

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Orangeburg County

S.C. Supreme Court

Diane Schafer Goodstein, Circuit Court Judge

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REGINALD MONTGOMERY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001288

---

APPENDIX

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STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

COURT OF GENERAL SESSIONS  
FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

CASE NO. 06-GS-38-2052

versus

)  
)  
) TRANSCRIPT OF RECORD

REGINALD MONTGOMERY,

)  
) DATE:

DEFENDANT

)  
) APRIL 3, 2007

BEFORE:

HONORABLE J. C. NICHOLSON, PRESIDING JUDGE

AND A JURY.

APPEARANCES:

BRIAN JEFFRIES, ESQUIRE  
KELLEY BURBAGE, ESQUIRE

ASSISTANT SOLICITORS

FOR THE STATE

THOMAS R. SIMS, ESQUIRE

ATTORNEY AT LAW

FOR THE DEFENDANT

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I N D E X

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I N D E X

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1 DATE:

2 APRIL 3, 2007

3 THE COURT: ALRIGHT, SOLICITOR, DO  
4 YOU WANT TO CALL YOUR FIRST CASE, PLEASE, SIR?

5 SOLICITOR JEFFRIES: YES, SIR, YOUR  
6 HONOR, THE STATE CALLS THE CASE OF STATE VERSUS REGINALD  
7 MONTGOMERY, INDICTMENT NUMBER 2006-GS-38-2052. YOUR  
8 HONOR, THERE IS AN AMENDMENT, I THINK YOUR WITNESS LIST  
9 HAS ALSO 2053, WE'RE NOT GOING FORWARD ON THAT TODAY.

10 THE COURT: JUST 2052?

11 SOLICITOR JEFFRIES: THAT'S CORRECT,  
12 YOUR HONOR.

13 THE COURT: OKAY, THANK YOU, SIR.

14 LADIES AND GENTLEMEN OF THE JURY  
15 PANEL, THE STATE HAS PRESENTED AN INDICTMENT, THE STATE  
16 VERSUS REGINALD MONTGOMERY, WHO IS INDICTED FOR ARMED  
17 ROBBERY, AND THE INDICTMENT ALLEGES THAT THE DEFENDANT  
18 DID, IN ORANGEBURG COUNTY, ON SEPTEMBER THE SEVENTEENTH,  
19 COMMIT ROBBERY AT A SHELL STORE HERE IN ORANGEBURG  
20 COUNTY. NOW, THIS IS THE INDICTMENT, THIS IS NOT  
21 EVIDENCE, IT'S MERELY THE MEANS BY WHICH THE STATE  
22 BRINGS THE DEFENDANT BEFORE THE COURT AND BEFORE A JURY  
23 FOR TRIAL. IT'S NOT EVIDENCE, AND THE ALLEGATIONS THAT  
24 I JUST READ TO YOU IN THE INDICTMENT IS NOT EVIDENCE.  
25 HOW OUR SYSTEM WORKS IS, THE SHERIFF'S DEPARTMENT

1 GENERALLY GETS A WARRANT ISSUED, A PERSON IS ARRESTED,  
2 THOSE ARREST WARRANTS ARE TURNED OVER TO THE SOLICITOR'S  
3 OFFICE, AND THE SOLICITOR PREPARES AN INDICTMENT AND  
4 PRESENTS IT TO THE GRAND JURY. THE GRAND JURY RETURNS  
5 A TRUE BILL OR A NO BILL. IF A TRUE BILL IS RETURNED  
6 THEN THEY ARE ELIGIBLE TO BE BROUGHT BEFORE THE COURT  
7 FOR TRIAL IN THE CIRCUIT COURT. AND I EMPHASIZE THE  
8 FACT THAT IN NO WAY DOES IT INDICATE OR INSINUATE THAT  
9 THE DEFENDANT IS GUILTY, THE STATE STILL HAS THE  
10 OBLIGATION OF PROVING THE DEFENDANT GUILTY BEYOND A  
11 REASONABLE DOUBT BY EVIDENCE THAT'S PRESENTED IN THE  
12 COURTROOM AND FROM THE WITNESS STAND.

13 NOW, I'M GOING TO ASK YOU CERTAIN  
14 QUESTIONS, AND THE FIRST THING I'M GOING TO DO IS CALL  
15 OUT A LIST OF NAMES, AND I'M GOING TO ASK YOU THE SAME  
16 QUESTION ABOUT EACH PERSON. I'M GOING TO ASK YOU, DO  
17 YOU THE KNOW THE INDIVIDUALS, ARE YOU RELATED BY BLOOD  
18 OR MARRIAGE, OR HAVE YOU HAD ANY TYPE OF CONTACT WITH  
19 THE INDIVIDUALS. AND WHEN I SAY, RELATED BY MARRIAGE  
20 I'M TALKING ABOUT PRESENT MARRIAGES AS WELL AS PAST  
21 MARRIAGES. I HAD ONE LADY ON A JURY THAT FELT SHE WAS  
22 DIVORCED FROM THE PERSON SO SHE DIDN'T HAVE TO IDENTIFY  
23 THAT SHE HAD BEEN MARRIED TO HIM PREVIOUSLY. SO, I'M  
24 TALKING ABOUT PAST MARRIAGES AND PRESENT MARRIAGES, AND  
25 ANY FUTURE MARRIAGES IF YOU'RE AWARE OF IT.

1 THE FIRST NAME IS DEPUTY WILLIAM  
2 KETCHERSIDE. IS HE IN THE COURTROOM? IS ANYBODY  
3 RELATED BY BLOOD OR MARRIAGE TO DEPUTY WILLIAM  
4 KETCHERSIDE OF THE ORANGEBURG COUNTY SHERIFF'S OFFICE?  
5 DOES ANY KNOW DEPUTY KETCHERSIDE? HAS ANYBODY HAD ANY  
6 CONTACT WITH DEPUTY KETCHERSIDE? IF SO, PLEASE STAND.  
7 (Negative response from jury panel.)

8 THE COURT: THE NEXT NAME IS  
9 INVESTIGATOR ROMAN RODRIGUEZ, OF THE -- AND HE'S  
10 STANDING TO MY LEFT AND IN FRONT OF YOU. THANK YOU,  
11 SIR. DOES, ANYBODY KNOW INVESTIGATOR RODRIGUEZ, IS  
12 ANYBODY RELATED BY BLOOD OR MARRIAGE? IF SO, PLEASE  
13 STAND.

14 (Affirmative response from jury panel.)

15 THE COURT: LET'S, I GUESS, START ON  
16 MY RIGHT. YOUR NAME, SIR?

17 JUROR SUMMERS: FRANKIE SUMMERS.

18 THE COURT: WHAT?

19 JUROR SUMMERS: FRANKIE SUMMERS.

20 THE COURT: OKAY, MR. SUMMERS, JUST  
21 A SECOND. JUROR NUMBER ONE SIXTY-TWO. MR. SUMMERS, HOW  
22 DO YOU KNOW INVESTIGATOR RODRIGUES?

23 JUROR SUMMERS: JUST MUTUAL FRIENDS  
24 IN ORANGEBURG.

25 THE COURT: ARE YOU A PERSONAL

1 FRIEND WITH HIM?

2 JUROR SUMMERS: NO, SIR, NOT  
3 PERSONAL. WE JUST KNOW ONE ANOTHER.

4 THE COURT: YOU JUST KNOW EACH  
5 OTHER?

6 JUROR SUMMERS: YES, SIR.

7 THE COURT: DO YOU SEE HIM IN  
8 PASSING, OR DO YOU GO TO CHURCH WITH HIM OR HOW -

9 JUROR SUMMERS: I SEE HIM -

10 THE COURT: PARDON?

11 JUROR SUMMERS: I SEE HIM IN PASSING  
12 MOSTLY.

13 THE COURT: DID YOU GO TO SCHOOL  
14 WITH HIM?

15 JUROR SUMMERS: NO, SIR, I USED TO  
16 WORK RIGHT BEHIND THE COURT HOUSE HERE AND I WOULD SEE  
17 HIM A LOT THERE.

18 THE COURT: OKAY. WHERE DID YOU  
19 WORK BEHIND THE COURT HOUSE?

20 JUROR SUMMERS: HUB COVINGTON.

21 THE COURT: OKAY. SO, YOU JUST KNOW  
22 HIM IN PASSING, HE'S NOT A CLOSE PERSONAL FRIEND?

23 JUROR SUMMERS: NOT CLOSE AND  
24 PERSONAL, NO, SIR.

25 THE COURT: DO YOU EVER GO OUT WITH

1 HIM OR DO ANYTHING WITH HIM?

2 JUROR SUMMERS: NO, SIR.

3 THE COURT: OKAY. ALRIGHT, ASSUMING  
4 HE WILL TESTIFY IN THIS CASE WOULD THAT CASE YOU ANY  
5 DIFFICULTY IN SITTING ON THIS JURY?

