.

3 So, the heavier one had the gun, no doubt about that? Both
4 white males?

5 A. Yes, sir. Uh-huh.

6 Q. Did you see any physical markings on them?

7 A. I can't say I did, no.

8 Q. And it was - - it was the robber who had the gun that told you
9 he was going to blow your head off?

10 A. Yeah, the heavier guy had the gun.

11 Q. If you'll just answer any questions the defense may have.

12 Thank you, Mr. Price.

13 CROSS EXAMINATION BY MR. AXELROD:

14 Q. Good afternoon, sir.

15 A. Hi.

16 Q. Did it surprise you that the police never asked you to look at
17 photographs of the people they arrested?

18 A. Well, I wasn't here when they arrested them?

19 Q. Did the police have your address, your phone number to be able
20 to contact you?

21 A. Yes, they did.

22 Q. Did they ever make the opportunity or did they ever say, "Hey,
23 Mr. Price, we've got some photos for you to look at?"

24 A. No.

25 Q. They brought you down here for the trial, correct?

MR. PRICE - CROSS EXAMINATION BY MR. AXELROD

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1 A. Yeah.

2 Q. Did they ever bring you down to look at photographs prior to
3 this date?

4 A. No.

5 Q. Have they ever shown you the photographs that they had taken
6 prior to this date?

7 A. No.

8 Q. So, all - - all the photographs that the State has somewhere
9 around - - -

10 A. Oh, wait, wait, wait, now, wait.

11 Are you saying photographs of the guys that robbed me?

12 Q. Yes, sir.

13 A. Oh, no. I never saw any of those. No.

14 Q. Now, in one of these statements it says that the victim,
15 either you or maybe your wife, it says that the shorter person had
16 the gun. Was that you? Did you make that statement to the
17 police?

18 A. I just remember one of them being heavy and the other one
19 being slender.

20 Q. Alright. Because - - -

21 A. I was looking at that gun more than anything.

22 Q. Well, the reason I asked you the question, in the police
23 report it says that the shorter - - -

24 MR. RICHARDSON: Your Honor.

25 THE COURT: Wait a minute.

MR. PRICE - CROSS EXAMINATION BY MR. AXELROD

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1 MR. RICHARDSON: It makes no difference if it's coming from
2 the police report.

3 THE COURT: Well, he said heavier or lighter. He hasn't
4 said tall or short.

5 Go ahead.

6 MR. AXELROD: Thank you, Your Honor.

7 THE COURT: He hasn't said that but let him ask the
8 question.

9 MR. RICHARDSON: Your Honor, I think Mr. Axelrod was going
10 from a police report which was taken by an officer. He can ask
11 that officer what was said.

12 THE COURT: I understand but I'll let him ask him if he
13 said it, and he said he didn't.

14 He said he said - - I'll leave it for the jury. He said
15 heavier or lighter.

16 MR. RICHARDSON: Yes, sir, Your Honor.

17 THE COURT: He never said tall or short.

18 Q. The question I asked you, Mr. Price, is - - and it might not
19 be your statement. That's why I'm trying to clarify it.

20 In the police report it says that one of the victims told the
21 police that the shorter person presented the gun. Was that you?

22 MR. RICHARDSON: Your Honor, I'm still objecting. He's
23 reading out of a report.

24 THE COURT: No, well, wait a minute, now. He said, "The
25 police report said that. What's your recollection?"

MR. PRICE - CROSS EXAMINATION BY MR. AXELROD

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1 He's asking him what his recollection is.

2 MR. RICHARDSON: Your Honor.

3 THE COURT: Let him ask it.

4 MR. RICHARDSON: Yes, sir.

5 THE COURT: Go ahead.

6 A. I'm telling you that the heavier guy had the gun.

7 Q. I understand but the question - - and - - and - - and I
8 understand what you're saying but the question I'm asking you, and
9 it's not - - it might not be your statement.

10 One of the victims tells the police that the shorter person
11 had the gun. The question I'm asking you is was that your
12 statement.

13 A. I think I - - in what I told them, the chunky guy had the gun.

14 Q. Okay.

15 A. I think that was the word I used, "chunky".

16 Q. If it's in the report that says shorter, then that would have
17 not been your statement?

18 THE COURT: No, sir. I sustain that now.

19 You asked him what he said, and he's told you.

20 He can't respond - - you can ask the author of that statement
21 what they said and where they got their information.

22 MR. AXELROD: Yes, sir, Your Honor.

23 Q. Now, do you remember the man that had the gun - - do you
24 remember where he had a tattoo if he had one?

25 A. I don't remember the tattoo, no, I don't.

1 Q. Okay, because in the report it said that one of the victims
2 states that - - -

3 THE COURT: Wait a minute, now.

4 He has told you he didn't remember. So, don't refer to the
5 report. The report is not his, Mr. Axelrod.

6 MR. AXELROD: Okay.

7 THE COURT: Just ask him what his recollection is. What's
8 not in the report.

9 Q. It's not your recollection of any tattoos on the man who had
10 the gun?

11 A. No.

12 I told you. I was just looking at that gun. That's all I
13 was looking at.

14 When they're holding a gun three feet away from you and
15 hollering and yelling.

16 Q. I understand.

17 Now, is it your testimony that when the two men came into the
18 room, they looked around, and one man went out and then came back
19 in with the gun?

20 A. Right.

21 Q. So, you didn't - - initially, you did not see the gun?

22 A. No, not initially.

23 Q. How long were they in the room before you saw the gun?

24 A. Which - - as soon - - he said he was going to go out and get
25 a tool if I remember right, and when he come back, he come back

1 with the gun.

2 That's after they'd already been in the room.

3 Q. Well, my question is from the time he entered the room - -

4 A. Yeah.

5 Q. - - to the time he comes back with the gun, was that a minute
6 or two minutes or thirty seconds?

7 A. Two minutes, maybe. I don't know. It wasn't very long.

8 Q. Okay.

9 So, the men were in the room for two minutes before you saw a
10 gun?

11 A. I'd say something like that, yeah.

12 They come in and looked around the room, and then when one
13 said, "I have to go get a tool."

14 And he come back with the gun.

15 That was the chunky guy that did that.

16 Q. Now - - now, you told the police that the man who had the gun
17 was more muscular than the other guy. Is that correct?

18 A. Yeah, probably, yeah.

19 Q. Well, that's the statement you gave.

20 A. Well, then that's what I said, then. Yeah.

21 Q. Okay.

22 You told Detective Mann that the man that had the gun, his
23 hair wasn't short but it didn't hang down his back.

24 A. I think that's what I told them, yeah, uh-huh.

25 Q. Would it surprise you that Tommy's hair was half-way down his

MRS. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 back?

2 A. Probably would, yeah.

3 Q. Thank you.

4 THE COURT: May this witness come down?

5 MR. AXELROD: Certainly, Your Honor.

6 THE COURT: You may come down, and we thank you.

7 (The witness leaves the witness stand.)

8 THE COURT: Call your next witness, please.

9 MR. RICHARDSON: Your Honor, at this time the State would
10 call Mrs. Fairey Price.

11 (The witness takes the witness stand.)

12 FAIREY M. PRICE, being duly sworn,
13 testifies as follows:

14 DEPUTY CLERK OF COURT: State your name for the Court.

15 MRS. PRICE: Fairey M. Price.

16 DIRECT EXAMINATION BY MR. RICHARDSON:

17 Q. Good afternoon, Mrs. Price.

18 A. Good afternoon.

19 Q. Mrs. Price, thank you for being here with us today. We
20 appreciate your patience.

21 I believe we've already heard from Mr. Price how long y'all
22 been married and where you're from.

23 A. Uh-huh.

24 Q. And once again I hate to go back over trodden ground but have
25 you and Mr. Price ever visited here in Myrtle Beach before?

MRS. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. No.

2 Q. Prior to October, 2005?

3 A. No.

4 Q. So, y'all did visit here in Myrtle Beach in October of 2005?

5 A. Yeah.

6 Q. And when y'all came down, did you drive or fly?

7 A. We drove.

8 Q. And do you recall where you stayed?

9 A. Boardwalk.

10 Q. Boardwalk Motel?

11 A. Yep.

12 Q. A hotel in Myrtle Beach?

13 A. Yeah.

14 Q. And I believe Mr. Price stated that y'all had gone to a show -

15 -

16 A. Yeah.

17 Q. - - the night of the 21st.

18 A. It, um, it was the Dixie Stampede we had went to.

19 Q. Dixie Stampede. So, y'all saw all the horses - -

20 A. Yes.

21 Q. - - and the dances and the singers?

22 A. Yes. We had dinner.

23 Q. Okay.

24 And after that dinner, what did y'all do?

25 A. We came back to the hotel, and we took a shower and - - and

MRS. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 probably talked a little bit and got in bed, and I have a habit of
2 taking my jewelry off before I take a shower.

3 Q. Yes, ma'am.

4 A. And I had it laying, ah, up by the tv, I think.

5 Q. Did you go to sleep?

6 A. Yes.

7 Q. And was that on October 21st?

8 A. Yes.

9 Q. And that's a Friday night?

10 A. Yes.

11 Q. You stated you went on to sleep?

12 A. Yes.

13 Q. During the course of the night or next morning were you ever
14 awakened?

15 A. Yes.

16 Q. And how were you awakened?

17 A. By knocking at the door, and I think I woke my husband up, and
18 I said, "Someone is knocking at the door really loud."

19 And so he got up and went to the door, and I heard them say
20 that there was tenants above us that left the water running and
21 coming down probably in our bathroom, and they wanted to check.

22 Q. Do you know about what time that was?

23 A. It was about 4:30.

24 Q. And I believe Mr. Price said that it was about 5:00.

25 A. Yeah, but it was probably around 4:30.

MRS. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. It was probably between 4:30 and 5:00, no doubt?

2 A. Yes.

3 Q. Still dark outside?

4 A. Yes.

5 Q. And you said you heard people outside saying they were
6 maintenance?

7 A. Yes.

8 Q. And they were there to fix a leak.

9 A. Yes.

10 To see if there was any water actually coming down through the
11 bathroom in ours.

12 Q. And after you heard them say that, what happened?

13 A. Well, ah, they come in and the heavier guy who is setting
14 right there, he looked around the corner, and then they said they
15 had to go - - they went in the bathroom or all I seen was him, and
16 he must have went in the bathroom, and then he'd have to go get his
17 tools.

18 So, when they come back in, he had the gun.

19 Q. You said he had the gun?

20 A. Yes.

21 Q. Can you describe the two men.

22 A. Ah, I never seen the one at the door but I did see him.

23 Q. You saw the - - you say, "him", you talking about the
24 defendant with the gun?

25 A. Yes.

MRS. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. The robber with the gun?

2 A. Yes.

3 Q. And did you ever give a description to the police?

4 A. Yes.

5 I said he looked like a big biker, and he had a tattoo on his
6 right arm, and he was waving that gun back and forth. I was in bed
7 thinking I was going to be raped - - -

8 (Witness breaks down crying.)

9 Q. Take your time.

10 THE COURT: Ma'am, can we get you some water, please?

11 MR. RICHARDSON: I've got it, Judge.

12 MR. AXELROD: Your Honor, maybe we need to take a break for
13 a few minutes.

14 THE COURT: No, she's alright. We'll take care of her.
15 She's alright.

16 A. I can tell you now that that defendant is the one with the
17 gun. I recognized the detective as soon as we got here. She can
18 vouch for that.

19 Q. You said the description you gave was he had a tattoo.

20 A. Right.

21 Q. That was the one with the gun. That's the one that you saw?

22 A. Yes.

23 That's the only one I seen.

24 Q. Do you remember what his hair was like?

25 A. All I seen was him waving that gun back and forth, and I

MRS. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 remembered the tattoo. He had a t-shirt on. He had it rolled up
2 where I could see the tattoo.

3 Q. Okay.

4 You said the only one you saw was the one with the gun?

5 A. Yes.

6 Q. And you definitely saw a tattoo?

7 A. Yes.

8 Q. You said it was on his right arm?

9 A. Yes.

10 Q. And - - demands - - what demands did they make, if any?

11 A. Well, they wanted my pocketbook, and I couldn't even think
12 where it was, and my husband, "Tell him!"

13 I said, "I don't remember where I put it."

14 And he says, "You're lying!"

15 And he said he was going to hold me hostage and have my
16 husband go get the pocketbook. He wanted to know where the car
17 was, and we said it was a block over because we couldn't get a
18 parking place in front of the hotel.

19 And so, ah, - - and then - - he got the jewelry - - oh,
20 well, the guy at the door said, "I got it. Let's go."

21 And he took the phone cord out and then he said about getting
22 the cord off the drapery, and he was going to tie us up, and the
23 guy at the door said, "Let's go."

24 And then he left.

25 Q. Do you remember what was stolen from you?

MRS. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Yes.

2 My earrings I have on today, my wedding rings which they never
3 got back and, ah, my necklace that I have on today.

4 Q. You said you had some items on today. I'm going to show you
5 what's been previously marked, first, State's Exhibit #2. Do you
6 recognize this item?

7 A. Yes. It's a - - -

8 MR. AXELROD: Your Honor, if I may see them so that I can
9 keep track of the numbers, what they are.

10 THE COURT: Yes, sir.

11 The record will reflect that at pretrial you had - - you also
12 had a look at them.

13 MR. AXELROD: Right. But they have a number. I just want
14 to keep track of the numbers.

15 THE COURT: I understand. You may.

16 Q. Could you tell us once again? Do you recognize this item?

17 A. My wallet as far as I know. I didn't get my fanny pack back.

18 Q. But this appears to be it?

19 A. Yeah.

20 Q. And is it an accurate portrayal of what your wallet looked
21 like?

22 A. Yeah.

23 Q. Now, I want to show you what's been previously been marked as
24 State's Exhibit #1. Do you recognize this item?

25 A. Yes. This is my necklace, and these are my earrings, and this

MRS. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 is my birth stone ring which I didn't wear today.

2 THE COURT: That's Exhibit #1 that you've previously seen.

3 MR. AXELROD: Thank you, Your Honor.

4 Q. And, also, see if you recognize State's Exhibit #24?

5 A. Yeah. My Sears Card?

6 Q. How did you recognize it?

7 A. My name on the back.

8 Q. Okay.

9 And were these items that were taken from you on the morning
10 of October 22, 2005?

11 A. Yes.

12 Q. And you said that you said that you have these items on right
13 now?

14 A. Uh-huh.

15 Q. When did you get these items back?

16 A. About two weeks ago.

17 Q. And from whom did you get these items?

18 A. From down here, ah, I forget what her name was.

19 Q. But did someone personally deliver it to you?

20 A. No. We got it through the mail.

21 Q. So, it was delivered to you via mail?

22 A. Plus the camera.

23 Q. You got a camera, and was the camera stolen on October 22nd?

24 A. Yes.

25 Q. And you as well gave a statement to Detective Mann that day?

MRS. PRICE - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Yes.

2 Q. And you've been provided with a copy of that statement?

3 A. Yes.

4 Q. And have you listened to that statement?

5 A. Yes.

6 Q. And is that pretty much the same statement that you're giving
7 here today?

8 A. Yes.

9 Q. No doubt about it, you gave a description of the defendant
10 with the gun?

11 A. Yes.

12 Q. You said he looked like a big biker guy?

13 A. Yes. He was muscular or his arms were muscular.

14 Q. Big guy?

15 A. Yeah.

16 MR. AXELROD: Your Honor, the Solicitor is now testifying and
17 leading the witness however you want to say it.

18 MR. RICHARDSON: Your Honor, I'm just restating what's in
19 evidence.

20 THE COURT: Just follow the rules.

21 MR. RICHARDSON: Your Honor, at this time I would offer
22 into evidence State's #24 - - -

23 THE COURT: Tell us what #24 is.

24 MR. RICHARDSON: #24 is the Sears Card in the name of Mrs.
25 Fairey Price.

MRS. FAIREY - CROSS EXAMINATION BY MR. AXELROD

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1 MR. AXELROD: No objection to #24 coming in.

2 MR. RICHARDSON: State's #1.

3 MR. AXELROD: No objection to State's #1 coming in.

4 MR. RICHARDSON: State's #2.

5 MR. AXELROD: No objection to State's #2 coming in.

6 THE COURT: They are a part of the record and will be - -
7 you may publish them if you care to, and they will be with the
8 Foreman and the jury during your deliberations.

9 (The Court Reporter accepts State's Exhibits #1, #2 and #24
10 into evidence.)

11 MR. RICHARDSON: Alright.

12 THE COURT: Just pass them around very hurriedly, please.
13 They'll be with the jury in the jury room.

14 Q: The defendant you concentrated on was the one with the gun?

15 A: Yes.

16 Q: Mrs. Price, thank you for your testimony.

17 A: Okay. Thank you.

18 THE COURT: Mr. Axelrod, you may examine.

19 Q: Just answer any questions Mr. Axelrod may have.

20 A: Okay.

21 CROSS EXAMINATION BY MR. AXELROD:

22 Q: Good afternoon, ma'am.

23 A: Good afternoon.

24 Q: I'm just trying to clear up something from before.

25 Initially, somebody told the police that the shorter - - the

MRS. FAIREY - CROSS EXAMINATION BY MR. AXELROD

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1 shorter person had the gun. Was that your statement to the
2 police?

3 A. No because I didn't see the other guy.

4 Q. Okay. Thank you.

5 Now, the police asked you about forty-five minutes after the
6 accident, they asked you if you could give a statement to them,
7 correct?

8 A. Uh-huh.

9 Q. And they asked you, I believe Detective Manning asked you,
10 "The guy with the gun, if you can picture him, describe him for
11 me."

12 A. Uh-huh.

13 Q. Okay. You remember that?

14 A. Yeah.

15 Q. And you stated to the police that he was really muscular.

16 A. Uh-huh.

17 Q. And you said that he had a tattoo.

18 A. Uh-huh.

19 Q. And you said that it was on his right arm.

20 A. Yeah.

21 Q. Up here.

22 And then you said his biceps were really muscular.

23 A. Yeah.

24 Q. I want to show you a picture. I want to show you a picture
25 that was taken of people at Wal-Mart - - and have the police ever

MRS. FAIREY - CROSS EXAMINATION BY MR. AXELROD

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1 showed you that picture?

2 A. No, no, no.

3 Q. I'm asking you. The man here that has a rolled up t-shirt
4 exposing a tattoo on a biceps - -

5 A. Right. I don't - - I can't see.

6 Q. But you can see a rolled up t-shirt and a muscular arm with a
7 tattoo and a biceps, correct?

8 A. Uh-huh.

9 Q. Up there.

10 A. See and like him looking sideways.

11 Q. Well, I'm just wondering if you can recognize that muscular
12 biceps with the tattoo on it.

13 A. All I know it was blue or whatever, it was tattoos.

14 Q. Now, and you're sure that the tattoo was up here?

15 A. Uh-huh.

16 Q. And you told the police you really didn't see the other guy
17 very good, correct?

18 A. No, I didn't see the other guy at all.

19 Q. At all.

20 And isn't it true that you told the police that the man that
21 had the gun, his hair wasn't very long.

22 A. Well, what I could see.

23 I mean, by looking at that gun, I wasn't looking at the hair
24 that much.

25 Q. Well, the reason I ask you that and - - and - - -

MRS. FAIREY - CROSS EXAMINATION BY MR. AXELROD

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1 A. But if it was pulled down in the back, you wouldn't have been
2 able to tell - - -

3 Q. My question to you. Detective Mann asked you, "And his hair
4 was short or long?"

5 A. Uh-huh.

6 Q. And you respond, "It wasn't really long, no."

7 "It wasn't really long, no."

8 Is that - - is that a fair statement that you made forty-five
9 minutes after this event?

10 A. Yes but - -

11 Q. Thank you.

12 THE COURT: Wait a minute. Let her answer.

13 A. - - but I also said he looked like a big biker which they have
14 long hair.

15 Q. Did he have long hair or short hair?

16 A. What?

17 Q. Did you see the hair at all on the man that had the gun?

18 A. No.

19 Q. Okay.

20 But you saw a rolled up t-shirt with a tattoo on his arm?

21 A. Yes, and he had the gun waving calling me a liar.

22 Q. Where else - - did you see any other tattoos?

23 A. No. That - - the lighting in the room wasn't too good.

24 I mean, those hotel lights, you know, and we didn't have them
25 all on at the time.

MRS. FAIREY - CROSS EXAMINATION BY MR. AXELROD

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1 Q. Then why would you tell the police his hair wasn't really
2 long?

3 A. Well, what I could see but I also said he was a big biker or
4 looked like a big biker, and to me the biker that I have in my mind
5 has longer hair.

6 Q. But - - but you told the police that he didn't have long hair.

7 A. I know what I told the police.

8 MR. RICHARDSON: Your Honor.

9 MR. AXELROD: It's an important matter, Your Honor.

10 MR. RICHARDSON: Your Honor, it's argumentative. He keeps
11 going over the same thing. He's going over it over and over.

12 THE COURT: I'm going to let him ask it one more time.
13 The jury will understand.

14 She's answered you twice, Mr. Axelrod.

15 MR. AXELROD: Well, now she's telling us - - now she's
16 telling us that her recollection of bikers in general, they have
17 long hair.

18 MRS. PRICE: That's right.

19 Q. But the night of the event forty-five minutes after it
20 happened, you told the police the hair wasn't long, didn't you?
21 That's all I'm asking.

22 A. Well, you tell me what you would be telling someone after you
23 had an experience like I did.

24 MR. AXELROD: Your Honor, she's asking - - -

25 THE COURT: She's answered you. You keep asking.

MRS. FAIREY - CROSS EXAMINATION BY MR. AXELROD

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1 MR. AXELROD: She's asked me a question. I asked a specific
2 question. I want to ask it and get an answer, and then I'll stop.

3 THE COURT: Okay.

4 Just answer it as best you can and go on.

5 MRS. PRICE: Okay.

6 Q. The question, ma'am, and I'll repeat it.

7 Today you tell us that bikers have long hair.

8 A. That's right.

9 Q. Forty-five minutes after the event occurred, right after it
10 occurred they asked you if he had long hair or short hair, the man
11 with the gun, and you said it wasn't really long, didn't you?

12 A. As far as I could see.

13 Q. Thank you.

14 THE COURT: That's exactly what she said fifteen minutes
15 ago.

16 MR. AXELROD: No, it wasn't.

17 THE COURT: Alright.

18 Thank you.

19 You may come down.

20 MR. AXELROD: Thank you, Mrs. Price.

21 THE COURT: It will be for the jury to determine what she
22 said, when she said and nuances as to her replies all of which is
23 for the jury as finders of the facts.

24 MR. AXELROD: Your Honor, may we approach a minute?

25 THE COURT: Yes, sir.

MRS. FAIREY - CROSS EXAMINATION BY MR. AXELROD

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1 (Bench conference off the record in the presence of the jury
2 but outside the hearing of the jury.)

3 THE COURT: Alright.

4 Ladies and gentlemen, I'm going to let you go to your jury room
5 for just a few minutes, about ten minutes, and I'll be calling you
6 back, now, so we can move on.

7 (The jury retires to the jury room at 3:25 p.m.)

8 THE COURT: We are in recess.

9 (The Court recesses the trial of this case and thereafter
10 reconvenes the trial.)

11 THE COURT: Your next witness ready, Mr. - - -

12 MR. RICHARDSON: Yes, sir.

13 THE COURT: Alright.

14 MR. RICHARDSON: Whenever Ms. Allen is ready.

15 (The jury returns to the courtroom at 3:38 p.m.)

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

18 MR. RICHARDSON: Thank you, Your Honor.

19 May it please the Court, at this time the State would call
20 Investigator Carol Allen.

21 (The witness takes the witness stand.)

22 INVESTIGATOR CAROL ALLEN, being duly
23 sworn, testifies as follows:

24 DEPUTY CLERK OF COURT: State your name for the Court.

25 INVESTIGATOR ALLEN: Carol Allen.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MR. RICHARDSON 105

1 DIRECT EXAMINATION BY MR. RICHARDSON:

2 Q. Good afternoon, Investigator Allen.

3 A. Hello.

4 Q. Could you please tell us about your place of employment, where
5 and how long and in what capacity?

6 A. I'm employed with the Myrtle Beach Police Department going on
7 fifteen years, and I hold the rank of Investigator.

8 Q. And that's your current detail, correct?

9 A. That's correct.

10 Q. How about back in October of 2005? In which capacity were
11 you employed?

12 A. I was the Crime Scene Unit Supervisor and held the rank of
13 Corporal.

14 Q. And as Crime Scene Unit Supervisor, what were your duties?

15 You know, we hear Crime Scene, we think of all three of those
16 tv shows, now, CSI.

17 Tell us what's involved in crime scene investigation.

18 Q. Well, basically, what we do is we respond to all crimes in the
19 City Limits of Myrtle Beach, and while we're on the particular
20 crime scene, we'll try to gather all kinds of evidence that,
21 basically, will say that a certain individual committed a certain
22 crimes.

23 Q. You did say you were employed October 22, 2005?

24 A. That's correct.

25 Q. Do you recall in your duties as Crime Scene Officer of Crime

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MR. RICHARDSON 106

1 Scene Supervisor, were you called to a motel back on October 22,
2 2005?

3 A. Yes, I remember.

4 Q. And do you remember what hotel it was?

5 A. It was called the Boardwalk Motel.

6 Q. And that's here in Horry County?

7 A. Yes.

8 Q. Did you get involved with the investigation of a burglary and
9 armed robbery on that case?

10 A. Yes, I did.

11 Q. Tell us about the investigation from your standpoint.

12 A. Okay.

13 I was called by a Patrol Supervisor which is protocol. I
14 responded to the motel, and, basically, when I got on scene I met
15 with the on-duty patrol officer. They gave me a brief detail of
16 what was involved. That way I basically know how I would conduct
17 my investigation.

18 Basically, what I would do is photograph the crime scene and
19 attempt to collect any evidence that would make me believe that a
20 crime had been committed.

21 Q. Now, Detective or Investigator rather, I want to show you what
22 has been previously marked as State's Exhibit #4, #5 - -

23 MR. AXELROD: Can I see #5? Okay.

24 Q. - - #6 - -

25 MR. AXELROD: Okay.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MR. RICHARDSON 107

1 Q. - - #7, #8, #9 - -

2 MR. AXELROD: Absolutely.

3 Q. - - and #10.

4 THE COURT: The record will reflect that these exhibits
5 were pre-marked at which time defense counsel had a full
6 opportunity to look at them.

7 Go ahead.

8 Q. And, Investigator Allen, I'm going to hand you the
9 aforementioned exhibits and see if you recognize those items.

10 A. Yes. These are the photos that I took, um, at that Boardwalk
11 Motel that evening.

12 Q. Do you remember what room number - -

13 A. Morning.

14 Q. - - that was?

15 A. This was Room #117.

16 Q. And how do you recognize these pictures?

17 A. Well - - -

18 Q. Well, rather - - you say they were pictures you took. Do
19 they clearly and accurately - - accurately represent the crime
20 scene that you saw?

21 A. Yes, they do.

22 MR. RICHARDSON: Your Honor, at this time the State would
23 seek to introduce #4 through #10 into evidence.

24 THE COURT: They are introduced without - - without
25 objection.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MR. RICHARDSON 108

1 MR. AXELROD: Was it #9. I stopped at #9. There was a #10
2 exhibit?

3 MR. RICHARDSON: #10.

4 MR. AXELROD: Okay. Go ahead.

5 THE COURT: Without objection - -

6 MR. AXELROD: Your Honor.

7 THE COURT: - - they are introduced.

8 MR. AXELROD: Your Honor. There's no objection.

9 THE COURT: Alright.

10 (Court Reporter accepts State's Exhibits #4, #5, #6, #7, #8,
11 #9 and #10 into evidence.)

12 MR. RICHARDSON: And the State would seek to publish, Your
13 Honor.

14 THE COURT: Alright, sir.

15 Q. Alright.

16 Investigator Allen, could you tell us what we're looking at in
17 State's #4?

18 A. Yes. That's a parking lot right outside of the motel.

19 Q. How about State's #5?

20 A. That's the walkway leading up to the motel room 117 where the
21 incident occurred.

22 Q. And is that an elevator?

23 A. Yes, it is.

24 Q. And how about State's #6?

25 A. That's the walkway that goes in front of Room #117.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MR. RICHARDSON 109

1 Q. Right here at this red light, is that an exit sign?

2 A. Yes.

3 Q. And would that be a stairway?

4 A. Yes.

5 Q. So, you'd have - - you could exit by elevator or stairway from
6 here?

7 A. That's correct.

8 Q. And this is on the ground floor level?

9 A. Yes, it is.

10 Q. So, someone could easily escape?

11 A. That's correct.

12 Q. How about State's #7?

13 A. That's a dining table that was inside the motel room. That's,
14 ah, where, ah, where the victim's purse was sitting where her
15 wallet was taken from.

16 Q. And I see what appears to be a door latch there. Is that
17 right inside the doorway?

18 A. Yes.

19 Q. From the outside?

20 A. Right.

21 Q. State's #8?

22 A. That's, ah, just inside the motel room. You see two beds.
23 You see an entertainment stand with a telephone on there.

24 Q. And what's the significance of - - well, I guess I'll go with
25 #8, #9. Is that a close-up view?

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MR. RICHARDSON 110

1 A. That's a close-up view of the telephone.

2 Q. And, finally, #10?

3 A. That's a real close-up view where I've shown that the
4 telephone cord is disconnected from the phone.

5 Q. And these are all pictures that you took the early morning of
6 October 22, 2005?

7 A. Yes, they are.

8 Q. They're all of Room #117?

9 A. That's correct.

10 Q. And you were there because an armed robbery and burglary had
11 been reported?

12 A. That's correct.

13 Q. Now, Investigator Allen, we've all seen all these crime shows,
14 CSI, New York, Las Vegas, Miami, all these movies of these super
15 police who are able to take a hair found out in the middle of the
16 parking lot and - - -

17 MR. AXELROD: Your Honor, is there a question here?

18 THE COURT: Yes, sir, there is.

19 Go ahead.

20 Wait for it. You'll get the question.

21 MR. RICHARDSON: Thank you, Your Honor.

22 Q. They always seem to be able to get a fingerprint - -

23 A. Yes.

24 Q. - - in all these detective shows?

25 A. Yes.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MR. RICHARDSON 111

1 Q. Is that how it happens in the real world?

2 A. Unfortunately not.

3 Q. Specifically, with regard to fingerprint analysis what's your
4 training?

5 A. I've had basic fingerprint, ah, training. I've had
6 fingerprint comparison training. I've had, ah, fingerprint
7 identification training. I'm also a fingerprint, ah, what we call
8 AFIS, - - -

9 THE COURT: I have qualified her in this area previously
10 and find her qualified.

11 MR. AXELROD: Your Honor, I have no objection for
12 Investigator Allen to be qualified as an expert in the taking of
13 fingerprints from crime scenes.

14 THE COURT: No, sir. I qualified generally as an expert.

15 MR. RICHARDSON: Thank you.

16 THE COURT: I'm not going to limit it to - - to few. I'm
17 going to qualify her as an expert and glad to have her.

18 Go ahead.

19 Q. So, you know how to take fingerprints?

20 A. Correct.

21 Q. Without a doubt?

22 A. Not a doubt.

23 Q. You've done it many times?

24 A. Many, many times.

25 Q. Or attempted to?

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Yes.

2 Q. How often is it that you get a usable print?

3 Or, let - - what - - what goes into the science of leaving
4 fingerprints?

5 A. Well, there's several determining factors whether someone will
6 leave a viable fingerprint or not. I mean, basically, how someone
7 leaves a fingerprint is a lot of people have oils or secretions on
8 their hand, and when they touch an item like I'm touching this
9 wood, they're going to leave those oily secretions on there with a
10 pattern.

11 I mean, if you look at your thumb, you'll see the pattern, you
12 know, ridge detail. Well, that's what gets left.

13 But if a person has real oily hands or if their hands are dry
14 and most people, they're not - - when they touch something they're
15 not going to roll their fingerprint. They're just going to, you
16 know, swipe their hand across it.

17 I mean, in a perfect world, yeah. We'd like them to roll
18 their fingerprints on there. It'd be easier for us but that
19 really doesn't happen too often.

20 Q. So, they don't oblige us too much with leaving fingerprints?

21 A. No.

22 Q. Does the surface have some affect on leaving fingerprints?

23 A. Oh, definitely, definitely.

24 Q. Is that like this piece of wood here would be a good conductor
25 of fingerprints?

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MR. RICHARDSON 113

1 A. Ah, as - - as long as it's smooth and doesn't have a lot of
2 texture, um, I mean, this could - - you could get a fingerprint off
3 of this type of surface but, I mean, if it's freshly painted or if
4 it's real rough, you might not be able to get a fingerprint off it.

5 Q. And - - and what are some the things that might foul up
6 someone leaving a fingerprint?

7 A. Ah, how they touched it. I mean, if they in a hurry and
8 they're just grabbing or, I mean, that they - - all we would get is
9 a smear fingerprint.

10 If - - if they pressed down on something too hard, it will be
11 smeared. If they don't touch it hard enough, I mean, it will be
12 too light.

13 Q. And can you read it smeared?

14 A. It's very difficult, very hard. I would have to say no.

15 Q. And how about the size of an item? Does that have an affect
16 on being able to pull a fingerprint?

17 A. Oh, yes.

18 I mean, it's a lot easier getting a fingerprint off of an item
19 this big than it would be getting a fingerprint off of, say, that
20 right here.

21 I mean, you might get a little ridge but as far as being able
22 to obtain enough ridge detail and actually identify a fingerprint,
23 it's very, very difficult.

24 Q. Did you attempt to look for fingerprints in this case?

25 A. Oh, yes, I did.

INVESTIGATOR ALLEN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. Tell us what you did?

2 A. Well, first, ah, because we could have spent hours, hours,
3 hours, you know, dusting the whole motel room, and, you know,
4 really, that's not feasible.

5 So, what I like to do is I like to, you know, talk to the
6 victims. Find out maybe which items the suspects may have touched,
7 and I'll start there.

8 The victims told that they touched the telephone receiver and
9 they may have touched around the bathroom door. So those were
10 places where I actually dusted for fingerprints.

11 Q. And after you dusted for prints, what was your expert opinion?

12 A. Well, when I dusted around the bathroom door, I did see what
13 appeared to be me as being a palm print, and when I looked at it
14 closer, there just wasn't any ridge detail.

15 So, basically, what that was telling me was there was no way
16 that I would have been able to identify that palm print to
17 somebody.

18 And when I dusted the telephone itself, all I say were, like,
19 smeared fingerprints that didn't have any ridge detail for me to be
20 able to identify it to anybody.

21 Q. But you did everything you could?

22 A. Yes.

23 Q. You just didn't get any usable prints?

24 A. Exactly.

25 Q. And in investigating crime scenes particularly with regard to

INVESTIGATOR ALLEN - CROSS EXAMINATION BY MR. AXELROD

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1 lifting for fingerprints, it is unusual to get no usable suspect
2 prints?

3 A. No. It - - it's common, yes. I mean, it's several times
4 where we, unfortunately, just weren't able to obtain good
5 fingerprints.

6 Q. So, in any case, it's common not to get usable fingerprints?

7 A. That's correct.

8 Q. I understand my phrasing was a little difficult.

9 MR. AXELROD: Uh-huh.

10 Q. So, it did suffice, you did not get usable fingerprints in
11 this case?

12 A. Correct.

13 Q. Thank you, Investigator Allen.

14 If you'll just answer any questions Mr. Axelrod may have.

15 CROSS EXAMINATION BY MR. AXELROD:

16 Q. Tell the jury what causes fingerprints. Tell them what it
17 is.

18 A. What causes fingerprints?

19 Q. Absolutely.

20 A. What kind of fingerprints?

21 Q. Fingerprints. I don't know. What kind are we talking about?
22 We talking about fingerprints. What causes fingerprints?

23 A. I think I mentioned that earlier.

24 ~~When one touches an object, basically, they are leaving the~~
25 oily secretions behind.

INVESTIGATOR ALLEN - REDIRECT EXAMINATION BY MR. RICHARDSON 116

1 Okay. If you look at your fingers, you'll see ridge detail
2 in there, and that with the oily secretions, you're just
3 transferring that from your hand onto the object.

4 Q. And - - and what are oily secretions?

5 A. Well, it could be anything. I mean, it comes within the skin.
6 It could be from sweat. It could be young people have oily skin.
7 It could be dirt. I mean, there's nothing in writing saying that's
8 what oily secretion is made of.

9 Q. Now, isn't it true that when you have prints that are smeared
10 or smudged or don't' have high ridge little, have little ridge
11 detail, have just a little bit, isn't it true that you can take
12 that? You can swab that, and you can put that in a tube, and can
13 you not send that up to SLED to be tested for residual DNA?

14 A. Sure.

15 Q. Did you?

16 A. No, I did not.

17 Q. Do you have any evidence putting Tommy in that room?

18 A. Not - - not physical evidence from what I gathered.

19 Q. Thank you.

20 A. You're welcome.

21 REDIRECT EXAMINATION BY MR. RICHARDSON:

22 Q. This residual DNA, how common is it to be able to get that off
23 of secretions of a little bit of oil?

24 A. Well, there is, I mean, it can happen but - - I mean, it's
25 very difficult.

INVESTIGATOR ALLEN - RE-CROSS EXAMINATION BY MR. AXELROD 117

1 MR. RICHARDSON: No further questions.

2 RE-CROSS EXAMINATION BY MR. AXELROD:

3 Q. Is it difficult to take a swab, to just go stick it in the
4 tube, mail it to SLED and see if they get DNA from the sweat that
5 maybe left the fingerprint?

6 A. Oh, sure. It could have been done?

7 Q. Thank you.

8 A. You're welcome.

9 THE COURT: You may come down.

10 MR. RICHARDSON: Thank you, Your Honor.

11 (The witness leaves the witness stand.)

12 MR. RICHARDSON: The State would call Joy Hines.

13 (The witness takes the witness stand.)