6 JUROR SUMMERS: NO, SIR.

7 THE COURT: CAN YOU BASE YOUR  
8 DECISION ON THE TESTIMONY YOU HEAR FROM THE WITNESS  
9 STAND?

10 JUROR SUMMERS: SIR?

11 THE COURT: CAN YOU BASE YOUR  
12 DECISION ON THE TESTIMONY YOU HEAR FROM THE WITNESS  
13 STAND IN THE COURTROOM?

14 JUROR SUMMERS: YES, SIR, I COULD.

15 THE COURT: CAN YOU BE FAIR TO BOTH  
16 THE STATE AND THE DEFENDANT?

17 JUROR SUMMERS: YES, SIR.

18 THE COURT: THANK YOU, MR. SUMMERS.  
19 YES, SIR, YOUR NAME?

20 JUROR JEFFERSON: MY NAME IS JAMES  
21 JEFFERSON.

22 THE COURT: DO YOU KNOW YOUR NUMBER?

23 JUROR JEFFERSON: NINETY-FIVE.

24 THE COURT: YES, SIR, MR. JEFFERSON?

25 JUROR JEFFERSON: I KNOW MR.

1 RODRIGUEZ, HE USED TO BE A SECURITY GUARD AT ROOSEVELT  
2 GARDENS, THAT'S HOW I MET HIM, WHENEVER HE WAS A  
3 SECURITY GUARD UP THERE.

4 THE COURT: HOW LONG AGO DID YOU  
5 MEET HIM?

6 JUROR JEFFERSON: I'VE KNOWN HIM NOW  
7 MAYBE ABOUT TWO YEARS.

8 THE COURT: TWO YEAR. HOW OFTEN DO  
9 YOU SEE HIM NOW?

10 JUROR JEFFERSON: NOT THAT REGULAR,  
11 WHEN WE JUST PASS IN THE ROAD I GET A GLIMPSE OF HIM.

12 THE COURT: SO, YOU KNEW HIM WHEN,  
13 DID YOU LIVE AT ROOSEVELT GARDENS?

14 JUROR JEFFERSON: NO, SIR, I WAS A  
15 MAINTENANCE TECHNICIAN OUT THERE.

16 THE COURT: OH, YOU WERE A  
17 MAINTENANCE TECHNICIAN?

18 JUROR JEFFERSON: RIGHT.

19 THE COURT: SO, YOU WORKED WITH HIM  
20 AT ROOSEVELT GARDENS?

21 JUROR JEFFERSON: RIGHT.

22 THE COURT: DO YOU, HOW OFTEN DO YOU  
23 SEE HIM NOW?

24 JUROR JEFFERSON: NOT REGULAR.

25 THE COURT: WOULD THAT CAUSE YOU ANY



1 DIFFICULTY IN SITTING ON THIS JURY, ASSUME HE WILL  
2 TESTIFY?

3 JUROR JEFFERSON: NO, SIR, I DON'T  
4 THINK SO.

5 THE COURT: ALRIGHT, AND YOU BE FAIR  
6 TO BOTH THE STATE AND THE DEFENDANT IN THIS CASE?

7 JUROR JEFFERSON: YES, SIR.

8 THE COURT: CAN YOU BASE YOUR  
9 DECISION ON TESTIMONY YOU HEAR FROM THE WITNESS STAND?

10 JUROR JEFFERSON: YES, SIR.

11 THE COURT: ALRIGHT, THANK YOU, MR.  
12 JEFFERSON.

13 YES, MA'AM, YOUR NAME?

14 JUROR JENKINS: DARLENE JENKINS,  
15 JUROR NUMBER NINETY-SIX.

16 THE COURT: YES, MA'AM, MS. JENKINS?

17 JUROR JENKINS: RODRIGUEZ WAS ONE OF  
18 OUR CUSTOMERS WHEN I WAS IN NEESES, I WAS HIS MAIL  
19 CARRIER.

20 THE COURT: I'M SORRY, YOU DELIVER  
21 HIS MAIL?

22 JUROR JENKINS: YES.

23 THE COURT: DO YOU SEE HIM WHEN YOU  
24 DELIVER HIS MAIL OR YOU JUST KNOW WHERE HE LIVES?

25 JUROR JENKINS: I DON'T SEE HIM

1 ANYMORE, HE DOESN'T STAY THERE, AND IT'S BEEN ABOUT TWO  
2 YEARS NOW.

3 THE COURT: HAVE YOU SEEN HIM IN THE  
4 LAST TWO YEARS?

5 JUROR JENKINS: YES, I HAVE, JUST IN  
6 PASSING.

7 THE COURT: WHERE HAVE YOU SEEN HIM?

8 JUROR JENKINS: IN HIS PATROL CAR.

9 THE COURT: YOU'VE SEEN HIM, ARE YOU  
10 FRIENDS WITH HIM?

11 JUROR JENKINS: WELL, NOT NO REAL  
12 CLOSE FRIENDS BUT WHEN I SEE HIM WE HAVE CONVERSATIONS.

13 THE COURT: OKAY. WOULD THAT CAUSE  
14 YOU ANY DIFFICULTY IN SITTING ON THIS JURY?

15 JUROR JENKINS: NO, NO, SIR.

16 THE COURT: CAN YOUR BASE YOUR  
17 DECISION ON THE TESTIMONY YOU HEAR FROM THE WITNESS  
18 STAND?

19 JUROR JENKINS: YES, SIR.

20 THE COURT: CAN YOU BE FAIR TO BOTH  
21 THE STATE AND THE DEFENDANT?

22 JUROR JENKINS: YES, SIR.

23 THE COURT: ALRIGHT, THANK YOU, MS.  
24 JENKINS.

25 YES, MA'AM, YOUR NAME?

1                    JUROR DANTZLER:     RUTH DANTZLER,  
2     NUMBER FORTY-SIX.

3                    THE COURT:     FORTY-SIX.     YES, MA'AM,  
4     MS. DANTZLER?

5                    JUROR DANTZLER:     OKAY, I KNOW MR.  
6     RODRIGUEZ FROM COMING IN AND OUT OF THE BROWN DERBY, AND  
7     SEEING HIM ON THE STREETS.

8                    THE COURT:     WHY IS HE COMING IN AND  
9     OUT OF THE BROWN DERBY?     I DON'T KNOW WHAT THE BROWN  
10    DERBY IS.

11                   JUROR DANTZLER:     TO EAT.

12                   THE COURT:     PARDON?

13                   JUROR DANTZLER:     TO EAT.     IT'S A  
14    RESTAURANT.

15                   THE COURT:     OH, OKAY, ALRIGHT. I  
16    APOLOGIZE, I JUST DIDN'T KNOW WHAT IT WAS.     SO, HE COMES  
17    IN THERE TO EAT?

18                   JUROR DANTZLER:     YEAH, HE COMES IN  
19    THERE AND GETS HIS FOOD AND STUFF LIKE THAT, I WOULD  
20    ALWAYS TEASE HIM, AT THAT TIME HE WORKED FOR THE CITY,  
21    AND I WOULD ALWAYS ASK HIM WHETHER OR NOT HE HAD LOCKED  
22    UP ORANGEBURG BEFORE HE COME OUT TO GET SOMETHING TO  
23    EAT.

24                   THE COURT:     OKAY.     ALRIGHT.     WHEN IS  
25    THE LAST TIME YOU SAW HIM?

1 JUROR DANTZLER: ABOUT THREE WEEKS  
2 AGO.

3 THE COURT: WHEREABOUTS?

4 JUROR DANTZLER: IN THE HAPPY JACK.

5 THE COURT: HAPPY JACK. OKAY, IS  
6 THAT ALSO A RESTAURANT?

7 JUROR DANTZLER: NO, THAT'S WHERE  
8 YOU GET GAS.

9 THE COURT: OH, OKAY. DO YOU SEE  
10 HIM ON A REGULAR BASIS?

11 JUROR DANTZLER: NO, NOT -- I DON'T  
12 SEE HIM ON A REGULAR BASIS, NOT SINCE I'M NO LONGER AT  
13 THE BROWN DERBY.

14 THE COURT: OKAY. DID YOU WORK AT  
15 THE BROWN DERBY?

16 JUROR DANTZLER: YES.

17 THE COURT: OR JUST HANG OUT THERE?

18 JUROR DANTZLER: NO, I WORKED THERE  
19 FOR FIFTEEN YEARS.

20 THE COURT: OKAY. ALRIGHT. WOULD  
21 THAT -- KNOWING HIM AT THE BROWN DERBY, AND WHAT'S THIS  
22 OTHER PLACE?

23 MR. SIMS: HAPPY JACK.

24 THE COURT: OKAY, WOULD THAT CAUSE  
25 YOU ANY DIFFICULTY IN SITTING ON THIS JURY?

1 JUROR DANTZLER: NO.

2 THE COURT: CAN YOU BE FAIR TO BOTH  
3 THE STATE AND THE DEFENDANT?

4 JUROR DANTZLER: YES.

5 THE COURT: CAN YOU BASE YOUR  
6 DECISION ON TESTIMONY HERE IN THE COURTROOM?

7 JUROR DANTZLER: YES.

8 THE COURT: ALRIGHT, THANK YOU, MS.  
9 DANTZLER.

10 ALRIGHT THE NEXT NAME IS SERGEANT  
11 RANDY CULLER, OF THE ORANGEBURG COUNTY SHERIFF'S OFFICE.  
12 DOES ANYBODY KNOW SERGEANT CULLER, IS ANYBODY RELATED BY  
13 BLOOD OR MARRIAGE, HAS ANYBODY HAD ANY CONTACT WITH  
14 SERGEANT CULLER? IF SO, PLEASE STAND.

15 (Negative response from jury panel.)

16 THE COURT: THE NEXT NAME IS  
17 NICHOLAS HERRINGTON. DOES ANYBODY KNOW NICHOLAS  
18 HERRINGTON, IS ANYBODY RELATED BY BLOOD OR MARRIAGE TO  
19 NICHOLAS HERRINGTON? IF SO, PLEASE STAND.

20 (Negative response from jury panel.)

21 THE COURT: THE NEXT NAME IS JAMES  
22 GREEN. DOES ANYBODY KNOW JAMES GREEN, IS ANYBODY RELATED  
23 BY BLOOD OR MARRIAGE TO JAMES GREEN? IF SO, PLEASE  
24 STAND.

25 (Negative response from jury panel.)

1                   THE COURT:     IS THAT REMIAS --  
2 REMAYES?

3                   SOLICITOR JEFFRIES:   RAMISE.

4                   THE COURT:     RAMISE?

5                   SOLICITOR JEFFRIES:   YES, SIR, YOUR  
6 HONOR.

7                   THE COURT:     RAMISE KEITT.   DOES  
8 ANYBODY KNOW RAMISE KEITT?  IS ANYBODY RELATED BY BLOOD  
9 OR MARRIAGE? IF SO, PLEASE STAND.

10       (Negative response from jury panel.)

11                   THE COURT:   THE NEXT NAME IS SHAWON  
12 JOHNSON.  DOES ANYBODY KNOW SHAWON JOHNSON, IS ANYBODY  
13 RELATED BY BLOOD OR MARRIAGE?  IF SO, PLEASE STAND.

14       (Negative response from jury panel.)

15                   THE COURT:   THE NEXT NAME IS APRIL  
16 JOHNSON.  DOES ANYBODY KNOW APRIL JOHNSON, IS ANYBODY  
17 RELATED BY BLOOD OR MARRIAGE?  IF SO, PLEASE STAND.

18       (Negative response from jury panel.)

19                   THE COURT:   THE NEXT NAME IS  
20 LATANGELA BELLAMY.  DOES ANYBODY KNOW LATANGELA BELLAMY?  
21 IF SO, PLEASE STAND.

22       (Negative response from jury panel.)

23                   THE COURT:   THE NEXT NAME IS DEPUTY  
24 PATRICIA EIKHOFF, IS THAT CORRECT?

25                   SOLICITOR JEFFRIES:   EIKHOFF.

1                   THE COURT:       EIKHOFF.       DEPUTY

2   PATRICIA EIKHOFF.   IS SHE WITH THE ORANGEBURG -

3                   SOLICITOR JEFFRIES:   SHE IS.

4                   THE COURT:       ORANGEBURG SHERIFF'S

5   OFFICE?   IF SO, PLEASE STAND.

6   (Negative response from jury panel.)

7                   THE COURT:       THE NEXT NAME IS ROSA

8   LEE JOHNSON.   IS ANYBODY RELATED BY BLOOD OR MARRIAGE,

9   DOES ANYBODY KNOW ROSA LEE JOHNSON?   IF SO, PLEASE

10   STAND.

11   (Negative response from jury panel.)

12                   THE COURT:       THE NEXT NAME IS LURINA

13   FELKS.   DOES ANYBODY KNOW LURINA FELKS?   IF SO, PLEASE

14   STAND.

15   (Negative response from jury panel.)

16                   THE COURT:       THE NEXT NAME IS KEVIN

17   PRINGLE.   DOES ANYBODY KNOW KEVIN PRINGLE, IS ANYBODY

18   RELATED BY BLOOD OR MARRIAGE TO KEVIN PRINGLE?   IF SO,

19   PLEASE STAND.

20   (Negative response from jury panel.)

21                   THE COURT:       THE NEXT NAME IS EVA

22   NICOLE WRIGHT.   DOES ANYBODY KNOW EVA NICOLE WRIGHT?

23   MS. WRIGHT, WOULD YOU PLEASE STAND -- SHE'S STANDING --

24   AND FACE THE JURY, PLEASE.   SHE'S STANDING TO YOUR LEFT.

25   THANK YOU, MS. WRIGHT.   IS ANYBODY RELATED BY BLOOD OR

1 MARRIAGE OR DOES ANYBODY KNOW EVA NICOLE WRIGHT? IF SO,  
2 PLEASE STAND.

3 (Negative response from jury panel.)

4 THE COURT: MR. MONTGOMERY, WOULD  
5 YOU PLEASE STAND AND FACE THE JURY, PLEASE, SIR. THANK  
6 YOU, MR. MONTGOMERY.

7 DOES ANYBODY KNOW MR. MONTGOMERY, IS  
8 ANY RELATED BY BLOOD OR MARRIAGE TO MR. REGINALD  
9 MONTGOMERY? IF SO, PLEASE STAND.

10 (Affirmative response from jury panel.)

11 THE COURT: YES, SIR, YOUR NAME?

12 JUROR INFINGER: DONALD INFINGER, I'M  
13 JUROR NUMBER EIGHTY-EIGHT.

14 THE COURT: EIGHTY-EIGHT. MR.  
15 INFINGER, HOW DO YOU KNOW MR. MONTGOMERY?

16 JUROR INFINGER: THE DEFENDANT WAS  
17 EMPLOYED BY ME ABOUT TWO YEARS AGO.

18 THE COURT: ALRIGHT, DO YOU WANT TO  
19 COME FORWARD, PLEASE, SIR?

20 YES, MA'AM?

21 JUROR SHINGLER: JUROR NUMBER ONE  
22 FIFTY, I KNOW HIS FAMILY.

23 THE COURT: ALRIGHT, JUST HOLD ON A  
24 SECOND.

25 ATTORNEYS MAY JOIN ME UP HERE.



1 (Whereupon, the following bench conference is  
2 held with Juror Infinger out of  
3 the hearing of the jury panel.)