14 MR. RICHARDSON: Your Honor, I'd ask that Investigator
15 Allen be excused from the trial.

16 MR. AXELROD: Without objection, Your Honor.

17 THE COURT: Yes.

18 I may excuse you. Thank you.

19 JOY E. HINES, being duly sworn, testifies
20 as follows:

21 DEPUTY CLERK OF COURT: State your name for the Court.

22 MS. HINES: Joy Hines.

23 DIRECT EXAMINATION BY MR. RICHARDSON:

24 Q. Good afternoon, Ms. Hines.

25 A. Good afternoon.

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. Ms. Hines, will you please tell us where you currently reside?

2 A. Yes, sir. I'm staying at J. Reuben Long right now.

3 Q. That's the Detention Center?

4 A. Yes.

5 Q. And before we go any further, do you have any kind of deals
6 with the State?

7 A. No, sir.

8 Q. And you've actually been charged with burglary in the first
9 degree and armed robbery in this case - - in this case?

10 A. Yes.

11 Q. And do you have any other charges pending?

12 A. Um, as far as this case, no.

13 Q. But you have no deals with the case?

14 A. No, sir.

15 Q. The State's made no promises?

16 A. No.

17 Q. No threats?

18 A. No.

19 Q. And you're hopeful that you'll be able to get something worked
20 out?

21 A. I hope so but I don't know.

22 Q. But there have been no promises?

23 A. No.

24 Q. Are you familiar with the defendant?

25 A. Yes, sir.

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. And can you identify who the defendant is?

2 A. Tommy Webb.

3 Q. And how do you know him?

4 A. He was living with me.

5 Q. He was living with you when?

6 A. Ah, when this incident occurred.

7 Q. When was that?

8 A. We were boyfriend, girlfriend.

9 Probably about two and a half years ago, October.

10 Q. And if you'll speak up just a little bit so I can hear you.

11 A. Yes, sir. I'm a little bit short.

12 Q. Loud so I can hear you.

13 You say you were living back with the defendant back in
14 October, 2005?

15 A. Yes, sir.

16 Q. Or he was living with you?

17 A. He was living with me at my house.

18 Q. And where was that located?

19 A. On Fourth Avenue North in Myrtle Beach.

20 Q. Fourth Avenue North in Myrtle Beach.

21 Mr. Gaunt is sitting here with short hair today.

22 A. Yes.

23 Q. Is that how he looked back in 2005?

24 A. You mean Mr. Webb.

25 Q. I mean Mr. Webb. I'm sorry. I said Mr. Gaunt.

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Um, his hair was a little bit longer but - - and he had a
2 moustache.

3 Q. So, his hair was longer, and he had a moustache then?

4 A. Yes, sir.

5 Q. And how about Randi Gaunt? Did you know him as well?

6 A. Not as well but I was acquainted with him through Tommy.

7 Q. So you were familiar with Randi Gaunt through the defendant,
8 Thomas Webb?

9 A. Yes, sir.

10 Q. Let's go back to October 22nd - - 21st and 22nd of 2005.

11 Did you happen to accompany the defendant and Randi Gaunt
12 anywhere?

13 A. Yes, sir.

14 Q. Could you tell us about that day?

15 A. Um, - - yes, sir. We spent most of the day at my house but
16 I took them around to some motels to - - well, I thought try to
17 find a place where Randi Gaunt would stay because I had told him he
18 couldn't stay at my house.

19 Q. So you told Randi he couldn't stay at your house but was
20 everybody over at your house?

21 A. Pardon me?

22 Q. Was everybody over at your house, you and the defendant and
23 Mr. Gaunt?

24 A. The three of us, yes, sir.

25 Q. Were you in any condition that day, were you intoxicated in

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 anyway?

2 A. Um, I was under the influence of cocaine. I wasn't drinking.

3 Q. But you - - you were shooting cocaine?

4 A. Yes.

5 Q. Alright.

6 Anyone else, were they - - -

7 A. Randi was drinking. Tommy was drinking and doing cocaine.

8 Q. Okay.

9 And you saw them do that?

10 A. Uh-huh.

11 Q. Now you said you accompanied them. You drove them. You drove
12 the defendant and Randi Gaunt from motel to motel.

13 A. Yes.

14 Q. Where was that, in what city?

15 A. In Myrtle Beach.

16 Q. And where were these motels located?

17 A. On the Boulevard on the north end.

18 Q. On the north end of the Boulevard.

19 And who was driving?

20 A. I was.

21 Q. And what kind of car were you driving?

22 A. Um, it was a friend of mine's car. It was a red - - I want to
23 say it was, like, a Buick or Plymouth or something like that but
24 I'm not sure of the make.

25 Q. How did you know where to drive?

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. They told me. Ah, mostly Randi said, "This one right here."

2 Because he had said he had friends staying at a motel.

3 Q. And you drove them from motel to motel. What would happen
4 when you arrived at a motel?

5 A. Um, they would get out and go in.

6 Q. You said, "they", you mean - -

7 A. Randi and Tommy.

8 Q. - - the defendant and Randi?

9 A. Yes, sir.

10 Q. They would get out, and they would go around to the motel.

11 A. Uh-huh. I stayed in the car.

12 Q. You stayed in the car each time?

13 A. Yes, sir.

14 Q. The defendant and Randi Gaunt told you to drive to several
15 motels. Did you ever come to the Boardwalk Motel?

16 A. Yes, sir. That was the last one.

17 Q. That was the last one.

18 What happened when you arrived there?

19 A. They got out and went in.

20 Q. And you stayed in the car?

21 A. Again, yes, sir.

22 Q. How long were you waiting in the car?

23 A. It - - it could have been five to ten minutes each time. It
24 could - - the first two times it wasn't as long. The last time it
25 was longer but, there again, I was - - my perception was not quite

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 what it should have been due to the cocaine. So I - - -

2 Q. You were still intoxicated.

3 A. Yes, sir. I couldn't say exactly how long. Fifteen minutes,
4 maybe, twenty.

5 Q. So you stayed in the car, and you waited on them.
6 And you expected them to return?

7 A. Yes, sir.

8 Q. Did anybody else ride with y'all at that time?

9 A. No, sir.

10 Q. So, it was just you, Randi Gaunt and Tommy Webb?

11 A. Yes, sir.

12 Q. Did they ever come back to the car?

13 A. Yes, sir.

14 Q. When Randi Gaunt and the defendant returned to the car - -

15 A. Uh-huh.

16 Q. - - who sat where?

17 A. Randi was in the passenger seat in the back on the passenger
18 side in the back. Tommy was in the passenger side up front. I was
19 driving.

20 Q. And you were driving, and Randi Gaunt got in the back.

21 A. Yes, sir.

22 Q. Tommy Webb got in the front?

23 A. Yes, sir.

24 Q. ~~On the passenger side.~~

25 Now, whenever the two defendants get back in the car - - I'm

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 sorry, Randi Gaunt and this defendant got back in the car, Mr. Webb
2 say anything to you?

3 A. I said something first.

4 I asked him what - - I said, "What in the hell did y'all do?"
5 Because they had things in their hand.

6 Q. You said, "They had things in their hand."
7 What kind of things?

8 A. It was, like, a wallet and a camera and I couldn't really see
9 a lot of other things, and, um, and then I glanced back to see
10 Randi. He was getting in.

11 I couldn't exactly tell anything else. I know there was
12 either a wallet or a fanny pack, and I can't remember.

13 Q. And was that all they had on?

14 A. In their hands? Um, no, because when I asked Tommy what the
15 hell they had done, he dropped the other stuff, and he had a gun
16 and pointed it at me and said, "Don't worry about what we did.
17 Just drive."

18 Q. A gun? What kind of gun was it?

19 A. It was a 38 five shot Taurus revolver.

20 Q. Did you recognize the gun?

21 A. Yes, sir.

22 Q. How did you recognize it?

23 A. It was my gun.

24 Q. It was your gun?

25 A. Yes, sir.

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. And who had it?

2 A. Tommy did.

3 Q. He had it in his hand?

4 A. Yes, sir.

5 Q. No doubt about it?

6 A. No doubt about it.

7 Q. Now, as between Tommy Webb and Randi Gaunt?

8 A. Uh-huh.

9 Q. Whose bigger and whose smaller?

10 A. Tommy's bigger.

11 Q. And whose hair was longer?

12 A. Tommy's was longer. It was in a mullet style. /

13 Q. It was a mullet style?

14 A. Uh-huh.

15 Q. Now, you said this pistol, you ~~recognized~~ it as yours?

16 ~~Did the defendant know where the gun was located?~~

17 A. I had never told him where it was but, evidently, he had come
18 across it in my bedroom or something.

19 Q. And that bedroom, is that the one you shared with the
20 defendant?

21 A. Yes.

22 Q. So, he would have had access to it?

23 A. Yes, sir.

24 Q. And you said you saw some wallets, fanny pack. Was there
25 anything in the wallet?

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Um, after they told me to get out of the parking lot, they did
2 go through them, and there was some money. I think Randi might
3 have had the fanny pack, and Tommy had a wallet or it might have
4 been backwards. I'm not sure which but one had one, one had the
5 other, and there were cash in both, and they both counted out the
6 cash, and one had credit cards.

7 Q. Now, these credit cards, did you see them?

8 A. Yes, sir.

9 Q. And did - - you were living with the defendant at the time.
10 Did he own a credit card himself?

11 A. No, sir.

12 Q. But you saw these credit cards?

13 A. Yes, sir.

14 Q. Were you instructed to do anything with regard to those credit
15 cards?

16 A. Yes, sir.

17 First, we stopped and got gas with them, and he told me to use
18 the credit card at the pump.

19 Q. And where was that?

20 A. At - - I think it was the Circle K on 17th Avenue South and
21 Highway 17.

22 Q. As you drove away from the scene, the defendant told you to
23 use the credit card at the pump?

24 A. To get gas, yeah.

25 Q. And did he tell you why?

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. He was wanting to take the car to Tennessee and trade it for
2 a car that he could get titled in his name.

3 Q. So the defendant gave you the credit card. You knew him not
4 to have a credit card before this.

5 A. Yes, sir.

6 Q. And told you to go gas up.

7 A. Yes, sir.

8 Q. To drive to Tennessee?

9 A. Yes, sir.

10 Q. Were you told to go anywhere else that night?

11 A. Um, yes, sir. He was wanting to use the credit cards, and
12 they - - there was conversation about where they could be spent at
13 that hour of the night.

14 Q. You say, "that hour of the night". Was it still dark
15 outside?

16 A. Yes, sir.

17 Q. Do you know what time of day it was?

18 A. Um, now I know that it was probably four or five o'clock in
19 the morning. At that time I didn't realize it was that time.

20 Q. So y'all discussed where to use the credit cards, and you say,
21 "y'all", you were involved in the conversation?

22 A. Yes, sir.

23 Q. Um, did y'all ever decide where to go to attempt to use the
24 credit cards?

25 A. Yes, sir, to Wal-Mart.

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON .

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1 Q. And which Wal-Mart was that?

2 A. The Surfside Wal-Mart on 544.

3 Q. Now, y'all were in Myrtle Beach.

4 A. Uh-huh.

5 Q. Down on the north end?

6 A. Uh-huh.

7 Q. Is there a Wal-Mart closer?

8 A. Yes, sir. There's one on Highway - - well, right beside
9 Highway 501.

10 Q. Why did you not use that one?

11 A. That one is right near my house, and that's where I went with
12 my son all the time. So, I told them, "No, I'm not going there."

13 Q. So, it was your idea to go to a different Wal-Mart?

14 A. Yes, sir.

15 Q. The defendant, did he agree with that?

16 A. Yes, sir.

17 Q. Let me show you what's been previously marked as State's #27.

18 THE COURT: You've had an opportunity to review this?

19 MR. AXELROD: I - - I actually received a copy of it. Yes,
20 sir, Your Honor.

21 THE COURT: Alright. Okay.

22 Q. State's #27, do you recognize this item?

23 A. This is the tape I viewed of us in Wal-Mart.

24 Q. When did you view the tape?

25 A. Um, last Wednesday or Thursday.

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. Last week.

2 And I was present then, correct?

3 A. Yes, sir.

4 Q. How do you - - now, you recognize this video tape. Could you
5 tell us what is depicted on it this video tape?

6 A. Myself, Tommy Webb and Randi Gaunt going into Wal-Mart and
7 shopping around.

8 Q. And how were you able to identify what's on this video tape?

9 A. Um, by the people. I mean, I know myself. I know Tommy, and
10 I know what Randi looked like.

11 MR. RICHARDSON: Your Honor, at this time I would move to
12 introduce State's #27 into evidence and publish it.

13 THE COURT: You may publish. Are you set up with
14 equipment to publish?

15 MR. RICHARDSON: Yes, sir.

16 (The Court Reporter accepts State's Exhibit #27 into evidence
17 and returns it to the Solicitor for publishing to the jury.)

18 Q. And this video tape accurately represents Wal-Mart on the
19 morning of October 22, 2005?

20 A. Yes, sir.

21 THE COURT: I'll go around.

22 Alright. You may publish it.

23 MR. RICHARDSON: Your Honor, if I could have Ms. Hines come
24 down?

25 THE COURT: You may come down.

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 (The witness stands before the video and the jury box.

2 The Solicitor plays video tape for viewing by the jury, and
3 during that time comments are made by both the Solicitor and the
4 witness as reflected herein.)

5 Q. Now, Joy, tell us what we're seeing here.

6 A. That's myself, Tommy Webb and Randi with the - - -

7 (Court Reporter asks witness to stand near microphone so that
8 she might be heard by the Court Reporter.)

9 Q. Alright.

10 Once again, who is this person right here?

11 A. That's me.

12 Q. That's you?

13 A. Yes, sir.

14 Q. And where are y'all?

15 A. In Wal-Mart.

16 Q. And who is that fellow with the ball cap on in Wal-Mart?

17 A. The one with the darker shirt is Tommy. The one with the
18 white shirt is Randi.

19 Q. And, once again, you say, "Tommy." Who is that?

20 A. Tommy Webb.

21 Q. The defendant?

22 A. Yes, sir.

23 Q. Okay. And this?

24 A. That's me.

25 Q. What are you doing here?

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Um, looking at, if I'm not mistaken, that there is VCR's, DVD
2 players, tv's.

3 Q. And with the black hat on right here, who is that?

4 A. Tommy Webb.

5 Q. And this is 5:37 in the morning?

6 A. Yes, sir.

7 Q. October 22, 2005?

8 A. Yes, sir.

9 Q. And you remember this?

10 A. Yes, sir.

11 Q. And what was the purpose once agin for being in Wal-Mart?

12 A. To buy something on the credit cards.

13 Q. And why were y'all attempting to buy something on the credit
14 cards?

15 A. To resell it for the cash.

16 Q. You ever see the name on the credit card?

17 A. Yes.

18 Q. Did it say Thomas E. Webb?

19 A. No, sir.

20 Q. Did it say Randi Gaunt?

21 A. No, sir.

22 Q. It didn't say Joy Hines either?

23 A. No, sir.

24 Q. So about how long were y'all about Wal-Mart?

25 A. There again, my guess would be I don't know, forty minutes,

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 fifty minutes. I don't know, though. My perception was not very
2 keen at that time.

3 Q. No doubt about it. The one in the dark shirt, plaid ball
4 cap, that's Thomas Webb?

5 A. The bigger of the two, yes, that's Tommy Webb.

6 Q. The female is you?

7 A. The female is me.

8 Q. And the fellow in the white shirt - -

9 A. Is Randi.

10 Q. - - was Randi Gaunt?

11 A. Yes, sir.

12 MR. RICHARDSON: Your Honor, I believe we've seen enough.
13 We can continue to watch it. It's forty-five minutes to an hour.

14 THE COURT: Go ahead. That's fine.

15 MR. RICHARDSON: I'll move this out of the way.

16 There we go.

17 THE COURT: Remove the - - -

18 MR. RICHARDSON: Mr. Axelrod indicated that he was going to
19 be using the video tape, Your Honor.

20 THE COURT: Alright. You through with your examination?

21 MR. RICHARDSON: No, sir.

22 THE COURT: Then move it so I can view the jury.

23 MR. RICHARDSON: Yes, sir.

24 THE COURT: And we'll put it back for Mr. Axelrod.

25 MR. RICHARDSON: Yes, sir.

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 (The Solicitor moves the television with the player out of the
2 view of the jury and the Court.)

3 THE COURT: Okay. Thank you.

4 Go ahead.

5 Q. In that October, 2005, you saw the video?

6 A. Yes, sir.

7 Q. You ever have the opportunity to talk to the police?

8 THE COURT: Has that video been introduced into evidence
9 yet?

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

11 THE COURT: The reason I say that. Madame Foreman, that
12 video will be available to you if you need it during your
13 deliberations, and we'll probably - - if you decide to use it,
14 we'll call you out here and view it out here.

15 MR. AXELROD: Your Honor, if that's not in evidence, we have
16 no objection. At this point we want to make sure it is in
17 evidence.

18 COURT REPORTER: Your Honor, it is in evidence.

19 THE COURT: It is now in evidence, without objection.

20 Go ahead.

21 Q. You talked with law enforcement?

22 A. Yes, sir.

23 Q. Actually, it was - - you talked with Detective Mann, correct?

24 A. Yes, sir.

25 Q. Do you remember when that was?

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. The following Wednesday night, I believe.

2 Q. And - - did she Mirandize you?

3 She gave you your Miranda rights?

4 A. Yeah.

5 I'm sorry. It first took me a minute to know what that is.

6 Q. That's alright. That's alright.

7 And did you voluntarily give a statement after that?

8 A. Yes, sir.

9 Q. And is that, basically, the same statement that you've given
10 here today?

11 A. Yes, sir.

12 Q. Including the trip to Wal-Mart?

13 A. Yes, sir.

14 Q. Including the defendant had a gun when he got in the car?

15 A. Yes, sir.

16 Q. And, in addition, while you were giving that statement to
17 Officer Mann, did you get any phone calls?

18 A. Yes, I did.

19 Q. And where were you talking with Officer Mann?

20 A. In the house.

21 Q. It was in your house?

22 A. Yes, sir.

23 Q. The house right here in Myrtle Beach?

24 A. Yes, sir.

25 Q. That house you shared with the defendant?

MS. HINES - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Yes, sir.

2 Q. So, you got a phone call while you were talking to the
3 officer?

4 A. I did.. Multiple phone calls.

5 Q. And you got multiple phone calls.

6 Did you ever find out who was calling?

7 A. Tommy Webb was calling.

8 Q. How did you know it was Tommy?

9 A. Um, it was my cell phone that he had picked up and taken with
10 him.

11 Q. Had picked up and taken with him.

12 And could you tell us what he told you on the phone?

13 A. Um, he asked me to bring him his thing, and I said what thing
14 was he talking about?

15 And he said his gun.

16 And I said, "Where did you put it? I don't know where it is
17 to bring it."

18 And he told me in was in the bedroom, I think, under some
19 clothes on top of a suitcase.

20 Q. Now, when he said to bring his gun, did you know what that
21 meant?

22 A. When he said gun I did. When he said thing at first, I
23 didn't know what he meant.

24 Q. And that gun, was that your former gun?

25 A. Yes, sir.

MS. HINES - CROSS EXAMINATION BY MR. AXELROD

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1 Q. His now?

2 A. Un-huh.

3 Q. Who was giving the marching orders that night?

4 A. Tommy Webb.

5 Q. Who had the gun?

6 A. Tommy Webb.

7 Q. Who told you to go to Wal-Mart?

8 A. Tommy Webb.

9 Q. And who told you to go get his gun?

10 A. Tommy Webb.

11 Q. And you don't have any deals with the State?

12 A. No, sir.

13 Q. Thank you, Ms. Hines.

14 If you'll just answer any questions Mr. Axelrod may have.

15 MR. AXELROD: Court's indulgence, Your Honor.

16 CROSS EXAMINATION BY MR. AXELROD:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. You'd say anything to get out of the charges that are against
20 you, won't you?

21 A. No, sir. I haven't been promised I would be getting out of
22 them.

23 Q. You have burglary in the first degree, correct?

24 A. Yes, sir.

25 Q. And you're facing from fifteen to life, aren't you?

MS. HINES - CROSS EXAMINATION BY MR. AXELROD

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1 A. Yes, sir.

2 Q. You have two kidnapping charges, correct?

3 A. Yes, sir.

4 Q. I think they carry up to thirty years?

5 A. That's what I've been told.

6 Q. So, you've got sixty years there and fifteen to life on the
7 burglary?

8 A. Yes, sir.

9 Q. And you have two armed robbery charges?

10 A. Yes, sir.

11 Q. And they carry from ten to thirty years?

12 A. Yes, sir, as far as I know.

13 Q. How many years is that? Have you added that up?

14 A. No, I haven't. I try not to think about that.

15 Q. Let's add it up.

16 We got two armed robberies. We got sixty years.

17 A. Could be.

18 Q. Kidnappings.

19 A. Yeah.

20 Q. Two armed robberies, kidnappings would be one hundred and
21 twenty or sixty. So that'd be a hundred and twenty years.

22 And burglary in the first degree, fifteen to life.

23 A. Yes, sir.

24 Q. So, you could receive a hundred and thirty-five years to life?

25 A. I could.

MS. HINES - CROSS EXAMINATION BY MR. AXELROD

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1 Q. Now, would it surprise you - - you gave a statement to the
2 police, correct?

3 A. Yes, sir.

4 Q. And your co-defendant, Mr. Gaunt, gave a statement to the
5 police, correct?

6 A. I'm assuming so.

7 Q. Did they ever let you hear his statement?

8 A. No.

9 Q. Would it surprise you your statements are different?

10 MR. RICHARDSON: Your Honor, that's pitting.

11 THE COURT: No, sir.

12 The jury will determine whether or not they are different.

13 Go ahead.

14 MR. AXELROD: Well, when - - I guess when they call Mr. Gaunt
15 up, then they'll do that.

16 Q. Now, you said - - let me ask you this.

17 You say when Tommy gets to the car, you guys go and get gas
18 and you get beer?

19 A. No, not at first.

20 Q. You get gas?

21 A. Yes, sir.

22 Q. From the time you got gas, then did you go to Wal-Mart?

23 A. Yes, sir.

24 Q. Okay.

25 Now, you went straight from the Boardwalk Motel to getting gas

MS. HINES - CROSS EXAMINATION BY MR. AXELROD

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1 at 17th South on Kings Highway?

2 A. I wouldn't say it was straight. I don't remember if it was
3 straight from point A to point B but that was the next stop, yes,
4 sir.

5 Q. Good. That's all I need. I'm not trying to confuse you.

6 Whether you drove around in circles or whether you took a bee-
7 line, you went from the motel and eventually your next designation
8 or stop was at the Circle K on 17 in Myrtle Beach?

9 A. Yes, sir.

10 Q. And you got gas.

11 A. Yes, sir.

12 Q. Who pumped the gas?

13 A. If I remember correctly, I did.

14 Q. Who paid for the gas?

15 A. It - - I paid for it with the card at the pump.

16 Q. You paid for it?

17 A. Yes, sir.

18 Q. Okay.

19 Now, when you left the gas station, I think you testified that
20 you went to Wal-Mart?

21 A. Yes, sir.

22 Q. Not the Wal-Mart on 501 where you shop with your son but you
23 went to the Wal-Mart on 544.

24 A. Yes, sir.

25 Q. And how long did it take you to get to the Wal-Mart on 544

MS. HINES - CROSS EXAMINATION BY MR. AXELROD

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1 from the time you were at 17 South and Kings Highway?

2 A. I couldn't tell you in minutes. I can tell you there was no
3 traffic that night.

4 Q. Twenty minutes?

5 A. Maybe fifteen, twenty, yes. Something like that.

6 Q. Okay.

7 A. My perception wasn't very good.

8 Q. So, it would be safe to say that from the time you left the
9 Boardwalk Motel to the time you got to Wal-Mart would have been
10 approximately forty-five minutes?

11 A. Could have been.

12 Q. Because I think the tape will substantiate that that from what
13 the victims had said that you were at the Wal-Mart, I believe, I'm
14 not sure, about ten of five or something like that.

15 A. Somewhere in that area.

16 Q. And then you spent fifty minutes there?

17 A. As I said, to the best of my guess.

18 Q. And your recollection that night of the facts are much better
19 than your recollection today, correct?

20 A. Pardon me?

21 Q. Your recollection of the facts back then two years ago
22 whenever this was, however long it was right now. It was October
23 26 in 2005. So, we're two years and a few months, correct?

24 A. Yes, sir.

25 Q. Okay.

MS. HINES - CROSS EXAMINATION BY MR. AXELROD

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1 Your recollection is better -- was it better then or is it
2 better now?

3 A. Um, it would probably been better then but it was distorted
4 due to I was under a good bit of cocaine at that time.

5 Q. So, you don't even remember -- you don't even know what you
6 knew back then, do you?

7 A. Oh, I knew, yeah, but - - -

8 Q. But you were intoxicated on drugs?

9 A. I was hazy. I was, yes.

10 Q. Okay.

11 And can we look at the video now here?

12 MR. AXELROD: Your Honor, I'm going to go back into the tape.
13 If we can cue that tape up.

14 THE COURT: And I'll permit her to come around if she needs
15 to.

16 MR. AXELROD: Okay.

17 THE COURT: Mr. Richardson, you may come around, too.

18 MR. RICHARDSON: Yes, sir, Your Honor.

19 THE COURT: You may need to help them run the machine.

20 (Mr. Axelrod moves television in front of jury again, and
21 witness stands before the television near the jury box.)

22 Q. Alright.

23 Ma'am.

24 A. Uh-huh.

25 Q. That you.

MS. HINES - CROSS EXAMINATION BY MR. AXELROD

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1 A. That's me.

2 Q. That's Tommy.

3 A. Uh-huh.

4 Q. And that's Randi.

5 A. Yes, sir.

6 Q. And is that Randi wearing a rolled-up t-shirt exposing a
7 muscular biceps with a big tattoo on it?

8 A. It's actually kind of a puny biceps but it does have a big
9 tattoo on it.

10 I'm sorry.

11 Q. That's okay.

12 I'd hate to see what you call mine.

13 Okay.

14 And Tommy's wearing - - what's he wearing?

15 A. I'm not sure if it's a jacket or a long-sleeve shirt.

16 Q. Okay.

17 Have yourself a seat, ma'am, and I'll leave this here for a
18 second.

19 (Witness resumes her seat in the witness stand.)

20 Q. Here's a question I have to ask you, ma'am, today.

21 A. Yes, sir.

22 Q. Why on October 26th at 10:15 in the evening you told the police
23 that when Tommy got back into the car - - because he hadn't gone
24 anywhere but from the car to Wal-Mart, you told the police he was
25 wearing a camouflage jacket?

MS. HINES - CROSS EXAMINATION BY MR. AXELROD

143

1 A. Well, because my perception wasn't good, and I hadn't seen the
2 tape then.

3 Q. But you don't remember what you said back then, do you,
4 because you didn't know, did you? You made that up?

5 A. No, - - -

6 Q. It was when you see today - - -

7 THE COURT: Wait a minute, hold. She's entitled to answer
8 your question.

9 MR. AXELROD: I'm sorry, Judge. I got carried away.

10 THE COURT: I know you did but let her get carried away for
11 a minute.

12 Go ahead.

13 A. I could have been mistaken but, no, I didn't try to make it
14 up.

15 Q. But you - - whether you said he was wearing a jacket that was
16 yellow or with butterflies or he was wearing - - -

17 THE COURT: Wait a minute, now. Ask a specific question.

18 Q. You specifically said a camouflage jacket.

19 A. I may have. I don't remember what I said then.

20 Q. I - - I'm going to show it to you.

21 THE COURT: Now, Mr. Axelrod, she does not deny that she
22 said it. She's already said she may have.

23 Q. If I were to tell you that's what you said, would that - -

24 A. I would believe you, yes.

25 Q. - - you'd believe me?

MS. HINES - CROSS EXAMINATION BY MR. AXELROD

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1 A. Yes, sir.

2 Q. Fair enough.

3 I don't need to waste anymore time showing that you did say
4 that.

5 And I think you testified that Tommy made you use the credit
6 card and buy everything?

7 A. Yes, sir.

8 If you know Tommy, you know he can't read or write very well.
9 So, he did insist I use them.

10 Q. He forced you.

11 A. He didn't beat me and force me but he told me to.

12 Q. Okay. Alright.

13 MR. AXELROD: The video, audio man, take me back.

14 Q. So, you were walking down that aisle pushing that cart having
15 a good time, weren't you?

16 A. I wouldn't say I was having a good time but I was pushing the
17 cart, yes, sir.

18 Q. Okay.

19 MR. AXELROD: Let's get to where she's pushing the cart.

20 Let's slow it down. Let it play regular. Back it up and just
21 let it play regular.

22 (Mr. Axelrod has video playing off and on during questioning.)

23 Q. Ma'am - - you can stay there. You can stay there.

24 I'll ask the question and let the jury see.

25 And you just walking down the aisle looking at stuff, weren't

MS. HINES - CROSS EXAMINATION BY MR. AXELROD

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1 you?

2 A. Uh-huh.

3 Q. You were on a shopping spree.

4 A. Actually, I was trying to spend more than was on the card so
5 the store would keep them.

6 Q. Absolutely.

7 That's sounds good. Did you ever tell that the police?

8 A. Uh-huh.

9 Q. When?

10 A. Several times.

11 Q. We're going to go back to that.

12 MR. AXELROD: Stop right there.

13 Q. It's your testify today that you told this detective right
14 here, you told her that you tried to spend over the limit so they
15 could keep the card?

16 A. I - - I - - suppose I told her that that night. I know that
17 that's what was happening.

18 Q. You just testified under oath that you told the police several
19 times - -

20 A. Uh-huh, I did.

21 Q. - - that you told - - now which is it? Did you tell the
22 police that or not?

23 A. I did but I talked to them several times. I don't know that
24 I stated that that night but I did state it several times.

25 Q. How many statements did you give the police?

MS. HINES - CROSS EXAMINATION BY MR. AXELROD

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1 A. Um, I talked to them two or three times at J. Reuben long,
2 once at my house. So, I don't know.

3 Q. When you talked to Detective Mann, did you tell her that - -
4 I'm only asking you about this woman right here. Did you tell her
5 that you were hoping to spend over the limit?

6 A. You would know that better than me. You've got the
7 transcript.

8 I - - I don't remember.

9 Q. Well, would it surprise you that you never did? And was it
10 a truthful statement to say you did tell her that?

11 A. Yes, it was truthful.

12 (Mr. Axelrod plays video further.)

13 MR. AXELROD: I'm almost there, Your Honor. I'm almost
14 there.

15 Q. And isn't it true that Tommy's hair is half-way down his back?

16 A. ~~That's a mullet,~~ yes, sir.

17 Q. What?

18 A. Yes, sir. That's a mullet as I said he had.

19 Q. A mullet.

20 So, he had hair going down his back?

21 A. Uh-huh.

22 Q. And your charges are still pending? Is that correct?

23 A. That's correct.

24 Q. And isn't it true that your co-defendant already pled? Mr.
25 Gaunt already pled - - -

MS. HINES - CROSS EXAMINATION BY MR. AXELROD

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1 MR. RICHARDSON: Your Honor - - -

2 THE COURT: Whoa, whoa.

3 What's your objection?

4 MR. RICHARDSON: Your Honor, she's not an attorney. She's
5 not the co-defendant's attorney. She may not have any knowledge
6 whether a defendant has pled. It has no place here.

7 MR. AXELROD: I'll ask her if she has that knowledge.

8 THE COURT: No, sir.

9 What - - what is the question?

10 MR. AXELROD: I asked her whether or not she knows if her co-
11 defendant Mr. Gaunt has pled to charges.

12 THE COURT: I don't think that's pertinent to our inquiry
13 here. I'm not going - - I'm not going to allow that.

14 MR. AXELROD: Okay.

15 THE COURT: I see no reason to get into that one way or the
16 other.

17 Q. But you have not pled to your charges?

18 A. No, sir.

19 Q. And you have sat in jail pending the outcome of this case?

20 A. Yes, sir, I'm still in jail.

21 Q. And the State said that they would not deal with your case
22 until after you testified?

23 A. They haven't said anything period about it. I just haven't
24 heard. I haven't been called to court. That's all I know.

25 Q. But you're not here on trial with Tommy today, are you?

MS. HINES - CROSS EXAMINATION BY MR. AXELROD

148

1 A. No, sir.

2 Q. Why is that?

3 MR. RICHARDSON: Your Honor.

4 THE COURT: Wait minute, now. That -- that's not a proper
5 question to ask her. That's a Solicitor's -- he can call it or
6 not call it. It's not for her to say when they going to try her or
7 with who.

8 I sustain his objection.

9 MR. AXELROD: I'll ask the question this way.

10 Q. You're not on trial today, are you?

11 THE COURT: I can answer that question for you.

12 No.

13 MR. AXELROD: I was trying to get her to answer that
14 question.

15 THE COURT: No, sir. I tell you as a matter of law. She
16 is not on trial today.

17 MR. AXELROD: Absolutely.

18 THE COURT: I wouldn't want to confuse the jury on that
19 issue.

20 MR. AXELROD: Absolutely, Your Honor.

21 THE COURT: I thought you might agree with me.

22 Now, next question.

23 MR. AXELROD: I love you, Judge.

24 Court's indulgence, Your Honor.

25 Q. Did you ever take some of this jury and pawn it?

MS. HINES - REDIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Yes, sir.

2 Q. You did?

3 A. All of it.

4 Q. No further questions.

5 THE COURT: You may come - - do you have any further
6 inquiry?

7 Please move - - please move the television.

8 MR. RICHARDSON: Judge, real quick.

9 THE COURT: You may be seated, Mr. Axelrod.

10 MR. RICHARDSON: I'll move that out.

11 (The television is moved away from the view of the Court and
12 the jury.)

13 REDIRECT EXAMINATION BY MR. RICHARDSON:

14 Q. Mr. Axelrod asked you did Tommy force you to go to Wal-Mart.
15 Did you have a gun?

16 A. No, sir.

17 Q. Tommy have a gun?

18 A. Yes, sir.

19 Q. How many shots that thing fire?

20 A. It had five, and I know it was loaded.

21 Q. And could that gun reach across Wal-Mart and get you if he
22 tried?

23 A. I don't think he ever got that far.

24 Q. So, I'm saying if he would have fired that gun in Wal-Mart, it
25 could have hit you?

MS. HINES - RE-CROSS EXAMINATION BY MR. AXELROD

150

1 A. Yes, sir.

2 MR. RICHARDSON: No further questions, Your Honor.

3 RE-CROSS EXAMINATION BY MR. AXELROD:

4 Q. If you pawned the jury, how come it ends up - - -

5 MR. RICHARDSON: Your Honor, this goes beyond the matter of
6 redirect.

7 THE COURT: No, sir. You elected to ask one more question
8 which was unnecessary. I'm going to let him go forward.

9 Q. If you pawned all the jury, how come it ends up on Tommy?

10 A. I went and got it back but he took it.

11 MR. AXELROD: Nothing further.

12 THE COURT: Alright, sir.

13 You may now come down.

14 (The witness leaves the witness stand.)

15 THE COURT: Call your next witness.

16 MR. RICHARDSON: The State would call Christina Van Houten.

17 (The witness takes the witness stand.)

18 CHRISTINA VAN HOUTEN, being duly sworn,
19 testifies as follows:

20 DEPUTY CLERK OF COURT: State your name for the Court.

21 MR. RICHARDSON: Your Honor, I'd ask that witness be
22 excused.

23 THE COURT: Yes, sir.

24 MS. VAN HOUTEN: Christina Van Houten.

25 MR. RICHARDSON: Before anybody gets nervous, this is a

MS. VAN HOUTEN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 safe weapon. It's got a binder through it.

2 THE COURT: I have a rule in my court when weapons are
3 presented. First, I want to make sure they are unloaded.

4 And if you point the pistol anywhere, I have another rule.
5 Point it to the lawyers and not me, the judge.

6 MR. AXELROD: Hey, wait a second.

7 THE COURT: Or me or the jury.

8 MR. AXELROD: Wait a second.

9 (Laughter in the courtroom.)

10 THE COURT: Make sure it's unloaded, now.

11 MR. RICHARDSON: It is unloaded, Your Honor.

12 THE COURT: Alright.

13 You may now proceed.

14 MR. AXELROD: I need to check that gun, Your Honor.

15 THE COURT: No, sir. I've checked it. It's fine.

16 MR. AXELROD: Okay.

17 I know that Mr. Richardson just might want to turn around and
18 point it at me.

19 MR. RICHARDSON: I'm just showing you that - - -

20 THE COURT: The gun is unloaded. I saw the chambers.

21 DIRECT EXAMINATION BY MR. RICHARDSON:

22 Q. Mrs. Van Houten.

23 A. Yes.

24 Q. Please tell us where you're currently employed and how long
25 and in what capacity.

MS. VAN HOUTEN - DIRECT EXAMINATION BY MR. RICHARDSON

152

1 A. Myrtle Beach Police Department. I'm a Property and Evidence
2 Clerk, and I'm beginning my ninth year at the Myrtle Beach Police
3 Department.

4 Q. And as a Property and Evidence Clerk, what do you do?

5 A. I take evidence from locked boxes, ah, enter them into the
6 computer by way of a Property Sheet. Um, lock the evidence in, ah,
7 what is called a cash vault and hold the evidence until an officer
8 calls for it, it has to go to court or some such other destination.

9 Q. Now, you were so employed back in October of '05?

10 A. Yes, sir.

11 Q. Now, with regard to the present case against this defendant
12 and during the course of your duties as Evidence Custodian with the
13 City of Myrtle Beach Police Department, did you take into custody
14 evidence relating to this case?

15 A. Yes.

16 Q. I want to show you what's been previously been marked as
17 State's #28 and #29 for I.D.

18 A. Okay.

19 Q. Do you recognize these items?

20 A. Yes, I do. They're evidence that I took out of the lock-box
21 in the police department.

22 Q. Okay.

23 And how can you be sure that these are items that you took out
24 of evidence?

25 A. If I can look at the serial number, I can be -- the gun,

MS. VAN HOUTEN - DIRECT EXAMINATION BY MR. RICHARDSON

153

1 obviously, looks like the evidence I have but - - the serial number
2 matches what's on the Property Sheet.

3 Q. That's regarding this case?

4 A. Yes, sir.

5 Q. And how about this? Can you tell me what that is?

6 A. These are four rounds, unfired rounds.

7 Okay.

8 Q. And how can you identify those?

9 A. With the - - what is called the UCR number,

10 Q. And these were submitted into evidence together?

11 A. Yes, they were.

12 Q. Do you recall who presented these into evidence or where you
13 retrieved these items from?

14 A. They, um, were in a locked box in the lock-box area in the
15 Myrtle Beach Police Department.

16 Q. You say they were in a locked box - - lock-box area? Tell me
17 about this lock-box process.

18 A. Um, first thing in the morning, ah, I collect evidence from,
19 ah, various areas in the police department. One of those areas is
20 a lock-box areas.

21 The officers, um, will bring evidence in. They will put the
22 Property Sheet which explains the evidence, describes evidence and
23 the evidence into a lock-box area, and it locks upon pushing a
24 button, and then - - -

25 Q. And this locked box, who has access to that locked box?

MS. VAN HOUTEN - DIRECT EXAMINATION BY MR. RICHARDSON

154

1 A. I have access to it and my two co-workers.

2 Q. Could you identify them?

3 A. Yes. Patty Daniels and Peg Neudek.

4 Q. Now, you said you removed these from this lock-box?

5 A. Yes.

6 Q. Only you three - - -

7 A. Right.

8 Q. And maybe the Chief?

9 A. No, not even the Chief. He would have to get us.

10 Q. So, only you three have access to the lock-box. Y'all take
11 items out.

12 A. Yes.

13 Q. What do you do besides take out the lock-boxes?

14 A. Well, we - - hopefully, they always have a Property Sheet.

15 In this case there was a property sheet with the evidence.

16 I examine the property sheet to make sure everything is filled
17 out correctly on it. I look at the evidence to make sure that what
18 the officer is describing on the property sheet is the actual
19 evidence that I'm holding in my hand.

20 Q. At this juncture you - -

21 A. And then I - - -

22 Q. - - you knew who dropped these rounds and this pistol into
23 the drop box.

24 A. Robert Ursits, I believe, was the officer.

25 Q. And how can you tell that?

MS. VAN HOUTEN - DIRECT EXAMINATION BY MR. RICHARDSON

155

1 A. He had signed the property sheet.

2 Q. Now, upon receiving these - - excuse me. I believe I cut you
3 off.

4 What did you do with them after you filled out your evidence
5 sheet?

6 A. Well, after I examined the evidence sheet and made sure
7 everything matched, then I signed the property sheet myself to show
8 when I accepted the evidence: My name, lock-box area or where
9 ever it has come from, and then the date and time.

10 Q. And then what did you do with the actual evidence?

11 A. Then I, um, boxed up the evidence and put it in my cash vault
12 on a shelf where it's of an appropriate size.

13 Q. You put it in - - in another lock-box?

14 A. Ah.

15 Q. A vault?

16 A. It's in a cash vault, yes. It's in a big vault door, and
17 behind that is a room, square room, and there are shelves and bins
18 and boxes.

19 Q. Okay, and who has access to that?

20 A. I have access to that and Peg Neudek.

21 Q. Okay.

22 So, only two of y'all have access to that.

23 A. That's right, and that's in my office which is locked.

24 Q. So, this particular weapon, Serial Number Taurus - - Serial
25 Number TA - - serial numbers, are they unique to each weapon?

MS. VAN HOUTEN - DIRECT EXAMINATION BY MR. RICHARDSON

156

1. A. Yes.

2. Q. Can you tell if this weapon was ever sent off for any kind of
3 forensic testing?

4. A. Yes, it was.

5. According to the property sheet I took it to, um, Charleston
6 County where it was entered into IBIS.

7. Q. And did you ever have - - did you ever get this weapon back?

8. A. Yes, I did. I brought it back from the same - - that same
9 facility.

10. Q. After it was tested?

11. A. After it was tested and put it back in the cash vault.

12. Q. Do you know if there were any forensic reports generated about
13 this weapon?

14. A. Yes, there was - - from the IBIS Tech.

15. And that, ah, should be with the property sheet.

16. Q. And what was the purpose of taking it for forensic testing?

17. A. To see if it's been used in a crime somewhere else.

18. He fires the weapon and gets a signature from the gun and
19 matches that against other data in his computer and, ah, and finds
20 out if it was used somewhere else - - in another crime scene.

21. Q. To tell if it has been fired?

22. A. Right.

23. Q. If you don't fire the gun, it doesn't leave any evidence of a
24 round being fired, correct?

25. A. That's right.

MS. VAN HOUTEN - CROSS EXAMINATION BY MR. AXELROD

157

1 Q. And no doubt about it, this is the weapon that you received
2 into the lock-box and you received back from IBIS?

3 A. Yes.

4 Q. And I don't believe I told you but could you tell me when you
5 got this out of the lock-box what was the date on that?

6 A. 10/28 of 2005.

7 Q. I believe that's all the questions I have for you.

8 A. Okay.

9 Q. Answer any questions the defense may have.

10 THE COURT: At this time, these instruments are only in for
11 identification?

12 MR. RICHARDSON: Yes, sir, Your Honor.

13 THE COURT: Alright.

14 You may proceed.

15 CROSS EXAMINATION BY MR. AXELROD:

16 Q. Good afternoon.

17 A. Hello.

18 Q. Did you bring your report with you?

19 A. Ah, the, um, Brad Richardson has the property sheet.

20 Q. Because - - -

21 A. The original property sheet.

22 Q. Because you said that you sent it out for forensic testing and
23 forensic reports were generated.

24 A. Yes.

25 Q. Do you have them with you?

MS. VAN HOUTEN - CROSS EXAMINATION BY MR. AXELROD

158

1 A. Ah, it's on the back of the packet of the property sheets.

2 MR. AXELROD: I was looking at this, Your Honor, because I've
3 never seen it.

4 Q. Let me ask you a question.

5 A. Uh-huh.

6 Q. Did you receive this gun in this condition?

7 A. Uh - - -

8 Q. Basically?

9 A. Yes.

10 Q. And - - and - - and it hasn't changed any way, shape or form,
11 has it?

12 A. No.

13 Q. And when you got it, then you sent it to Charleston to be shot
14 into something like you see on tv like water or a barrel or
15 something?

16 A. Yes.

17 Q. And then they take the striations, and then they mark it and
18 they catalog it and they check it?

19 A. Right.

20 Q. Okay.

21 When you received that gun, that was the gun that was picked
22 up in this case, correct?

23 A. Yes.

24 Q. It was just given to you?

25 A. Well, it was locked up in the area in the lock-box.

MS. VAN HOUTEN - CROSS EXAMINATION BY MR. AXELROD

159

1 Q. Okay.

2 Was there any fingerprint dust on that gun when you received
3 it?

4 A. Not to my knowledge.

5 Q. Take a good look at it because I don't think it's changed.

6 A. Okay.

7 Q. And tell me if there is any fingerprint dust on that gun.

8 A. No, there's not.

9 Q. Okay.

10 MR. AXELROD: That's all I have.

11 Thank you.

12 THE COURT: You may come down, and thank you.

13 MS. VAN HOUTEN: Thank you.

14 (The witness leaves the witness stand.)

15 MR. AXELROD: This witness may be excused.

16 THE COURT: I will excuse you. Thank you.

17 You are now excused from your subpoena.

18 Call your next witness.

19 MR. RICHARDSON: The State would call Patty Daniels.

20 (The witness takes the witness stand.)

21 PATTY DANIELS, being duly sworn, testifies

22 as follows:

23 DEPUTY CLERK OF COURT: Please state your name for the Court.

24 MS. DANIELS: Patty Daniels.

MS. DANIELS - DIRECT EXAMINATION BY MR. RICHARDSON

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1 DIRECT EXAMINATION BY MR. RICHARDSON:

2 Q. Good afternoon, Ms. Daniels.

3 A. Good afternoon.

4 Q. Could you please tell us the place of your employment and how
5 long you work in that capacity?

6 A. I work for the Myrtle Beach Police Department. I work in
7 Property Evidence, and I've been there twenty years.

8 Q. Okay.

9 Could you describe your duties as Evidence Custodian?

10 A. I intake all the evidence the officers collect or Crime Scene
11 collects. They'll either hand it to us directly or it's in a
12 lock-box system. We sign for it, and we put it on shelves, and we
13 just keep it until they need it for court.

14 Q. And in the present case, you were Evidence Custodian back in
15 October of 05?

16 A. Yes, sir.

17 Q. Did you have an opportunity to take into custody evidence
18 pertaining to this case?

19 A. Yes, sir.

20 Q. I'm going to show you what has been previously marked in as
21 State's #12 and #13.

22 MR. AXELROD: What numbers are they?

23 MR. RICHARDSON: #12 and #13.

24 Q. Do you recognize these two items?

25 A. It appears to be the camera that was collected.

MS. DANIELS - DIRECT EXAMINATION BY MR. RICHARDSON

161

1 Yes, sir.

2 Q. And how do you recognize these items?

3 A. Ah, it matches up to my property sheet description and the
4 serial number that matches it.

5 Q. So the serial number on this camera matches the one on the
6 property sheet?

7 A. Yes, sir.

8 Q. And you took this camera into custody?

9 A. No, sir, I didn't. Officer Neudek did.

10 Q. Officer Neudek did. I apologize for that.

11 A. No problem, sir.

12 Q. Well, I read my sheets wrong.

13 Ah, did you take the jewelry into custody?

14 A. Yes, sir.

15 I handled that camera back to the victim.

16 I sent it back to the victim.

17 Q. You have seen that?

18 A. Yes, sir.

19 Q. But you did end up mailing - -

20 A. That camera.

21 Q. - - that camera back to the victims?

22 A. Yes, sir.

23 Q. No doubt about it was this camera?

24 A. Yes, sir.

25 Q. Any other involvement with this case?

MS. DANIELS.- DIRECT EXAMINATION BY MR. RICHARDSON

162

1 A. Ah, the jewelry. I took the jewelry in, and I mailed it back
2 to the victims, also.

3 Q. That's the jewelry Mrs. Price was talking about earlier.

4 A. I don't know. I wasn't in here. So, I don't know.

5 Q. Let me show you what has been previously been marked and
6 introduced into evidence as State's #1.

7 A. Yes, sir. A yellow necklace with a pendant and the yellow
8 ring with a blue stone, a pair of earrings and a black pouch.

9 Q. And they are in connection with this case?

10 A. Yes, sir.

11 Q. And you mailed them back to Mrs. Price?

12 A. Yes, I did, UPS, I sent it back to her.

13 Q. Thank you.

14 If you'll answer any questions Mr. Axelrod may have.

15 MR. AXELROD: No questions.

16 MS. DANIELS: Alright.

17 Thank you.

18 MR. AXELROD: Have a nice day.

19 THE COURT: You may come down. Thank you.

20 MS. DANIELS: Thank you.

21 (The witness leaves the witness stand.)

22 MR. RICHARDSON: The State would call Peg Neudek.

23 THE COURT: You are now excused from your subpoena.

24 MS. DANIELS: Thank you. Thank you so much.

25 (The witness takes the witness stand.)

MS. NEUDEK - DIRECT EXAMINATION BY MR. RICHARDSON

163

1 PEG NEUDEK, being duly sworn, testifies as
2 follows:

3 DEPUTY CLERK OF COURT: State your name for the Court.

4 MS. NEUDEK: Peg Neudek.

5 DIRECT EXAMINATION BY MR. RICHARDSON:

6 Q. Good afternoon, Ms. Neudek:

7 Would you please tell us the place of your employment, how
8 long and in what capacity?

9 A. I'm employed by the Myrtle Beach Police Department as an
10 Evidence Clerk. I've been there six years.

11 Q. I believe everybody knows what an Evidence Clerk does at this
12 time.

13 I want to show you what has been previously marked as State's
14 Exhibits #12 and #13. Do you recognize these items?

15 A. Yes, sir.

16 Q. And how do you recognize these items?

17 A. They were placed into evidence. Ah, I received them into
18 evidence on October 28, 2005.

19 Q. And where did you - - from whom did you receive these items?

20 A. Um, Officer Ursits placed them into a lock-box on the evening
21 of the 27th, and I collected them the following morning.

22 Q. And what are these items?

23 A. A camera.

24 Q. Specifically?

25 A. A Minolta camera.

MS. NEUDEK - CROSS EXAMINATION BY MR. AXELROD

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1 Q. And State's #13 shows?

2 A. The serial number.

3 Q. Is that how you were able to identify this particular camera?

4 A. Yes.

5 Q. And that's the camera taken into evidence in this case?

6 A. Yes.

7 Q. And you show it was taken into evidence from Robert Ursits?

8 A. Correct.

9 Q. Thank you. If you'll answer any other questions the defense
10 may have.

11 THE COURT: Mr. Axelrod, you have any questions?

12 CROSS EXAMINATION BY MR. AXELROD:

13 Q. And the only time that you saw this evidence, the camera, was
14 when you were in the police station?

15 A. Correct.

16 MR. AXELROD: That's all, Your Honor.

17 THE COURT: You may come down and are excused from your
18 subpoena.

19 We thank you.

20 Next witness

21 (The witness leaves the witness stand.)

22 MR. RICHARDSON: Robert Ursits.

23 Thank you, ma'am.

24 (The witness takes the witness stand.)

OFFICER URSITS - DIRECT EXAMINATION BY MR. RICHARDSON

165

1 OFFICER ROBERT URSITS, being duly sworn,
2 testifies as follows:

3 DEPUTY CLERK OF COURT: Please state your name for the Court.

4 OFFICER URSITS: Robert Ursits, U-r-s-i-t-s.

5 DIRECT EXAMINATION BY MR. RICHARDSON:

6 Q. And is it Officer, Investigator?

7 A. Officer.

8 Q. Officer, would you please tell us about your place of
9 employment, how long and in what capacity?

10 A. Ah, yes. I work with the Myrtle Beach Police Department.
11 Been there for about nine years. I'm currently in the Crime Scene
12 Division.

13 Q. Referring back in October of 2005, what were your duties?

14 A. I was in the Crime Scene Unit.

15 Q. And in the Crime Scene Unit, what specifically did you do?
16 What kind of - - what kind of details do you perform?

17 A. Oh, yes. We get called up to process, basically, anything
18 that is dictated as a crime scene, ah, all the way from burglary
19 motel rooms up through homicide.

20 Q. And did you have the opportunity to become involved in the
21 investigation of this case against the defendant?

22 A. Yes, sir.

23 Q. In what way?

24 A. On October 26, 2005, at about 10:45 hours, I was called out to
25 Avenue North in reference to a follow-up to an armed

OFFICER URSITS - DIRECT EXAMINATION BY MR. RICHARDSON

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1 robbery.

2 Q. And upon arriving for a follow-up what did you do?

3 A. Ah, yes, sir. When I arrived on the scene, Detective Mann
4 was on scene. She had executed a search warrant. I made contact
5 with her.

6 She advised me that there were two pieces of evidence that she
7 wanted me to photograph and collect. Ah, one was a, um, black in
8 color Taurus 38 special revolver with wood grips, and the second
9 item was a, ah, a camera, Minolta camera.

10 Q. Let me go a little bit back.

11 State's #12 and #13, do you recognize these items?

12 A. Yes, sir.

13 And what do you recognize these items to be?

14 A. This is the Minolta 35 mm camera that I recovered on the
15 scene, ah, serial number .

16 Q. Is this the camera you located at that address?

17 A. Yes, sir.

18 Q. Detective Manning told you to photograph and take into
19 evidence?

20 A. Yes, sir.

21 Q. And, now, State's #11 for I.D., do you recognize that item?

22 A. Yes.

23 Q. And what does that item depict?

24 A. That is the same camera.

25 Q. And could you tell what -- what particular you photographed?

OFFICER URSITS - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. This camera is actually the location. It was in this bag.

2 These photographs were actually taken in succession.

3 The photographs - - the first photograph is the location of
4 the camera. Then we remove it, take detailed photographs of the
5 camera and a detailed photograph of the serial number.

6 Q. Do you know whose bag that is?

7 A. Um, I do not.

8 MR. RICHARDSON: Your Honor, at this time the State would
9 seek to introduce State's #11, #12 and #13.

10 THE COURT: They are introduced. He's seen them.

11 MR. AXELROD: Can I see them?

12 Without objection, Your Honor.

13 THE COURT: Yes, sir. These were those that you
14 previously saw.

15 Go ahead.

16 (The Court Reporter accepts State's Exhibits #11, #12 and #13
17 into evidence.)

18 Q. Looking at State's #11, that's the bag in which you found the
19 camera?

20 A. Yes, sir.

21 Q. And State's #12 and #13 were actually the frontal view of the
22 camera and serial number marking this as this particular camera
23 that you found?

24 A. Yes, sir.

25 The serial number is actually located on the bottom of the

OFFICER URSITS - DIRECT EXAMINATION BY MR. RICHARDSON

168

1 camera.

2 Q. And I believe you also stated that Detective Mann - - she
3 located the firearm?

4 A. Ah, she had indicated to me that the probable location was in
5 the bedroom located under some clothing. Okay.

6 I went inside the bedroom and located a weapon actually lying
7 - - there was a pile of clothes on the bed. The weapon was laying
8 under a pillow near the head of the bed.

9 Q. I'm going to show you what's been previously marked as State's
10 #14, #15 and #16.

11 See if you recognize these, Officer.

12 A. Yes, sir.

13 This is the handgun, the revolver.

14 Q. You recognize these pictures as being the revolver?

15 A. Yes, sir.

16 That first picture is the original location. I had lifted
17 the pillow so that you could see the butt end of the revolver.

18 The next photograph is a, ah, closer photo, and then the third
19 was a photograph of the serial number so that we could document it.

20 Q. These pictures fairly and accurately represent the handgun as
21 you found it?

22 A. Yes, sir.

23 MR. RICHARDSON: Your Honor, at this time the State would
24 seek to introduce these into evidence and publish them.

25 THE COURT: They are admitted.

OFFICER URSITS - DIRECT EXAMINATION BY MR. RICHARDSON

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1 MR. AXELROD: Without objection, Your Honor.

2 THE COURT: Alright, sir.

3 (The Court Reporter accepts State's Exhibits #14, #15 and #16
4 into evidence.)

5 Q. Once again, I know I'm trodding well-worn ground but #14 is
6 the bed on which the handgun was found?

7 A. Yes, sir.

8 Again, the pillow has been lifted so that the gun can be in
9 view.

10 At the time that I located it, it was covered by the pillow.

11 Q. And Detective Mann told you where it was located?

12 A. Yes, sir.

13 Q. And number #15 depicts a closer picture of the gun?

14 A. Yes, sir.

15 Q. And number #16, clearly marked the serial number of the gun?

16 A. Yes, sir.

17 We take close photographs of the weapon for court purposes so
18 that we can identify that it is, in fact, the same weapon that was
19 recovered.

20 Q. And the serial numbers, are they unique to each gun?

21 A. Yes, sir.

22 Q. Now, Officer Ursits, I want to show to you exhibits that have
23 been identified as State's #28 and #29 if you'll take these. Do
24 you recognize these items?

25 MR. AXELROD: Your Honor, is #29 the bullets or the gun?

OFFICER URSITS - DIRECT EXAMINATION BY MR. RICHARDSON

170

1 OFFICER URSITS: #29 is the ammunition.

2 MR. AXELROD: Thank you.

3 Q. To reassure everybody, it's an empty handgun, correct?

4 A. It is, yes, sir.

5 Yes, sir, this is the weapon.

6 Q. And you say this is the weapon, what weapon?

7 A. Ah, this is the weapon that was located at
8 Avenue North on the bed under the pillow.

9 Q. The same gun as depicted in these pictures?

10 A. Yes, sir.

11 Q. The location where it was found in the bedroom?

12 A. Yes, sir.

13 MR. RICHARDSON: Your Honor, at this time the State would
14 - - and what did you do with this handgun and these rounds once you
15 took them into custody?

16 A. Again, I documented the - - whether it was loaded or unloaded.
17 There were four live - - it's actually a five shot revolver, a 38
18 special. There were four live rounds in the chamber. The one
19 chamber that, ah, that the hammer closes on did not contain a
20 round.

21 Taurus cylinders rotate counter-clockwise whenever you pull
22 the trigger or pull the hammer back. So it was in a firing
23 position. If the hammer would have been pulled back or the trigger
24 would have been depressed, the cylinder rotates one counter-
25 clockwise. Thus, it would have been ready to fire.

OFFICER URSITS - DIRECT EXAMINATION BY MR. RICHARDSON

171

1 Q. So, there was a firing round in position to fire?

2 A. Yes, sir.

3 Q. Ready to be used?

4 A. Yes, sir.

5 Q. And this handgun, you took it into custody?

6 A. I did.

7 Q. Once you took it into custody, did you keep it? What
8 happened?

9 A. Ah, what the procedure is, we take it down to the lab. It was
10 unloaded before transport. It's photo documented again, and then
11 we, ah, complete property and evidence reports, and we drop it into
12 Property and Evidence.

13 MR. RICHARDSON: Your Honor, at this time the State would
14 seek to introduce this into evidence.

15 THE COURT: They are introduced.

16 MR. AXELROD: Without objection, Your Honor.

17 THE COURT: Alright.

18 (The Court Reporter accepts State's Exhibits #28 and #29 into
19 evidence.)

20 THE COURT: Leave the ammunition in the custody of the
21 Clerk. I don't like the ammunition and the gun to be together.

22 MR. RICHARDSON: Yes, sir. I understand that.

23 THE COURT: Alright, sir.

24 Q. And if the jury wants to compare the serial numbers on that -
25 - that's inside of the - - the revolver, correct?

OFFICER URSITS - CROSS EXAMINATION BY MR. AXELROD

172

1 A. Correct.

2 It's on the frame of the weapon. That cannot be changed.

3 Q. And is that pretty much the extent of your involvement in this
4 case?

5 A. It is. I collected those two pieces of evidence, documented
6 them and dropped them in Property and Evidence.

7 Q. And you filled out the paperwork?

8 A. Yes, sir.

9 MR. RICHARDSON: No further questions of this witness, Your
10 Honor.

11 THE COURT: Mr. Axelrod.

12 MR. AXELROD: Thank you, sir.

13 CROSS EXAMINATION BY MR. AXELROD:

14 Q. You said you're in the Crime Scene Department?

15 A. Yes, sir.

16 Q. And - - and - - and as Corporal?

17 A. Yes, sir.

18 Q. Now, you - - you said that you processed the scene. Those
19 are your words?

20 A. Yes. Process is a general term.

21 Q. Okay.

22 Tell the jury what that process means.

23 A. Well, it depends on the nature of the crime. We have a
24 multitude of duties. We can be called to actually look for
25 fingerprint evidence. We can be called to examine blood spatter.

OFFICER URSITS - CROSS EXAMINATION BY MR. AXELROD

173

1 In this particular case I was called to collect two items and
2 place them into Property and Evidence.

3 That was the extent of my process.

4 Q. So, you weren't asked to check for fingerprints?

5 A. No, sir.

6 Q. Did anybody check for fingerprints?

7 A. I can't answer for anyone other than myself. I don't know.
8 There were other crime scene techs involved.

9 Q. I want you to look at these photos. Tell me if there's any
10 fingerprint dust on them. I got one in my hand right now.

11 A. I do not see any, no.

12 Q. Thank you.

13 Whose gun was that? Do you know?

14 A. Who - - whose gun was it?

15 Q. Yeah?

16 A. I have no way of telling that?

17 Q. No idea?

18 Whose fingerprint is on this bullet?

19 A. There's no way to tell.

20 Q. Whose fingerprint is on this bullet?

21 A. There is no way to tell until it's processed.

22 Q. How long have you been in Crime Scene?

23 A. Five years.

24 THE COURT: He's not a - - he's not a fingerprint expert.
25 Not been qualified as one.

OFFICER URSITS - CROSS EXAMINATION BY MR. AXELROD

174

1 MR. AXELROD: Well, I'm - - well, what I'm getting at, Your
2 Honor, is I'm asking because I think I know whose fingerprint is on
3 this bullet right now.

4 THE COURT: Well, yours would be one if - - if it's
5 identifiable for instance but he can't testify to that.

6 MR. AXELROD: Let's stick with my fingerprint.

7 THE COURT: Sir?

8 MR. AXELROD: That's where I'm going.

9 THE COURT: No, sir.

10 I'm going to take his testimony as to what he did and his
11 involvement.

12 MR. AXELROD: Absolutely.

13 THE COURT: He's not involved in any fingerprint analysis.

14 MR. AXELROD: I'm not saying he was but he was involved in
15 processing a crime scene. I - - -

16 THE COURT: No, sir. He said his processing was limited
17 to very narrow areas. Now, you cross-examine on the narrow areas
18 that he's testified to.

19 MR. AXELROD: This is cross-examination, Your Honor.

20 THE COURT: I understand that but you still are limited to
21 what he says he did.

22 MR. AXELROD: A little bit of leeway, Your Honor.

23 THE COURT: Sir?

24 MR. AXELROD: A little bit of leeway here, please.

25 THE COURT: Well, let's see what your question is.

OFFICER URSITS - CROSS EXAMINATION BY MR. AXELROD

175

1 MR. AXELROD: I'll move on.

2 Okay.

3 Q. When someone takes a gun such as a revolver, do they have to
4 manually put in each bullet themselves bullet by bullet into the
5 cylinder?

6 A. Not always.

7 There are - - I don't know. There's - - which would enable
8 the person - - there's a mechanical device enables a person to load
9 every round simultaneously.

10 Q. When you picked up this gun, did you do a search of the house?

11 A. A - - I did not do a complete search of the house, no.

12 Q. So you don't know - - let me ask you this question.

13 Where's that statement?

14 Did you do any investigation?

15 A. Define investigation.

16 Q. Anything more than pick up - - anything more than take a
17 couple of pictures, pick up the gun and the camera?

18 A. No.

19 That was the limit - - that was the extent of my duties on
20 scene.

21 Q. Did you think that maybe you should look and see who this bag
22 this camera was in?

23 A. The, ah, female on the scene was in possession of that bag but
24 I don't know who that female was.

25 Q. Did you take a picture?

OFFICER URSITS - CROSS EXAMINATION BY MR. AXELROD

176

1 A. I did.

2 Q. And you never looked in the bag?

3 A. I did.

4 Q. Did you look at any of the papers in the bag?

5 A. I did not.

6 Q. Did you find any -- did you find anything at all in that room
7 being the Crime Scene person that you are that put Tommy even in
8 that room?

9 A. No, sir.

10 Q. Thank you.

11 THE COURT: You may come down. Thank you.

12 Call your next witness.

13 (The witness leaves the witness stand.)

14 MR. RICHARDSON: Thank you, Your Honor.

15 At this time the State would call Officer Selena Mann.

16 MR. AXELROD: Your Honor, may we approach.

17 MR. RICHARDSON: And I would ask that this witness be
18 excused.

19 THE COURT: Yes, sir.

20 OFFICER URSITS: Thank you.

21 (Bench conference off record and in the presence of the jury
22 but outside the hearing of the jury.)

23 THE COURT: Call the witness.

24 (The witness takes the witness stand.)

25

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

177

1 OFFICER SELENA MANN, being duly sworn,
2 testifies as follows:

3 DEPUTY CLERK OF COURT: Please state your name for the Court.

4 OFFICER MANN: Selena Mann.

5 DIRECT EXAMINATION BY MR. RICHARDSON:

6 Q. Good evening approaches now, Officer.

7 A. Good evening.

8 Q. Could you tell us a little bit about yourself? Where you're
9 currently employed, how long and in what capacity?

10 A. I'm currently employed at Conway Police Department as the
11 Training Coordinator. I've been there, um, since November of 2007.
12 Prior to that, I was with the Conway Police Department for ten
13 years - - I'm very sorry - - Myrtle Beach Police Department for ten
14 years, and during that time I worked the jails, patrol, Crime Scene
15 and also did investigations and was a corporal and investigator
16 following detective.

17 Q. And back in October of 2005 what did you do?

18 A. I was the detective assigned to the Investigations Unit.

19 Q. And when you say Investigations, that - - any kind of crime in
20 particular.

21 A. Most of the time worked in violent crimes.

22 Q. And back on October 26, 2005, did you have an occasion to
23 become involved in an investigation of a burglary and armed robbery
24 that occurred at 117 - - Room #117 at the Boardwalk Motel?

25 A. Yes.

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

178

1 Q. And where is that motel located?

2 A. It's located, ah, let me look at my notes real quick - - 2301
3 North Ocean Blvd. It was at about 23rd Avenue North and Ocean
4 Blvd., and it's on the east side of the boulevard.

5 Q. And that's in the City of Myrtle Beach?

6 A. Yes.

7 Q. Here in Horry County?

8 A. Yes, it is.

9 Q. Tell us to the best of your recollection what happened during
10 the course of your investigation.

11 A. During the course of my investigation, I met with, ah, two
12 victims that were inside the room, ah, which would have been the
13 Prices that are here seated in the court.

14 I spoke with them about the case. When I first arrived,
15 basically, the patrol officers that are on scene call us to the
16 scene. We are not out patrolling the area. I was actually called
17 to the scene.

18 I came to the scene. Met with the patrol supervisors. They
19 directed me to the victims and told me that there had been a
20 robbery that had occurred.

21 At that time I sat down. They'd already advised me that Crime
22 Scene was in route. So I knew that was already taken care of. So,
23 then I sat down to interview the victims, you know, separately.

24 I interviewed Ellis Price first, and then after that I
25 interviewed Fairey Price which is the lady that was in the room.

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Ah, I did a tape-recorded interview with them, and to
2 summarize what they said to me was they said they were, basically,
3 asleep in their room. They hear a knock at the door. Mr. Price
4 got up, went to the door. Asked who it was.

5 They advised that he heard someone say that they were
6 maintenance asking about water leaking and that they had to check
7 the room. He stated he then opened the door, and there were two
8 white men standing there. He let them into the room.

9 He said for a moment they kind of walked and looked around.
10 Somehow one went to go get some more tools as he thought.

11 Then when he came back into the room, the gun was pulled, and
12 they started telling them to lay down on the floor and not move or
13 he would blow his head off, um, and he said the gun was pointed at
14 him.

15 He stated then that that's when the robbery was taking place.
16 They were getting very angry that there wasn't more money or they
17 couldn't rightfully say, "My purse is right here with the money."

18 They were saying, "I don't know. Just take whatever you
19 need."

20 Um, at that point the subjects then removed the cord from the
21 phone and told them not to move, um, and took the phone cord away
22 so that they couldn't call police, um, and fled the scene.

23 I then asked Mr. Price to give me a description as best he
24 could, and he had told me, you know, that during part of it he just
25 focused on the gun.

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

180

1 When I asked him for the description, he told me they were
2 both white males. He stated the one with the gun was, like,
3 heavier and bigger, um, than the other one.

4 So, he was - - the way we separated it was the one with the
5 gun. We referred to it as the subject with the gun, and then the
6 subject without, you know, without the gun.

7 And he stated the one with the gun had dark hair, was, um,
8 basically, kind of bigger than the other one, um, and had,
9 basically, like dark hair.

10 And he said he wasn't, you know, he said he just - - he really
11 focused on the gun itself.

12 And then when I spoke to Mrs. Price and asked her for a
13 description, um, she only saw one subject because I guess - - the
14 way the room is, she can't see the other subject that's in there.
15 She sees the one that's out with the gun, and she focuses on him
16 because, of course, her husband's prone out on the ground with the
17 gun, and then the gun's waiving towards her.

18 And she described that one as having, like, you know,
19 basically, some dark hair and had a tattoo. She really focused on
20 the tattoo on the upper arm. And she said - - noticed that the
21 arm was large, seemed large and had a tattoo on it.

22 And that was the best of the description that they could give
23 me right then at that time.

24 Q. Was there any kind of description of hair length or anything?

25 A. Yeah.

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 What I was told was that the subject with the gun had longer
2 hair than the subject that had shorter hair, like, the second
3 subject without the gun had short hair, like, in - - like, clean-
4 cut short hair. That the other subject had longer hair.

5 And I know that there's some confusion about this. When we
6 were on scene, we did like a canvas. We go talk to people in the
7 adjoining rooms.

8 Ah, the gentleman in another room - - -

9 MR. AXELROD: Your Honor, I - - -

10 THE COURT: No, not going to - - I sustain that.

11 That's hearsay. Can't do that.

12 OFFICER MANN: Okay.

13 Q. But I - - from that, I ended up - - I'm the one that
14 interviewed. I asked a question based on information I had
15 received. I asked the victim, "Did he possibly have a long braided
16 pony tail?"

17 And the talk of this long, long hair when I'm being told, "No,
18 not long, long hair," is I'm asking about a pony tail down to the
19 waste, and that was the details about the braided pony tail, and I
20 had come about that information just to ask if that had been it.

21 And they were saying, "No, he didn't have that long a hair but
22 he did have longer hair than the subject that did not have the
23 gun."

24 Q. Now, you said - - did you ever receive information on other
25 possible suspects?

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Yes. I mean, we - - when we work these cases, we, basically,
2 put out BOLO's which is "Be on the look out for". As soon as I've
3 given a description I gave out the description to other officers
4 and to other people in the area to try to obtain any information,
5 and at that point they gave me names of some people they had been
6 out with earlier. However, they were extremely tall and did not
7 fit the description to it.

8 And then when I obtained the video from Wal-Mart, the two
9 officers that had been out with individuals on the street earlier
10 in the night came and viewed the video from Wal-Mart and said it -
11 - -

12 MR. AXELROD: Your Honor, my objection again to hearsay.

13 THE COURT: Wait a minute.

14 I understand what hearsay is, and he does, too.

15 MR. AXELROD: Well, he's - - -

16 THE COURT: Wait a minute. Please.

17 That testimony can be elicited by those who made it, not her?

18 MR. RICHARDSON: Yes, sir.

19 OFFICER MANN: Yes, sir.

20 THE COURT: She could say she received information that
21 caused her to do certain other things.

22 Q. You did receive information on other possible suspects. Is
23 that correct?

24 A. Yes.

25 Q. Now, the Prices tell you certain items stolen from them?

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Yes.

2 Q. And they listed a credit card?

3 A. Yes.

4 Q. What type of credit card was that?

5 A. A Visa card.

6 Q. Specifically with regards to the credit card, did you do - -
7 did you take any steps?

8 A. Yes. I had asked because of, you know, some problems that
9 you'll have at first with a credit card company, I had advised the
10 victims to contact their credit card company. Let them know that
11 the credit card had been stolen and to notify them of any charges.

12 Mr. Price called me and said that it had been used, ah, for
13 approximately \$900 at a place listed. They would only tell him
14 that it was listed as a grocery store, um, type business.

15 At that point I called the credit card company myself.
16 Explained to them the urgency of what was going on, and they at
17 that point told me that it could have been a Wal-Mart in the area
18 but they couldn't give me - - at that point when the credit card is
19 charged, it can't - - it's not going to give you the specific store
20 number. It's just going to tell you a Wal-Mart in the Myrtle Beach
21 surrounding area.

22 At that point I called all of the Wal-Marts in the area and
23 had them run the victims' credit card number to see if it had been
24 used if they had that capability.

25 Surfside Wal-Mart told me, "Yes, the credit card was used here

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1 this morning at approximately, you know, 5:30 - - between 5:30 and
2 6:00."

3 I'm not sure of the exact time of the run of the credit card,
4 and I asked them to start to obtain the video for me.

5 Then later in the day we went and met with Wal-Mart, and they
6 started recording the video for me so that I could have an actual
7 copy of their hard copy of the video at Wal-Mart.

8 Q. And is that the video that we watched earlier?

9 A. Yes, it is.

10 Q. Now, what gave you the idea to start calling Wal-Mart at - -
11 I think you said the credit card company said it was a grocery
12 store?

13 A. Correct, but it was \$900, and I asked, you know, I asked them
14 for specifics, and they said \$900, and we were talking about that
15 it would be, you know, odd for someone to spend \$900 in my opinion
16 in a - - in, basically, a grocery store, and knowing at that time
17 of the morning what grocery store type businesses would be open and
18 for them to, you know, to spend over \$900, and so I took it upon
19 myself to just call all the Wal-Mart and to just start working on
20 that avenue just in case.

21 Q. So, you were looking for a twenty-four hour place?

22 A. Uh-huh.

23 Q. That had items for \$900?

24 And your copy of the video from Wal-Mart, is that the item
25 that we viewed earlier today?

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Yes.

2 Q. And I'm going to pop it out at this time.

3 I believe it's Item #27? State's Exhibit #27.

4 Do you recognize that video?

5 A. Yes.

6 Q. You've seen it before?

7 A. Yes.

8 Q. No doubt about it, that's the video you received from Wal-
9 Mart?

10 A. Correct.

11 Q. And what does that video depict?

12 A. It depicts three subjects - two white males and one female,
13 ah, going into Wal-Mart and attempting to use the credit card of
14 the victims.

15 Q. Now, once you received that video, what did you do with it?

16 A. When I got the video, I actually went back and we secured it,
17 and what happened is, actually, I stayed with the video but I had
18 to go work some more on the case. Investigator Crosby actually
19 collected it for me and gave it back to me at the PD, and then I
20 had pictures, basically, printed out from that, like, still
21 photographs so that I could send that information out and to, like,
22 a be on the look out for.

23 However, when I viewed the video looking at it, I personally
24 recognized the female and the male, and at the time I knew that I
25 had been on scene with a certain - - with another corporal at an

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1 apartment on a call with the two individuals in the video but the
2 call, I couldn't recall their names right at the time but I knew
3 who I had seen them with. So at that point I tried to get up with
4 the corporal.

5 During the time I was getting up with him, I received a phone
6 call that gave me a first name of somebody in the video, and,
7 immediately, I remembered the names and the location where I had
8 seen the two people in the video.

9 Q. So, you recognized the female?

10 A. Yes.

11 Q. And one male in the video?

12 A. Correct.

13 Q. And who did you recognize as the female?

14 A. The female I recognized as Joy Hines, and then the - - in the
15 video the guy that's got the kind of like windbreaker jacket on and
16 the longer hair, I recognized him to be Thomas Webb. I knew them
17 to be boyfriend and girlfriend.

18 Q. And did you know them to live together?

19 A. Yes.

20 Q. And did you know where they lived together?

21 A. They lived at Avenue North.

22 Q. Now, upon learning that you had this video that had someone
23 you identified as the defendant, Tommy Webb, Joy Hines and another
24 suspect, you didn't recognize him?