4 THE COURT: HARRY DOT, CAN YOU HEAR  
5 US OKAY?

6 COURT REPORTER: YES, SIR.

7 THE COURT: HE WAS EMPLOYED BY YOU  
8 TWO YEARS?

9 JUROR INFINGER: I THINK IT WAS TWO,  
10 I BUY PEANUTS IN THE FALL, AND I THINK IT WAS TWO, TWO  
11 YEARS AGO, TWO THOUSAND AND FIVE, ---

12 THE COURT: OKAY.

13 JUROR INFINGER: --- HE WAS EMPLOYED  
14 BY ME FOR ABOUT A MONTH.

15 THE COURT: WAS HE A GOOD EMPLOYEE?

16 JUROR INFINGER: HE WAS PRETTY GOOD.

17 THE COURT: DID YOU HAVE ANY  
18 DIFFICULTY OR PROBLEMS WITH HIM?

19 JUROR INFINGER: NO, SIR.

20 THE COURT: AND HE WAS EMPLOYED FOR  
21 ABOUT TWO MONTHS, YES, SIR, A TEMPORARY POSITION.

22 THE COURT: HOW WOULD THAT AFFECT  
23 YOU IF YOU WERE CHOSEN ON THIS JURY.

24 JUROR INFINGER: I MEAN, I COULD BE,  
25 YOU KNOW, I WOULDN'T HAVE NO PROBLEM, BUT I DON'T WANT

1 TO, YOU KNOW, SERVE ON A JURY IF SOMEBODY THINKS THERE  
2 WOULD BE.

3 THE COURT: WELL, I'M NOT CONCERNED  
4 ABOUT WHAT SOMEBODY ELSE THINKS, I NEED TO KNOW WHAT YOU  
5 THINK.

6 JUROR INFINGER: I MEAN, IT IS NOT  
7 GOING TO AFFECT ME, I MEAN, I CAN GIVE A FAIR TO THE  
8 STATE AND THE DEFENDANT.

9 THE COURT: YOU DON'T THINK IT WOULD  
10 AFFECT YOU IN ANY MANNER WHATSOEVER?

11 JUROR INFINGER: NO, SIR.

12 THE COURT: SINCE HE WAS YOUR PAST  
13 EMPLOYEE?

14 JUROR INFINGER: YES, SIR.

15 THE COURT: YOU DON'T THINK IT WOULD  
16 GIVE YOU ANY DIFFICULTY AT ALL?

17 JUROR INFINGER: NO, SIR.

18 THE COURT: AND YOU COULD BE FAIR TO  
19 BOTH THE STATE AND THE DEFENDANT?

20 JUROR INFINGER: YES, SIR.

21 THE COURT: ALRIGHT, HAVE YOU GOT  
22 ANY QUESTIONS, SOLICITOR?

23 SOLICITOR JEFFRIES: NONE FROM ME.

24 THE COURT: MR. SIMS, HAVE YOU GOT  
25 ANY QUESTIONS?

1                   MR. SIMS:   NOTHING.

2                   THE COURT:   OKAY, YOU MAY GO AND  
3   HAVE A SEAT, MR. INFINGER?

4                   COURT REPORTER:   WHAT WAS YOUR NAME,  
5   SIR?

6                   JUROR INFINGER:   DONALD INFINGER.

7                   THE COURT:   DONALD INFINGER, JUROR  
8   NUMBER EIGHTY-EIGHT, NUMBER EIGHTY-EIGHT.

9                   ANY MOTIONS FROM EITHER PARTY?

10                  SOLICITOR JEFFRIES:   NONE FROM ME,  
11   YOUR HONOR.

12                  MR. SIMS:    NONE.

13                  THE COURT:   OKAY.   ALRIGHT.

14   (Whereupon, the following  
15   takes place in the hearing  
16   of the jury panel.)

17                  THE COURT:   YES, MA'AM, DO YOU WANT  
18   TO COME AROUND?   Y'ALL MIGHT AS WELL JUST COME UP HERE  
19   AND STAND.

20                  YES, MA'AM, COME ON UP HERE, PLEASE,  
21   MA'AM.

22   (Whereupon, the following  
23   takes place out of the hearing  
24   of the jury panel.)

25                  THE COURT:   YES, MA'AM, WHAT WAS

1 YOUR NAME AGAIN?

2 JUROR SHINGLER: ROSA SHINGLER.

3 THE COURT: DO YOU KNOW YOUR NUMBER?

4 JUROR SHINGLER: ONE FIFTY.

5 THE COURT: ONE FIFTY, ROSA

6 SHINGLER, NUMBER ONE FIFTY, HARRY DOT.

7 HOW DO YOU KNOW THE DEFENDANT?

8 JUROR SHINGLER: I DON'T KNOW HIM

9 BUT I KNOW HIS MOTHER.

10 THE COURT: YOU KNOW HIS MOTHER AND

11 FATHER?

12 JUROR SHINGLER: YES, SIR.

13 THE COURT: HOW DO YOU KNOW HIS

14 MOTHER AND FATHER?

15 JUROR SHINGLER: THEY WAS A FRIEND OF

16 OURS YEARS AGO.

17 THE COURT: YEARS AGO, HOW MANY

18 YEARS AGO?

19 JUROR SHINGLER: ABOUT SEVEN OR

20 EIGHT YEARS.

21 THE COURT: SEVEN OR EIGHT YEARS

22 AGO?

23 JUROR SHINGLER: OR LONGER.

24 THE COURT: OR LONGER. DO YOU EVER

25 SEE THEM NOW?

1                   JUROR SHINGLER:   JUST IN PASSING,  
2   YOU KNOW.

3                   THE COURT:   ALRIGHT, DO YOU KNOW --  
4   DID YOU KNOW MR. MONTGOMERY WHEN HE WAS A CHILD?

5                   JUROR SHINGLER:   WHEN HE WAS REAL  
6   SMALL I DID KNOW HIM, BUT NOT NOW.

7                   THE COURT:   YOU HAVEN'T SEEN HIM IN  
8   SEVEN OR EIGHT YEARS?

9                   JUROR SHINGLER:   NO, SIR.

10                  THE COURT:   ALRIGHT.   WOULD THAT  
11   CAUSE YOU ANY PROBLEMS IN SITTING ON THIS JURY?

12                  JUROR SHINGLER:   I JUST WANTED YOU  
13   TO KNOW.

14                  THE COURT:   I UNDERSTAND, AND I  
15   APPRECIATE YOU COMING FORWARD, OKAY, THANK YOU SO VERY  
16   MUCH.   BUT YOU DON'T THINK IT WOULD CAUSE YOU ANY  
17   DIFFICULTY IN SITTING ON THE JURY?

18                  JUROR SHINGLER:   NO, SIR.

19                  THE COURT:   DO YOU THINK YOU CAN BE  
20   FAIR TO BOTH THE STATE AND THE DEFENDANT?

21                  JUROR SHINGLER:   YES, SIR.

22                  THE COURT:   CAN YOU BASE YOUR  
23   DECISION ON THE TESTIMONY HERE IN THE COURTROOM?

24                  JUROR SHINGLER:   YES, SIR.

25                  THE COURT:   ANY QUESTIONS FROM

1 EITHER PARTY?

2 SOLICITOR JEFFRIES: NO, SIR.

3 MR. SIMS: NO, SIR.

4 THE COURT: ALRIGHT, MS. SHINGLER,  
5 THANK YOU SO VERY MUCH.

6 (Whereupon, the following takes  
7 place in the hearing of the  
8 jury panel.)

9 JUROR JEFFERSON: EXCUSE ME, JUDGE,  
10 YOU CALLED A JAMES GREEN, AND THERE'S PROBABLY A FEW OF  
11 THEM IN ORANGEBURG, SO I DON'T KNOW WHO IS WHO.

12 THE COURT: I DON'T EITHER.

13 JUROR JEFFERSON: I KNOW A JAMES  
14 GREEN.

15 THE COURT: YOU KNOW A JAMES GREEN.  
16 SOLICITOR, CAN YOU TELL US WHERE MR. GREEN LIVES?

17 JUROR JEFFERSON: I DON'T KNOW  
18 EXACTLY, HE USED TO LIVE BY ME.

19 THE COURT: WHERE DOES THE GREEN  
20 THAT YOU KNOW LIVE?

21 JUROR JEFFERSON: OUT IN COPE OR  
22 CORDOVA, SOMEWHERE OUT THERE, HE USED TO WORK FOR  
23 ELECTROLUX OUT AT AYP, SO -

24 THE COURT: OKAY.

25 COURT REPORTER: WHAT'S THAT JUROR'S

1 NAME?

2 THE COURT: WHAT'S YOUR NAME?

3 JUROR JEFFERSON: JAMES JEFFERSON.

4 THE COURT: DO YOU KNOW YOUR NUMBER?

5 JUROR JEFFERSON: NINETY-FIVE.

6 THE COURT: THANK YOU, SIR.

7 SOLICITOR, DOES HE LIVE IN COPE OR

8 CORDOVA?

9 SOLICITOR JEFFERIES: NO, SIR, YOUR

10 HONOR, HE IS FROM BOWMAN, HE IS APPROXIMATELY,

11 APPROXIMATELY TWENTY-FOUR YEARS OLD.

12 THE COURT: WOULD THAT BE THE SAME

13 PERSON, MR. JEFFERSON?

14 JUROR JEFFERSON: NO, HE WAS A

15 LITTLE OLDER THAN THAT.

16 THE COURT: OKAY. THANK YOU VERY

17 MUCH.

18 THERE WAS A LADY STANDING UP. ARE

19 YOU THE LADY THAT WAS STANDING UP EARLIER?

20 JUROR MACK: YES.

21 THE COURT: ALRIGHT, DO YOU WANT TO

22 COME FORWARD?

23 (Whereupon, the following takes

24 place out of the hearing of

25 the jury panel.)