25 A. Correct. I didn't know him.

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. And you knew it was someone using the credit card stolen from
2 the Prices?

3 A. Correct.

4 Q. What did you do next after you identified them out of the
5 video?

6 A. Once I identified them out of the video because it had been
7 approximately about a week and a half to two weeks since I had been
8 to that residence, I went back and did some surveillance down from
9 the residence.

10 At that point I ran some the vehicles. I knew one of the
11 vehicles parked outside was still registered to Joy Hines. Ah, I
12 also observed Joy Hines go into the residence and stay for an
13 extended amount of time, um, and at that point I realized that,
14 clearly, she probably still was living there being the fact that
15 her vehicles were out front. The house looked the same as it did
16 when I had been there a week and a half ago when she was living
17 there.

18 At that point I gathered my information and typed up a search
19 warrant to request a search of the residence based on the fact that
20 within about thirty minutes of our response, thirty to forty-five
21 minutes of our response to the hotel - - to the hotel and the
22 robbery, her and Mr. Webb and another co-defendant were seen on
23 video using the stolen credit card.

24 So, based on that, I went and presented it to a judge and
25 requested a search of the residence and the vehicles, you know,

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 outside of the residence for any of the belongings that could have
2 been stolen during the robbery or anything to link them to the
3 robbery.

4 Q. And did you execute that search warrant?

5 A. Yes, I did.

6 Q. Upon execution of the search warrant, did you come into
7 contact with Ms. Hines?

8 A. Yes, I did. Um, she called to the residence, and she came to
9 the house. I asked her to come to the house, and she came to the
10 house.

11 Q. Who was present at the house whenever you searched?

12 A. Her - - her son was there.

13 Q. Did he call Ms. Hines?

14 A. Yes.

15 Well, actually, he was getting ready to because I requested
16 him to call his mother based on the fact that he was a juvenile,
17 and at that point she actually called the house, and I asked her to
18 - - I spoke with her and asked her to come to the house, ah, for
19 the search warrant.

20 Q. She came to the house?

21 A. Yes, she did.

22 Q. Was she by herself?

23 A. Yes.

24 Q. Alright.

25 And how did she arrive?

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. She was driving, ah, it was like a Ford Ranger pickup truck
2 that was hers.

3 Q. Now, once Ms. Hines comes into her house, did you ever observe
4 anyone else that lived in this house?

5 A. When I was there that week and a half prior, yes.

6 Q. Who was living in that house?

7 A. With her was Thomas Webb.

8 Q. So, the defendant was living with her before?

9 A. Correct.

10 Q. You personally observed him living there before?

11 A. Yes. He took me inside the house.

12 Q. So, she comes in, and you have an opportunity to speak with
13 her?

14 A. Correct.

15 Q. And what do you do?

16 A. Um, I advised her at that point that I was there investigating
17 a crime, and I went ahead and told her I needed to record an
18 interview with her and would she speak with her, and she said yes.

19 At that point I have what we call our Miranda Warnings. I
20 went over her rights under Miranda with her. She voluntarily
21 waived those rights and gave me a statement.

22 At that point she goes into detail telling me what happened
23 and how she came into contact with some of the victims' belongings.

24 Q. So, you read her Miranda Rights, and she gave you a statement?

25 A. Correct.

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. Now, while you're speaking with Ms. Hines, did you all get
2 interrupted by anything?

3 A. Yes. She received a phone call while I was with her.

4 Q. A phone call on her house phone?

5 A. Yes.

6 Q. And did you overhear anything -- did you see her -- did you
7 observe her answer the phone?

8 A. Correct.

9 She said, "That's my cell phone." Something like, "That's my
10 cell phone calling me."

11 And she said, "That's going to be Tommy. It's got to be
12 Tommy."

13 Q. She indicated that Thomas Webb had her cell phone?

14 A. Correct.

15 Q. And was calling their house?

16 A. Correct.

17 Q. And did she pick up the phone?

18 A. Yes, she did.

19 Q. And where were you standing when she picked up the phone?

20 A. Directly beside her.

21 Q. Did you overhear any statements by the individual on the other
22 end of the line?

23 A. It was a male voice on the line.

24 Q. ~~It was a male voice, and Joy Hines identified him as Tommy~~
25 Webb?

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Correct.

2 Q. And these statements, you said you overheard statements?

3 MR. AXELROD: Your Honor, I object to that. The Solicitor
4 just said that Joy Hines identified the voice but - - what the
5 testimony was was that the - - they elicited it out as hearsay but
6 they said that Joy said it must have been Tommy before the phone
7 rings but there's been no testimony that it was Tommy - - -

8 THE COURT: You may ask the question again. I'll let the
9 jury determine who and what was said and why.

10 Go ahead.

11 MR. RICHARDSON: I'll move on, Your Honor.

12 THE COURT: Okay.

13 Q. You heard a male voice on the other end of the line.

14 A. Correct.

15 Q. Did you hear that male voice make any statements?

16 A. Yes. He was asking her to come pick him up.

17 Q. Do you remember where this male voice was asking her, you mean
18 Joy Hines?

19 A. Yes.

20 Q. Do you remember where the location the male voice said he was?

21 A. Perry Court.

22 Q. Did he make any other statements.

23 A. That he told her to bring that, something like, bring that to
24 him. I'll have to look at my notes to be exact.

25 "Bring that thing."

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. And did you understand what "that thing" was?

2 A. No, I didn't know. Immediately, Joy said, "What thing?"

3 Q. And did the male voice respond at that time?

4 A. Yes.

5 Q. And how did he respond?

6 A. He told her his gun, "Bring me my gun."

7 Q. And did he identify the location of that gun?

8 A. Yes.

9 Q. So, the male voice on the other end of the line called from
10 Joy Hines' cell phone stating, "I'm at Perry Court. Come pick me
11 up. Bring that thing, my gun, and it's underneath some clothes on
12 the bed."

13 A. Correct.

14 Q. Now, after the phone call, what did y'all do?

15 A. At that exact time, Crime Scene Officer Ursits had also
16 arrived on scene. At that point I told Ms. Hines there were some
17 undercover officers that were also on scene. I sent them to the
18 area of Perry Court with a, you know, and I had a photograph of Mr.
19 Webb, and I gave him a description, and I said, "Go to this area
20 and see if you see him walking around."

21 Then, I also just met with Ursits for a moment and then told
22 him what we heard on the phone because the way the house was, we
23 had been - - we started at the backside trying to conduct a search.
24 There was a lot of clothing. It was a very - - it was very
25 cluttered, um, inside the house.

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Um, so we had been actually conducting a search, and I had not
2 made it to the front bedroom which I knew that bedroom to be the
3 one that a week and a half ago been pointed out to me to be Mr.
4 Webb's and Joy Hines.

5 So, I said, "You saying it's in the bed."

6 You know, by that I gave that information to Ursits, and then
7 I had Joy Hines go. We followed Joy Hines to the Perry Court
8 because he - - she, like, he wouldn't come out without seeing her.
9 So we sent her down there, and as she pulls up, we had undercover
10 officers there, and when he - - Mr. Webb approached the vehicle at
11 Perry Court to get in the vehicle with her, at that point we
12 detained him and arrested him.

13 Q. So, the male voice on the other end of the line calling the
14 home of Tommy Webb and Joy Hines, says, "I'm at Perry Court."

15 A. Yes.

16 Q. You take Joy Hines to Perry Court, and Thomas Webb is there?

17 A. Correct.

18 Q. And you take him into custody?

19 A. Correct.

20 Q. Did he have anything on his person?

21 A. Yes. The search incident to the lawful arrest produced a
22 little black bag, um, and inside that bag was some jewelry that fit
23 the description of what the Prices had, um, told me was missing.

24 Q. And I want to show you what's previously been marked as
25 State's Exhibit #1 and #2. Do you recognize these items?

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Yes.

2 Q. What are those items?

3 A. That was the black bag that was on his person and inside that
4 black bag was the necklace, the earrings and the ring.

5 Q. The ones that Mrs. Price has already said was her jewelry?

6 A. Correct.

7 Q. She identified as being stolen the morning of October 22,
8 2005?

9 A. Correct.

10 Q. And when was this arrest?

11 A. October 26th.

12 Q. And the Prices had already left to go back home, correct?

13 A. Correct.

14 Q. And is that why you never produced a photo line-up to them?

15 A. Yes. They had left town, and then when I'd also spoken to
16 them, um, I believe I put it in my follow-up when I asked them, "If
17 you were - - ", I always ask, "If you were to look at a photo
18 array, would you be able to positively identify someone from that
19 photo array, and they had indicated that they didn't feel
20 comfortable that they would be able to.

21 Q. But they had given you a description?

22 A. Uh-huh. Yeah, they said that they were able to describe him
23 and about him but actually to look at a photo array, they weren't,
24 ~~you know, didn't know if they could because they ended up focusing~~
25 so much on the gun.

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. Now, you arrested the defendant. Did you make any other
2 arrests with regard to this case?

3 A. Yes, two other arrests.

4 Q. And who were they?

5 A. Joy Hines and Randy Gaunt.

6 Q. Did you have the opportunity to interview Randy Gaunt?

7 A. Yes, I did.

8 Q. And he made a statement?

9 A. Yes, he did.

10 Q. And did you retrieve any property from Randy Gaunt?

11 A. Yes, I did.

12 Q. What property was that?

13 A. Um, the victims' Sears Credit Car.

14 Q. I'm going to show - - I'm going to show you what has been
15 previously marked and entered as State's #24. Do you recognize
16 that item?

17 A. Yes.

18 Q. And what is that item?

19 A. That's the victims' Sears Card.

20 Q. And where did you get that item?

21 A. Um, it was in the - - Mr. Gaunt's property. He had already
22 been booked in at J. Reuben Long on something unrelated, and at
23 that point we noticed - - I asked to see, you know, what was in his
24 property as far as listed on the sheet on his copy of the booking
25 card, and it said a Sears Card, and it - - they advised that it had

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 the name Fairey Price on it, and that was my victim's name.

2 Q. And, Officer Manning, you indicated earlier or I'm going to
3 ask you to identify the subject at this time. Do you see Tommy
4 Webb in this courtroom today?

5 A. Yes, I do.

6 Q. Where is he?

7 A. He's sitting over there at the table - - in the white shirt.

8 Q. The white shirt.

9 Now, I believe Mrs. Price said that they had a little bit
10 longer hair and looked scruffy and had tattoos?

11 A. Yes.

12 Q. He doesn't look like that.

13 A. No.

14 Q. Is that how he looked whenever you arrested him?

15 A. No, sir.

16 Q. Back in October, 2005?

17 A. No, sir.

18 Q. I'm going to show you what has been previously marked for
19 identification as State's #17, #18 and #19.

20 THE COURT: You've previously seen them, Mr. Axelrod.

21 Go ahead.

22 MR. AXELROD: Can I see them again?

23 MR. RICHARDSON: Sure.

24 (Mr. Axelrod reviews the exhibits.)

25 Q. Do you recognize State's #17, #18 and #19?

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Yes. Yes, I do.

2 Q. And who do you recognize in that exhibit?

3 A. That's Tommy Webb when he was arrested on the 26th.

4 Q. So, that's how he looked back in October, 2005?

5 THE COURT: May I see that photograph?

6 MR. RICHARDSON: Yes, sir, Your Honor.

7 Q. And how about State's #21, #22 and #20? See if you recognize
8 these photographs?

9 MR. AXELROD: You said #20, #21, and #22?

10 A. Yes.

11 Q. And how do you recognize these photographs?

12 A. These are photographs I had taken of Randy Gaunt when he was
13 arrested.

14 THE COURT: You may have these and you may publish them at
15 your discretion.

16 MR. AXELROD: Without objection, Your Honor.

17 THE COURT: Alright, sir.

18 Q. Is this how Randy Gaunt appeared in October of 2005?

19 A. Yes.

20 Q. Detective Mann, who has got longer hair there?

21 A. Mr. Webb.

22 Q. Mr. Webb does have a little bit longer hair.

23 Was it down to his belt buckle?

24 A. No.

25 Q. Was it longer than Mr. Gaunt's?

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 A. Yeah, it was like a - - kind of like a mullet style. It was,
2 you know, shorter, like, from the side. It was just kind of
3 straggly here, and then it was longer in the back.

4 Q. Alright.

5 Let's look at the full picture.

6 That's Tommy Webb on the left-hand side, correct?

7 A. Correct.

8 Q. And that's picture #18, State's #18?

9 State's #21, that's Randy Gaunt?

10 A. Correct.

11 Q. Both of them have two tattoos, don't they?

12 A. Yes.

13 Q. And do you know who was bigger?

14 A. Oh, Mr. Webb, Tommy Webb.

15 Q. A right good bit?

16 A. Yes.

17 Q. Was he more muscular?

18 A. Yeah, I mean they were both big. I don't - - like I said, I -
19 - I'd say they were muscular but he wasn't, like, cut. I don't
20 know how - - I don't mean that rude. I mean, they just wasn't like
21 a cut muscular.

22 Q. He wasn't Mr. Olympia?

23 A. Correct.

24 Q. Okay.

25 And, now, let's look at State's #19 and #22. Do you know

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 what that is?

2 A. Tattoos of both of them arms.

3 Q. At which arms, can you tell?

4 A. Right arm, right upper arm.

5 Q. Oh, they both have tattoos on their upper right arm.

6 And I know it's a simple question but if somebody has a jacket
7 on, it's going to cover up with sleeves?

8 A. Correct.

9 Q. So, if they have a jacket on because Wal-Mart's got its air
10 conditioning on, that tattoo is going to be covered up?

11 A. Correct.

12 Q. And no doubt about it, both of them had pretty big tattoos on
13 their right arms?

14 A. Right upper arm, yes.

15 Q. No doubt about it, Tommy Webb has longer hair than Randy
16 Gaunt?

17 A. Correct.

18 Q. Taller than Randy Gaunt?

19 A. Correct.

20 Q. Bigger set than Randy Gaunt?

21 A. Correct.

22 Q. These photographs were never introduced to the Prices?

23 A. No.

24 Q. And that's because they had traveled on back?

25 A. Correct.

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 Q. But no doubt about it, this is how the defendants appeared
2 within a week of the robbery?

3 A. Yes, within four days.

4 Q. And it accurately matched the description of the Prices?

5 A. Correct.

6 Q. And you recognized Tommy Webb in that Wal-Mart video?

7 A. Correct.

8 Q. The one with Joy Hines?

9 A. Correct.

10 Q. And that gun that we saw, that was found in the home of Joy
11 Hines and Tommy Webb?

12 A. Correct.

13 Q. A male voice called Joy Hines' home phone. Said, "Go get my
14 thing."

15 A. Correct.

16 Q. "My gun." "My gun."

17 Jewelry - - jewelry that was stolen was found on this
18 defendant?

19 A. Correct.

20 Q. The credit card was found on the other male defendant?

21 A. Correct.

22 Q. The camera, the camera was found where?

23 A. In the pocketbook belonging to Ms. Hines.

24 Q. So each one of them had a piece of it?

25 A. Correct. Yeah, each of them had something when I located

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 them.

2 Q. Ms. Hines gave you a statement right away?

3 A. Yes.

4 Q. And did the Prices say a woman was up there holding a gun on
5 them?

6 A. No.

7 Q. There was two men?

8 A. Yeah, two white men.

9 Q. Thank you, Officer Mann.

10 If you'll just answer any questions Mr. Axelrod might have.

11 A. Okay.

12 (Court Reporter accepts State's Exhibits #17, #18, #19, #20,
13 #21 and #22 into evidence.)

14 THE COURT: Mr. Axelrod, it's twenty till six. Would you
15 prefer your cross examination in the morning?

16 MR. AXELROD: Your Honor, I think we're all hungry. I think
17 we all want to go home and have supper.

18 THE COURT: Well, I - - it would probably be - - take the
19 jury past 6:00, and they've got responsibilities at home with their
20 families, this that and the other.

21 We gone take a break now for the evening hour. I would
22 respectfully request that you be in the jury room promptly at 9:30
23 in the morning ready to go.

24 Remember my admonition. Don't discuss the case with anyone.

25 Let no one discuss it with you. Let no one discuss it in your

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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1 presence. Obviously, you would not discuss it among yourselves.

2 Anything any further instructions anybody requires of the jury

3 MR. AXELROD: No, Your Honor.

4 THE COURT: Alright.

5 You are now excused, and I will see you at 9:30 in the
6 morning, and thank you so much.

7 (The jury is released for the day to return at 9:30 a.m. on
8 Tuesday, and the jury departs the courtroom at 5:41 p.m.

9 The Court adjourns the trial of this case and court for the
10 day until 9:30 a.m. on Tuesday.)

OFFICER MANN - DIRECT EXAMINATION BY MR. RICHARDSON

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TUESDAY, MARCH 4, 2008

(The Court reconvenes the trial of this case with all parties present in the courtroom.)

THE COURT: Good morning, ladies and gentlemen.
Please be seated.

Bring the jury in, please.

MR. AXELROD: Good to see you.

THE COURT: Good to see you.

MR. RICHARDSON: Judge, do you want the detective to go ahead and resume the witness stand?

MR. AXELROD: Judge, the detective back on the witness stand?

THE COURT: Yes, please.

(The jury returns to the courtroom at 9:53 a.m.)

THE COURT: Madame Foreman, ladies and gentlemen, Good morning to you. I trust that the arrangements made for the biscuits were satisfactory to everybody.

Alright, sir.

At the conclusions of the proceedings yesterday, the State had concluded its direct examination of this witness, and we'll now have the cross examination by defendant's attorney.

Mr. Axelrod, you may proceed.

MR. AXELROD: Thank you, Your Honor.

Good morning, sir.

THE COURT: Good morning.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 OFFICER SELENA MANN, being previously
2 sworn, testifies as follows:

3 CROSS EXAMINATION BY MR. AXELROD:

4 Q. Good morning, ma'am.

5 A. Good morning.

6 Q. How are you today?

7 A. Great. How are you?

8 Q. I'm good before the rain comes.

9 A. Yes, exactly.

10 Q. Makes my hair frizzy.

11 A. It does mine, too.

12 Q. How many - - how many times did you interview Joy Hines?

13 A. Um, the official interview was that first one. That was the
14 recorded, and then when I saw her out at the jail, we went out to
15 the jail for another interview. She asked to speak with us and
16 did. Asked us how the case was going.

17 Q. Okay.

18 Now, I'm not sure if you know this answer, so I'll ask the
19 question to you.

20 Are you aware whether or not Mr. Gaunt has pled guilty to his
21 charges?

22 A. Am I aware of if he's pled guilty?

23 Q. Yes, ma'am.

24 A. I was advised that he - - that his case was disposed of but I
25 don't know what the, you know, the outcome was.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 Q. You never asked the Solicitor?

2 A. He just told me that the case was disposed of but, honestly,
3 I don't know how many years he got or anything like.

4 Q. Okay.

5 Did they send you a letter?

6 A. No.

7 They may have sent one to Myrtle Beach but I'm at Conway
8 Police Department now. So I wouldn't have gotten a letter.

9 Q. During the course of your investigation, you had the
10 opportunity to interview Randy Gaunt also?

11 A. Yes, I did.

12 Q. And you interviewed Joy Hines?

13 A. Yes.

14 Q. And during the course of your investigation, isn't it true
15 that the statements that each of those gave, Gaunt and Hines, were
16 actually opposed in many ways?

17 A. As far as every detail?

18 Q. Well, let's start with the detail of who wanted to start the
19 robbery, who wanted to do the robbery. Isn't it true that you
20 learned through your investigation that Randy told you that Joy
21 wanted to do the robbery?

22 A. To start it or had knowledge of it starting? I'd have to look
23 directly at it but I know that she had knowledge - - he claimed
24 that she had knowledge that they were going to the hotels to rob
25 them.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 Q. My question was during the course of the investigation, isn't
2 it true that you learned from Randy that Joy wanted to do the
3 robberies?

4 A. I'd have to look at the exact wording of it. I know you said
5 you had a transcript but I'd have to see his exact wording.

6 Q. Okay.

7 I'll get it for you.

8 THE COURT: Is this a deposition or statement?

9 MR. AXELROD: These were, ah, tape-recorded statements.

10 THE COURT: Alright.

11 Refer to what page you're talking about.

12 MR. AXELROD: I will. Yes, sir, Your Honor.

13 MR. RICHARDSON: And, Your Honor, the State's not been
14 provided with a copy of the transcript.

15 MR. AXELROD: Your Honor, now, I'm willing to provide the
16 State with a copy of the transcript but my concern is, Your Honor,
17 the Court's well aware that the Court Reporter Association has said
18 that - - I mean, he had the opportunity to transcribe it as well as
19 I had the opportunity to transcribe it.

20 THE COURT: I understand what the Court Administration says
21 but they don't run my court. Give it to him.

22 MR. AXELROD: Okay.

23 And I'm going to hand up to the Court a copy also - - for
24 them.

25 Your Honor, I'm going to hand up a sealed copy for the Court.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 COURT REPORTER: Will this be a Court's Exhibit, Your
2 Honor?

3 THE COURT: Yes, ma'am.

4 MR. AXELROD: That'd be Court's #3, I believe, Your Honor.

5 THE COURT: I'm accepting this is a Court's Exhibit.

6 (The Court Reporter accepts transcript as Court's Exhibit #3.)

7 THE COURT: This is designated a "Transcript audio
8 interview of Randy Gaunt, October 27, 2005".

9 Solicitor, he apparently is referring to an interview with
10 Randy Gaunt. Now, you have no objection to him testifying what
11 Randy Gaunt said without you having an opportunity to cross examine
12 him?

13 MR. RICHARDSON: Your Honor, I - - I can redirect on - - -

14 THE COURT: Well, there's no need - - -

15 MR. RICHARDSON: But it would be hearsay. He could have
16 subpoenaed Randy Gaunt. He could have arrange to call the
17 witness.

18 THE COURT: Well, Randy Gaunt be available anyway.

19 Well, let's see where he's going, and you may or may not
20 objection but I'm not going to permit Randy Gaunt's testimony - -

21 MR. AXELROD: Your Honor.

22 THE COURT: - - to come in through this witness.

23 MR. RICHARDSON: Yes, sir.

24 MR. AXELROD: I'm not doing that, Your Honor.

25 What I said - - what I said to the investigator was, "Didn't

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 you learn through your investigation that statements were opposing
2 each other?", and I said, "Isn't it true that you learned through
3 your investigation that Randy had told you that Joy was wanting to
4 do the robbery?"

5 The witness then said that she would like to refresh her
6 memory to that.

7 I'm not asking for what Randy said. I'm asking what she
8 learned through the course of her investigation but the transcript
9 is nothing more than to refresh her memory.

10 THE COURT: I'm going to limit - - I understand the
11 question.

12 Q. I'm going to ask you to go to page 20.

13 A. Okay.

14 THE COURT: He is using this, Solicitor, solely for the
15 purpose of attempting to challenge the credibility of a former
16 witness for some reason.

17 MR. RICHARDSON: Yes, sir.

18 A. I saw one thing on page 7. Is that what you're talking about?

19 Q. No. Let - - let me look. Let me see if I can find it. I
20 can find it.

21 THE COURT: Before we proceed, Mr. Axelrod, tell me who
22 instigated this statement from Randy Gaunt, the Solicitor's office
23 or your investigator?

24 MR. AXELROD: This investigator on the stand.

25 THE COURT: Alright, sir.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 Q. On - - on - - -

2 MR. AXELROD: Your Honor, I'm going to move on. I'm going
3 to find this question. I have it in here somewhere.

4 THE COURT: Alright, sir.

5 MR. AXELROD: Your Honor, I'll just move on.

6 Q. I'm going to come back to that. I'll find it.

7 A. Okay.

8 MR. AXELROD: Your Honor, I'll come back to that.

9 Q. At some point through Randy during your investigation didn't
10 you learn that - - that Randy had told you that Tommy had had the
11 wallet.

12 A. Again, do you mind if I look at my notes as far as who had the
13 wallet and who other things?

14 Q. Okay.

15 A. Just one moment.

16 THE COURT: Mr. Axelrod, you may look at page 8 to see her
17 inquiry.

18 MR. AXELROD: No, there's another place I'm looking for,
19 Judge. I just can't - - I just can't find it.

20 THE COURT: Alright.

21 MR. AXELROD: I have Mr. Bailey looking for it.

22 Q. Alright.

23 Ma'am?

24 A. Yes.

25 Q. On page 20, line 15.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 A. Yes.

2 Q. Isn't it true that you learned through the investigation that
3 Randy says that Tommy had the billfold?

4 MR. RICHARDSON: Your Honor, now he's just asking directly
5 what - -

6 THE COURT: Yes, sir.

7 MR. RICHARDSON: - - what - - -

8 THE COURT: I decline to go into that.

9 I'll make Randy available to you for direct examination.

10 MR. AXELROD: They - - the State had Randy on their witness
11 list, Your Honor.

12 THE COURT: Well, that's true.

13 MR. RICHARDSON: We decided not to call him, Your Honor.

14 THE COURT: He - - he can call who he wants to but I tell
15 you that if you want that individual to testify, I will make him
16 available to you.

17 I will not permit his testimony through this witness. That is
18 rank hearsay.

19 MR. AXELROD: Absolutely.

20 All I - - let me rephrase the question.

21 Q. During your investigation when you conducted an interview with
22 Randy Gaunt was it your opinion after your investigation that the
23 billfold, Tommy had the billfold?

24 A. Looking at my notes I don't have a direct because they talk
25 about a billfold and then one of the things which you wear around

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 which I took as the fanny pack. So I don't - - like I said, I'd
2 have to - - that's why I'm trying to look at, you know, your
3 transcription to determine which one had exactly what but I know he
4 talks about credit cards and the wallet.

5 Q. Well, I'm talking about - - your interview. I had a court
6 reporter transcribe your interview.

7 A. Yeah. That's what I'm trying to look at.

8 Q. Okay.

9 And I'm referring you to page 20, line 11, specifically.

10 A. Yeah.

11 Randy Gaunt when I interviewed him talked about that he took
12 the old man's billfold and one of those, you know, like you wear it
13 around.

14 So, according to that, I thought he was talking like he may
15 have taken one or both.

16 Q. Okay. Okay.

17 And isn't it true that through your investigation with Joy
18 that based on your investigation on Joy's interviews that it was
19 your belief that, um, Randy had the wallet?

20 A. Well, now, I believe when we talked to Joy she wasn't sure.
21 When I talked to Joy Hines she knew that they both had something.
22 She knew they had a wallet and a fanny pack but I don't know if she
23 said directly. I'd have to look at hers, too. She didn't
24 directly say which one had which, you know, which one had the fanny
25 pack and which one had the wallet.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 MR. RICHARDSON: Your Honor, of course, I would object to
2 eliciting any statements made by Ms. Hines from this witness as Ms.
3 Hines has already been on the witness stand, and she could have
4 been asked and crossed on her own statement.

5 THE COURT: I will permit him to call -- recall her as his
6 witness during the appropriate time if he cares to. I'm not going
7 to let -- I'll see where he's going but if he wants to see -- get
8 into Ms. Joy's testimony again, you have a right to cross examine
9 on that issue.

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: You cannot cross examine the way he proposes to
12 do.

13 MR. RICHARDSON: Yes, sir.

14 MR. AXELROD: I'm just going into the investigation that this
15 police officer conducted as to what she learned through her
16 investigation.

17 THE COURT: I'm going to let you do that.

18 MR. AXELROD: Thank you.

19 THE COURT: But we're not going into specificity as to what
20 who said what unless they come into this courtroom and say it.

21 Q. On page 10, line 5, based on your investigation, isn't it true
22 that at that point you believed that Randy had the wallet?

23 A. Well, from my interview, she said she wasn't sure. That she
24 thinks that Randy could have the wallet or he could of had the
25 pocket book, you know, the fanny pack.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 Q. Okay.

2 A. It sounded to me like she wasn't sure which one had what. She
3 just knows the credit card came out later.

4 Q. During - - during your investigation, you learned from Joy
5 that they went to many gas stations after the alleged event, right?

6 A. I know that they discussed that they had gone and tried to get
7 gas. I don't know how many gas stations that they may have stopped
8 at.

9 Q. Well, isn't it true through your investigation that - - that
10 each person said they went to different gas stations?

11 A. I don't know that they knew the exact one. So, you know what
12 I mean, as far, I know she mentioned, like, I think a Circle K at
13 17th Avenue South, and I don't know if the other ones knew the exact
14 name of the gas station.

15 Q. But - - but isn't it true that during the investigation with
16 Randy - - with Randy that when you came out of that investigation,
17 you thought the first stop that was made was on a Kangaroo at 501?

18 A. Is that in the transcript, too, because I - - I don't dispute
19 that. I just need to look at the exact line.

20 Q. I will see if I can find it.

21 A. Thank you. I appreciate that.

22 Q. You're welcome.

23 On page 24.

24 A. 24?

25 Q. Yes, ma'am, in Randy's interview.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 A. Uh-huh.

2 Q. Okay.

3 Isn't it true that that point during your investigation that
4 you learned that the first stop that they made was on a gas station
5 on 501?

6 A. He said that he was trying to remember. He wasn't sure which
7 one but he thought it was out on 501 at a gas station.

8 Q. Now, isn't it true that in your investigation when you
9 conducted an interview with Randy that -- Mr. Gaunt -- that you
10 learned -- as part of your investigation that Mr. Gaunt did not
11 live in South Carolina but actually lived in Wilmington, North
12 Carolina?

13 A. I know he had been staying at a hotel or something with his
14 wife or girlfriend, um, Linda, um.

15 Q. At the Perry Court?

16 A. I believe -- I believe that's where it was.

17 Q. Okay, but -- but didn't you learn through the interview with
18 Randy that he, actually, was living in North Carolina, Wilmington?

19 And I'll refer you to page 26. I'll let you look at that.

20 A. Okay.

21 Yeah, I'm sorry. He does state that -- he had been staying
22 at the Perry Court recently but that he also works out of
23 Wilmington and has, like, apparently, a residence up in Wilmington,
24 and then they stayed down here at the Perry Court.

25 Q. You learned he lived at Wilmington?

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 A. Yeah. His statement was that he just moved up to Wilmington.

2 Q. Okay.

3 But, in fact, Joy testified in court that he was living with
4 her.

5 A. No. I heard her testify that Mr. Webb lived with her.

6 Q. Did - - did you not hear the testimony when she said that
7 Randy couldn't live with her anymore. So she was driving him
8 around to look for - - -

9 MR. RICHARDSON: Your Honor.

10 THE COURT: Wait a minute. Hold it, now.

11 Sir?

12 MR. RICHARDSON: He's witness pitting.

13 MR. AXELROD: No, I'm not. This is - - this is a detective.
14 It's not a witness.

15 THE COURT: No. I'll let him answer that.

16 A. Okay.

17 What I heard when I heard the testimony was that he wanted to
18 stay at her house, and she did not want him to stay the night at
19 her house. So they were going to drive up and down and look for
20 that.

21 Q. Okay.

22 I'll allow you to remember what you remember.

23 THE COURT: I will allow the jury to remember what they
24 remember.

25 MR. AXELROD: Absolutely.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 THE COURT: That's the important factor.

2 Go ahead.

3 MR. AXELROD: They're the ones that matter.

4 THE COURT: Sir?

5 MR. AXELROD: They'll remember what they need to remember.

6 Absolutely.

7 THE COURT: They will.

8 Q. You arrested - - you arrested - - Mr. Gaunt was arrested at
9 some point that day of the event. Am I correct?

10 A. As far as the day of which event, the search warrant or the
11 actual robbery?

12 Q. I don't know the exact date but I know he was arrested before
13 the 26th when I executed my search warrant. I don't have - - I know
14 he was in jail when I initially met with Joy Hines and Tommy Webb
15 on an unrelated incident because I met with him at J. Reuben Long.

16 Q. Alright.

17 And he was arrested on Broadway right outside Steve's Pawn
18 Shop?

19 A. Let's see.

20 Q. Maybe you need to refer to - - -

21 A. Yes, I'm looking at my notes.

22 He - - in the interview, he - - he himself advised me that he
23 had gotten arrested by the lawnmower shop near a Steve's Pawn Shop.

24 Q. Okay.

25 And we have testify that Joy had pawned the jewelry at one

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 point. Correct?

2 We had testimony yesterday. Joy testified on the stand that
3 she had pawned the jewelry at one point.

4 A. Yes. At the end she had something about she had pawned it and
5 gotten it out.

6 Q. And gave it to Tommy.

7 A. She may have. Now, that I don't know for sure.

8 Q. Okay.

9 With the jewelry.

10 A. Yes, sir.

11 Q. Now, did you go into Steve's Pawn Shop to see if, in fact,
12 that jewelry had been pawned in that pawn shop?

13 A. We had, ah, met with some pawn shop, and she had actually
14 pawned it and gotten it all out but not all. There was still one
15 piece of jewelry that was missing.

16 Q. Do you have the pawn slips - - was the jewelry pawned actually
17 at Steve's Pawn Shop?

18 A. I think it was pawned at Willie's but I can't tell you for
19 sure. I'd have to - - you know, we got to get back with the pawn
20 shop because I don't have the pawn slip.

21 Q. You - - you never got the pawn slip?

22 A. No.

23 Not that - - and if I did, you know, it would have been a
24 print-out from our computer at Myrtle Beach Police Department but
25 I don't have that with me here.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELSON

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1 Q. So, do you know who actually pawned the jewelry?

2 A. I believe it was Joy Hines because she had an I.D. is what I
3 was told.

4 Q. My question was do you know who pawned the jewelry? Either
5 you do or you don't know, not speculative.

6 A. Well, I can only go off what Joy Hines tells me in my memory.
7 I believe it was Joy Hines but, of course, I - - if there's a
8 pawnshop that says otherwise.

9 Q. So your knowledge of - - you're relying on Joy Hines'
10 statements to you as to what's true?

11 A. Well, I - - and like I said. At some point in a computer
12 system that we have in the police department, I thought we had Joy
13 Hines as pawning the jewelry.

14 But like I said, I - - I don't have that print-out with me.
15 So that is going from my memory.

16 Q. And you don't really remember, do you?

17 A. Well, I'm just telling you what I remember on that.

18 If you've got something different, I'll be glad to look at it.

19 Q. No. I wasn't the investigator on this case.

20 A. Okay.

21 Q. Now, in your investigation, isn't it true you learned after an
22 interview with Mr. Gault that supposedly Tommy walks in immediately
23 with the gun?

24 A. Immediately with the gun?

25 Q. Shows the gun as soon as they get there?

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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A. Let me look back. If you'll give me just a moment.

Q. And -- and I'll try to help direct you.

THE COURT: Yes, sir.

MR. RICHARDSON: Your Honor, he keeps going back over statements. Without getting the actual statement in, he asking, "Didn't you learn that Randy Gaunt said that? Didn't you learn that Randy Gaunt said that?"

THE COURT: I'm not going -- I'm about to cut this off, now. I'm not going to get in -- let him get in through her what Randy Gaunt said and deprive you the opportunity of cross examination. I've already told him twice.

MR. RICHARDSON: Well --

THE COURT: Wait a minute, now.

Mr. Axelrod, you know the rules.

MR. AXELROD: Your Honor, what I'm asking --

THE COURT: I know it but you know the Rule of Hearsay.

MR. AXELROD: Your Honor --

THE COURT: Wait a minute. Listen.

You are attempting to get in through her Randy Gaunt's testimony, and I'm telling you that you can't do that. If you want Randy Gaunt's testimony, I'll have him introduced here. Put him on the stand. He here can tell that jury what he said.

This lady's not responsible for that.

MR. AXELROD: Your Honor,

Absolutely, Your Honor.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 THE COURT: Alright.

2 I'm telling you, now, quit.

3 MR. AXELROD: I'll ask the question a different way, Your
4 Honor.

5 THE COURT: You're not going to get his testimony in - -

6 MR. AXELROD: I know. I don't want his testimony.

7 THE COURT: - - in anyway.

8 MR. AXELROD: I'll ask it a different way.

9 THE COURT: Let me - - you sit down a minute. Let me
10 explain to the jury.

11 We have a proposition know as Hearsay. Hearsay is the
12 testimony of an individual who is not in the courtroom.

13 Now, our Rules say that you cannot put in by hearsay other
14 than certain exceptions what somebody else says, and the reason for
15 that is fairly obvious. The jury should have an opportunity to
16 judge that witness' credibility and believability and the opposing
17 side should have a right to cross examine him.

18 If I permit her to say what some other individual said, one,
19 you would not have the testimony of him in open court such that you
20 could decide for yourself his credibility.

21 Two, unless he's here testifying, opposing counsel has no
22 opportunity to cross examine.

23 Now, I say to you. Randy Gaunt is available. If anybody
24 wants to know what he said, they have a full opportunity to bring
25 him on this witness stand and let you observe him.

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 I have ruled one time twice that I am not going to permit that
2 testimony to come in through her. I will permit him to say in a
3 general way what her investigation led to but I'm not going to go
4 into specificities of who said what.

5 Now, let that be clear.

6 MR. AXELROD: Yes, Your Honor.

7 THE COURT: Alright.

8 Q. During the course of the investigation, isn't it true that you
9 learned that there was conflicting stories of how the gun was
10 presented against the victims?

11 A. Conflicting stories about how the gun was presented?

12 Q. Yes..

13 A. Ah, the victims advised that they just remembered seeing the
14 gun, um, and that they just focused on the gun itself, you know,
15 that he just - - that he went out and came back and had the gun.

16 Q. Exactly.

17 And Mr. Price had told us that supposedly Tommy went out and
18 then came back with the gun.

19 A. Yeah, he said the gentleman that ended up with the gun, you
20 know, came back - - stepped back out and then came back in with the
21 gun.

22 Q. Came back in.

23 But isn't it true that during the course of your investigation
24 that you realized that there was conflicting stories to that?

25 A. To the details of how the gun was presented?

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

222

1 Q. Yes, because didn't you learn through your investigation at
2 some point that the gun was presented instantaneously in the
3 beginning and not several minutes later?

4 A. I don't recall it being instantaneously.

5 Q. In your investigation didn't you learn that when - - when,
6 supposedly, Tommy and Randy go to the door, Tommy goes in
7 immediately and shows the gun? Didn't you learn that in your
8 investigation, and I'm referring you to page 18, line 23.

9 A. I recall him giving me, basically, his version or summary of
10 what happened, and he doesn't give me a step by step, you know,
11 account detail.

12 He talks them going in and posing and maintenance men to get
13 in there and that Tommy ends up pulling up his shirt, showing a gun
14 coming out with a gun and telling them to lay on the floor but I
15 don't have a detailed minute by minute account when he gave me the
16 statement. So, I can only take what he's willing to give.

17 Q. Absolutely.

18 Now, you testified yesterday that Tommy had jewelry on him.
19 Correct?

20 A. Correct.

21 Q. And Randy had credit cards on him?

22 A. Correct.

23 Q. And Joy had the camera on her?

24 A. Correct.

25 Q. And each of them had something on them?

OFFICER MANN - CROSS EXAMINATION BY MR. AXELROD

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1 A. Yeah. That's why I looked on them as all principals of the
2 crime.

3 Q. And Randy at some point you learned from Randy that he lived
4 with - - in Wilmington with his girlfriend, Linda?

5 A. Yeah. He stated that's where he was working at but he - - and
6 he also told me he was that he was staying in Myrtle Beach with the
7 lady, Linda. So, evidently, they were staying both places. Randy
8 worked in Wilmington.

9 Q. And he told you he was staying at the Perry Court Motel.

10 A. If that's what it says in there about Perry Court. I believe
11 it was Perry Court.

12 MR. AXELROD: That'd be all, Your Honor.

13 THE COURT: Any redirect?

14 MR. RICHARDSON: Don't need it, Your Honor.

15 THE COURT: You may come down. Thank you.

16 COURT REPORTER: Your Honor, would the transcript of the
17 tapes be a Court's Exhibit.

18 THE COURT: I will make them both Court's Exhibits. Yes.

19 I'm going to make both of those transcripts Court's Exhibits.

20 (The Court Reporter accepts the transcript of audio interview
21 of Joy Hines as Court's Exhibit #4, the transcript of audio
22 interview of Randy Gaunt having previously been made Court's
23 Exhibit #3.)

24 THE COURT: Alright.

25 Call your next witness, please.

THE STATE RESTS/MOTIONS AND RULING OF THE COURT

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1 THE STATE RESTS

2 MR. RICHARDSON: Your Honor, at this time the State would
3 rest.

4 THE COURT: Alright. That's fine.

5 Alright. I'm going to let you go to the jury room for just
6 a few minutes to relax, and I'll be calling you back for the
7 conclusion of the case, and - - and we'll be moving along.

8 Anybody need to go out to smoke?

9 Alright, sir. Make arrangements to have them go out to
10 smoke.

11 Come back as quick as you can.

12 (The jury retires to the jury room at 10:23 a.m.)

13 MOTIONS AND RULING OF THE COURT

14 THE COURT: Alright, Mr. Axelrod, any motions before we
15 proceed?

16 MR. AXELROD: Yes, sir, Your Honor.

17 At this time I would like to make a motion for a directed
18 verdict, sir.

19 THE COURT: On what grounds?

20 MR. AXELROD: There is absolutely not one fact in evidence,
21 absolutely not one fact in evidence that ties Tommy to this armed
22 robbery and burglary and this kidnapping.

23 The State had the opportunity if they chose to. They could
24 have put the co-defendant supposedly there with Tommy. He could
25 have said he was with him.

MOTIONS AND RULING OF THE COURT

225

1 They're trying to bootstrap him being there because he had
2 jewelry on him because the detective says, "Everybody had something
3 on them."

4 It's mere speculation, Your Honor.

5 There's not one fact. Nobody identified Tommy as the person
6 in that courtroom - - in that hotel room.

7 THE COURT: You're ignoring all of the testimony of the - -
8 of the lady, completely ignoring it.

9 You want to respond to that, Mr. Richardson?

10 MR. AXELROD: She never identified him, Your Honor.

11 MR. RICHARDSON: Your Honor, I believe the record - -

12 THE COURT: I'm sure she did. She said all - - -

13 MR. RICHARDSON: - - speaks for itself.

14 I believe Mrs. Price did say, "That's the man who had the
15 gun."

16 THE COURT: Well, it goes further than that.

17 MR. RICHARDSON: With all the other testimony, Your Honor.

18 THE COURT: If believed, she said all three of them got in
19 the car. Rode around looking for motels to rob, and this one - -
20 several of them didn't get it done. She clearly says that they
21 got out the car, that they went in.

22 MR. AXELROD: She said - - she didn't testify that they went
23 looking for motels to rob. She said that they drove around and
24 didn't know that they were going to rob the motel.

25 THE COURT: Didn't she testify that these two went into

MOTIONS AND RULING OF THE COURT

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1 that motel? Didn't she?

2 MR. AXELROD: She was in the car. She doesn't know they
3 went in.

4 THE COURT: Well, she - - that's what she said. The jury
5 - - you can argue she was in the car and didn't know.

6 There is a plethora of testimony throughout this case if
7 believed to clearly show that these three individuals rode around
8 looking for something to rob, that two of them went in to rob and
9 did rob these folks. The evidence is uncontroverted that shortly
10 thereafter whoever robbed them used a credit card at a gas tank and
11 used their credit cards at Wal-Mart.

12 That standing alone is circumstantial evidence that whoever
13 used those cards some thirty or forty-five minutes later were the
14 same culprits that stole them from these unfortunate victims.

15 MR. AXELROD: But that's speculation.

16 THE COURT: Well, that's for the jury.

17 MR. AXELROD: But that - - -

18 THE COURT: No need in arguing here. This is just about
19 as clear as I ever saw it.

20 MR. AXELROD: Yes, sir, Your Honor.

21 THE COURT: Plenty of evidence if believed to clearly
22 convict him of all charges.

23 So your motion is respectfully denied.

24 MR. AXELROD: I accept that - - -

25 THE COURT: You can argue what you tell me to the jury, and

MOTIONS AND RULING OF THE COURT

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1 I have no problem with that.

2 MR. AXELROD: I accept - - I accept the Court's ruling. I
3 just take exception to it, sir.

4 THE COURT: Well, they are the finders of the fact based on
5 all of the testimony. Any one incident standing alone might
6 substantiate your position but given the fact that she's testified
7 totally as to what occurred, given the fact that three individuals
8 identified as him used this gentleman's credit card at Wal-Mart,
9 given the fact, too, that there were observations of her house with
10 him going in and out coupled with the fact that there is
11 uncontroverted testimony if believed that he said, "Bring me my
12 thing."

13 And she said, "What thing?"

14 And he said, "My gun."

15 And she said, "Where is it?"

16 And as a result of that, the investigating officer went
17 straight to the location of where he on the telephone said it was.

18 Then there is clearly evidence that that was the weapon used
19 in this unfortunate occurrence.

20 Alright.

21 Yes, sir.

22 MR. RICHARDSON: Your Honor, for housekeeping purposes for
23 Mrs. McCall, the State will not be introducing State's Exhibit #23,
24 #26, #25 or #3.

25 THE COURT: Alright, sir.

NCIC OF THE DEFENDANT

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1 MR. RICHARDSON: Mrs. McCall, does that take care of all
2 our exhibits?

3 NCIC OF THE DEFENDANT

4 THE COURT: Now, Mr. Axelrod, to protect the record, I need
5 the defendant to stand and let's make inquiry as to whether he
6 cares to testify or not.

7 MR. AXELROD: Well, Your Honor, at this point before we get
8 to that point, that's where I'm at, I would like the State - - I
9 would like to go over with the State and the Court of what his NCIC
10 would be. So let's establish that before we ask him. Then the
11 Court can inquire of what - - what's going to be before the Court.

12 THE COURT: Alright, sir.

13 MR. AXELROD: Mr. Richardson, what do you have?

14 MR. RICHARDSON: Looks like he has a 1982 burglary, attempt
15 to commit a felony and one count out of Tennessee, one to five
16 years.

17 THE COURT: Wait a minute, now. Burglary?

18 MR. RICHARDSON: Burglary, yes, sir. That's out of the
19 State of Tennessee looks like in 19 - - 1986 had a grand larceny
20 for stealing, stolen property over \$200, two counts. Ah, looks
21 like a received a sentence of six years on that out of the State of
22 Tennessee.

23 MR. AXELROD: Your Honor, it's my understanding that for the
24 Solicitor to enter in an out of state criminal record, he's going
25 to need a certified copy. He's not going to be able to work it off

NCIC OF THE DEFENDANT

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1 of the NCIC.

2 MR. RICHARDSON: That's for enhancement purposes. I can
3 ask him if he has - - if he's been convicted of a violent - - of a
4 felony.

5 THE COURT: If he takes - - if I conclude that these are
6 prior convictions, under the first part of the applicable rule it
7 does not require the balancing test, that rule providing that
8 crimes of dishonesty are admitted.

9 If I conclude that he has convictions of crimes of dishonesty,
10 and robbery is one. Burglary is one. Then, grand larceny is one.

11 Now, I'm not going to let in any drug charges if there be any.

12 MR. RICHARDSON: Your Honor, the defendant also has a 1998
13 conviction for criminal domestic violence of a high and aggravated
14 nature.

15 THE COURT: I will not permit that to come in. It's not a
16 crime of dishonesty.

17 MR. RICHARDSON: Yes, sir.

18 THE COURT: I think I could balance it and probably let it
19 in but in fairness to him I decline to do that.

20 MR. RICHARDSON: That's one that I had to rerun.

21 THE COURT: I think this, Mr. Richardson. Even though I am
22 permitted to bring it in, I think since he's been indicted for
23 robbery, I would prefer that you say, "Haven't you been convicted
24 of a felony."

25 MR. RICHARDSON: Yes, sir, Your Honor.

NCIC OF THE DEFENDANT

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1 THE COURT: And leave out - - I think that might be
2 prejudicial though I don't I have to weigh it anyway but in
3 fairness to a fair trial since he's being charged with armed
4 robbery and burglary - - -

5 MR. RICHARDSON: I agree, Your Honor.

6 THE COURT: Alright.

7 Just use the word "felony".

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

9 THE COURT: And I would - - -

10 MR. AXELROD: And, Your Honor, so - - Thomas - - Tom, I want
11 you to listen, now. When the judge asks you if you're going to
12 testify, they're going to be able to impeach you with - - they're
13 going to - - I'll - - I'll have to bring out on direct examination,
14 "Isn't it true that you've been convicted of a felony?"

15 THE COURT: And I will charge the jury, now, that that
16 issue only goes to his credibility and believability and is not in
17 any way evidence of his guilt in this charge today but it will go
18 to the jury's credibility and believability as they decide whether
19 to believe his testimony or not.

20 He's entitled to that charge, and I'll make it if he elects to
21 testify.

22 MR. AXELROD: Your Honor, what I'd like the Court to do is
23 inquire of my client and to go over his constitutional rights with
24 him, and then I would like to speak with him for a second please.

25 THE COURT: You may do that.

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 231

1 Please stand.

2 CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT

3 (The defendant stands before the Court.)

4 THE COURT: Mr. Defendant, we are at that stage of the
5 trial where the State has now presented all of its testimony
6 against you. At this time you have a right to call any witnesses
7 on your behalf, and this Court will make every effort to subpoena
8 any witnesses for you like.

9 There's been some reference to Randy Gaunt's testimony. If
10 you want Randy Gaunt to testify, this Court will make him
11 available. I know where he is, and I'll have him here within an
12 hour. So, that's for your lawyer to decide.

13 Now, with reference to you, do you fully understand that if
14 you desire to you have the absolute right under oath to get on this
15 stand and testify? Do you understand that?

16 MR. WEBB: Yes, sir.

17 THE COURT: And do you understand that you would be under
18 oath and if you lie, and I'm not saying that you would, but you lie
19 - - if in the event you should not tell the truth, you stand to be
20 indicted for perjury?

21 MR. WEBB: Yes, sir.

22 THE COURT: Now, I previously told the jury and I will tell
23 them again that you come into court under the presumption of
24 innocence. Don't have to prove a thing, that the State has the
25 burden of proving you guilty if they can beyond a reasonable doubt.

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 232

1 You will remember me already having told the jury that.

2 You understand that?

3 MR. WEBB: Yes, sir.

4 THE COURT: Now, if, and I say that advisedly, if you elect
5 not to testify, I would again charge the jury in strong words that
6 you don't have to testify. You don't have to prove a thing. The
7 fact that you do not testify is your constitutional right as it is
8 mine and as it is theirs.

9 I would further charge the jury in the event that you don't
10 testify that that fact cannot even enter into their deliberations
11 in the jury room.

12 You understand that?

13 MR. WEBB: Yes, sir.

14 THE COURT: Now, obviously, you would discuss such an
15 important issue with your counsel but you cannot ever be heard to
16 say that it was his decision as to whether you testified or not and
17 not yours because I tell you now. You, of course, can talk to him
18 about it but the ultimate decision to testify and not to testify is
19 yours and yours alone. You cannot hide behind later whatever you
20 do that you did it because your lawyer told you to. I'm telling
21 you that the question to testify or not to testify ultimately is
22 yours and yours alone.

23 Do you understand that?

24 MR. WEBB: Yes, sir.

25 THE COURT: Now, I've given some detailed explanation as to

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 233

1 your right to testify and not to testify. Do you have any
2 questions about what I'm saying to you?

3 You would not offend me by asking any questions. I want to
4 make sure that in your mind you are clear as to these proceedings.

5 MR. WEBB: No, sir.

6 THE COURT: Sir?

7 MR. WEBB: No, sir.

8 THE COURT: Alright.

9 Now, before making that decision, will you care to talk to
10 your lawyer a few minutes?

11 MR. WEBB: Yes, sir.

12 THE COURT: Alright.

13 Now, do you understand that you are certainly entitled to that
14 but the ultimate decision is yours?

15 MR. WEBB: Yes, sir.

16 THE COURT: Alright.

17 Then, do you understand that if you have any witnesses to call
18 including this Randy, we'll make him up here, too, for you?

19 You understand that?

20 MR. WEBB: Yes, sir.

21 THE COURT: Alright.

22 Mr. - - you may be seated.

23 (The defendant resumes his seat at the defense table).

24 THE COURT: Mr. Axelrod, make that determination.

25 MR. AXELROD: Yes, sir, Your Honor.

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 234

1 THE COURT: Let me ask you this.

2 Is there any other witnesses to be called other than his
3 possible testimony?

4 MR. AXELROD: Not at this time, Your Honor.

5 THE COURT: Alright.

6 Do you understand, now, that Randy Gaunt is available to
7 testify?

8 MR. AXELROD: I - - I've been informed several times from
9 Your Honor.

10 THE COURT: Alright, sir.

11 I'll inform you one more time if necessary. I don't want you
12 to be confused on that issue.

13 MR. AXELROD: And I appreciate that, Your Honor.

14 THE COURT: Alright, sir.

15 I thought you might.

16 MR. AXELROD: Confusion runs rampant some times.

17 (Mr. Axelrod confers with his client.)

18 MR. AXELROD: Your Honor, can we approach a second?

19 THE COURT: Yes, sir.

20 (Bench conference held off the record and outside the presence
21 of the jury.)

22 THE COURT: Alright.

23 Okay. Let's see here.

24 Alright, Mr. Axelrod, what is his position, please?

25 MR. AXELROD: My client's position is that he chooses not to

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 235

1 testify, and I would ask the Court to inquire fully on that.

2 THE COURT: Please stand.

3 (The defendant stands before the Court.)

4 THE COURT: Now, I have fully explained to you your right
5 to testify and not to testify. Do you have any questions about
6 your absolute right?

7 MR. WEBB: No, sir.

8 THE COURT: Alright, then.

9 Can you tell me whatever your decision is? It's got to be
10 yours.

11 You understand that?

12 MR. WEBB: Yes, sir.

13 THE COURT: What is your decision as to testify or not to
14 testify?

15 MR. WEBB: I don't want to testify.

16 THE COURT: Sir?

17 MR. WEBB: I don't want to testify.

18 THE COURT: And that's your decision?

19 MR. WEBB: Yes, sir.

20 THE COURT: Thank you. I certainly respect that.

21 Alright.

22 (The defendant resumes his seat at the defense table.)

23 THE COURT: Now, gentlemen, in connection with the charge,
24 I'm going to charge, of course, the burden of proof, the
25 credibility of witnesses, the presumption of innocence. I then

CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT 236
1 will charge circumstantial evidence. I propose to charge the
2 doctrine of the hand of one, the hand of all. I will charge the
3 elements that the State must prove beyond a reasonable doubt as to
4 the indictments regarding armed robbery, burglary and kidnapping.

5 Any other charges requested for the Solicitor?

6 MR. RICHARDSON: Possession of recently stolen goods, Your
7 Honor.

8 THE COURT: Sir?

9 MR. RICHARDSON: Possession of recently stolen goods.

10 THE COURT: Let me see that charge.

11 MR. AXELROD: Your Honor, he's not indicted for possession of
12 stolen property. I think the charge would be inappropriate.

13 THE COURT: Well, no. The charge relates to something
14 different.

15 MR. RICHARDSON: The defendants admit that - - Ms. Hines
16 stated that they had the credit cards that had been recently stolen
17 during the robbery and that they - - that all three people were at
18 Wal-Mart in possession of that.

19 THE COURT: Yes. I will permit that. He's entitled to
20 that.

21 Okay.

22 There is - - there is a stealing in this thing, and that's a
23 stealing as a result of the burglary.

24 MR. AXELROD: But he wasn't - - he wasn't charge with
25 possession of that property.

THE DEFENDANT RESTS - MOTIONS RENEWED/RULINGS OF THE COURT 237

1 THE COURT: He doesn't have to be charged with it. I'm - -
2 I'm going - - I'm going to do it.

3 MR. AXELROD: Thank you, sir.

4 THE COURT: Do you have any charges?

5 MR. AXELROD: Ah, not that I can think of right now, Your
6 Honor.

7 THE COURT: Okay.

8 Let's take a short break, and then we'll have final charges.

9 MR. AXELROD: Can I put one more thing on the record, your
10 Honor?

11 THE COURT: Yes, sir, please.

12 THE DEFENDANT RESTS - MOTIONS RENEWED/RULING OF THE COURT

13 MR. AXELROD: To save the judicial economy and time for this
14 Court wants to move forward quickly, I'm going to rest my case. I
15 would like to rest my case now rather than bring the jury in and
16 then rest my case.

17 Let me rest my case now. Let me put my motion on the record.

18 THE COURT: We'll do that. That's satisfactory to save
19 the jury having to come in and out.

20 So, the record will reflect that when the jury comes back you
21 will begin the final arguments, and the record will reflect that
22 your - - your motions and my rulings were made at the conclusion of
23 all the testimony.

24 MR. RICHARDSON: You're going to do the charge first,
25 correct, Judge?

THE DEFENDANT RESTS - MOTIONS RENEWED/RULINGS OF THE COURT 238

1 THE COURT: Sir.

2 I'm going to charge first as I've done for you and Mr. Axelrod
3 in the past.

4 MR. AXELROD: And, Your Honor, so the record is protected, I
5 would like to just renew my motion for a directed verdict.

6 It's just mere speculation of the facts that a jury can deny
7 on.

8 THE COURT: I understand that, and I respectfully disagree
9 with you. It's clearly a question for the jury.

10 MR. RICHARDSON: And, Your Honor, also, I've talked with
11 Dr. Ferlauto pursuant to the Blair hearing. He will be available.
12 He will make himself available at 10:00 on Thursday morning.

13 THE COURT: Alright.

14 We will complete - - I'm comfortable having read the record
15 and the, of course, the statutory law provides that is admissible
16 even without the doctor.

17 MR. RICHARDSON: Yes, sir, Your Honor.

18 THE COURT: And you elected not to bring him and to rely on
19 the statute.

20 However, he wanted the right to cross exam him, and I'm going
21 to give him that right.

22 MR. RICHARDSON: Yes, sir.

23 MR. AXELROD: Yes, sir.

24 Your Honor, what I'm going to do is I'm going to call my
25 office now and see what my schedule is for 10:00, and I will add -

THE DEFENDANT RESTS - MOTIONS RENEWED/RULINGS OF THE COURT 239

1 - if I need the Court's assistance to clear my docket.

2 THE COURT: Let us know when your schedule is ready, and
3 we'll make him available at that time.

4 MR. RICHARDSON: Dr. Ferlauto said he would be available
5 either Friday or Thursday.

6 THE COURT: I'd rather do it Thursday if we can.

7 MR. AXELROD: Okay. I'm going to call my office right now,
8 Your Honor.

9 THE COURT: Okay. Go ahead.

10 MR. AXELROD: Can we take a fifteen minute break now, Your
11 Honor?

12 THE COURT: Let's take a ten - - well, 11:00. Be back at
13 11:00. That's fine.

14 MR. AXELROD: Thank you.

15 (The Court recesses the trial of this case and thereafter
16 reconvenes the trial of this case with all parties present.)

17 THE COURT: Be seated, please.

18 Alright. Are we ready to proceed?

19 MR. RICHARDSON: The State's ready, Your Honor.

20 THE COURT: Alright.

21 You, of course, Solicitor, will have the first argument
22 followed by the defense according to statute.

23 In accordance with our understanding, I'm going ahead and
24 charge the jury prior to summations.

25 Bring the jury in, please.

CHARGE OF THE COURT

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1 MR. AXELROD: Just your standard charges?

2 THE COURT: Yeah, oh, yeah.

3 MR. AXELROD: That will be fine, Your Honor.

4 THE COURT: If I conclude that - - this is on the record.
5 If, I having, ah, instructed the jury, we've agreed on it but if
6 you still feel aggrieved, say, "Judge, I have a matter I need to
7 take up with the Court," and I'll send them back out again.

8 MR. AXELROD: Thank you, Your Honor.

9 THE COURT: Brad.

10 MR. RICHARDSON: Yes, sir.

11 THE COURT: In your charge, I'm going to use inference
12 rather than presumption.

13 MR. RICHARDSON: That's fine, Your Honor.

14 THE COURT: The one we talked about but I'll use the word
15 "inference" rather than "presumption".

16 MR. AXELROD: May I read the charge?

17 THE COURT: Yeah. Let's see.

18 (The attorneys review charges with the Court at the bench.

19 The jury returns to the courtroom at 11:10 a.m.)

20 CHARGE OF THE COURT

21 THE COURT: Alright.

22 Madame Foreman, ladies and gentlemen, at the conclusion of the
23 testimony, the State has rested, and the defense has elected to
24 rest which is their absolute right; and the defendant himself as is
25 his absolute right has elected not to testify.

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1 Now, I charge you in words as strongly as I can that this
2 defendant comes into this court under the presumption of innocence.
3 That presumption remains with him from the moment of his
4 arraignment, throughout the trial and until you, the jury, find him
5 guilty, if at all, by evidence satisfactory to you unanimously
6 beyond a reasonable doubt.

7 This defendant and any defendant in South Carolina does not
8 have to prove himself innocent. The State has to prove him guilty
9 beyond a reasonable doubt, and I charge you that the fact that this
10 witness did not testify cannot, must not be used against him in
11 anyway.

12 Madame Foreman, that fact cannot even enter into your
13 discussions in the jury room. Permit no discussion of the fact
14 that he elected not to testify because it is absolute
15 constitutional right.

16 I tell you that, and I'll address that issue again in a moment
17 because it's always an important issue.

18 Now, ladies and gentlemen, ordinarily, I give you the
19 instructions in the law after summations of counsel.

20 Jurors in the past few years have said, "Judge Cottingham, I
21 wish you would have told us the law even prior to their arguments.
22 I believe I could have followed their positions better."

23 And that made sense to me. So in the last ten, fifteen years
24 that's what I've been doing such that you are in the position to
25 apply the facts as you perceive them to be to the law for the case

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1 as I give it to you, and, hopefully, in doing that, it will help
2 you follow their positions as it relates to the law as I now charge
3 you.

4 Now, Madame Foreman, during your deliberations there will be
5 pencil and paper provided in the jury room, and if you or any
6 member of your distinguished jury has any further questions about
7 what the law is, you write that question down and knock on the
8 door, and we'll address it as appropriate under the circumstances.

9 Now, remembering this. While I can tell you and must tell
10 you what the law is, I cannot tell you what the facts are, and you
11 are to determine the facts from the evidence which is in this
12 courtroom heard on this record by the witnesses.

13 And I tell you that because some years ago I was trying a case
14 in Darlington where a young lady was charged with arson, it being
15 alleged that she burned down a mobile home.

16 A juror sent me an interesting question. It said, "Judge, can
17 you tell us whether she smoked or not?"

18 Well, that question was never asked. Consequently, it was
19 never answered. So my reply to her is, "You will base your factual
20 findings on the law and the evidence heard in this courtroom. That
21 issue was not addressed in the courtroom. So, it's not available
22 to us."

23 I use that just simply as an example that you are to base - -
24 that I cannot tell you what the facts are. You take the facts as
25 you find them to be and apply it to the law of this case.

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1 Now, as you are well aware, this defendant is charged under
2 the facts of this case with burglary, first degree, and I will
3 define that for you in just a moment. He's also charged with armed
4 robbery in this case, and he's charged with kidnapping.

5 Each of these charges relate to each of these victims, and I
6 tell you again that to these indictments this defendant has pled
7 not guilty.

8 Now, as to these indictments I continue to tell you that
9 having pled not guilty, that places the burden of proof upon the
10 State of South Carolina of proving him guilty if they can to your
11 satisfaction beyond a reasonable doubt. I charge you that it is
12 a vital, important rule of law of evidence that a defendant in a
13 criminal case no matter how serious or great may be the offenses
14 with which he is charged must always be presumed innocent until his
15 guilt has been proven beyond a reasonable doubt.

16 As I've said before, this presumption of innocence remains
17 with this defendant at all times from the moment of his
18 arraignment, throughout the trial and until you, the jury, have
19 upon the testimony and evidence presented in this courtroom reached
20 a verdict of guilty beyond a reasonable doubt. For it is the
21 solemn duty of the jury if not clearly convinced of his guilt
22 beyond every reasonable doubt to acquit the defendant.

23 Now, with regards to reasonable doubt, I charge you that the
24 state has the burden of proving him guilty beyond a reasonable
25 doubt. Some of you may have served as jurors in civil cases where

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1 you were told is it only necessary to prove a fact is more likely
2 true than not.

3 In criminal cases, the State's proof must be more powerful
4 than that. It must be beyond a reasonable doubt.

5 Ladies and gentlemen, proof beyond a reasonable doubt is proof
6 that leaves you firmly convinced of the defendant's guilt. There
7 are very few things in this world that we know with absolute
8 certainty, and in criminal cases the law does not require proof
9 that overcomes every possible doubt. If, based on your
10 consideration of the evidence you are firmly convinced that the
11 defendant is guilty of the crime or crimes charged, you must under
12 your oath find him guilty.

13 If, on the other hand, you think there is a real possibility
14 that he is not guilty, then you must give him the benefit of that
15 doubt and find him not guilty.

16 Now, ladies and gentlemen, under the constitution and laws of
17 this state, I continue to emphasize to you, too, that you are the
18 sole and only finders of the facts in this case. As trial judge,
19 I'm not entitled to a factual opinion. Have none. If any ruling,
20 mannerism of mine might indicate to any of you how I feel about any
21 factual situation between the litigants, please disregard that. I
22 am not entitled to a factual opinion, and I absolutely have none.

23 You twelve, you twelve are the only people in this wide world
24 that can tell us what the facts are in this.

25 In determining facts in the case, of course, there will be

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1 matters that are introduced in the testimony, and you would have
2 heard various testimony from the lips of the sworn witnesses.

3 In that regard you are the sole judges of the credibility
4 meaning the believability of the witnesses who have testified in
5 this.

6 In passing upon a witness' testimony you may, if you choose,
7 take into consideration many things such as the appearance and
8 manner of a particular witness sometimes referred to as demeanor.

9 Was a particular witness forthright or hesitate? What was
10 the witness - - was the witness' testimony consistent or did it
11 contain discrepancies?

12 You would, of course, always concern yourselves with does a
13 particular witness have some cause or reason to be biased or
14 prejudiced. Otherwise, do they want you to believe one way or the
15 other?

16 You would consider what was the ability of a particular
17 witness to know about the facts which he or she testified to, and,
18 of course, you may, if you choose, consider was the testimony of
19 the various witnesses corroborated or made stronger by other
20 testimony in evidence or was it made weaker.

21 You have a right to believe one witness against that of many
22 and the other way around. Obviously, you do not determine the
23 truth or falsity of a matter by counting up the number of witnesses
24 who may have testified on one side or the other.

25 As I indicated to all of you yesterday and I emphasize so

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1 strongly, in judging credibility and believability you have but one
2 single objection, to seek and find the truth, to seek and find the
3 truth.

4 Now, ladies and gentlemen, by the same constitution which
5 makes unto you the finders of the facts makes unto me the
6 instructor in the law, and under your oath as jurors you are
7 required to accept the law as I give it to you even though you or
8 I for that matter might disagree with what the law is or ought to
9 be. Please accept this law as I tell it to you remembering that as
10 finders of the facts you take the facts as you find them to be and
11 apply those facts to the law and thereafter reach a verdict.

12 Verdict comes from the Latin word "verdicto" meaning let your
13 verdict speak the truth.

14 Now, I want to emphasize again to you that the defendant in s
15 case has not testified. This is his constitutional right and is
16 not a circumstance that you can take into your consideration or
17 even allow such a discussion in the jury room.

18 Under the Constitution of South Carolina and the United States
19 Constitution, it is his constitutional right not to:

20 The burden of proof is upon the State, if they can, to
21 establish to your satisfaction by competent testimony guilt beyond
22 a reasonable doubt.

23 The fact that a defendant and this defendant did not take the
24 witness stand and testify in his own behalf does not create any
25 inferences against him. The jury must not permit that fact to

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1 weigh in the slightest degree as against this defendant nor must
2 you let this fact even enter into your discussions in the jury
3 room.

4 Now, there is a doctrine in the law known as the hand of one
5 is the hand of all. I charge you, then, ladies and gentlemen, that
6 it is the law of this state that if a crime is committed by two or
7 more persons who are acting together in the commission of the
8 offense, the act of one is the act of both or all.

9 By way of illustration, two people can be guilty of killing
10 another or murder when only one of the two had a pistol and only
11 one shot was fired.

12 In that event if both are acting together assisting each other
13 in the commission of a felony or offense, the law says clearly
14 under those circumstances the act of one is the act of all and is
15 sometimes said the hand of one is the hand of all.

16 I charge you that if several persons agree or conspire to
17 commit a crime, each of the persons is criminally responsible for
18 the acts of his associates or confederates which are done in
19 furtherance or in prosecution of the common purpose for which they
20 are conspiring.

21 Now, I charge you that mere presence is not sufficient under
22 the hand of one is the hand of all to convict. There must be a
23 shown a common purpose each of which known and each of which
24 participated in his assigned role may have been.

25 Under those circumstances if the evidence so suggests that and

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1 you so find, I charge you, then, and it's for you to determine that
2 if under those circumstances the hand of one is the hand of all,
3 and as all factual findings, that is for you to determine as
4 finders of the facts.

5 Now, in criminal cases there are two types of evidence that
6 are generally presented during a trial: Direct evidence and
7 circumstantial evidence.

8 Direct evidence is the testimony of a person who asserts or
9 claims to have actual knowledge of a fact such as an eye-witness.

10 Circumstantial evidence is proof of a chain of facts and
11 circumstances indicating the existence of a fact.

12 The law makes absolutely no distinction between the weight or
13 value to be given to either direct or circumstantial evidence nor
14 is a greater degree of certainty required of circumstantial
15 evidence than of direct evidence.

16 You should consider and weigh all of the evidence in the case.

17 After weighing and considering all of the evidence if you are
18 not convinced of the guilt of the defendant beyond a reasonable
19 doubt, then you under those circumstances must find him not guilty.

20 I charge you that if a defendant is found possessing recently
21 stolen goods, this may be used as evidence that the defendant stole
22 those goods. This would simply be an evidentiary fact to be taken
23 into consideration by you along with all the others in the case,
24 and you may give that fact if it exists such weight as you decide
25 it should receive. You can reject that in its entirety or accept

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1 it depending on your view of the findings of the facts.

2 Now, these defendant is charged with two counts of robbery as
3 against the alleged victims in this case.

4 You know, larceny is the stealing of the property of another
5 such that if I walk over there and I see that young girl's
6 pocketbook and surreptitiously take it, that's larceny. We call it
7 stealing.

8 If I go over there and take it by threat or choke her, it is
9 robber. When you take property of another with the intent to
10 deprive the owner thereof by force or violence, that becomes
11 robbery.

12 Now, armed robbery possesses all of the elements of robbery;
13 that is, the taking of the property of another with consent - -
14 with the intent to permanently deprive the owner of that property
15 thereof by force and violence. It includes all of those elements
16 that the State must prove beyond a reasonable doubt, and for
17 someone to be convicted of armed robbery there must be an
18 additional charge of - - an additional element, and that is the
19 robbery must have taken place while armed with a deadly weapon.

20 In that connection I charge you that the crime of armed
21 robbery includes all of the elements of robbery as I've explained
22 them to you. In order to make out the crime of armed robbery, an
23 additional element is required to be proven. The robbery must have
24 been committed with a deadly weapon. That is, the person or
25 persons committing the robbery had and used a deadly weapon which

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1 placed the one possessing the property in fear in order to obtain
2 the property.

3 I charge you that a pistol or gun is a deadly weapon.

4 Now, and in that connection, I charge you as follows:

5 That Section 16-11-330(a) of the South Carolina Code provide,

6 "A person convicted of the crime of robbery while armed with
7 a pistol commits armed robbery."

8 And that exception also says a pistol or rifle is a deadly
9 weapon.

10 Now, ladies and gentlemen, the defendant is charged, also,
11 with burglary. Burglary is defined as the entering of the property
12 of another, a dwelling of another, without consent and with the
13 intent to commit a crime therein.

14 Now, I charge you that a motel room used for overnight
15 accommodations is a dwelling.

16 Now, to convict somebody of burglary, the State must prove
17 beyond a reasonable doubt, one, there was an entering without
18 consent.

19 And I charge you that an entering by deceit, trickery or guile
20 is not consent.

21 The State must prove that they entered without consent. The
22 state must prove that the entry was with the intent of committing
23 a violent crime therein.

24 The State must prove that the structure intended to be entered
25 was a dwelling, and to make a burglary, ah, burglary in the first

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1 degree - - there's burglary, third, second and first - - but in
2 order to make an entry first degree, the State must prove that that
3 entry was accompanied by a deadly weapon or that the entry occurred
4 during the nighttime. They don't have to prove both but they got
5 to prove in order to make an entry without consent with the intent
6 to commit a crime therein burglary in the first degree, they must
7 prove that it occurred either in the nighttime or it was
8 accompanied by a deadly weapon.

9 Now, kidnapping, you know, we envision kidnapping as something
10 out of some grabbing some child or some person and put them in the
11 truck of a car and hauling them off such as the Lindbergh tragedy.

12 Kidnapping under the law - - that could be kidnapping but it's
13 not necessary. The technical definition of kidnapping is that if
14 you restrain by force or violence an individual's liberty at any
15 time for any moment, you are committing kidnapping because you have
16 restrained an individual by force or violence from their freedom of
17 movement.

18 A lot of jurors say, "Well, they didn't haul them off."

19 But that's not the test, and so let me in that regard explain
20 that to you.

21 A kidnapping is the intentional taking of a person and
22 compelling him or her to be detained against his or her will. It
23 is the willful and unlawful seizing of a person against her will
24 with an intent to cause him or her to be confined, imprisoned or
25 detained.

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1 The essence of the offence of kidnapping is the unlawful
2 seizing, holding or imprisonment of a person.

3 Kidnapping can mean the carrying away of a person by unlawful
4 or by force against his will or seizing and detaining him or her
5 for any unlawful purpose such as carrying away.

6 The elements of kidnapping that the State must prove beyond a
7 reasonable doubt are as follows:

8 That this defendant did unlawfully seize or confine, inveigle,
9 decoy, kidnap or carry away any other person by any means
10 whatsoever without authority of law.

11 The gist of the offense of kidnapping is the detaining of an
12 individual for any period however slight against his will or
13 purpose and preventing them from freedom of movement. As I've
14 indicated to you, the gist of the offense is some form of
15 compulsion.

16 The offense of kidnapping commences when one is wrongfully and
17 unlawfully deprived of his or her freedom and continues as
18 kidnapping until that freedom is restored.

19 Now, all of these elements in each of these crimes must be
20 proved to your satisfaction beyond a reasonable doubt and that the
21 State must prove beyond a reasonable doubt that this defendant did
22 it.

23 Now, ladies and gentlemen, you have been selected as fair and
24 impartial jurors sworn to impartially try and determine the facts
25 in this case and when you comply with your oath to do so, then no

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1 one will have a right to criticize your verdict and you would have
2 fully discharged your duty as jurors.

3 You must not, ladies and gentlemen, be influenced by opinions
4 or expressions of opinions, if any, that you may have heard on the
5 outside but you are to decide this case according to the testify
6 that you have heard from the lips of the sworn witnesses along with
7 other evidence in the case.

8 Now, Madame Foreman, these indictments will be with you in the
9 jury room. Each indictment, there are only two verdicts. They
10 are either not guilty or guilty. Your verdict must be as to each
11 indictment unanimous.

12 There are six indictments. Your verdict - - you consider the
13 evidence as to each indictment separately. Your verdict could be
14 not guilty as to all, guilty as to all, not guilty as to some and
15 guilty to some depending on your - - your view of the facts.

16 Once your jury has reached a unanimous verdict of all twelve
17 of you, you would turn on the back under the word "verdict" meaning
18 to speak the truth, write your verdict of either not guilty or
19 guilty. Sign your name. Let us know you have completed
20 deliberations, and we will call you out to accept the verdict.

21 Now, at this time we'll have concluding statements, first,
22 under the rule from the Solicitor followed by Mr. Axelrod.

23 Is any reason for me to excuse the jury at this time?

24 MR. RICHARDSON: None from the State, Your Honor.

25 MR. AXELROD: No, sir.

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1 THE COURT: Alright.