1                   THE COURT:   WHAT'S YOUR NAME?

2                   JUROR MACK:   MINNIE MACK.

3                   THE COURT:   MINNIE MACK.   OKAY.

4   YOU'RE FROM BOWMAN?

5                   JUROR MACK:   SANTEE.

6                   THE COURT:   OH, YOU'RE FROM SANTEE.

7   OKAY.   MINNIE MACK, FROM SANTEE.   YOU USED TO WORK AT  
8   THE HIGH SCHOOL DOWN THERE?

9                   JUROR MACK:   RIGHT.

10                  THE COURT:   HOW DO YOU KNOW MR.  
11   MONTGOMERY?

12                  JUROR MACK:   HE'S FAMILY.

13                  THE COURT:   PARDON?

14                  JUROR MACK:   HE'S PART OF THE  
15   FAMILY.

16                  THE COURT:   TELL ME WHAT FAMILY?

17                  JUROR MACK:   COUSIN?

18                  THE COURT:   COUSIN.   FIRST, SECOND  
19   COUSIN, THIRD COUSIN?

20                  JUROR MACK:   THIRD COUSIN.

21                  THE COURT:   OKAY.   AND IS THAT ON  
22   YOUR MOTHER'S SIDE OR YOUR FATHER'S SIDE?

23                  JUROR MACK:   MOTHER'S SIDE.

24                  THE COURT:   ON MOTHER'S SIDE.   DO  
25   YOU EVER SEE HIM AT FAMILY REUNIONS?



1 JUROR MACK: YES, SIR.

2 THE COURT: PARDON?

3 JUROR MACK: I SEE HIM AT FAMILY  
4 REUNIONS.

5 THE COURT: HOW OFTEN DO YOU HAVE  
6 REUNIONS?

7 JUROR MACK: TWO OR THREE YEARS.

8 THE COURT: EVERY TWO OR THREE  
9 YEARS. AND SO, YOU'VE KNOWN HIM BASICALLY ALL HIS LIFE?

10 JUROR MACK: NO.

11 THE COURT: NO?

12 JUROR MACK: NOT ALL HIS LIFE.

13 THE COURT: NOT ALL HIS LIFE.

14 JUROR MACK: I KNOW HIS FATHER.

15 THE COURT: YOU KNOW HIS FATHER?

16 JUROR MACK: YES.

17 THE COURT: OKAY. WELL, HOW WOULD  
18 THAT AFFECT YOU ON THIS JURY? YOU DON'T THINK IT WOULD  
19 CAUSE ANY DIFFICULTIES WITHIN THE FAMILY AT THE REUNIONS  
20 WITH THE FATHER?

21 JUROR MACK: I DON'T THINK SO.

22 THE COURT: YOU DON'T THINK SO.  
23 ONLY YOU KNOW, YOU KNOW, ONLY YOU CAN TELL. WHAT I'M  
24 TRYING TO FIND OUT IF, YOU KNOW, HOW IT WOULD AFFECT YOU  
25 IF YOU WERE SITTING ON THE JURY. I MEAN, IT'S HUMAN

1 NATURE TO, I MEAN, YOU'RE NOT GOING TO WANT TO DO  
2 ANYTHING TO YOUR FAMILY, AND THAT'S JUST HUMAN NATURE.  
3 I'M TRYING TO GET YOU TO TELL ME HOW IT WOULD AFFECT  
4 YOU.

5 JUROR MACK: IF YOU COULD SPARE ME,  
6 I WOULD LIKE TO, I DON'T SAY I WON'T, YOU KNOW.

7 COURT REPORTER: I'M SORRY?

8 JUROR MACK: I WOULD LIKE TO.

9 THE COURT: YOU WOULD LIKE TO WHAT?  
10 WELL, IF YOU FEEL LIKE YOU'LL HAVE PROBLEMS WITH IT,  
11 THAT'S FINE, I CAN EXCUSE YOU OR NOT EXCUSE YOU.

12 JUROR MACK: I WOULD LIKE TO BE  
13 EXCUSED.

14 THE COURT: YOU WOULD?

15 JUROR MACK: YES.

16 THE COURT: OKAY. BECAUSE IT'S  
17 FAMILY?

18 JUROR MACK: RIGHT.

19 THE COURT: WHAT I'M GOING TO DO IS  
20 EXCUSE YOU FOR TRIAL ON THIS JURY, BUT NOT FOR THE WHOLE  
21 WEEK, OKAY?

22 JUROR MACK: OKAY.

23 THE COURT: BECAUSE WE MIGHT USE YOU  
24 LATER ON THIS WEEK.

25 JUROR MACK: OKAY. ALRIGHT.

1                   THE COURT: ALRIGHT, THANK YOU SO  
2 VERY MUCH, MS. MACK.

3                   TELL THE CLERK JUROR NUMBER ONE  
4 SEVENTEEN, MINNIE MACK, IS EXCUSED FOR THIS TRIAL.  
5 (Whereupon, the following takes  
6 place in the hearing of the  
7 jury panel.)

8                   THE COURT: ALRIGHT, MR. SIMS, WOULD  
9 YOU STAND AND INTRODUCE YOURSELF TO THE JURY, PLEASE,  
10 SIR.

11                  MR. SIMS: MY NAME IS THOMAS SIMS,  
12 I PRACTICE LAW HERE IN THE ORANGEBURG COUNTY AREA.

13                  THE COURT: THANK YOU, MR. SIMS.

14                  HAS ANYBODY BEEN REPRESENTED BY MR.  
15 SIMS EITHER PRESENTLY OR IN THE PAST BEEN REPRESENTED BY  
16 MR. SIMS OR HAVE PERSONAL CONTACT WITH MR. SIMS? IF SO,  
17 PLEASE STAND.

18 (Affirmative response from jury panel.)

19                  THE COURT: YES, MA'AM, THE LADY ON  
20 THE FRONT ROW, WHAT'S YOUR NAME?

21                  JUROR CRUM: HANIE CRUM.

22                  THE COURT: DO YOU KNOW YOUR NUMBER?  
23 I'LL TELL YOU IN A SECOND HERE. THAT'S HER NAME NOW, IT  
24 WAS SOMETHING ELSE BEFORE. WHAT WAS YOUR NAME BEFORE  
25 YOU WERE A CRUM?

1                    JUROR CRUM:    POUGH.

2                    THE COURT:    PARDON?

3                    JUROR CRUM:    HILL?    OKAY.

4                    CLERK:    ONE THIRTY-SEVEN.

5                    THE COURT:    WHAT NUMBER?

6                    CLERK:    ONE THIRTY-SEVEN.

7                    THE COURT:    OKAY.    OKAY, MS. CRUM,

8    IT'S SHOWING THAT YOU'RE UNDER ONE THIRTY-SEVEN, HANIE

9    L. POUGH ON THE JUROR LIST.

10                    YES, MA'AM, MS. CRUM, MR. SIMS

11    REPRESENTS YOU NOW?

12                    JUROR CRUM:    YES, HE DOES SOME

13    PERSONAL WORK FOR ME.

14                    THE COURT:    I CAN'T HEAR YOU.

15                    JUROR CRUM:    HE DID SOME PERSONAL

16    PAPERWORK FOR ME.

17                    THE COURT:    PRESENTLY DOING OR IN

18    THE PAST?

19                    JUROR CRUM:    ABOUT TWO YEARS AGO.

20                    THE COURT:    ABOUT TWO YEARS AGO.

21    HAVE YOU SEEN HIM IN THE LAST TWO YEARS?

22                    JUROR CRUM:    YES, SIR.

23                    THE COURT:    HOW OFTEN DO YOU SEE

24    HIM?

25                    JUROR CRUM:    PRETTY REGULAR.

1                   THE COURT: PRETTY REGULAR?

2                   JUROR CRUM: YES, SIR.

3                   THE COURT: DO YOU WANT TO COME  
4 AROUND?

5 (Whereupon, the following takes  
6 place out of the hearing of  
7 the jury panel.)