2 Let the record so reflect.

3 Thank you.

4 SUMMATION BY MR. RICHARDSON

5 MR. RICHARDSON: Well, I started off talking to y'all about
6 hyenas. Once again, they are vicious animals, predatory scavengers
7 always looking for the easy prey.

8 They want - - they don't want too hard for them. Not terribly
9 bright, and I think after listening to the facts of the case you
10 understand why this case reminds me of hyenas.

11 You heard from Joy Hines that on the - - in the early morning
12 hours of October 22, 2005, she was instructed by Randy Gaunt and
13 Tommy Webb to drive from hotel to hotel. She told you she didn't
14 know the purpose.

15 Maybe she did and maybe she didn't but I submit to you that
16 what they were doing at that time was looking for easy prey until
17 they got to the Boardwalk Motel, and Joy says she stopped there at
18 the Boardwalk Motel, and she parked.

19 Two other people in the car, two white males, Randy Gaunt and
20 Thomas Webb. They get out.

21 Joy doesn't know what goes on in that motel. There are two
22 people who do, Mr. Ellis Price and Mrs. Fairey Price.

23 You heard from both of them. They told you how - - how these
24 two men came to the door knocking on the door. Mr. Price groggily
25 getting up sometime between 4:30 and 4:50 in the morning, goes to

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1 the door, and he hears, "We're maintenance. We're here to fix a
2 leak."

3 He wouldn't have let them in otherwise. He told you.

4 If they would have been real nice about it and say, "Hey,
5 we're here to rob you," he would have said, "No, no. You can't
6 come in."

7 But he did let them in.

8 You heard the description that the Prices gave. Detective
9 Mann told you of the description the Prices gave of the two men.
10 All descriptions indicate that the man with the longer hair, the
11 big man, he's the one with the gun.

12 Mrs. Price told you she got a good look at the man with the
13 gun. She's sitting there looking at him, the man with the gun on
14 her saying, "Give me what you got. You're lying to us."

15 The man she was so frightened of, that was the man with the
16 tattoo on the upper arm.

17 Both defendants had tattoos on the upper arm but she said he
18 was definitely a big man with longer hair.

19 MR. AXELROD: Objection, Your Honor. That's testimony that -
20 - that's not evidence, that testimony.

21 THE COURT: No, sir. I'll let the jury determine what's in
22 the testimony.

23 Go ahead.

24 MR. RICHARDSON: Thank you, Your Honor.

25 They told you they were held against their will. They were

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1 told to remain there, not to come out. They told you property had
2 been stolen from them as they had been sleeping in this room, and
3 they saw these two white males run out.

4 What was stolen were credit cards, jewelry and a camera.

5 And the story picks up from there because Joy Hines told you.
6 Who comes down to the car? Randy Gaunt and Thomas Webb.

7 The leader of the pack gets in the front, Tommy Webb. The
8 leader of the pack has the gun in his hand, Tommy Webb.

9 How did Joy Hines recognize that gun? Well, it was hers. It
10 was kept in the bedroom that she shared with Thomas Webb.

11 Is there any - - any choice other than she knows who Tommy
12 Webb is? She was sleeping with him.

13 MR. AXELROD: Objection, Your Honor. That - - that fact's
14 not in evidence either.

15 THE COURT: The jury can make a determination whether the
16 evidence generally suggests such an inference or not.

17 Go ahead.

18 That's for the jury to decide.

19 MR. RICHARDSON: "We shared a bedroom."

20 People sleep in bedrooms, okay.

21 Then, they drive on to Wal-Mart.

22 Like I said, hyenas aren't bright animals.

23 They go to Wal-Mart with all the nice bright lights, big
24 cameras, and that's where they're caught.

25 Detective Mann did some pretty good police work. She called

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1 the credit card company, and said, "Where has this credit card been
2 used? Where has Mr. Price's credit card been used?"

3 Wal-Mart, they made a \$900 purchase forty-five minutes after
4 the robbery.

5 She gets the video. You've seen the video. Joy Hines tells
6 you who is in that video.

7 She says, "That woman, that's me, 5:30 in the morning, October
8 22nd, using the Prices' credit card."

9 She says, "Those other two guys, well, the shorter guy, the
10 smaller guy, that's - - that's Randy Gaunt, white shirt."

11 "How about the guy with the jacket?"

12 You know, the jacket covers up that nice big tattoo on his
13 arm.

14 "Oh, that's Tommy Webb."

15 Once again, "How do you know Tommy Webb?"

16 "He lives with me. We share a bedroom."

17 Detective Mann went to talk to Joy Hines. She reads her
18 Miranda. She gave a statement. You heard her, and during the
19 course of that interview she gets a call. And who is on the other
20 end of the line? Thomas Webb.

21 Detective Mann overheard the phone call. Joy Hines heard the
22 phone call, and what was that man on the other end of the line
23 saying? What was the defendant saying on the line?

24 "Get my gun, my gun."

25 It wasn't Joy's anymore. It was his gun. Tells her where to

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1 find it.

2 Where is the gun found? Exactly where Tommy Webb said it
3 would be because it's his gun. It's the gun he used in the
4 robbery.

5 They go and arrest Tommy Webb. What's found on his person?
6 The jewelry that he stole from Mrs. Price, the jewelry Mrs. Price
7 luckily is able to wear today because the police were able to find
8 it.

9 Folks, it wasn't a brilliant crime. It wasn't the crime of
10 the century but it was a crime.

11 The State has proved beyond a reasonable doubt and has left
12 you firmly convinced that the Prices' dwelling, that hotel room,
13 was broken into in the middle of the night by deceit.

14 The description of Thomas Webb and the fact that he had the
15 property proves he was there, and I submit in that regard, he had
16 the gun.

17 But the Judge will tell you. It's irrelevant who had the gun.
18 It's just that he was there committing that robbery. It's armed
19 robbery. It's burglary in the first degree. They were held
20 against their will. It was kidnapping.

21 Now, the defense made a big show of what was done and what
22 wasn't done. Folks, there's an old adage we learned in law school
23 when you go into trial work. They tell you, "If the facts are
24 against you, you got to argue the law, and if the law is against is
25 you, well, you best argue the facts."

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1 You raise your hand and you say, "Well, what if the facts and
2 the law are against you?"

3 "You scream your bloody head off. Talk loud and hope that
4 they are - - they just ignore everything."

5 And that's what happened here.

6 It was good police work. Did we fingerprint everything? No,
7 we didn't need to.

8 We found the stolen property on the defendant. Found the gun
9 he used in the crime in his home. Joy Hines told you what
10 happened.

11 Folks, you've been left firmly convinced. All I ask is that
12 you do your job and you cage this wild animal. Put him away for
13 what he did.

14 Thank you.

15 THE COURT: Thank you, Mr. Richardson.

16 Mr. Axelrod, you're entitled to a closing, sir.

17 MR. AXELROD: At this time, I will. Thank you, sir.

SUMMATION BY MR. AXELROD

18 MR. AXELROD: May it please this Court, Your Honor?

19 Good morning. I don't know. It might be afternoon in a
20 second.
21

22 Last night I was preparing for closing arguments and it had on
23 the history channel. I watched it from North Carolina. I had on
24 the history channel on. I was watching it, and it was talking
25 about dictatorships and it was talking about dictators rule

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1 countries and things that they do, and they were speaking about
2 this one dictator in Bolivia, I don't know, a hundred years ago,
3 eighty years, and they spoke about that in Bolivia and I don't know
4 if they still do it now but in Bolivia back when they were talking,
5 if someone commits a crime, they just take that person. They just
6 haul them off to the soccer field, and they would shoot them. No
7 trials, nothing. Just haul them off and shot them on the soccer
8 field, and then the next week they play soccer.

9 That's what sets us apart, that we have a trial. The State
10 puts up evidence and then you decide, and not only do you have to
11 decide the evidence that they put up and the Judge tells you you
12 can't go back there and even discuss whether Tommy took the stand
13 but you can go back there and you can discuss about what the State
14 did not put up and why they did not put it up.

15 The State read you a witness list in the beginning, and the
16 Solicitor stood up there and he read his witness list, on the
17 witness list, he read Joy Hines, and after that he read Randy
18 Gaunt. On the State's witness list, they read Randy Gaunt.

19 When the Solicitor tells you that if the facts and the law are
20 against you that you're suppose to scream loud, talk loud, he said,
21 and then he said there was good police work, the State did not want
22 you to hear from Randy Gaunt.

23 Now, I had discussion with Ms. Mann here, and we talked about
24 the interviews that she did and the people that she met, and the
25 Judge informed you that Randy Gaunt if I wanted him to testify, he

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1 could testify, and I say to you that that's incorrect, absolutely
2 positively incorrect because it is not my burden. It is the
3 State's burden to prove beyond all reasonable doubt to you the
4 facts of this case.

5 And what better way to put on the witness stand the person
6 they said that they would put on the witness stand that supposedly
7 was there with Tommy, that Ms. Mann told you had disposed of his
8 case already and would have no reason to not tell the truth. He is
9 not here.

10 I tell you to go back into that jury room and you ask
11 yourself, "Why didn't Randy Gaunt testify?"

12 And I'll answer it for you. They didn't want you to hear what
13 he was going to say because they know.

14 MR. RICHARDSON: Your Honor, that's just assuming facts not
15 in even evidence.

16 MR. AXELROD: Your Honor, I can argue what I just argued.

17 THE COURT: I understand but the jury will understand in
18 fairness to this process that you had the absolute right to call
19 him if you wanted to.

20 So, the State does not have the exclusive right to call him,
21 and I informed you of that at the time but you may proceed.

22 MR. AXELROD: Thank you.

23 They didn't want you to hear because if they wanted you to
24 hear what Randy Gaunt said on their witness list which they wrote,
25 they would have called him.

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1 THE COURT: I want to say one other thing.

2 In qualifying the jury, I told them that this was a witness
3 list of witnesses that may or may not be called, and I specifically
4 heard the Solicitor say in that statement that in the interest of
5 time some of them, in fact, would not be called.

6 Now, that's a part of the record in voir dire.

7 Go ahead.

8 MR. AXELROD: So, in the interest of time, the co-defendant
9 will not be called to testify.

10 Testimony and evidence from the witness stand is suppose to
11 allow, is suppose to help you. It's suppose to help you put aside
12 your doubts. You're suppose to be able to say, "Well, we heard
13 this. This takes care of this doubt."

14 Or, "We heard this. This takes care of this doubt."

15 But what we have is, "We didn't hear this. I have a doubt."

16 "We didn't hear this. I have a doubt."

17 "We didn't hear this. I have a doubt. I have a doubt."

18 Why didn't we hear it?

19 The Solicitor will tell you that it was good police work. He
20 will tell you that the police did everything they positively could
21 have done.

22 Now, what's interesting, the Prices are victims, without a
23 doubt. They're victims.

24 They're staying at Boardwalk Motel, 2301 Ocean Blvd at Myrtle
25 Beach, and they allegedly get robbed about 4:45 in the morning.

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1 They leave for Charleston the following day.

2 Now, on the same day of the robbery, police arrest Randy
3 Gaunt. They take his picture. His picture's taken, and then four
4 or five days later, they arrest Tommy Webb. Take his picture.
5 Have pictures.

6 Mr. Price told you that they never showed him any pictures.
7 Never - - never called him. Never said, "Hey, come down and look
8 at them. Come let me mail you some pictures."

9 Anything. E-mail, snail mail, voice mail, no pictures.

10 They had pictures. No pictures.

11 No photos were ever shown to him.

12 He testify. Listen to what Mr. Price testified in the trial.

13 He said, "And his hair wasn't short but it didn't hang down
14 his back."

15 He said, "It didn't hang down his back."

16 Now, this is the person that has the gun. The person that has
17 the gun on him, he's the closest person to seeing the gun.

18 He says, "The hair didn't hang down his back."

19 He testified when I asked him. He said it would surprise him
20 that hair was half-way down Tommy's back. It would surprise him.

21 The man that had the gun had shorter hair than Tommy, and
22 you're going to see these pictures.

23 The clearest pictures was the video. Tommy's hair and I can't
24 show you. Tommy's hair is going down his back. He wore it in a
25 mullet, the type of hair that's shorter here, and it's long down

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1 his back.

2 You're going to see pictures of - - of Randy and Tommy. Now,
3 what's interesting because they're all hinging their cases saying
4 Tommy was the one that had the gun. Nobody else knows what the
5 other person looks like, and they're saying Tommy had the gun. So,
6 we're going to discuss this fact because if you have a - - if you
7 have a doubt as to whether Tommy had the gun, then you're going to
8 have a doubt as to whether Tommy was in the room no matter what the
9 facts say.

10 Remember, Joy told you. She wasn't sure if she did a bee-line
11 from the motel to the gas station or if she drove around a little
12 while. I submit to you. That's when Tommy enters this picture,
13 afterwards..

14 What's really interesting with Fairey, Mrs. Price, what she
15 says.

16 She says, "He had a tattoo on his upper arm."

17 And she testifies and it's in the record, and you can play it
18 back that he had a t-shirt that was rolled up exposing the biceps.

19 Now, I submit to you when you watch the video from Wal-Mart
20 Randy is standing in there with a rolled-up t-shirt with a tattoo
21 on his upper arm. Randy had the gun without a doubt. Randy had
22 the gun, and if Randy had the gun, do you know whether Tommy was in
23 that room?

24 Now, it's interesting, and you're going to go back, and you're
25 going to look at these pictures, and you can see it from the Wal-

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1 Mart picture, too. Tommy has a tattoo also hear, and Mrs. Price
2 never said he had a tattoo and a tattoo here, and if she saw the
3 gun, she still would have seen this tattoo but she didn't see a
4 tattoo because there wasn't one there.

5 And when you go back and you look at the pictures of Randy
6 Gaunt, you know what? Guess what? He only has one tattoo, and
7 it's up here, and you can tell in the picture, and you can tell
8 from the video, and you can have that video back there, and you can
9 play that video. Randy had the gun, absolutely, Randy had the gun.

10 Mrs. Price testified that the man wore a rolled up t-shirt,
11 and forty-five minutes later in Wal-Mart is the man in with the
12 rolled up t-shirt with the tattoo. She did not see the other guy.

13 Do we know whether that's Tommy?

14 And what's interest is Tommy's in Wal-Mart. The question
15 you're going to have to take a leap is you're going to say because
16 if Tommy was in Wal-Mart, was he in the motel.

17 This is my pen because I'm holding it. No, and to bootstrap
18 Tommy in the motel room because he's in Wal-Mart, I submit to you
19 that's a stretch you can't go.

20 You're going to need evidence. However slight it is, you're
21 going to need evidence. You're going to need something to put
22 Tommy into that room, and you do not have it. You absolutely do
23 not have it.

24 And what's really interesting is Joy says to us. When she
25 says this man comes back to the car, this man asked Joy, "What's

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1 Tommy wearing?"

2 And she says, "Oh, he has on a camouflage jacket."

3 And I submit to you. Whoever had on a camouflage jacket left
4 their presence for whatever reason, and Tommy appears.

5 The man that can't read, the man that can't write, he appears.

6 And I think to myself, "Oh, you're going to say, 'Well, that
7 would be a far stretch!'"

8 And I say to you, no, it's not because like he said, hyenas
9 prey on animals that can't defend themselves.

10 And they said, "We're going to pick up Tommy because no matter
11 what happens, Tommy's the fall guy."

12 Now, you're going to say to me, "Well, that - - that's
13 absurd."

14 And I submit back to you, if I can show you something that
15 goes with that, would that cast doubt into your mind that Tommy was
16 the one that had the gun?

17 And he didn't have the gun because we know he didn't have the
18 gun already but if there's anymore doubt, let me submit something
19 to you.

20 Ms. - - Ms. Mann said, she said, "Jewelry was on Tommy.
21 Credit cards were on Randy, and a camera was on Joy. Each of them
22 had something."

23 Well, here's the interesting thing. Joy knows that Randy gets
24 arrested. He's in jail. He tells her that. Randy is in jail, and
25 Joy had already pawned the jewelry. She pawned the jewelry I think

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1 she said for drugs but when Joy realizes that Randy's in jail,
2 she goes, "What am I going to do now? Well, let me just put it on
3 Tommy."

4 So, what does she do? And this doesn't make any sense. You
5 pawn jewelry to get money for drugs. She goes back. She gets the
6 jewelry out of the pawn shop. She tells you that, and she gives it
7 to Tommy. She gives him the jewelry.

8 "Here, Tommy. Hold the jewelry because the cops are coming."

9 Because it was a day or so from the time that she talked to
10 Joy that Tommy gets arrested.

11 "Hold the jewelry, Tommy, because the cops are coming."

12 MR. RICHARDSON: Your Honor, that's just a mis-
13 characterization of that.

14 THE COURT: Sir?

15 MR. RICHARDSON: That's a mis-characterization of
16 testimony.

17 I believe Joy was talked to and the defendant was arrested on
18 the same day, within the hour.

19 THE COURT: The jury -- I will let the witness determine
20 -- --

21 MR. AXELROD: Absolutely, because prior to Joy and Tommy
22 getting arrested, Joy had already taken it out because she knew
23 Randy was in jail, and "We're going to put it on Tommy," because
24 there's no reason, absolutely no reason that I can think of of why
25 she would pawn the jewelry to get money for drugs to take the money

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1 back which where ever she got the money from to take the jewelry
2 back to stick the jewelry in Tommy's pocket. That don't make
3 sense.

4 The patsy is right there. Not wearing a camouflage jacket.
5 There's not one piece of evidence. Whether you like it or not,
6 there's no evidence that puts Tommy into that room.

7 He's as Wal-Mart. He's not charged today with receiving
8 stolen goods. He's not charged today with using a credit card
9 illegally. He's not charged with that. You should not bootstrap
10 that into the burglary.

11 The Judge told you. Mere presence is not enough to convict
12 somebody.

13 He told you that possession of property, you can infer that it
14 came from a crime. I submit to you that it came directly from Joy.

15 Joy takes that property and specifically gives it back to
16 Tommy for no other reason that when he is caught, he has the
17 jewelry.

18 There are conflicting stories in this case. They did not want
19 you to hear the conflicting stories. They did not want you to hear
20 what Mr. Gaunt might say.

21 Ms. Allen, the police officer, she doesn't dust - - she dusts
22 for fingerprints but, clearly, she knew that you can take a smudge
23 fingerprint, and you can take a fingerprint. The oil, the oil that
24 comes from our bare skin whether we want to accept it or not is
25 DNA, and it's very simple. You take a little swab. You wipe it.

SUMMATION BY MR. AXELROD

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1 You stick it in a little jar just like we do see on television.

2 The State would tell you this is not television. This is not
3 CSI, New York, Miami or Las Vegas but it is common police
4 procedure. You take a swab. You stick it in from the fingerprint
5 and you send it off. They didn't do that.

6 Ms. Allen with twenty years experience states that there's
7 absolutely no evidence linking Tommy to that motel room. Nothing
8 links him there.

9 Christina Van Houten, she told you that they never dusted the
10 gun. If there's fingerprints on this gun, they didn't dust it,
11 absolutely did not.

12 And Robert Ursits, I'm messing his name up, I guess, but that
13 was the man that processed Joy's room. He processed it. He does
14 crime scene processing. Well, it seems like all he did was take
15 pictures because when he finds that gun, and I submit to you. I
16 submit to you, and you're not going to have the bullets back there
17 because the Judge says that he either sends the guns or the
18 bullets. So, maybe if you ask for the bullets, he'll send the gun
19 out.

20 And I submit to you that the bullets, you can touch the
21 bullets and you can see a fingerprint. Whoever put these bullets
22 in this gun had fingerprints on these bullets, and - - -

23 MR. RICHARDSON: Your Honor, that is not - - that wasn't
24 the testimony whatsoever. He's just - - -

25 THE COURT: I again say to you. The jury is an intelligent

SUMMATION BY MR. AXELROD

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1 jury. They listened very intently. They know what was said.

2 MR. RICHARDSON: Thank you.

3 MR. AXELROD: But the actual fact is they never tested the
4 bullets for fingerprints but the State will tell you they did good
5 police work, and they tell you I'm going to talk loud. I tell you
6 they did no police work.

7 What did they do? She based everything she knows on what Joy
8 said. Joy is facing a hundred and twenty years to life. Joy
9 testified. She wants to work something out with the State.

10 I submit to you that Joy's the hyena, and there's something
11 that hyenas do when they get their leg caught in a trap. They chew
12 their leg off. They chew it off. That's how far they'll go to
13 save themselves.

14 Tommy's wearing a camouflage jacket. No, he wasn't. He was
15 wearing some kind of blue shirt, and they just took him in there,
16 and Tommy didn't know what was going on, absolutely did not know.

17 You might look at this. You might look at this case and say,
18 "He had to be the one."

19 Well, when you go back there, and you come up with the proof
20 to why he had to be the one, and you lay it out there with the
21 paper and the pencils and the pens that the Judge says you're going
22 to have. Lay out how he had to be the one because I go back to the
23 two people that were in the room, and without a doubt when you look
24 at the evidence and the testimony - - you look at the evidence and
25 the testimony you heard, without a doubt, Randy Gaunt held the gun,

SUMMATION BY MR. AXELROD

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1 absolutely he held the gun, absolutely.

2 Rolled up t-shirt, tattoo up here and when you're in Wal-Mart
3 looking at that video, he's got a rolled up t-shirt and a tattoo up
4 here, Tommy's got a tattoo here, too. How come that was never
5 mentioned?

6 THE COURT: Your time is expiring, Mr. Axelrod.

7 Mr. Axelrod, your time is expiring.

8 MR. AXELROD: I'm almost done, Your Honor. I've got a little
9 ways to go, please, sir.

10 THE COURT: Go ahead.

11 MR. AXELROD: He's holding a gun on somebody, and they see a
12 tattoo up here, and they testify that they were holding - - they
13 were looking at that gun. You know what? They did not see a
14 tattoo here, and you know why? Because there was no tattoo here,
15 and Tommy has one here, and Randy Gaunt does not.

16 Tommy's not the shooter, and if Tommy's not the shooter, was
17 Tommy in the room?

18 Why is everybody saying Tommy's the shooter?

19 The Judge said in his charge to you, "When you listen to the
20 witnesses, do they have some cause or reason to be biased?"

21 A hundred and twenty years to life, you have a reason to be
22 biased. You have a cause - - to chew her leg off.

23 You know, reasonable doubt, I liken - - I liken trials to it's
24 almost like a boxing ring. You have a boxing ring, and the ropes
25 have some pliability. You can pull them. You can lean on them.

SUMMATION BY MR. AXELROD

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1 And, basically, what you do is you take the facts that you
2 got, the facts that you heard and the facts that you did not hear,
3 the facts that you can infer that you did not hear, and you put
4 them into that ring.

5 Now, the ropes, that's the law. That's what the Judge will
6 give. You are the finder of the facts. That's the man that's the
7 finder of the law. He will give you that law. You have to put
8 those facts into that law. You can push them. You can tug them
9 but you can't throw the facts out of that. You can't throw them
10 out.

11 And the more you sit there in that jury room and you say to
12 yourself, "Well, I'm not sure. Well, if Randy wasn't the shooter,
13 then who was? If Tommy wasn't the shooter, who was?"

14 Because Randy was the shooter.

15 Each time you have a doubt, this is what happens. The ropes
16 get smaller.

17 The Judge says you've got to be firmly convinced. This is the
18 oath you took. Whether you like it or not, if you have doubts, no
19 matter what the facts, absolutely no matter what the facts are, you
20 have to come back not guilty.

21 And that rope gets - - that ring gets smaller and smaller with
22 your doubts.

23 And I don't know how you're going to reconcile who the shooter
24 was in this case or the person with the gun because without a doubt
25 from the testimony that you heard that you've got to follow.

FINAL CHARGE OF THE COURT

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1 That's your oath. Randy had the gun. Tommy did not. And the
2 closest person to the gun said that he'd be surprised that Tommy's
3 hair went down his back.

4 To close, the Solicitor told you in his closing remarks.
5 Tommy had the jewelry on him.

6 He then said, and I quoted him, "That property proves he was
7 there."

8 I submit to you that's not logical. You cannot assume that.
9 Your job is to use the facts that you were given and the facts you
10 were not given to make your determination, and that's the oath you
11 took today, and that's what does separate us, and if you think that
12 this State has proved beyond all reasonable doubt the facts of this
13 case, then why don't we just bulldoze this courthouse and build a
14 soccer field.

15 THE COURT: Thank you, Mr. Axelrod, and thank you, Mr.
16 Richardson.

FINAL CHARGE OF THE COURT

17 Ladies and gentlemen, you heard all of the testimony and
18 evidence in the case. We've had final summations by distinguished
19 counsel for the State and the defense.
20

21 I have provided to you the various instructions in the law
22 which I would ask, please, that you keep in mind as you consider as
23 the sole finders of the facts in this case. Apply those facts to
24 the law as I've instructed it to you. Additional instructions are
25 available to you, Madame Foreman, simply upon your request.

FINAL CHARGE OF THE COURT

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1 Now, if in the event you desire to look at the video again, we
2 can send it in if somebody's competent to run it or if you want to
3 come out and look at it out here, we'll have somebody out here do
4 it but it's not necessary unless you and your jury determine you
5 want to see the jury again.

6 You understand that?

7 So, what we going to do, I'm going to let you go to the jury
8 room.

9 Do not begin your deliberation until these indictments come in
10 and all of this various evidence will come. I'm going to leave the
11 bullets out and let the gun go in. If you want to see the bullets,
12 I'll bring the gun out and let the bullets go in. I'm not going to
13 put them together unless, of course, it's all pointed - - somewhat
14 pointed a certain way. That's not indicated to you.

15 Whatever your verdict is, as I've told you, it's got to be the
16 unanimous verdict.

17 Madame Foreman, it's 12:00. I suggest that as soon as this
18 come in, you begin your deliberations, and if you conclude that you
19 need additional time after lunch, you let us know, and we'll order
20 you some type of quick lunch but if you determine you can reach a
21 verdict in the next hour, I suggest you do so.

22 But I'll leave that to you. We've got all day today, tomorrow
23 and the following. We've got plenty of time to do it but I want to
24 make sure that you understand that at the appropriate time, we'll
25 make lunch available to you if necessary.

FINAL CHARGE OF THE COURT

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.1 Alright.

2 Please go into your jury room. Wait until these matters come
3 in.

4 And if - - if during your deliberations you need the video,
5 let me know whether you want to send it in or bring it out. If
6 someone among you can run it, we'll bring it in.

7 Alternates will remain outside, please.

8 Wait. Don't let the alternates leave.

9 Where are the alternates? Bring them back.

10 (The jury retires to the jury room at 12:21 p.m. after
11 separating the alternates from the jury.)

12 THE COURT: Where are both alternates?

13 BAILIFF: Right here, Your Honor.

14 THE COURT: Listen to me very carefully.

15 Everybody looks healthy but my experience has been several
16 times, one time I sent a jury out and one of the jurors had an
17 epileptic attack, and I had already let the alternates go.

18 Another time just as soon as I let the alternates go, we got
19 an emergency call that one of the jurors' daughters had been in a
20 serious wreck and was in the emergency room about to die.
21 Obviously, I had to let that juror go.

22 So, since that in various cases, I now have kept jurors until
23 we reach a verdict. So, I'll make a place for you comfortably.

24 Now, Mr. Bailiff.

25 BAILIFF: Yes, sir.

FINAL CHARGE OF THE COURT

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1 THE COURT: If the jury determines that they need to have
2 lunch prior to reaching verdict, I want to make sure that you go in
3 and get these gentlemen lunch, too.

4 So, take them to a safe, secure place, and we'll call you back
5 just as soon as we can, and I - - I wish I could let you do but as
6 sure as I do, something will happen. I'm sure you understand.

7 (Alternate jurors depart the courtroom.)

8 THE COURT: Alright.

9 There being no exceptions or additions, what say the State to
10 the charge? No exceptions or additions, Mr. Axelrod, to the
11 charge?

12 MR. AXELROD: I just suggest that maybe we ought to send the
13 jury some lunch now.

14 THE COURT: No, it's just 12:00. I'm not going to do that.

15 MR. AXELROD: It's 12:15. It's lunchtime in Horry County.

16 THE COURT: I'll decide when we're having lunch, and I
17 don't eat lunch at 12:00.

18 Have y'all agreed as to what the evidence is?

19 MR. AXELROD: Mr. Bailey is going to go up and look at it
20 with Mr. Richardson now.

21 THE COURT: Go ahead and let's look and send it in. Who is
22 the Bailiff to take it in?

23 (The Court Reporter reviews the evidence with both counsel,
24 and the evidence going into the jury room is agreed upon,
25 specifically, leaving the bullets outside the jury room as the

EXHIBITS AGREED UPON

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1 Court has instructed.)

2 COURT REPORTER: Your Honor.

3 THE COURT: Ma'am?

4 COURT REPORTER: The attorneys have agreed on the evidence
5 that goes into the courtroom. Of course, I'm retaining the
6 Court's Exhibits as well as the bullets.

7 THE COURT: Okay.

EXHIBITS AGREED UPON

8
9 THE COURT: Now, I want to talk the Bailiff that will be
10 working with the jury.

11 DEPUTY: Eddie Williams.

12 (The Bailiff comes before the Court.)

13 THE COURT: Take these exhibits into the jury room. Tell
14 them to begin their deliberations.

15 MR. AXELROD: Can I see the verdict forms first, Your Honor,
16 before they get them.

17 THE COURT: There's no verdict forms. I told you.

18 MR. AXELROD: Then, can I see the indictments.

19 (The attorney for the defense reviews the indictments.)

20 THE COURT: Let's let this evidence go in. I want the jury
21 deliberating.

22 MR. AXELROD: I just want to see the indictments.

23 THE COURT: Well, I hope this isn't the first time you've
24 looked at them.

25 MR. AXELROD: I want to look at the originals.

EXHIBITS AGREED UPON

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1 THE COURT: Who's going to be working with my jury?

2 BAILIFF: Right here, sir.

3 THE COURT: I'm going to be at lunch at the jail. If the
4 jury wants lunch, she'll be here and go get it for them.

5 So, tend to that if they want lunch. They may reach a verdict
6 between now and 1:00, and if they reach a verdict between now and
7 1:00, tell them to be back in the jury room at 2:00.

8 BAILIFF: So, if they reach a verdict, you want to let
9 them go.

10 THE COURT: No, no. I can't do that.

11 If they reach a verdict, I'm sorry, keep them here.

12 Now, if they have any questions, just tell them I'm having
13 lunch, too, and I'll be back at soon as possible to answer the
14 questions.

15 BAILIFF: Alright, sir.

16 THE COURT: If they want the video in there, just want
17 until I get back. Don't do anything. The only thing I want you to
18 do is get lunch if they come out and ask for it.

19 If they have any questions, take the questions and tell them
20 I'll answer them as soon as I get back.

21 BAILIFF: Yes, sir.

22 THE COURT: So, you going to be with them the whole time?

23 BAILIFF: Yes, sir.

24 THE COURT: So, at the first indication they want lunch,
25 call Christina and go get it.

JURY BEGINS DELIBERATIONS-12:23 P.M./REACH VERDICT-2:45 P.M. 279

1 COURT REPORTER: Your Honor, can we conclude the review of
2 the indictments and send them back for the jury to begin
3 deliberations?

4 MR. AXELROD: You - - you told the jury there were six
5 indictments.

6 THE COURT: Well, there's five.

7 MR. RICHARDSON: There are five.

8 MR. AXELROD: But that - - in the closing remarks, that was
9 just - - -

10 THE COURT: Well, there's just five.

11 MR. AXELROD: Correct, am I correct.

12 THE COURT: I understand but there's five indictments.

13 You have no problem with the indictments?

14 MR. AXELROD: No. No. I just wanted to look at them.

15 THE COURT: Okay. That's good.

16 (The jury receives exhibits and indictments at 12:23 p.m. and
17 begins deliberations.

18 The Court recesses the trial of this case at 12:23 p.m.
19 awaiting the call of the jury.

20 The jury advises a verdict has been reached at 2:45 p.m.

21 The Court thereafter reconvenes the trial of this case.)

22 THE COURT: Good afternoon.

23 Be seated.

24 Where is Mr. Axelrod, now?

25 I understand that the jury has a verdict.

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1 Bring the jury in, and bring the alternates in with them,
2 please.

3 MR. AXELROD: Judge, may we approach for a second?

4 THE COURT: Yes, sir.

5 (Bench conference held off the record and outside the presence
6 of the jury.)

7 The jury returns to the courtroom at 3:07 p.m.)

VERDICT

8
9 THE COURT: Good afternoon, Madame Foreman.

10 I'm advised that you and your jury have reached a unanimous
11 verdict. Is that true?

12 FORELADY: Yes, sir, we have.

13 THE COURT: If this jury has reached a unanimous verdict,
14 please signify by raising your right hand.

15 (All jurors raise their right hands.)

16 THE COURT: Let the jury so signify that - - has everybody
17 raised their right hand?

18 They have.

19 Alright.

20 Christina, accept the verdict and hand it to me.

21 (The Clerk of Court accepts the verdict and passes it to the
22 Court and the Court thereafter passes the verdict back to the
23 Clerk.)

24 THE COURT: Publish the verdict.

25 CLERK OF COURT: The State of South Carolina vs. Thomas E.

VERDICT

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1 Webb, Indictment 06-GS-26-182, charge of kidnapping:

2 We, the jury, by unanimous consent find the defendant guilty.

3 Catherine Lane, Foreperson.

4 Indictment 06-186, charge of kidnapping:

5 We, the jury, by unanimous consent find the defendant guilty.

6 Catherine Lane, Foreperson.

7 As to Indictment 06-GS-26-185, armed robbery:

8 We, the jury, by unanimous consent find the defendant guilty.

9 Catherine Lane, Foreperson.

10 Indictment 06-GS-26-184, armed robbery:

11 We, the jury, by unanimous consent find the defendant guilty.

12 Catherine Lane, Foreperson.

13 Indictment 06-GS-26-183, burglary, first degree:

14 We, the jury, by unanimous consent find the defendant guilty.

15 Catherine Lane, Foreperson.

16 THE COURT: Alright.

17 Is anything else requested of the jury at this time for the
18 State or the defendant?

19 MR. AXELROD: No, sir, Your Honor.

20 MR. RICHARDSON: Nothing for the State.

21 THE COURT: Alright, sir.

22 Have the defendant be seated.

23 Just for the jury's edification here, read his prior record,
24 ~~they are entitled to know that.~~

25 MR. RICHARDSON: Yes, sir, Your Honor.

VERDICT

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1 THE COURT: Ladies and gentlemen, I wanted you to know as
2 finders of facts in this case that this defendant has a long and
3 serious prior record.

4 Now, under our rules of evidence, unless he testifies he is
5 not -- that information is not entitled to be brought into court,
6 and if he should testify, it could only be used as to his
7 credibility or believability but if you find having convicted him,
8 you are entitled to know what his true record was.

9 Go ahead.

10 MR. RICHARDSON: Your Honor, I'll just hit the highlights
11 on this thing.

12 Ah, in addition to numerous because I gather they're all
13 related, crimes, looks like the defendant -- the defendant has
14 definite convictions for burglary, for grand larceny in Tennessee.
15 I know he's been charged with a case out of Tennessee.

16 In 1998, he had a conviction for criminal domestic violence of
17 a high and aggravated nature. Received some time in probation, and
18 he had a probation violation on that.

19 He also had an additional probation violation of at least one
20 while he was in Tennessee.

21 THE COURT: Have you added up the number of years that this
22 defendant has actually been in various prisons anywhere from
23 Tennessee and South Carolina or anything in between?

24 MR. RICHARDSON: Your Honor, I have got -- I had
25 information provided to me by -- by a source that's he's spent a

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1 majority of his life institutionalized in various facilities,
2 county jails or prison systems.

3 THE COURT: Madame Foreman, ladies and gentlemen, as the
4 instructor in the law here, I during the course of the trial and
5 was not entitled to a factual opinion and I have none or had none
6 but as I listened to the testimony, the evidence was absolutely
7 overwhelming as to his guilt, and there was in my opinion no way in
8 the world that twelve people listening to that testimony bent upon
9 finding the truth could have found anything other than you did.

10 Now, I want to congratulate the Solicitor's Office and the
11 investigating officer. I thought it was tremendous police work
12 that you just happened to think of Wal-Mart, and that was the key
13 to your case.

14 I also want to thank Mr. Stuart Axelrod here who gave this
15 defendant every defense that he was entitled to. He was court-
16 appointed at no expense to this defendant, and that's just a good
17 part about our system. When an individual can't afford no matter
18 how serious the charge may be, he's entitled to a defense by an
19 excellent attorney, and Mr. Stuart Axelrod gave him every defense
20 and more to which he was entitled which is proper.

21 So, I want to thank all of you for services. I know that none
22 of you actually desired to come to court this week, and I'm sure
23 you didn't want to sit in on this serious case.

24 ~~Having been called upon as citizens of this country, you've~~
25 done your duty. Our state, our county and this Court, you have

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1 our deepest gratitude for your efforts.

2 Now, as I understand it, what are the instructions for the
3 jury? To come back in the morning?

4 CLERK OF COURT: Last I heard, Judge, was call after six.

5 THE COURT: Call after six for further instructions.

6 CLERK OF COURT: Yes, sir.

7 THE COURT: All of you have your call-in numbers?

8 Ordinarily, we wouldn't be working you jurors as hard as we do
9 but we got five judges working this week, and that's appropriate
10 given these jail overcrowding, and I see the Sheriff back there.
11 He's one of the finest sheriffs in the State of South Carolina.
12 He's concerned with jail overcrowding which is no fault of his own.
13 It's the just the great work that's to be done here.

14 And as a result of that through his efforts, we have three
15 circuit court judges working full-time this week on criminal cases
16 alone, and there will be numerous ones of us here later. The
17 Sheriff is making every effort to help the taxpayers deal with this
18 prison overcrowding situation.

19 It's not of his own fault but he and the Solicitor's Office
20 are moving rapidly to do something about it, and I congratulate the
21 Sheriff. I see him back there and congratulate him on his
22 efforts.

23 These folks who are entitled to a trial are entitled to a
24 speedy trial, and with the solicitor's efforts that's what we going
25 to do.

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.1 You are now excused to call in after 6:00 tonight and go with
2 my heartfelt thanks.

3 (The jury departs the courtroom.)