8                   THE COURT: ARE YOU PERSONAL FRIENDS  
9 WITH MR. SIMS?

10                  JUROR CRUM: NO, HE'S JUST -

11                  THE COURT: HE'S JUST YOUR ATTORNEY?

12                  JUROR CRUM: HE HELPED ME BECAUSE OF  
13 SOME CHILDREN, AND HE DONE MY PAPERWORK, AND HE'S ALSO  
14 MY IN-LAW'S LAWYER.

15                  THE COURT: YOUR IN-LAW'S LAWYER.  
16 TELL ME, HOW WOULD THAT AFFECT YOU IF YOU WERE CHOSEN TO  
17 SIT ON THIS JURY, WOULD IT AFFECT YOU AT ALL?

18                  JUROR CRUM: NO.

19                  THE COURT: YOU DIDN'T LIKE THE WORK  
20 HE DID FOR YOU?

21                  JUROR CRUM: YES, SIR.

22                  THE COURT: PARDON? WERE YOU MAD AT  
23 HIM FOR THE WORK HE DID?

24                  JUROR CRUM: NO.

25                  THE COURT: OKAY. BUT YOU DON'T

1 THINK IT WOULD AFFECT YOU AT ALL?

2 JUROR CRUM: I DON'T THINK SO.

3 THE COURT: OKAY, DO YOU THINK YOU  
4 COULD BE FAIR TO BOTH PARTIES?

5 JUROR CRUM: YES.

6 THE COURT: CAN YOU BASE YOUR  
7 DECISION ON THE TESTIMONY HERE IN THE COURTROOM?

8 JUROR CRUM: YES.

9 THE COURT: ANY QUESTIONS FROM THE  
10 SOLICITOR? MR. JEFFRIES, DO YOU HAVE ANY QUESTIONS YOU  
11 WOULD LIKE TO ASK?

12 SOLICITOR JEFFRIES: NO, YOUR HONOR.

13 THE COURT: MR. SIMS, DO YOU HAVE  
14 ANY QUESTIONS YOU WANT TO ASK HER?

15 MR. SIMS: NO, SIR.

16 THE COURT: OKAY, THANK YOU VERY  
17 MUCH, MS. CRUM.

18 (Whereupon, the following  
19 takes place in the hearing  
20 of the jury panel.)

21 THE COURT: YES, MA'AM, YOU CAN COME  
22 ON UP.

23 (Whereupon, the following  
24 takes place out of the hearing  
25 of the jury panel.)

1                   THE COURT:    TELL ME ABOUT THIS  
2 RESTAURANT.

3                   JUROR DANTZLER:  OH, IT'S GOT GOOD  
4 BARBECUE.

5                   THE COURT:  DO THEY?  DO THEY SERVE  
6 IT, WHAT DAY OF THE WEEK DO THEY SERVE IT?

7                   JUROR DANTZLER:  THEY'RE OPEN SEVEN  
8 DAYS A WEEK.

9                   THE COURT:  OH, THEY ARE?  WHERE IS  
10 IT?

11                   JUROR DANTZLER:  OUT ON BELLEVILLE  
12 ROAD.

13                   THE COURT:  ON THE BELLEVILLE ROAD.  
14 GOOD BARBECUE, HUH?

15                   COURT REPORTER:  WHAT WAS YOUR NAME,  
16 MA'AM?

17                   JUROR DANTZLER:    RUTH DANTZLER,  
18 NUMBER FORTY-SIX.

19                   THE COURT:    HOW DO YOU KNOW MR.  
20 SIMS?

21                   JUROR DANTZLER:  HE DID THE CLOSING  
22 ON TWO PIECES OF PROPERTY FOR ME.

23                   THE COURT:    OKAY.  HOW LONG AGO?

24                   JUROR DANTZLER:  THE LAST ONE WAS  
25 ABOUT SIX YEARS AGO.

1 THE COURT: ABOUT SIX YEARS AGO?

2 JUROR DANTZLER: UH HUH.

3 THE COURT: HAVE YOU SEEN HIM IN THE  
4 LAST SIX YEARS?

5 JUROR DANTZLER: NO, JUST IN PASSING  
6 AND STUFF LIKE THAT.

7 THE COURT: JUST IN PASSING. DID HE  
8 DO A GOOD JOB?

9 JUROR DANTZLER: YEAH. I'M LOOKING  
10 FOR HIM TO DO SOMETHING ELSE FOR ME.

11 THE COURT: OH, YOU ARE, YOU'VE GOT  
12 SOMETHING FOR HIM TO DO NOW?

13 JUROR DANTZLER: UH HUH.

14 THE COURT: HAVE YOU EVEN TALKED TO  
15 HIM ABOUT IT?

16 JUROR DANTZLER: NO.

17 THE COURT: NO. OKAY. WELL, TELL ME  
18 THIS, HOW WOULD THAT AFFECT YOU, SINCE HE'S YOUR LAWYER  
19 ON THIS JURY? WELL, SEE, YOU DON'T KNOW THAT GENTLEMAN  
20 BEHIND YOU, OR YOU MAY, I HAVEN'T ASKED YOU THAT.

21 JUROR DANTZLER: I DON'T KNOW HIM.

22 THE COURT: HUH?

23 JUROR DANTZLER: I DON'T KNOW HIM.

24 THE COURT: YOU DON'T KNOW HIM, BUT  
25 YOU KNOW MR. SIMS. SO, HOW WOULD THAT AFFECT YOU IF YOU



1 WERE CHOSEN TO SIT ON THIS JURY?

2 JUROR DANTZLER: I WOULDN'T WANT TO  
3 DO THAT.

4 THE COURT: YOU WOULDN'T WANT TO DO  
5 THAT?

6 JUROR DANTZLER: HUH UH.

7 THE COURT: OKAY. ALRIGHT. WHY  
8 WOULDN'T YOU WANT TO DO THAT?

9 JUROR DANTZLER: SOMETIMES HE MIGHT  
10 NOT -- HE IS -- IN ESSENCE HE WOULD BE REPRESENTING TWO  
11 PERSONS, HE WOULD BE REPRESENTING ME AND HE'S  
12 REPRESENTING THE DEFENDANT.

13 THE COURT: OKAY. ALRIGHT, WELL  
14 WHAT I'LL DO, MS. DANTZLER, I'LL EXCUSE YOU FROM SERVICE  
15 ON THIS PARTICULAR JURY, NOT FOR THE WEEK, BUT FOR THIS  
16 JURY. OKAY?