4 THE COURT: May I hold the indictments? Where are the
5 indictments, please?

6 Did she sign them?

7 CLERK OF COURT: Yes, sir.

8 THE COURT: Alright.

9 MR. RICHARDSON: Your Honor, the State would request that
10 this defendant be held at J. Reuben Long until after his hearing
11 that's scheduled for Thursday at 10:00 a.m.

12 THE COURT: Yes. Let's come forward. Let's have the
13 sentencing procedure at this time, please.

14 MR. RICHARDSON: Your Honor, at the appropriate time Ms.
15 Price wishes to address the Court.

16 THE COURT: Be glad to hear it at this time. Come
17 forward, please.

18 MR. PRICE: Ellis Kramer Price.

19 THE COURT: Mr. Price, let me express to you my
20 appreciation for your returning to court and my apologies for
21 coming to our fair community and to have to suffer such a degrading
22 prospect but I do think that justice has been done in this case.

23 MR. PRICE: Thank you.

24 THE COURT: I'll be glad to hear from you.

25 MR. PRICE: Tom, I hope you - - someday you realize how

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1 much you scared my wife and I when you pointed that gun at us.
2 You'll never know - - we see people now that we don't even trust,
3 and we shouldn't even feel that way but it's all because of you.

4 And I really feel someday you'll get out and you'll kill
5 somebody, and I just hope Your Honor thinks about that when he
6 sentences you.

7 That's it.

8 Thank you.

9 THE COURT: And I appreciate it.

10 Mr. Axelrod, I'll be glad to hear from you.

11 MR. AXELROD: Your Honor, the State said it. My client has
12 been institutionalized most of his life. I don't think he spent
13 that much time in jail, really, but he spent a lot of time in
14 juvenile or as a child. He's had a tough life himself. It's not
15 an excuse.

16 The Solicitor and the Court's well aware that the jury
17 deliberated, I'd say, two and a half to three hours. I'd say that
18 they gave it deliberation. He's had a good trial.

19 Your Honor, I know at one point beginning of the trial - -
20 before the trial my client was offered fifteen years, and he chose
21 not to take it. The co-defendant, Mr. Gaunt, did plead to fifteen
22 years prior to the trial.

23 Just before the trial began, we talked about maybe a twenty
24 year sentence, and my client has said no to that.

25 Your Honor, I would ask you not to punish him for going to

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1 trial. He was entitled to that. I would ask the Court to come in
2 with a sentence under the thirty year mark, and I know the Court
3 can entertain a much longer sentence, burglary carrying fifteen
4 life, the kidnapping carrying zero to thirty, armed robbery, ten to
5 thirty.

6 I'm going to ask the Court to come in under the thirty, maybe
7 in the twenty-five year range - - twenty to twenty-five year range.

8 How old are you?

9 MR. WEBB: Forty-five.

10 MR. AXELROD: My client is forty-five years old, Your Honor.

11 THE COURT: Well, of course, I wasn't a party to and know
12 nothing about any of these other conditions or negotiations but
13 having heard the facts in this case under no circumstances would I
14 as trial judge have accepted any numbers like you're talking about

15 - -

16 MR. AXELROD: Yes, sir, Your Honor.

17 THE COURT: - - particularly given his record.

18 MR. AXELROD: And those were conversations I had with the
19 Solicitor on this matter.

20 THE COURT: I would never punish anybody for exercising
21 their right to trial by jury but based on the facts in this case,
22 if those unfortunate victims would have moved the slightest, he
23 would have killed them. Clearly, he was prepared to do it and
24 said he would do it.

25 There's just no excuse for this sort of conduct, and I kind of

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1 agree with the victim here. He keeps on he's going to kill
2 somebody. Ah, apparently, he doesn't feel like he's got nothing
3 to lose. He's in and out of court. When he gets out, he violates
4 probation.

5 Anything you want to tell me? You don't have to say anything
6 now. I want that clear to you.

7 MR. WEBB: Yeah, I'd like to say something, sir.

8 Sir, I know it's too late to say this but I didn't touch a
9 dime bothering them people but I was there. I'm not - - I'm not
10 denying it. I was there but I didn't take nothing from these
11 people.

12 I - - matter of fact, I'm the one walked out the door, and I
13 didn't come back in either. The stuff was already carried to the
14 car.

15 Apparently, Randy Gaunt took the stuff to the car and put it
16 in the back seat of the car and came back and hollered at me. I
17 was walking down through the car lot towards the beach.

18 THE COURT: Well, I don't want you to say any further. It
19 might implicate you.

20 The problem is you were there, and you knew what was going on.
21 The hand of one is the hand of all, and you participated in the
22 proceeds.

23 MR. WEBB: What I thought - - at least what was going on
24 to start with, we suppose to be going to Joy Hines' dope man.
25 Well, that's what she called it, her dope person where she gets her

VERDICT

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1 crack and stuff. That's what we suppose to be there for.

2 THE COURT: Well, be that as it may, the evidence was
3 pretty overwhelming that there were only three - - only two men
4 involved, and there were two men there, and, ah, there were two men
5 and one woman in that video. The video was the killer in and of
6 itself.

7 No. It's clear to me that two went in, and it's pretty clear
8 to me that you were one of them in some capacity.

9 I don't concern myself with who had the gun or not. My
10 concern is two went in through deceit and guile and opened that
11 door. There's some reference that you tried two other motels and
12 somebody had sense enough not to open that door, and thank goodness
13 they didn't.

14 And this unfortunate individual being a caring person,
15 somebody knocking at his door, he went ahead and opened it but this
16 has taught me a lesson. Somebody knock at my door, I'm going to
17 find out who they are in the future before I open the door.

18 Be that as it may, this is a most serious case, Mr. Axelrod.

19 MR. WEBB: May I say something else, Your Honor?

20 THE COURT: Sir? Yes, sir.

21 I don't want you to say anything that jeopardizes your right
22 to appeal, now.

23 MR. WEBB: I'm just saying that - - -

24 THE COURT: I would suggest to you that you tell your
25 lawyer what you want to say - - but I just don't want to be in a

SENTENCE OF THE COURT

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1 position that anybody says I faulted his rights and this, that and
2 the other because I'm not asking him to say anything.

3 MR. AXELROD: He's not going to talk about the case, Your
4 Honor.

5 THE COURT: I'm cautioning him but I'm not going to decline
6 for him to say a statement if he cares to with your permission.

7 MR. AXELROD: I don't want him to talk about the case, Your
8 Honor.

SENTENCE OF THE COURT

9
10 THE COURT: Alright.

11 With regards to burglary in the first, it is the sentence and
12 judgment of the Court that you be confined to the State
13 Penitentiary for a period of thirty years.

14 With regards to armed robbery as against Ellis Price upon
15 Indictment 0185, it is the sentence and judgment of the Court that
16 you be confined upon that charge of armed robbery fifteen years
17 consecutive to the burglary charge. It means I'm putting you in
18 jail for forty-five years because I don't want you to see the light
19 of day again because you going to kill somebody.

20 Now, with regards to the other armed robbery, I'm going to let
21 that run fifteen years concurrent.

22 With regards to both of the kidnappings, I'm going to sentence
23 him to thirty years on each one concurrent to the previous
24 indictment.

25 Let it be clearly understood that as to the burglary, I'm

MOTIONS AND RULING OF THE COURT

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1 sentencing him to thirty years and as to the Indictment 0185, I'm
2 sentencing him to fifteen years consecutive on armed robbery for a
3 total of forty-five years, the rest of the sentences to run
4 concurrent.

5 MR. RICHARDSON: Yes, sir, Your Honor.

6 THE COURT: Alright. Thank you.

MOTIONS AND RULING OF THE COURT

7
8 MR. AXELROD: Your Honor, at this time I'd like to make a
9 motion for a new trial. I'd like to perfect my motions at this
10 time, sir.

11 THE COURT: Go ahead and make them.

12 MR. AXELROD: I'd like to ask the Court for a new trial.
13 There's absolutely no evidence that the jury could have inferred
14 that Tommy was actually in that room, and I'd also like to renew my
15 motion I made on a directed verdict for the same purpose that there
16 was nothing that they could have based their decision on.

17 THE COURT: Well, again, as I said then and renew now, the
18 evidence as to his guilt was simply overwhelming.

19 Two of them went in. One went outside. That's basically
20 uncontroverted. Two people went, and two people including him
21 were later seen within thirty minutes at Wal-Mart with stolen
22 property.

23 Subsequent to that, he call the lady and said, "Bring me my
24 thing."

25 And that gun was the gun.

MOTIONS AND RULING OF THE COURT

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1 And then later on when he was apprehended, they actually found
2 some of the stolen property on him.

3 So, he would have some difficulty with regards to his
4 involvement.

5 Now, it may or may not have been that they went out to rob
6 some drug dealer but still they went out to rob somebody.

7 No question about it the fact that this unfortunate couple
8 suffered this grievous situation on that night at his hands.
9 Certainly, the hand of one is the hand of all.

10 My personal view of the testimony is that he was the culprit
11 with the gun but it simply makes no difference.

12 MR. AXELROD: Yes, sir.

13 THE COURT: Your motions for a new trial are noted for the
14 record, respectfully overruled, and we will complete the Blair
15 hearing. When is that?

16 MR. RICHARDSON: 10:00 Thursday morning, Your Honor.

17 THE COURT: And your schedule is such that we can do that?

18 MR. AXELROD: Yes, sir, Your Honor.

19 THE COURT: Now, I want him to remain so that he can be
20 here for the Blair hearing. Bring him in at 9:00 such that the
21 doctor can have an opportunity to look at him again before we have
22 the Blair hearing at 9:30.

23 Okay?

24 MR. AXELROD: Thank you.

25 Your Honor, may I get a copy of the sentencing sheets at this

MOTIONS AND RULING OF THE COURT

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1 point, Your Honor.

2 THE COURT: Well, we can get them.

3 MR. RICHARDSON: We'll get the defense a copy.

4 THE COURT: We will do all of that.

5 Alright.

6 That will be the judgment of the Court, and he's remanded to
7 the Detention Center to remain and be back here at 9:00 Thursday
8 morning.

9 Now, as to this charge, he is to receive credit for time
10 served.

11 (The Court adjourns the trial of this case to reconvene this
12 case for the Blair hearing on Thursday of this week at 10:00 a.m.)

CONTINUED BLAIR HEARING

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THURSDAY, MARCH 6, 2008CONTINUED BLAIR HEARING

(The Court reconvenes this case with all parties present in the courtroom to conduct the Blair hearing as requested by defendant's counsel.)

MR. RICHARDSON: Your Honor, at this time the State would go back on the record with regard to The State of South Carolina, County of Horry vs. Thomas E. Webb on the following indictments:

06-GS-26-182, that's a true-billed indictment for kidnapping;

06-GS-26-183, true-billed indictment for burglary in the first degree;

06-GS-26-184, true-billed indictment for armed robbery;

06-GS-26-185, true-billed indictment for armed robbery;

06-GS-26-186, a true-billed indictment for kidnapping.

Brad Richardson representing the State.

I believe Mr. Joshua Bailey, an associate of Mr. Stuart Axelrod, is representing the defendant at this stage of the matter.

Your Honor, this is pursuant to a Blair hearing.

The State introduced on March 3rd the report of Dr. Ferlauto of William S. Hall Mental Institution with regard to the defendant's competency to stand trial.

Dr. Ferlauto wasn't available on Monday. He was - - he did make himself available for today.

The State - - the Court took into consideration Court's Exhibit #1, the report of Dr. Ferlauto dated January - - the report

CONTINUED BLAIR HEARING

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1 was actually dated January 23, 2008.

2 Then the defendant - - at that point the report indicated the
3 defendant was competent to stand trial.

4 THE COURT: Yes. I would want the record to reflect that
5 I was totally satisfied with the report as it was placed in the
6 record and specifically adopted the findings of that court as a
7 recommendation of my findings of that report as the recommendations
8 of the Court and adopted it in toto.

9 However, the defense counsel at least for the record wanted an
10 opportunity to cross examine, and I concluded that we would do that
11 to protect the record but I concluded it was unnecessary to further
12 delay the case given the significance of the case and the length of
13 the case and the time of the case, it being an old case.

14 MR. RICHARDSON: Yes, sir.

15 THE COURT: I concluded then and find again that he was
16 totally competent in all respects with reference to that trial.

17 However, the doctor is here, and he couldn't be here through
18 no fault of his own.

19 MR. RICHARDSON: Medical emergency, Your Honor.

20 THE COURT: And defense counsel consented to the
21 continuation of that issue as to cross examination today permitting
22 us to go forward with the trial.

23 Now, you may call that witness.

24 MR. RICHARDSON: At this time the State would call Dr.
25 Ferlauto.

DR. FERLAUTO - DIRECT EXAMINATION BY MR. RICHARDSON

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1 And, Your Honor, I believe the defense will stipulate to the
2 standing of the doctor as an expert in the field of Forensic
3 Psychiatry.

4 THE COURT: So stipulated.

5 I've had the doctor in my court on many occasions.

6 Glad to have you again.

7 (The witness takes the witness stand.)

8 DR. MICHAEL FERLAUTO, being duly sworn,
9 testifies as follows:

10 CLERK OF COURT: Please state your name for the Court.

11 DR. FERLAUTO: My name is Michael Ferlauto.

12 My first name is M-i-c-h-a-e-l. Last name, F as in Frank, e-
13 r-l-a-u-t-o.

14 MR. RICHARDSON: Thank you, Doctor.

15 DIRECT EXAMINATION BY MR. RICHARDSON:

16 Q. You are admitted here as an expert in the field of Forensic
17 Psychiatry.

18 Did you receive an order from this Court to examine this
19 defendant, and did you do so?

20 A. Yes. We received an order for an evaluation of competency to
21 stand trial.

22 Q. What information did you obtain prior to the examination of
23 the defendant?

24 A. Prior to our examination, we searched the South Carolina
25 Department of Mental Health data basis for any history of services

DR. FERLAUTO - DIRECT EXAMINATION BY MR. RICHARDSON

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1 that may have been provided through the Department of Mental
2 Health.

3 We also attempted to contact family members for collateral
4 information. We also received material such as police records,
5 ah, from your office to review before meeting with him.

6 Q. And what was the significance of those - - of that
7 information?

8 A. Well, the Department of Mental Health records indicated that
9 he had been seen at least, I think, on one brief occasion through
10 the Mental Health Center, and that was actually after his arrest.

11 Um, we also were unable to contact any family member to
12 actually gather that collateral information. So we had to rely
13 rather heavily on his personal account.

14 Q. When was this exam done?

15 A. The date of the evaluation was January 23, 2008.

16 Q. And who was present at that time?

17 A. The defendant, myself and the second examiner who is Davis
18 Rowell, a licensed social worker.

19 Q. How much time was spent with the defendant?

20 A. We spent approximately three hours with the defendant.

21 Q. And have you, ah, did you examine the defendant again today to
22 determine his competency?

23 A. I did.

24 Since the evaluation was conducted a couple of months ago, I
25 met with the defendant this morning. I also contacted the - - the

DR. FERLAUTO - DIRECT EXAMINATION BY MR. RICHARDSON

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1 jail to speak with the nurse and officers there to find out how he
2 had been doing in recent weeks.

3 Q. Are you familiar with the legal standards for competency to
4 stand trial?

5 A. Yes, sir.

6 Q. And what was done to determine if the defendant met these
7 standards?

8 A. Well, our evaluation, in addition to reviewing the materials
9 we discussed, we conduct a psychiatric evaluation which aids us in
10 determining if there is a mental illness.

11 We then go through a series of questions which helps us decide
12 whether he has a factual and rational understanding of the
13 proceedings against him and the capacity to work with his attorney
14 in the preparation of his defense.

15 Q. In your expert opinion, is the defendant competent to assist
16 counseling and stand trial?

17 A. Yes. It's my opinion that he would be -- he is competent to
18 stand trial.

19 Q. And he was competent back in January, and he is competent
20 today?

21 A. Correct.

22 Q. So, there seems to be a continuation of competency during the
23 entire period.

24 A. That's right.

25 Q. Thank you, Doctor.

DR. FERLAUTO - CROSS EXAMINATION BY MR. BAILEY

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1 Please answer any questions that the defense or the Court may
2 have of you.

3 CROSS EXAMINATION BY MR. BAILEY:

4 Q. Good morning, Doctor.

5 A. Good morning.

6 Q. How are you today?

7 A. I'm fine, thank you.

8 Q. I want to first ask you about Mr. Webb's schooling. You
9 covered that with him during your examination, correct?

10 A. We did. That's a routine part of getting a background
11 history.

12 Q. Did he inform you that throughout his younger education he was
13 in Special Education Classes?

14 A. He mentioned that.

15 We attempted to obtain information which would confirm that
16 but the one school that he was able to name we looked and actually
17 had closed several years. So we were unable to obtain records from
18 that school.

19 Q. Did he inform you how long he progressed in school before he
20 dropped out?

21 A. He informed us that he had dropped out in the ninth grade.

22 Q. Did he ever obtain a GED?

23 A. He informed us that he had never pursued a GED.

24 Q. Did Mr. Webb inform you what kind of activities he took up
25 once he exited school?

DR. FERLAUTO - CROSS EXAMINATION BY MR. BAILEY

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1 A. He, ah, indicated that, basically, he was involved in the
2 legal system from an early age and soon after dropping out of
3 school, I think, spent some time incarcerated, and that's how the
4 rest of his teenage and adult years progressed from what he told
5 us.

6 Q. When he was a teenager, he had a heavy alcohol use problem,
7 didn't he?

8 A. That's what he told me.

9 Q. And he was also involved in a drug process called huffing of
10 gas and glues and those sort of substances?

11 A. That's what he told me, correct.

12 Q. Did he also have any other drug problems that he informed you
13 of?

14 A. Mr. Webb told us about several drugs that he has used over the
15 years. Alcohol seemed to be the primary substance of abuse but he
16 has also huffed gas as you mentioned, used cocaine and heroin, I
17 believe.

18 Q. You stated that you had examined on January 23rd. That is
19 correct?

20 A. Yes, sir.

21 Q. Did you diagnosis him with any type of disorders?

22 A. Based on the information we had, we diagnosed Mr. Webb with
23 alcohol dependence, history of inhalant abuse, history of cocaine
24 abuse, history of oploid abuse and ruled out post-traumatic
25 distress disorder.

DR. FERLAUTO - CROSS EXAMINATION BY MR. BAILEY

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1 We also diagnosed personality disorder not otherwise
2 specified.

3 Q. Under that personality disorder, is it possible that he could
4 not understand it one day and today he would be able to understand
5 the legal system?

6 A. Personality disorders do not typically impair one's ability to
7 understand the legal system. Personality disorders, we all have
8 personalities. We usually develop healthy personalities based on
9 modeling, nurturing from our parents, things of that nature.
10 Because of the tumultuous environment that he grew up in, it is my
11 believe that he developed a maladaptive way of interacting with the
12 world but having that kind of a personality should not impair
13 someone's ability to understand right from wrong or understand how
14 the legal system works or impair their ability to - - to - - to
15 make decisions.

16 Q. Would be that the case as well even if at a young age he
17 started abusing alcohol and various types of drugs?

18 A. If there was any evidence of permanent physical damage caused
19 from those drugs, it could create a picture similar to mental
20 retardation or chronic memory problems but part of our examination
21 includes screening for such deficits of attention, concentration,
22 memory, abstract thinking ability, and he performed adequately on
23 all of those screening questions.

24 Q. At your examination on January 23rd, were you informed of any
25 type of hallucinations that Mr. Webb observed?

DR. FERLAUTO - CROSS EXAMINATION BY MR. BAILEY

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1 A. Mr. Webb spoke about hearing the voice of his grandmother, um,
2 and it was my conclusion that that was a symptom of possible post-
3 traumatic stress disorder because he spoke about how she use to
4 physically abuse him, blamed him for the death of his father. He
5 had a lot of distress talking about that but that is not uncommon
6 to hear, ah, and recreate in your mind the - - the sounds, the
7 experiences of the traumatic abuse.

8 Q. Did he express any sorts of paranoia to you at this
9 evaluation?

10 A. Mr. Webb, due to his long involvement with the criminal
11 justice system, has developed a distrust of the criminal justice
12 system but we did not feel that rose to the level of psychosis or
13 delusional paranoia.

14 Q. You stated that your examination on the 23rd of January lasted
15 approximately three hours?

16 A. Correct.

17 Q. And you stated that you saw Mr. Webb this morning?

18 A. Yes.

19 Q. How long did you spend with Mr. Webb this morning?

20 A. I spent about fifteen to twenty minutes with Mr. Webb this
21 morning but I also spoke, as I mentioned earlier, to the Detention
22 Center the night before to find out how he had been doing in the
23 previous weeks and months since I saw him.

24 Q. In the fifteen to twenty minutes you spent with him this
25 morning, what did you get to cover?

DR. FERLAUTO - CROSS EXAMINATION BY MR. BAILEY

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1 A. We talked about what had happened this week. He mentioned the
2 sentence, how the trial went for him, um, his expectations, those
3 kind of things.

4 Q. When you spoke to the nurse at J. Reuben Long, did they give
5 you a list of his medications that he's currently taking?

6 A. They - -they did.

7 Q. What medications is he on?

8 A. The nurse at the Detention Center indicated that Mr. Webb is
9 on Benedryl, Phenobarbital. Phenobarbital is a seizure
10 medication. He's on Tegritol, Tegritol also being a seizure
11 medication, and Trazodone. Trazodone is a old anti-depressant
12 medication that is often used primarily to help people sleep these
13 days.

14 Q. Do any of those have side affects that would impair his
15 ability to understand?

16 A. If dosed appropriately, it's my opinion that they should not
17 interfere with his ability to think properly.

18 MR. BAILEY: I have no further questions, Judge.

19 THE COURT: Anything - - any further questions?

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

22 THE COURT: Thank you, Doctor, and you are now released
23 from your subpoena.

24 DR. FERLAUTO: Thank you.

25 (The witness leaves the witness stand.)

THE COURT AFFIRMS PREVIOUS RULING/COMPETENT TO STAND TRIAL 304

1 THE COURT AFFIRMS PREVIOUS RULING/COMPETENT TO STAND TRIAL

2 THE COURT: Having heard this additional examination, I
3 again conclude that it is appropriate to adopt in toto the findings
4 of the doctor in his report, finding further, again, that the
5 defendant clearly had the ability to work with his attorney and
6 proceed with the case and to go to trial.

7 MR. RICHARDSON: And the conviction stands.

8 THE COURT: And we thank you.

9 Now, do you have any other testimony that you would like to
10 present, any other witnesses?

11 MR. BAILEY: Nothing, Your Honor.

12 THE COURT: Alright.

13 That concludes your interest in this Blair hearing, right?

14 MR. BAILEY: It does, Your Honor.

15 THE COURT: Alright.

16 Thank you.

17 MR. BAILEY: Thank you, Judge.

18 THE COURT: Thank you.

19 MR. RICHARDSON: Thank you, Judge.

20 (The Court adjourns the trial of this case.)

21 - - - END OF TRANSCRIPT - - -

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GENERAL SESSIONS JURY SELECTIONCASE NO: 06 GS 26-186, 182, 185, 184, 183 DATE: 3-3-08PLAINTIFF: State ATTORNEY: Brian Richardson ASDEFENDANT: Thomas E Webb ATTORNEY: Stuart Applehead
Josh BaileyPRESIDING JUDGE: Edmund B. Cottingham COURT REPORTER: LINDA W. MCCALL

STRIKES

JUDGE	NAME	RACE	SEX	COURT	STATE	DEP.	ACCEPT
362	Mary Stout	C	F			X	
339	Alfonso Simmons	AA	M				✓
64	Charles Cecala	C	M				✓
34	Brad Boyles	C	M				✓
355	Erma Stackhouse	C	F			X	
341	Mary Singleton	C	F				✓
334	George Sherman	C	M			X	
318	Roger Todd	C	M			X	
114	Robert Duncan	C	M		X		
28	Roger Black	C	M			X	
23	Petrick Lindrum	C	M		X		
79	Levell Clevinger	C	M			X	
276	Pamela Nettleton	C	F				✓
216	Catherine Lane - Foreperson	C	F				✓
193	Kathleen Johnson	C	F				✓
277	John Noel	C	M			X	
100	Carolyn Davis	C	F				✓
325	Tammy Scott	AA	F			X	
186	Pamela Jarvis	C	F				✓
129	Brian Fessler	C	M				✓
240	Kathleen Manuel	C	F				✓
65	Darren Ceran	C	M		X		
59	Philip Carr	C	M		X		
391	Kelli Wadsten	C	F			X	
22	Reggie Bellamy	AA	M		X		
12	Robert Balzotti	C	M				✓
Alternates							
162	Judith Hardin	C	F			X	
83	Frank Corda	C	M				✓
252	Rita Mapp	C	F			X	
138	Dana Eldorick	C	M				✓

CERTIFICATE OF COURT REPORTER

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Linda W. McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of all the proceedings had and evidence
8 introduced in the trial of the captioned case, relative to
9 appeal, in the Court of General Sessions of Horry County, South
10 Carolina.

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

13 June 8, 2008

14 Linda W. McCall

15 Linda W. McCall

16 Official Reporter
17
18
19

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Horry)Thomas Earnest Webb #91521)

Full name and prison number (if any) of Applicant)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
990 Wintock Highway, Bishopville SC 29010
2. Name and location of Court which imposed sentence Myrtle Beach
South Carolina
3. Name(s) of co-defendant(s) (if any) Jay Hines
Dandi Gaunt
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

H-792487 (a) Kidnapping
H-792487 (b) Arm robbery

7-792490 (c) Arm robbery H-792491 Burglary First Degree

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) _____
 (b) _____
 (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty N/A
 (b) after a plea of not guilty N/A
 (c) after a plea of not contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

- i. Harvey County
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Appeal denied
 ii. _____
 iii. _____

(c) the date of each such result:

- i. _____
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Opinion 4708
 ii. _____
 iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) N/A
 (b) N/A

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Counsel
- (b) Prosecutor violated defendants rights
- (c) See Attached
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel did not bring forth co-defendants
- (b) Counsel was aware defendant could not read
- (c) Counsel failed to notify defendant of rights during Trial
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Court of Appeals
- ii. Rule 221
- iii. Rule 224
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Horry County
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. July 7 2010
- ii. _____
- iii. _____
- iv. _____

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

- i. Opinion - 4708
- ii. _____
- iii. _____
- iv. _____

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

Appeal - ineffective counsel
violated rights

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

(a) which grounds have been presented:

- i. violates rights
- ii. _____
- iii. _____

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

- i. Issue one in courts of appeal
- ii. _____
- iii. _____

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

(a) ineffective counsel - didn't know at the time
 (b) violated rights - didn't know my rights
 (c) _____

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

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

yes

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

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

i. Stuart Akelrod, 609 Sixteenth Ave North Myrtle Beach SC
Handle County Parent P.O. Box 11629 Columbia SC 29577
29211

ii. _____

iii. _____

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

i. Akelrod as my trial Attorney

ii. Durant as my appeal Attorney

iii. _____

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

New trial grant to be given a time
reduction to prove me innocent

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

No I am not

16

10651

STATE OF SOUTH CAROLINA)

County of Horry)

VERIFICATION

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

Thomas Webb

SWORN to and subscribed before me this 13
day of December, 2011.

Debra Sines (L.S.)
Notary Public

My Commission Expires: 11-7-2015

HORRY COUNTY
11 DEC 20 PM 2:04
JELAMIE A. JONES-WARD
CLERK OF COURT

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

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

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

Thomas Webb
Applicant

SWORN or affirmed to and subscribed before me this

13 day of December, 2011.

Debra Sines
Notary Public

My Commission Expires:

11-4-2015

HORRY COUNTY
11 DEC 20 PM 2:04
MELANIE L. J. STANLEY
CLERK OF COURT

Issue one-

Counsel didn't help me at all it was insufficient and ineffective.

Counsel never warned me of my rights

Issue two

Prosecutor violated my rights by calling me an animal.

Prosecutor defamed my character.

Issue three

Prosecutor knew I was unable to read or write. So I was never explain every thing in full by Counsel

Counsel didn't fight for me to protect my rights

Counsel told me not to take the Stand.

HORRY COUNTY
11 DEC 20 PM 2:04
HELAHIE THOMAS-WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS)

2011-CP-26-10651)

Thomas E. Webb, # 291521)

Applicant,)

v.)

RETURN)

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 20, 2011, 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 Horry County Clerk of Court. The Applicant was indicted at the January 2006 term of the Horry County Grand Jury for two counts of Kidnapping, 2006-GS-26-0186 and 2006-GS-26-0182; two counts of Armed Robbery, 2006-GS-26-0185 and 0184; and Burglary, First Degree, 2006-GS-26-0183. He was represented by Stuart Axelrod, Esquire.

On March 3, 4, 6 2008, Webb proceeded to trial before the Honorable Edward B. Cottingham and a jury. The jury rendered verdicts of guilty on all charges. Judge Cottingham sentenced Webb to thirty years imprisonment on each count of kidnapping, fifteen years imprisonment on each count of armed robbery, and thirty years imprisonment for burglary first degree. All sentences were to run concurrently with the exception of one armed robbery which was to run consecutively to the others, resulting in an aggregate sentence of forty-five years imprisonment. Webb appealed the convictions,

and the South Carolina Court of appeals affirmed Webb's convictions in Opinion No. 4708, filed July 7, 2010. The Remittitur was filed November 7, 2011.

Attached herewith and incorporated herein are the records of the Horry County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Any of the above not so attached will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II

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

1. "Ineffective counsel";
2. "Prosecutor violated defendants rights"

Applicant's relief requested in filing his Application is "New trial grant to be given a time reduction to prove me innocent."

III

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 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).

The reviewing court applies 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, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117; 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant's "Prosecutor violated defendants rights" allegation concerns issues that could or should have been raised at trial and/or on appeal. Thus, it is not a proper matter for PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, this claim must be summarily dismissed.

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that these allegations should be dismissed as a matter of law.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that the Application be denied, and the action dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
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2-21, 2012

STATE OF SOUTH CAROLINA
COUNTY OF HORRY.

IN THE COURT OF COMMON PLEAS

2011-CP-26-10651

THOMAS E. WEBB, #291521

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,
Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Thomas E. Webb, #291521
Lee Correctional Inst.
990 Wisacky Hwy.
Bishopville, SC 29010

DATED this 21st day of February, 2012.


Norma Bigbee, Legal Assistant
For Respondent

1
2 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
3 COUNTY OF HORRY) CASE NO: 2011-CP-26-10651
4 PCR HEARING

5 B E F O R E: The Honorable George C. James
6 March 17, 2014

7
8 THOMAS E. WEBB,
9 Claimant/Applicant,

10 vs.

11 STATE OF SOUTH CAROLINA,
12 Respondent.

13
14 APPEARANCES:

15 Daniel Selwa, Esq.
16 For the Claimant/Applicant.

17
18 Joshua L. Thomas, Esq.
19 For the Respondent.
(Office of the Attorney General)

20
21
22
23 Court Reporter:

24 Natalie Dahl, RPR

25

I N D E X

WITNESSES

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EXHIBITS

(NO EXHIBITS WERE MARKED OR ADMITTED)

THE COURT

P R O C E E D I N G S

1
2 THE COURT: This is Thomas E. Webb versus the
3 State, 2011-CP-26-10651. Mr. Thomas, tell me about
4 the background.

5 MR. THOMAS: This is a March 2008 trial where
6 Mr. Webb was convicted of two counts of kidnapping,
7 two counts of armed robbery and one count of burglary
8 first. Judge Cottingham sentenced him to 30 years on
9 the kidnapping and 30 years on the burglary on all of
10 those charges concurrent, with a concurrent 15 on one
11 of the armed robberies and a consecutive 15 on the
12 other armed robberies, so 45 years total. He filed
13 his PCR December 2011 alleging prosecutorial
14 misconduct and ineffectiveness of counsel. He is
15 represented by Daniel Selwa. State is ready to
16 proceed.

17 THE COURT: All right. Mr. Selwa, do you want to
18 tell me about it.

19 MR. SELWA: Those are the two grounds we wish to
20 proceed on, the ineffective assistance of counsel and
21 prosecutorial misconduct.

22 THE COURT: You can ask him about whether or not
23 he understands that if his application is granted,
24 he'll face as much as life measured in years, all of
25 the calculations of what time he's facing.

THOMAS WEBB - DIRECT EXAMINATION

1 MR. SELWA: Your Honor, I do go over that with
2 every client I have. I explain that process.

3 THE COURT: Call your first witness.

4 MR. SELWA: I call Mr. Webb.

5 (THOMAS WEBB, having been duly sworn,
6 testified as follows:)

7 DIRECT-EXAMINATION

8 BY MR. SELWA:

9 Q Mr. Webb, you are here for a PCR, correct?

10 A Yes, sir.

11 Q And your claims are that your trial counsel was
12 ineffective; is that correct?

13 A Yes, sir.

14 Q And who was your trial counsel for --

15 A Stuart Axelrod.

16 Q And what did he represent you on?

17 A Armed robbery -- two armed robberies, two
18 kidnappings and first degree burglary.

19 Q What were you convicted of?

20 A All of them.

21 Q And that was a trial?

22 A Yes, sir.

23 Q Did you appeal that?

24 A Yes.

25 Q What was the result of that?

THOMAS WEBB - DIRECT EXAMINATION

1 A Turned down.

2 Q You are claiming that Mr. Axelrod was ineffective
3 in his assistance at trial level?

4 A Yes.

5 Q Can you tell the Court what your basis for those
6 claims are?

7 A Well, me and Axelrod had problems with each other
8 before. I don't know if he remembers or not. When my
9 trial was going on, they kept calling me "animal"
10 through the whole trial, then he kept coming to the
11 table asking me if I was going to stab him.

12 THE COURT: Stay?

13 THE WITNESS: Stab him.

14 THE COURT: Stab your lawyer?

15 THE WITNESS: Yeah.

16 A I told him I didn't know what he was talking
17 about, which I didn't, so he walked away. He came back
18 again and he said, I'm trying to help you and you're
19 going to stab me? I say, Man, I don't know what you're
20 talking about. He gets too close, you know, where I
21 was sitting, so I just think -- that is what I was
22 going to ask you when I came in here. I have trouble
23 talking with people. I was going to ask you: Would
24 you hit me if you thought I was going to stab you?

25 THE COURT: I'm not going to answer your

THOMAS WEBB - DIRECT EXAMINATION

1 question.

2 MR. SELWA: Sorry, Your Honor. I'll ask you
3 questions.

4 Q (MR. SELWA) Mr. Webb, he represented you
5 throughout the whole trial, correct?

6 A Yes.

7 Q Did you make motions to have him relieved?

8 A Did I? I did that before I ever went to court.

9 Q Before the trial?

10 A Yeah.

11 Q And what was the result of that?

12 A They say that they would investigate it, what I
13 filed against him, and said he was all right.

14 Q Was he your court-appointed attorney?

15 A Yes, sir.

16 Q So he was kept on the case?

17 A Yes.

18 Q Ultimately, what was the outcome of that trial?

19 A Found me guilty.

20 Q How many years did you get?

21 A Forty-five.

22 THE COURT: Who called you an animal?

23 THE WITNESS: The solicitor. He done that

24 through the whole trial. I don't know why, he said I

25 was like a hyenie (sic/phonetic).

THOMAS WEBB - DIRECT EXAMINATION

1 Q He did that in his opening statement?

2 A At the end of it, if I remember. He was always
3 at the...

4 Q At the end of the opening he referred to you as a
5 wild animal?

6 A Yes, sir.

7 Q A hyena?

8 A Hyenie (sic/phonetic), I reckon.

9 Q Did Mr. Axelrod object to that?

10 A Yes, one time. Didn't do any good. They went
11 through the whole trial doing it.

12 Q To your knowledge, did the judge overrule or
13 agree with Axelrod, or did he agree with the
14 prosecution?

15 A The judge said that he wasn't meaning it towards
16 me. I'm the only one in there, so I don't know who
17 else he was talking about, do you?

18 Q They brought that back up in closing?

19 A Yeah.

20 Q And they referred to you again as a wild animal,
21 correct?

22 A Yes.

23 Q Did Mr. Axelrod object at that point?

24 A I remember one time. I don't remember the rest
25 of it.

THOMAS WEBB - DIRECT EXAMINATION

1 Q So he didn't object in closing. Do you think
2 that that impacted the jury?

3 A Done something, because they looking at me like
4 an animal or something, you know. I've never been
5 called that in court.

6 Q So in his representation of you during the trial,
7 you feel that his questions about stabbing prejudiced
8 you in any way?

9 A Yes, because he kept coming to the table and
10 asking me about it. I said I didn't know what he was
11 talking about, which I didn't. When I left court and
12 went back, another officer would tell me about it, the
13 guy came up to him and told him about it. It was a
14 joke, all it was.

15 Q Did Mr. Axelrod object every time that you wanted
16 him to?

17 A Well, I asked to get on the stand, he wouldn't
18 let me on the stand. Let me try this, let me try this,
19 that is all I heard from him.

20 Q Did you ask Mr. Axelrod if you could -- did you
21 tell him you wanted to testify?

22 A Yes. I wanted to get on the stand, he wouldn't
23 let me get on the stand.

24 Q Did you tell the Court you wanted to testify?

25 A No. He kept putting me off, you know, let me try

THOMAS WEBB - DIRECT EXAMINATION

1 this, you know.

2 Q At any point did the judge ask you if you wanted
3 to testify?

4 A Can't remember all of this. It's been awhile.

5 Q But you didn't end up testifying, did you?

6 A Huh-huh.

7 Q Is there anything else you would like to tell the
8 Court?

9 A I was wondering about my codefendant, they never
10 would bring him, and that is who the people was -- he's
11 looking at him, is who they are looking for. They
12 identified him, not me.

13 Q Are you stating that Mr. Axelrod didn't call your
14 codefendant to testify?

15 A Huh-huh.

16 Q And you wanted him to?

17 A I wanted him to, but they say we don't know why,
18 he's not here anyways.

19 Q Anything else?

20 A Well, like I say, this, you know, it's kind of
21 embarrassing thing, I can't read or write, so I have a
22 hard time with my transcripts or anything like that. I
23 would like to ask if I could give a couple more months
24 if he's my lawyer where we sit and go through that,
25 because five minutes -- you see a letter for five

THOMAS WEBB - CROSS-EXAMINATION

1 minutes, you can't, you know...

2 THE COURT: Well, we've begun the hearing, so I
3 don't -- I'm not going to entertain a request for a
4 continuance. We've been in a hearing for 15 minutes.

5 MR. SELWA: We've met, Your Honor.

6 THE WITNESS: I've never seen nothing like this
7 before in my life. I mean, you go in a room for five
8 minutes and already know everything? Ain't no way. I
9 mean, ain't never seen nothing like that. You know
10 what, can you give me a lie detector test on this?

11 THE COURT: No, sir.

12 MR. SELWA: Anything further, sir?

13 THE WITNESS: No.

14 THE COURT: Mr. Thomas. His name is Mr. Thomas.

15 THE WITNESS: Oh.

16 CROSS-EXAMINATION

17 BY MR. THOMAS:

18 Q Mr. Webb, how many meetings did you have with Mr.
19 Axelrod?

20 A How many meetings?

21 Q How many times did you meet with him before?

22 A A couple times. I don't know exactly how many.

23 Q During those meetings, you had a chance to go
24 over the charges against you?

25 A Well, like here, few minutes and talk about it

THOMAS WEBB - CROSS-EXAMINATION

1 and leave, that's it. I was in jail for almost three
2 years.

3 Q But he informed you of the charges against you,
4 you knew about those?

5 A Yes.

6 Q And did you go over any defenses with him that
7 you might have to the charges?

8 A Couple things, like they tried to identify me as
9 short, black hair. I had hair down the middle of my
10 back. I got him to take pictures, where they took
11 pictures when they first arrested me and had it blowed
12 up, but they are still saying it's me.

13 Q Did you give him any other leads to investigate,
14 witnesses to call?

15 A No, I didn't.

16 Q Did you ever ask him to try to get you a plea to
17 these charges?

18 A Well, before we went through the trial, I believe
19 they offered me 20 years.

20 Q It was your decision to turn that down and go to
21 trial?

22 A Yes, sir, but another thing, too, like the
23 15-year sentence, I don't know what happened to that
24 part. I heard it one time, and that was it.

25 Q Do you remember Judge Cottingham going over with

STUART AXELROD - DIRECT EXAMINATION

1 you at trial your right to testify; do you remember him
2 going over that with you?

3 A I can't remember.

4 MR. THOMAS: Beg the Court's indulgence.

5 THE COURT: All right.

6 MR. THOMAS: Thank you. That is all.

7 THE COURT: Redirect?

8 MR. SELWA: None.

9 THE COURT: Any other witnesses, Mr. Selwa?

10 MR. SELWA: Your Honor, I don't at this time.

11 THE COURT: Mr. Thomas?

12 MR. THOMAS: State would call Stuart Axelrod.

13 (STUART AXELROD, having been duly sworn,
14 testified as follows:)

15 DIRECT-EXAMINATION

16 BY MR. THOMAS:

17 Q How long have you been practicing law?

18 A About 18 years.

19 Q Were you appointed or retained?

20 A Appointed.

21 Q How many meetings did you have with Mr. Webb?

22 A I don't remember. We had -- I had a lot of
23 meetings. Whenever I would go to jail, I would see him
24 every other month, two months. We had time to go over
25 the case.

STUART AXELROD - DIRECT EXAMINATION

1 Q What kind of motions did you file regarding this
2 case?

3 A Brady, Motion for Speedy Trial, standard motions.

4 Q What was the State's response?

5 A They gave me discovery, video, pictures of Mr.
6 Webb in Walmart, statements from the victims, stuff
7 like that.

8 Q And, briefly, what was the State's theory of the
9 case? What evidence did they give you?

10 A Theory was they robbed an elderly couple at an
11 oceanfront motel --

12 THE COURT: That's fine for you all to talk,
13 certainly fine, but it's got to be of a tone where I
14 can't hear. I have to pay attention to the witness,
15 so you need to use an inside voice, whisper, okay.

16 Repeat the question.

17 Q (MR. THOMAS) What was the State's theory of the
18 case?

19 A That Mr. Webb and several other people robbed an
20 elderly couple in a small motel in Myrtle Beach -- I
21 think it was Myrtle Beach -- and then they were caught
22 on a video feed, I believe, from Walmart. I believe
23 that might have been Surfside. I forgot what

24 ~~Walmart -- maybe the Walmart in Conway, I forget --~~

25 using the credit cards that were taken.

STUART AXELROD - DIRECT EXAMINATION

1 Q What was your overall defense strategy going into
2 trial?

3 A We had an offer on the table, and I thought and
4 told Mr. Webb we should take the offer, but he was
5 adamant he did not want the offer, so we went into the
6 trial alleging that Mr. Webb wasn't the one that did
7 it, that he might have been with the people afterwards,
8 but we were alleging that he did not go into that motel
9 room and he did not rob those people. Through the
10 trial, I thought I got a decent cross-examination on
11 the victim because -- I forget if it was a he or she,
12 but they were unable to identify Mr. Webb fully.

13 Q Where does this testimony come from about you
14 asking him if he was going to stab you?

15 A I don't know.

16 Q Do you recall ever having that conversation with
17 him at trial?

18 A Honestly, no. I don't remember. I don't -- I
19 don't know. I can't picture myself asking him that
20 unless he said he was going to stab me, but I don't
21 think he would have said that to me, so I don't know.
22 We had a relationship. I represented him for quite a
23 while. I'm not sure when I filed Brady, but I was his
24 lawyer for quite a few years.

25 THE COURT: In other criminal cases?

STUART AXELROD - DIRECT EXAMINATION

1 MR. AXELROD: This one. When he got arrested,
2 Your Honor, he never made bond. He was in -- let me
3 -- well, I don't have it in front of me. Several
4 years.

5 Q (MR. THOMAS) Regarding his testimony that you told
6 him that he couldn't get on the stand, do you recall
7 in the trial Judge Cottingham going over his Fifth
8 Amendment rights with him?

9 A I think what he might be referring to is that I
10 would tell my clients that if you do testify, you know,
11 I'm going to lose that last close, and as tenuous as
12 this case was, I felt if we were going to go to trial,
13 at least let me have the last closing argument, but he
14 always -- I mean, that is what I would have explained,
15 but he's always free to testify. I didn't think it
16 would be beneficial for him. I thought the solicitor
17 would have -- based on the facts of the case, I think
18 the cross-examination of Mr. Webb would have hurt him,
19 so my advice was not to testify. My advice was not to
20 go to trial.

21 Q Do you recall what his past record was?

22 A I do not.

23 Q Do you recall if it was lengthy or short?

24 A ~~Do you have it with you? I'll look at it.~~

25 Q Did he have any witnesses he wanted you to call?

STUART AXELROD - DIRECT EXAMINATION

1 A He might have, and I might have researched to
2 find them, but I couldn't find any witnesses. They had
3 him on a video with the codefendants at Walmart, and
4 then you had -- you know, we had some sort of in-court
5 identification. I tried to attack it, but the lady
6 made some mistakes in identification.

7 Q Why didn't you call the codefendant to testify?

8 A I'm not sure if the defendant pled or not, or
9 they could have taken the Fifth or something. I rarely
10 call a codefendant to testify in a case.

11 Q Why is that?

12 A If they are going to take the Fifth, I can't call
13 them anyway. I don't remember, but, you know, I was --
14 the only thing a codefendant is going to do is say he
15 did it. They are all caught on the video at Walmart,
16 and so I didn't see the purpose.

17 Q As far as the comments where the Solicitor called
18 him an animal, do you recall if you objected to those?

19 A In talking with you this morning, you reminded me
20 that I objected in the opening statement, but I did not
21 object -- it is my opinion I did not object in the
22 closing statement and, Your Honor, they made me the
23 case when they discuss this issue now, it is my case
24 that I was wrong for, I think, not objecting to it.

25 MR. THOMAS: Can I approach?

STUART AXELROD - DIRECT EXAMINATION

1 THE COURT: Yes.

2 Q (MR. THOMAS) Are you familiar with that? Could you
3 identify that?

4 A The Court of Appeals where they appealed my case.
5 I preserved it --

6 THE COURT: The name of it?

7 THE WITNESS: State versus Thomas Webb, appeal
8 from Horry County, Edward Cottingham, Opinion No.
9 4708.

10 MR. THOMAS: I believe that is in your packet,
11 Your Honor.

12 THE COURT: Okay.

13 Q (MR. THOMAS) So based on that, do you believe you
14 sufficiently preserved the objections to the
15 Solicitor's statements about him being a wild animal?

16 A Court's indulgence.

17 THE COURT: Sure.

18 A Looks like I preserved it well enough for the
19 opening statement. He referred to him as a hyena, a
20 dog-like creature, and the Court of Appeals said that
21 those statements are allowed, basically. The closing
22 statement, I don't think I preserved it, but I think
23 they addressed both of them, actually. It says, Webb
24 argues the trial court erred in allowing the Solicitor
25 to refer to him as a wild animal in his opening and

STUART AXELROD - CROSS-EXAMINATION

1 closing argument, and the Court of Appeals disagreed.

2 So I preserved it.

3 MR. THOMAS: May I approach?

4 THE COURT: Yes, sir.

5 THE WITNESS: Is it in my package?

6 MR. THOMAS: Probably not. I didn't send it to
7 you.

8 THE WITNESS: I would like to keep it.

9 MR. THOMAS: Sure. That is all I have.

10 THE COURT: Mr. Selwa.

11 CROSS-EXAMINATION

12 BY MR. SELWA:

13 Q Mr. Axelrod, throughout the trial were you
14 allowed to object to every objectionable instance that
15 you could have?

16 A In reference to the hyena?

17 Q Yes.

18 A I didn't object to it in the closing argument. I
19 think even in the opening he said it three times before
20 I objected, but I did object.

21 Q And in the closing statement, there was no
22 objection?

23 A That is correct.

24 Q And was there a reason for that?

25 A It was a mistake I made in this case. I should

STUART AXELROD - CROSS-EXAMINATION

1 have objected probably -- you know, should have asked
2 for a mistrial at that point. That is something I've
3 learned from this case, that they are saying what
4 happened was not wrong, but I think -- my opinion is
5 that it wasn't a clear identification of Mr. Webb by
6 the victims, and I think the statements calling him a
7 wild animal and hyena prejudiced him in this trial, and
8 I should have asked for a mistrial in the closing
9 argument at least, or at least sought a curative.

10 Q And did you request that at all?

11 A I did not.

12 Q As far as the witnesses he wanted you to call,
13 did you call all of the witnesses that he asked you to?

14 A No. I think there is one witness, if I can
15 remember, that we looked for, or something, but the
16 witness he wanted to call wasn't going to help his
17 case.

18 Q In what sense?

19 A Well, you had a codefendant or -- Joy Heinz
20 testified that she dropped Webb and the codefendant off
21 at the motel on the night of the robbery and returned
22 to the car with a gun, a wallet, a camera and stolen
23 credit cards. There is -- you know, it was a case that
24 I almost pleaded with Mr. Webb to take the plea in this
25 case, and he knows that. The facts were against him.

STUART AXELROD - CROSS-EXAMINATION

1 There was nobody that would help me as a witness.

2 There was some witness I remember he wanted me to find,

3 I think. I don't remember who, but I wasn't able to

4 locate one. He did mention one that might have been

5 out there in the sand dunes or something after it

6 occurred, because it was like a beachfront motel.

7 Q Did he give you a name?

8 A I don't remember. He might have.

9 Q Were you able to cross all of the witnesses?

10 A I believe so. I was able to bring out that the

11 victims weren't able to identify Mr. Webb, and there

12 was some inconsistencies in her statement, I believe,

13 that the Court or the Solicitor would say that the

14 victim was fixated on the gun, so they didn't remember.

15 But I thought it was important that they weren't able

16 to identify him.

17 Q In your defense of Mr. Webb, did you focus on the

18 codefendant at all?

19 A I honestly don't remember. I have to look at the

20 trial transcript if you want me to. I was trying to

21 focus on Mr. Webb not being the one there with the

22 victims, actually.

23 Q Okay. Who did you call on behalf of Mr. Webb?

24 A Who did I call?

25 Q Uh-huh.

STUART AXELROD - CROSS-EXAMINATION

1 A I don't remember if I called anybody. Are you
2 aware of me calling somebody? It might help refresh my
3 memory.

4 Q Did you cross-examine the State's witnesses?

5 A I did. I cross-examined Officer Mann and Joy
6 Heinz.

7 Q And in your cross-examination of Joy Heinz, were
8 you able to ask her all of the questions that you
9 wanted to?

10 A Looks like I got shut down by Judge Cottingham in
11 my cross-examination of both.

12 Q Were you limited in that?

13 A The judge limited me on that, to some degree.

14 Q Were you effectively able to mount a defense
15 based on your cross-examination questions?

16 A Well, I was trying to get Gaunt's (phonetic) --
17 Juan's testimony in for Mann as non-testimonial, and I
18 guess Judge Cottingham shut me down saying it was
19 hearsay --

20 THE COURT: You have your hand over your mouth.

21 THE WITNESS: I'm sorry.

22 A I believe I got shot down on getting Gaunt's
23 testimony in through Officer Mann because Gaunt wasn't
24 there. I was trying to get it in as non-testimonial
25 evidence. They said it was hearsay, so they -- I think

STUART AXELROD - CROSS-EXAMINATION

1 Cottingham considered it testimonial at that point.

2 Q Do you feel that limited your ability to
3 represent Mr. Webb?

4 A No.

5 Q Did you object to that at any point?

6 THE COURT: Object to what? The judge's ruling?

7 MR. SELWA: The ability not to present a defense.

8 THE WITNESS: I think I took exception to the
9 rulings that would have been against me, because in
10 reading the Court of Appeals here it said they found
11 no fault with what had happened.

12 Q Were you able to ask them all the questions you
13 wanted to?

14 A I did not preserve for review -- it says, Defense
15 counsel did not object to the trial court's limitations
16 on cross-examination and, therefore, Webb's argument
17 was not preserved.

18 So I made a mistake there by not preserving that
19 argument that I had been limited in cross-examination.

20 Q Do you think that limitation affected the outcome
21 of Mr. Webb's trial?

22 A Well, probably. There was reasons for what I
23 wanted to get into and, you know, Judge Cottingham was
24 being very strict that day.

25 Q Had anybody actually identified Mr. Webb?

STUART AXELROD - CROSS-EXAMINATION

1 A The only identification of Mr. Webb actually
2 would have been the Walmart -- he's found at Walmart
3 with the other people with the stolen stuff, and our
4 argument was that he might have been with those people
5 and received stolen goods, but was not the one that
6 committed the kidnapping, armed robbery or the
7 burglaries.

8 Q So the only claims against Mr. Webb arose out of
9 Ms. Heinz, correct?

10 A Yes.

11 Q And you weren't able to effectively cross-examine
12 her, correct?

13 A Correct.

14 Q And you didn't object to that limitation?

15 A Maybe it was Heinz -- yeah, I didn't preserve
16 that. Clearly, I didn't preserve it. I didn't object
17 to it and preserve it for the record.

18 Q And do you feel if you had been able to fully
19 examine those witnesses that things would have been
20 different?

21 A Might have. I can't say with absolute certainty.

22 Q Can you elaborate more on what you would have
23 asked?

24 (A pause in the proceedings.)

25 A I'll go back and answer a question you had with

STUART AXELROD - REDIRECT EXAMINATION

1 Joy Heinz. I was trying to elicit that it was her idea
2 to commit the robberies, and I believed that Mr. Mann
3 learned all of that through the investigation, and that
4 is why I considered that there be non-testimonial taken
5 in the course of business of a police officer.

6 MR. SELWA: All right. No further questions.

7 THE COURT: Mr. Thomas?

8 REDIRECT-EXAMINATION

9 BY MR. THOMAS:

10 Q Briefly, you did cross-examine Ms. Heinz on --
11 I'm looking and it looks like her testimony starts on
12 Page 136. You did get a chance to cross-examine her on
13 the total exposure she was facing, she was charged with
14 these crimes?

15 A I impeached her to the fact that she could
16 receive 120 years plus life -- 135 years to life is
17 what I asked her, and she said that she knew that.

18 Q Do you recall what else you impeached her on,
19 maybe a prior statement that she had given?

20 A Do you have a page on that?

21 Q Looks like there was a -- you viewed the video
22 with her?

23 A Yes.

24 Q On Page 145 you talked to her about her testimony
25 to the officers prior to that?

THE COURT - ARGUMENTS

1 A Yes.

2 Q And you remember on Page 141 where you pointed
3 out that she was intoxicated or high on drugs at the
4 time all of this happened?

5 A Yes. Her answer was that she was hazy.

6 MR. THOMAS: That's all I have.

7 THE COURT: Anything else, Mr. Selwa?

8 MR. SELWA: No redirect.

9 THE COURT: You can step down, Mr. Axelrod.

10 MR. AXELROD: Thank you, Your Honor.

11 THE COURT: Any other witnesses from the State?

12 MR. THOMAS: That is the State's case.

13 THE COURT: Any reply, Mr. Selwa?

14 MR. SELWA: No, Your Honor.

15 THE COURT: I read this opinion. It just kind of
16 escapes me. Certainly I have deference to the Court
17 of Appeals as to how a trial lawyer should object to a
18 Court's ruling. I'm familiar with State versus
19 Mitchell where if a lawyer acquiesces in a judge's
20 ruling and makes no further objection, appellant
21 review is procedurally barred, but doesn't that force
22 arguing with the trial judge?

23 Okay. You can step down, Mr. Axelrod.

24 All right. In other words, he was

25 cross-examining the witness, he's asking questions,

THE COURT - ARGUMENTS

1 prosecutor objects, Judge Cottingham sustains the
2 objection, certainly he could have made a proffer of
3 what he wanted to ask, but I don't understand that
4 line of cases. Of course, Judge Lockemy was going by
5 that when he heard the opinion.

6 Okay. Any arguments, Mr. Selwa? After you
7 finish, I have a few questions.

8 MR. SELWA: No arguments, Your Honor.

9 THE COURT: Mr. Thomas?

10 MR. THOMPSON: We would point out, Your Honor,
11 and I guess at this time we would move to dismiss that
12 second charge of prosecutorial misconduct.

13 THE COURT: I assumed you were talking about
14 closing arguments?

15 MR. THOMAS: Yes. We believe that was addressed
16 on direct appeal and is not right for PCR.

17 THE COURT: Was it addressed when he said it
18 during closing?

19 MR. THOMAS: Your Honor, the issue on appeal
20 specifically refers to -- and I'm at Part 1 here where
21 he says "wild animals" -- in his opening and closing
22 arguments.

23 THE COURT: Right.

24 MR. THOMAS: You know, the Court of Appeals
25 addresses that language, the "wild animal" language,

THE COURT - ARGUMENTS

1 and preserved or not, they clearly said that that
2 language, in any event, is not inappropriate, not
3 improper. They went on to further say there is strong
4 evidence of his guilt, so even if it was improper, it
5 did not affect the trial with unfairness. I would
6 just submit that the objection -- the Court of Appeals
7 clearly found that the objection was to closing and
8 opening.

9 THE COURT: Well, I just kind of wonder why they
10 didn't find it to be objectionable. I mean, it's
11 arguably inflaming the jury's passion calling someone
12 a wild animal. It doesn't make any sense why that
13 would be permitted, but it does appear in the very
14 last sentence, We find the Solicitor's comments did
15 not so affect the trial with unfairness as to make
16 Webb's conviction a denial of due process, even though
17 he didn't object in the closings. Of course, then you
18 have the cross-examination of Heinz and Mann.

19 It is clear to me that you can't get in Mr.
20 Gaunt's statement through the police officer, because
21 it is hearsay.

22 MR. THOMAS: Correct.

23 THE COURT: I guess Mr. Axelrod could have asked
24 ~~to send the jury out and he could have proffered what~~
25 Mr. Mann would say. I assume that Gaunt had already

THE COURT - ARGUMENTS

1 pled or his charges were disposed of, because Judge
2 Cottingham said somewhere, I can get him here in less
3 than an hour if you want him. So, evidently, he was
4 in custody somewhere.

5 So, Mr. Selwa, you say that they should have
6 called Mr. Gaunt at trial?

7 MR. SELWA: Your Honor, that would have been --

8 THE COURT: What would he have said?

9 MR. SELWA: You know, I'm not sure what he would
10 have said. It is always a possibility that he could
11 have, of course, asserted his rights not to testify to
12 some issues, but at least that would have been known
13 by the Court, and that didn't happen.

14 THE COURT: Where is he now?

15 MR. SELWA: Mr. Gaunt?

16 THE COURT: Is he in prison?

17 MR. WEBB: As far as I know, he is.

18 THE COURT: For this?

19 MR. SELWA: I think so, Your Honor.

20 THE COURT: Anything else, gentlemen?

21 MR. SELWA: No, sir.

22 THE COURT: Mr. Webb, what I'm going to do is
23 this. I have a lot to read. I'm going to read the
24 whole transcript. I'm going to go over all of the
25 materials that are in your packet, your application,

THE COURT - ARGUMENTS

1 the State's response. I have taken detailed notes. I
2 will make a decision. One decision will be that your
3 application should be granted and you'll get a new
4 trial, that is one choice I have. The other is that
5 if I deny your application by stating that your
6 grounds have no merit, that is the second choice.
7 Whatever decision I make, it will be in the form of a
8 written order that I sign. Your lawyer will get a
9 copy, whether you win or you lose.

10 If you don't like what is in the order, you will
11 have a certain amount of time from that date to either
12 ask for me to reconsider, or to appeal. Your lawyer
13 can tell you about the deadlines. There is ten days
14 for one deadline, and 30 for the other. Thirty days
15 is to appeal, but he'll alert you as to what that
16 decision is and you'll get a copy of it from him, all
17 right.

18 MR. WEBB: Yes, sir.

19 THE COURT: Thank you, gentlemen.
20
21
22
23
24

25

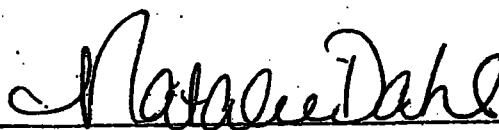
CERTIFICATE OF REPORTER

1
2 State of South Carolina)
3 County of Horry)
4

5 I, Natalie Dahl, Official Court Reporter for the
6 State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete Transcript
8 of Record of the proceedings had and evidence
9 introduced in the matter of the captioned case,
10 relative to appeal, in the Court of General Sessions
11 for Horry County, South Carolina, on the 17th day of
12 March, 2014.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.
15

16 July 16, 2014
17

18 
19

20 Natalie Dahl, RPR
21 Court Reporter
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Thomas E. Webb, #291521,)

Case No. 2011-CP-26-10651

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

FILED
11 APR 15 PM 1:25
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 20, 2011. Respondent made a timely Return on or about February 21, 2012. The Court convened an evidentiary hearing into the matter on March 17, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Daniel A. Selwa, II, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, Stuart M. Axelrod, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Horry County Clerk of Court. In January 2006, the Horry County Grand Jury indicted Applicant for first degree burglary (2006-GS-26-183), two counts of

[Handwritten signature]

kidnapping (2006-GS-26-182, -186), and two counts of armed robbery (2006-GS-26-184, -185).

Stuart M. Axelrod, Esquire ("trial counsel"), represented Applicant. On March 3, 2008, Applicant proceeded to trial before the Honorable Edward B. Cottingham and a jury. On March 6, 2008, the jury found Applicant guilty as indicted on all charges. Judge Cottingham sentenced Applicant to concurrent terms of thirty (30) years for first degree burglary, thirty (30) years for each kidnapping conviction, and fifteen (15) years for one of the armed robbery convictions. On the other armed robbery conviction, Judge Cottingham sentenced Applicant to a consecutive term of fifteen (15) years.

Applicant filed a timely notice of appeal, and LaNelle C. Durant, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the conviction on July 7, 2010. State v. Webb, 389 S.C. 174, 697 S.E.2d 662 (Ct. App. 2010). The South Carolina Supreme Court denied Applicant's petition for writ of certiorari on November 3, 2011, and the remittitur was returned to the circuit court on November 7, 2011.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "ineffective counsel"
 - a. "Counsel did not bring forth co-defendants"
 - b. "Counsel was aware defendant couldn't read"
 - c. "Counsel fail to notify defendant of rights during trial"
2. "Prosecutor violated defendants rights"

In an attachment to the application, Applicant alleged trial counsel did not help him at all, never warned him of his rights, did not fight to protect his rights, and told him not to take the stand. He

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also alleged the solicitor violated his rights by calling him an animal and defamed his character.

At the PCR hearing, Applicant proceeded on allegations of ineffective assistance based on trial counsel's failure to call the co-defendant to testify; trial counsel's failure to properly object to Judge Cottingham's limitations on the cross-examination of two witnesses; and trial counsel's failure to allow Applicant to testify at trial. Applicant also alleged the solicitor's comments were improper and trial counsel failed to object to them in closing argument.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified he had a difficult relationship with trial counsel. He also testified trial counsel asked during trial "are you going to stab me?" Applicant recalled the solicitor referring to him as a wild animal throughout trial. Applicant also testified trial counsel objected to these comments during the opening statement, but not during closing. He also testified he wanted to take the stand, but trial counsel would not let him. On cross-examination, Applicant did recall the judge going over his right to testify. He also recalled discussing with trial counsel his charges and the possible defenses he had. Applicant also admitted he made the decision to decline a plea offer for twenty (20) years.

Trial counsel recalled meeting with Applicant many times before trial. Trial counsel

testified that during those meetings they discussed the charges, Applicant's defenses, and the State's response to discovery. Trial counsel testified he advised Applicant to accept a plea, but Applicant declined. He further testified Applicant's theory of defense at trial was Applicant never entered the hotel room and the victims could not positively identify him as the robber.

Trial counsel did not recall making any comment to Applicant about a stabbing. However, he did recall objecting to the solicitor's "wild animal" comments during the opening. On cross-examination, trial counsel opined he could have also objected during closing and asked for a mistrial. Trial counsel recalled discussing with Applicant the right to testify. Trial counsel testified he advised Applicant to not take the stand because preserving last argument was important in a close case like this. He also feared cross-examination of Applicant would be harmful to the case. However, trial counsel did recall letting Applicant make the ultimate decision to remain silent. He also recalled Judge Cottingham explaining these rights to Applicant.

Trial counsel testified he did not call the co-defendant to the stand because the co-defendant would likely have exercised his right against self-incrimination. He also testified the only testimony the co-defendant would have given would have been to implicate Applicant in the crimes. On cross-examination, trial counsel admitted he tried to get the co-defendant's statement in through Investigator Mann, but Judge Cottingham ruled he could not. Trial counsel also testified he believed he should have objected to Judge Cottingham's limitations on the cross-examination of Ms. Hines. However, he further testified he was able to cross-examine Hines on her pending charges, her inconsistent prior statement, and her history of drug use.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "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." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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. at 117-18, 386 S.E.2d at 625.

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective. In reaching this conclusion, the Court finds trial counsel's testimony credible, while finding Applicant's not credible. The Court further finds trial counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. To the extent Applicant's testimony about trial counsel's stabbing comments is an allegation of ineffective assistance of counsel, the Court finds the allegation not credible and wholly without merit.

Applicant's allegation regarding trial counsel's failure to call the co-defendant to testify is also without merit. It appears from the transcript the co-defendant would not have testified Applicant was not involved in the robbery. Instead, it appears the co-defendant would have merely given a different account from the victim as to when Applicant presented the gun (Trial Tr. 218:21-25). Furthermore, trial counsel articulated a valid strategy for not calling the co-defendant in that he wanted to avoid the co-defendant implicating Applicant in the crime. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Judge Cottingham also gave Applicant an opportunity to have the co-defendant brought to court to testify (Trial Tr. 231:6-12). See State v. Stanko, 402 S.C. 252, 270, 741 S.E.2d 708, 717 (2013) ("Appellant cannot now complain of an error which his own conduct induced." (citing State v. Babb, 299 S.C. 451, 385 S.E.2d 827 (1989))). Regardless, the co-defendant did not testify at the PCR hearing. Therefore, Applicant presented no evidence of what the co-defendant's testimony would have been if trial counsel had called him. 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." (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995))).

The Court also finds meritless Applicant's claim regarding trial counsel's advice to not testify. The Court finds credible trial counsel's testimony he merely advised Applicant not to testify, but the final decision was Applicant's. Furthermore, the transcript reveals Judge Cottingham fully questioned Applicant about whether he would testify (Trial Tr. 231-235). Therefore, the evidence clearly demonstrates Applicant freely and voluntarily decided not to testify.

Applicant has also not shown trial counsel was ineffective in his cross examination of Hines and Investigator Mann. The Court of Appeals held trial counsel "did not object to the trial court's limitations" on his cross-examination of these witnesses regarding the co-defendant's statement, and refused to consider these arguments on appeal. This Court finds that holding curious as it appears that trial counsel asked questions, the solicitor objected, and the objections were sustained. However, the Court cannot discern what this further cross-examination would have yielded. It appears trial counsel was simply trying to show the jury there were conflicting accounts of the robbery. Even though Judge Cottingham sustained the solicitor's objections on hearsay grounds, trial counsel accomplished his goal of getting those conflicting accounts in front of the jury (Trial Tr. 221:8-222:16).

Furthermore, trial counsel was able to thoroughly impeach the only witness, ^{Hines (21)} Mann, who could identify Applicant as being a robber. Trial counsel questioned her about her pending

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charges, her inconsistent prior statement, and her history of drug use. In light of this thorough cross-examination, Applicant has not shown he was prejudiced by the lack of testimony regarding conflicting stories from the other co-defendant. See Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) ("[W]here evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel's failure to bring it forward." (citations omitted)).

C. Prosecutorial Misconduct

Applicant also failed to meet his burden of proving prosecutorial misconduct. The evidence demonstrates the Court of Appeals considered that argument on direct appeal and rejected it. Webb, 389 S.C. at 178, 697 S.E.2d at 664 ("Webb argues the trial court erred in allowing the solicitor to refer to him as a 'wild animal' in his opening and closing argument. [...] We disagree."). Applicant presented no evidence trial counsel failed to preserve the objection as to the closing arguments as it is clear the Court of Appeals addressed the issue. Id. at 179, 697 S.E.2d at 665 (addressing the solicitor's closing argument remarks). Because the issue was ruled upon by the Court of Appeals, Applicant cannot now challenge it on collateral review. Humbert v. State, 345 S.C. 332, 338, 548 S.E.2d 862, 866 (2001) ("PCR is not a substitute for appeal[.]") (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993))). Furthermore, the Court agrees with the Court of Appeals and finds the solicitor's comments "did not so infect the trial with unfairness as to make [Applicant's] conviction a denial of due process." Webb, 389 S.C. at 180, 697 S.E.2d at 665. The Court also agrees with the Court of Appeals and finds there was overwhelming evidence of Applicant's guilt. Id.

D. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

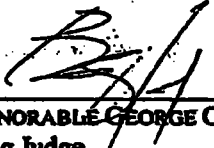
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

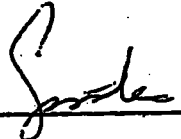
IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the State to complete the remainder of his sentence.

AND IT IS SO ORDERED this 9 day of April, 2014.



THE HONORABLE GEORGE C. JAMES, JR.
Presiding Judge


_____, South Carolina

MANN/MBPD
WITNESSES

DOCKET NO. 2006-GS-26-0182

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BCR 79260-001

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE
VS

ARREST WARRANT NO. H792488 *OB*

(CDR: 0095 16-03-0910)

DOA: 10-29-05

THOMAS E. WEBB

W/M

MYRTLE BEACH, SC 29577

DOB:

SS#: 9

ACTION OF GRAND JURY

TRUE

Katherine Smith JAN 26 2006
Foreman of Grand Jury

ATTORNEY: STUART AXELROD

VERDICT

Guilty

INDICTMENT FOR:

KIDNAPPING

ORIGINAL

Katherine Lane
Foreman of Petit Jury Date: 3/4/08

J. GREGORY HEMBREE SOLICITOR

362

STATE OF SOUTH CAROLINA)

INDICTMENT FOR:

COUNTY OF Horry)

KIDNAPPING

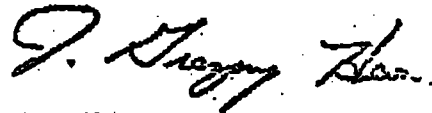
At a Court of General Sessions, convened on January 26, 2006, the Grand Jurors of Horry County present upon their oath:

KIDNAPPING

(CDR: 0095 16-03-0910)

That THOMAS E. WEBB did in Horry County on or about October 22, 2005, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Fairy Price without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

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



SOLICITOR

MANN/MBPD
WITNESSES

DOCKET NO. 2006-GS-26-0183

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BCR 79260-003

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE
VS

ARREST WARRANT NO. H792491 *CH*

(CDR: 0079 16-11-0311)

DOA: 10-29-05

THOMAS E. WEBB

W/M

MYRTLE BEACH, SC 29577

DOB: 1

SS#:

ACTION OF GRAND JURY

Stuart Axelrod
Foreman of Grand Jury

JAN. 26 2006

ATTORNEY: STUART AXELROD

VERDICT

Guilty

Calvin L. Luma

Foreman of Petit Jury Date: 3/4/08

INDICTMENT FOR:

BURGLARY, FIRST DEGREE

ORIGINAL

J. GREGORY HEMBREE, SOLICITOR

364

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT FOR:

BURGLARY, FIRST DEGREE

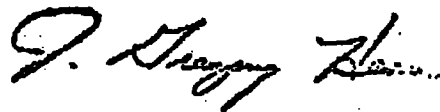
At a Court of General Sessions, convened on January 26, 2006, the Grand Jurors of Horry County present upon their oath:

BURGLARY, FIRST DEGREE

(CDR: 0079 16-11-0321)

That THOMAS E. WEBB did in Horry County on or about October 22, 2005, enter the dwelling of Ellis and Fairy Price located at Room #117 Boardwalk Motel, 2301 North Ocean Boulevard in Myrtle Beach, South Carolina without consent and with the intent to commit a crime therein and the defendant did so in the night time, in violation of Section 16-11-311(A), Code of Laws of South Carolina, 1976, as amended.

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



SOLICITOR

MANN/MBPD
WITNESSES

DOCKET NO. 2006-GS-26-0184

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BCR 79260-003

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE
VS

ARREST WARRANT NO. H792490 *CH*

(CDR: 0139 16-11-0330(A))

DOA: 10-29-05

THOMAS E. WEBB

W/M

MYRTLE BEACH, SC 29577

DOB:

SS#:

ACTION OF GRAND JURY

Stuart Axelrod
JAN 2 8 2006

Foreman of Grand Jury

ATTORNEY: STUART AXELROD

INDICTMENT FOR:

VERDICT

Guilty

ARMED ROBBERY

Catherine Lane

Foreman of Petit Jury Date: 3/4/08

ORIGINAL

J. GREGORY HEMBREE, SOLICITOR

366

STATE OF SOUTH CAROLINA)

INDICTMENT FOR:

COUNTY OF HORRY)

ARMED ROBBERY

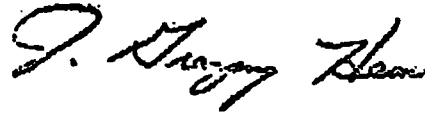
At a Court of General Sessions, convened on January 26, 2006, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

(CDR: 0139 16-11-0330(A))

That THOMAS E. WEBB did in Horry County on or about October 22, 2005, while armed with a deadly weapon, to wit: a firearm, take and carry away personal property from or in the immediate presence of Fairy Price with intent to deprive her of possession by use of force, threats or intimidation, in violation of Section 16-11-330(A), S. C. Code of Laws, 1976, as amended.

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



SOLICITOR

MANN/MBPD
WITNESSES

DOCKET NO. 2006-GS-26-0185

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BCR 79260-003

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE
VS

ARREST WARRANT NO. H792489 *CD*

(CDR: 0139 16-11-0330(A))

DOA: 10-29-05

THOMAS E. WEBB

W/M

MYRTLE BEACH, SC 29577

DOB: _____

SS#: _____

ACTION OF GRAND JURY

Stuart Axelrod JAN 26 2006
Foreman of Grand Jury

ATTORNEY: STUART AXELROD

INDICTMENT FOR:

VERDICT

Guilty

ARMED ROBBERY

ORIGINAL

Catherine Lane
Foreman of Petit Jury Date: 3/4/08

I. GREGORY HEMBREE, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR:

COUNTY OF HORRY)

ARMED ROBBERY

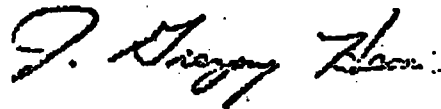
At a Court of General Sessions, convened on January 26, 2006, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

(CDR: 0139 16-11-0330(A))

That THOMAS E. WEBB did in Horry County on or about October 22, 2005, while armed with a deadly weapon, to wit: a firearm, take and carry away personal property from or in the immediate presence of Ellis Price with intent to deprive him of possession by use of force, threats or intimidation, in violation of Section 16-11-330(A), S. C. Code of Laws, 1976, as amended.

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



SOLICITOR

MANN/MBPD
WITNESSES

DOCKET NO. 2006-03-26-0186

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BCR 20260-003

COURT OF GENERAL SESSIONS

JANUARY TERM 2006

THE STATE
VS

ARREST WARRANT NO. W792487 *CP*

(CDR: 0095-16-03-0210)

DOA: 10-29-05

THOMAS E. WEBB

W/M

MYRTLE BEACH, SC 29577

DOB:
SS#

ACTION OF GRAND JURY

Katrina Smith
Foreman of Grand Jury

JAN 26 2006

ATTORNEY: STUART AXELROD

INDICTMENT FOR:

VERDICT

Guilty

KIDNAPPING

ORIGINAL

Catherine Lane
Foreman of Petit Jury Date: 3/4/08

J. GREGORY HEMBREE, SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT FOR:

KIDNAPPING

At a Court of General Sessions, convened on January 26, 2006, the Grand Jurors of Horry County present upon their oath:

KIDNAPPING

(CDR: 0095 16-03-0910)

That THOMAS E. WEBB did in Horry County on or about October 22, 2005, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Ellis Price without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

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



SOLICITOR