17 JUROR DANTZLER: OKAY.

18 THE COURT: ALRIGHT. SO, JUST GO  
19 HAVE A SEAT. THANK YOU, MS. DANTZLER. JUROR NUMBER  
20 FORTY-SIX.

21 THE COURT: ALRIGHT, MS. KEITT,  
22 SHIRLEY KEITT, FROM BOWMAN. HOW ARE YOU DOING?

23 JUROR KEITT: I'M FINE.

24 THE COURT: WELL, THAT'S GOOD. HOW  
25 DO YOU KNOW THIS GENTLEMAN TO YOUR LEFT?

1 JUROR KEITT: WE ARE CHURCH MEMBERS.

2 THE COURT: YOU'RE CHURCH MEMBERS?

3 JUROR KEITT: YES, SIR.

4 THE COURT: OKAY. DO YOU SEE HIM  
5 EVERY SUNDAY?

6 JUROR KEITT: NOT EVERY SUNDAY.

7 THE COURT: IS IT BECAUSE YOU'RE NOT  
8 THERE OR HE'S NOT THERE?

9 JUROR KEITT: NO, HE'S AT ANOTHER  
10 CHURCH NOW.

11 THE COURT: OH, HE'S GONE TO ANOTHER  
12 CHURCH?

13 JUROR KEITT: YEAH.

14 THE COURT: HOW LONG HAS HE BEEN  
15 GONE?

16 JUROR KEITT: A LITTLE OVER A YEAR  
17 OR TWO.

18 THE COURT: OVER A YEAR? HAVE YOU  
19 SEEN HIM IN THE LAST YEAR?

20 JUROR KEITT: YES.

21 THE COURT: WHERE HAVE YOU SEEN HIM?

22 JUROR KEITT: AT CHURCH.

23 THE COURT: AT CHURCH. THE TWO  
24 CHURCHES -- SO YOU GO TO BOTH CHURCHES OR --

25 JUROR KEITT: NO.

1                   THE COURT:    --- HE COMES BACK TO  
2 YOUR CHURCH EVERY NOW AND THEN?

3                   JUROR KEITT:  YES, UH HUH.

4                   THE COURT:  DO YOU EVER GO TO HIS  
5 CHURCH?

6                   MR. SIMS:    I'M A PASTOR ALSO.

7                   THE COURT:  OKAY. HE'S A PASTOR.

8                   JUROR KEITT:  UH HUH.

9                   THE COURT:     SO, HE COMES AND  
10 PREACHES AT YOUR CHURCH?

11                  JUROR KEITT:  YES, SIR, SOMETIMES.

12                  THE COURT:  BUT WHEN HE WAS AT THE  
13 CHURCH DID HE PREACH OR WAS HE JUST A MEMBER?

14                  JUROR KEITT:  HE PREACHED SOME.

15                  THE COURT:  HE PREACHED.    OKAY.

16 WELL, TELL ME, HOW WOULD THAT AFFECT YOU IF YOU WERE  
17 CHOSEN TO SIT ON THIS JURY?

18                  JUROR KEITT:  UM, ---

19                  THE COURT:     HAS THIS GENTLEMAN  
20 BEHIND YOU EVER PREACHED AT YOUR CHURCH?

21                  JUROR KEITT:  NO, I DON'T THINK SO.

22                  THE COURT:  HE NEVER HAS?

23                  JUROR KEITT:  NO.

24                  THE COURT:  OKAY, WELL, HOW WOULD IT  
25 AFFECT YOU SINCE ONE HAS PREACHED AT YOUR CHURCH AND THE

1 OTHER ONE HASN'T?

2 JUROR KEITT: I DON'T KNOW.

3 THE COURT: YOU DON'T KNOW.

4 JUROR KEITT: NO, I DON'T.

5 THE COURT: WELL, I SORT OF NEED TO  
6 KNOW. YOU SEE, WE'RE TRYING TO GET A JURY THAT'S  
7 UNBIASED AND FAIR TO BOTH SIDES, AND I -

8 JUROR KEITT: I THINK I COULD BE  
9 FAIR.

10 THE COURT: YOU THINK YOU COULD BE  
11 FAIR?

12 JUROR KEITT: YEAH, UH HUH.

13 THE COURT: YOU THINK YOU COULD SET  
14 ASIDE WHAT HE'S TOLD YOU FROM THE PULPIT, AND SET THAT  
15 ASIDE?

16 JUROR KEITT: YES, I CAN.

17 THE COURT: OKAY. WELL, I NEED TO  
18 KNOW IF YOU CAN OR IF YOU CANNOT. AND IT'S OKAY IF YOU  
19 CAN'T, I MEAN, THAT'S HUMAN NATURE.

20 JUROR KEITT: I CAN BE FAIR.

21 THE COURT: YOU CAN BE FAIR?

22 JUROR KEITT: YES, I CAN.

23 THE COURT: YOU DON'T THINK IT WOULD  
24 AFFECT YOU?

25 JUROR KEITT: NO.

1                   THE COURT: OKAY. ALRIGHT, AND YOU  
2 THINK YOU CAN BE FAIR TO BOTH PARTIES?

3                   JUROR KEITT: YES, I CAN.

4                   THE COURT: AND CAN YOU BASE YOUR  
5 DECISION ON THE TESTIMONY YOU HEAR FROM THE WITNESS  
6 STAND?

7                   JUROR KEITT: YES, I CAN.

8                   THE COURT: SOLICITOR, DO YOU HAVE  
9 ANY QUESTIONS YOU WOULD LIKE TO ASK MS. KEITT?

10                  SOLICITOR JEFFRIES: NO, I DON'T.

11                  THE COURT: MR. SIMS, DO YOU?

12                  MR. SIMS: NO, SIR.

13                  THE COURT: OKAY, THANK YOU, MS.  
14 KEITT, I APPRECIATE YOU COMING FORWARD.

15 (Whereupon, the following  
16 takes place in the hearing  
17 of the jury.)

18                  THE COURT: MR. JEFFRIES, WOULD YOU  
19 STAND AND INTRODUCE YOURSELF, PLEASE, SIR.

20                  SOLICITOR JEFFRIES: GOOD MORNING,  
21 MY NAME IS BRIAN JEFFRIES, I'M THE FIRST ASSISTANT  
22 SOLICITOR HERE IN ORANGEBURG COUNTY FOR THE FIRST  
23 JUDICIAL CIRCUIT, WHICH IS DORCHESTER COUNTY, ORANGEBURG  
24 COUNTY AND CALHOUN COUNTY. I WORK FOR THE ELECTED  
25 SOLICITOR, DAVID PASCOE, AND I AM ASSISTED BY ASSISTANT

1 SOLICITOR KELLEY BURBAGE IN THIS TRIAL.

2 THE COURT: ALRIGHT, LADIES AND  
3 GENTLEMEN OF THE JURY PANEL, DOES ANY MEMBER OF THE JURY  
4 PANEL KNOW EITHER SOLICITOR JEFFRIES OR SOLICITOR  
5 BURBAGE, OR HAVE A CLOSE RELATIONSHIP WITH ANYONE ELSE  
6 THAT WORKS IN THE SOLICITOR'S OFFICE INCLUDING THE  
7 SOLICITOR, HIMSELF? IF SO, PLEASE STAND.

8 (Negative response from jury panel.)

9 THE COURT: THANK Y'ALL VERY MUCH.

10 ALRIGHT, WHEN WE STARTED I READ A  
11 PORTION OF THE INDICTMENT TO YOU, AND MY QUESTION IS,  
12 HAVE YOU HEARD ANYTHING ABOUT THIS CASE, ANYONE TALKING  
13 ABOUT THE CASE, READ ANYTHING IN THE PAPER ABOUT THE  
14 CASE, OR SEEN ANYTHING ON THE NEWS MEDIA ABOUT THE CASE,  
15 OTHER THAN WHAT I'VE TOLD YOU HERE TODAY? IF YOU KNOW  
16 ANYTHING ABOUT THE CASE OR YOU'VE HEARD ANYBODY TALKING  
17 ABOUT THE CASE OUTSIDE THE COURTROOM, PLEASE STAND.

18 (Negative response from jury panel.)

19 THE COURT: IS THERE ANY MEMBER OF  
20 THE JURY PANEL AWARE OF ANY BIAS OR PREJUDICE TOWARDS  
21 EITHER THE STATE OR THE DEFENDANT IN THIS PARTICULAR  
22 CASE?

23 (Negative response from jury panel.)

24 THE COURT: IS ANY MEMBER OF THE  
25 GRAND JURY WHICH FOUND THE INDICTMENT IN THIS CASE ON

1 THE JURY PANEL? IF SO, PLEASE STAND.

2 (Negative response from jury panel.)

3 THE COURT: IS ANY MEMBER OF THE  
4 JURY PANEL A MEMBER OR CONTRIBUTOR TO ANY GROUP WHICH  
5 HAS AS ITS PRIMARY CONCERN THE PROMOTION OF LAW  
6 ENFORCEMENT OR VICTIM'S RIGHTS? THESE GROUPS WOULD BE  
7 LIMITED -- OR WOULD CERTAINLY NOT BE LIMITED TO MADD,  
8 SADD, CAVE OR CADRE. IF YOU ARE A MEMBER OF ANY OF THOSE  
9 GROUPS OR IF YOU CONTRIBUTE TO ANY OF THOSE GROUPS  
10 PLEASE STAND.

11 (Negative response from jury panel.)

12 THE COURT: HAS ANY MEMBER OF THE  
13 JURY PANEL OR A MEMBER OF THEIR FAMILY OR A CLOSE  
14 PERSONAL FRIEND BEEN PROSECUTED BY THE SOLICITOR'S  
15 OFFICE HERE IN ORANGEBURG COUNTY OR ANY OTHER COUNTY?  
16 IF SO, PLEASE STAND.

17 JUROR: REPEAT THAT.

18 THE COURT: HAS ANY MEMBER OF THE  
19 JURY PANEL OR A MEMBER OF YOUR FAMILY OR A CLOSE FRIEND  
20 BEEN PROSECUTED BY THE SOLICITOR'S OFFICE HERE IN  
21 ORANGEBURG COUNTY OR ANY OTHER COUNTY? IF SO, PLEASE  
22 STAND.

23 (Affirmative response from jury panel.)

24 THE COURT: YES, SIR, YOUR NAME?

25 JUROR SHULER: DAVID SHULER, JUROR

1 TWO FIFTY-TWO.

2 THE COURT: TWO FIFTY-TWO?

3 JUROR SHULER: YES, SIR.

4 THE COURT: YES, SIR, MR. SHULER.

5 JUROR SHULER: I HAD -

6 THE COURT: YOU HAD THE CASE WE  
7 DISCUSSED EARLIER, RIGHT?

8 JUROR SHULER: YES, SIR.

9 THE COURT: OKAY, AS A RESULT OF  
10 THAT DO YOU HAVE ANY BIAS OR PREJUDICE TOWARDS THE  
11 SOLICITOR'S OFFICE?

12 JUROR SHULER: NO.

13 THE COURT: HAVE YOU GOT ANY BIAS OR  
14 PREJUDICE TOWARDS LAW ENFORCEMENT? YES OR NO?

15 JUROR SHULER: NO.

16 THE COURT: I CAN'T -- IT'S HARD TO  
17 SEE WHICH WAY YOU'RE SHAKING YOUR HEAD.

18 JUROR SHULER: NO, SIR.

19 THE COURT: OKAY. THANK YOU, MR.  
20 SHULER.

21 JUROR BOOKER: CHARLEY BOOKER, JUROR  
22 THIRTY-FIVE.

23 THE COURT: JUROR THIRTY-FIVE? YES,  
24 SIR, MR. CHARLEY.

25 JUROR BOOKER: MY SON WAS INDICTED



1 FOR ARMED ROBBERY, BUT I DON'T HAVE NO OBJECTION.

2 THE COURT: WHAT HAPPENED TO THE  
3 INDICTMENT?

4 JUROR BOOKER: WELL, HE'S DOING  
5 TIME.

6 THE COURT: HE'S DOING TIME?

7 JUROR BOOKER: YES, SIR.

8 THE COURT: DID HE HAVE A TRIAL, OR  
9 DO YOU KNOW?

10 JUROR BOOKER: YES, SIR, HE HAD A  
11 TRIAL, AS FAR AS I KNOW, I DON'T KNOW, I DIDN'T TALK TO  
12 HIM.

13 THE COURT: WERE YOU INVOLVED IN THE  
14 PROCESS AT ALL?

15 JUROR BOOKER: NO, SIR, I WASN'T.

16 THE COURT: ALRIGHT, HOW WOULD THAT  
17 AFFECT YOU IN THIS CASE?

18 JUROR BOOKER: IT WON'T.

19 THE COURT: IT WILL NOT?

20 JUROR BOOKER: NO, SIR.

21 THE COURT: CAN YOU BE FAIR TO BOTH  
22 THE STATE AND THE DEFENDANT?

23 JUROR BOOKER: YES, SIR.

24 THE COURT: AND BASE YOUR DECISION  
25 ON THE TESTIMONY YOU HEAR IN THE COURTROOM?

1 JUROR BOOKER: YES, SIR.

2 THE COURT: ALRIGHT, THANK YOU, MR.  
3 CHARLEY.

4 YES, MA'AM, YOUR NAME AND NUMBER?

5 JUROR JENKINS: JUROR NUMBER NINETY-  
6 SIX, DARLENE JENKINS.

7 THE COURT: HOLD ON JUST A SECOND.  
8 YES, MA'AM, MS. JENKINS?

9 JUROR JENKINS: I HAD A NEPHEW, I  
10 THINK THAT WAS ON LAST YEAR, JOHN STROMAN, JUNIOR, WHO  
11 WAS PROSECUTED.

12 THE COURT: WHAT WAS HE PROSECUTED  
13 FOR?

14 JUROR JENKINS: I THINK IT WAS ARMED  
15 ROBBERY.

16 THE COURT: ARMED ROBBERY? DID YOU  
17 HAVE ANY PARTICIPATION IN THAT TRIAL OR DID YOU COME TO  
18 COURT?

19 JUROR JENKINS: NO, I DIDN'T GO TO  
20 COURT BUT I SPOKE TO CHIEF DAVIS ABOUT ONE OF HIS  
21 CAPTAINS.

22 THE COURT: OKAY. DO YOU HAVE ANY  
23 BIAS OR PREJUDICE TOWARDS THE POLICE OFFICERS IN GENERAL  
24 AS A RESULT OF THAT EXPERIENCE?

25 JUROR JENKINS: YES, THE DEPARTMENT

1 OF PUBLIC SAFETY.

2 THE COURT: THE DEPARTMENT OF PUBLIC  
3 SAFETY?

4 JUROR JENKINS: YES.

5 THE COURT: OKAY. DO YOU WANT TO  
6 COME AROUND, MS. JENKINS?

7 (Whereupon, the following takes  
8 place out of the hearing of the  
9 jury panel.)

10 THE COURT: TELL ME ABOUT WHAT KIND  
11 OF PREJUDICE OR BIAS YOU THINK YOU HAVE AGAINST THE  
12 DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC  
13 SAFETY, IS THAT THE CITY OR -

14 JUROR JENKINS: YES, IT WAS REALLY  
15 ONE OF THE LIEUTENANTS, I THOUGHT THAT HE WAS, REALLY,  
16 THEY WERE TRYING TO KIND OF LIKE PIN IT ALL ON MY  
17 NEPHEW, KIND OF RAILROADING HIM TO, THEY SAID HE WAS,  
18 LIKE, THE RING LEADER, OTHERS WAS ACTUALLY INVOLVED IN  
19 IT. SO, THAT'S ONE OF MY HANGUPS, WAS WITH THAT.

20 THE COURT: BECAUSE YOU FELT LIKE  
21 THEY WERE TRYING TO LAY IT ALL ON HIM, ---

22 JUROR JENKINS: YES.

23 THE COURT: --- AND THERE WERE OTHER  
24 PEOPLE INVOLVED IN IT?

25 JUROR JENKINS: YES.

1                   THE COURT:   WELL, LET ME ASK YOU  
2 THIS, HOW DO YOU THINK THAT WOULD AFFECT YOU IN THIS  
3 TRIAL?

4                   JUROR JENKINS:   WELL, IT PROBABLY  
5 WOULDN'T. NOW IF HE'S COMING UP, PROBABLY, IF ADAMS IS  
6 INVOLVED TO BE ONE OF THE PERSONS THEN I PROBABLY -

7                   THE COURT:   YOU PROBABLY WHAT?

8                   JUROR JENKINS:   --- I PROBABLY  
9 WOULDN'T REALLY KIND OF BELIEVE WHAT HE'S SAYING.

10                  THE COURT:   OKAY.   WELL, AND THAT'S  
11 THE LIEUTENANT WITH THE DEPARTMENT -

12                  JUROR JENKINS:   THAT'S THE CAPTAIN.

13                  THE COURT:   THE CAPTAIN WITH THE  
14 DEPARTMENT OF SAFETY?

15                  JUROR JENKINS:   PUBLIC SAFETY.

16                  THE COURT:   WELL, HOW ABOUT THE  
17 SHERIFF'S DEPARTMENT, HOW DO YOU FEEL ABOUT THEM?

18                  JUROR JENKINS:   I DON'T HAVE  
19 ANYTHING -

20                  THE COURT:   AGAINST THEM?

21                  JUROR JENKINS:   NO, NOT THAT I CARE  
22 FOR THEM, BUT -

23                  THE COURT:   IT'S JUST THIS  
24 PARTICULAR OFFICER?

25                  JUROR JENKINS:   RIGHT.

1                   THE COURT: ALRIGHT, WOULD-- BECAUSE  
2   OF THAT EXPERIENCE, WOULD YOU HAVE ANY BIAS OR PREJUDICE  
3   TOWARDS LAW ENFORCEMENT IN GENERAL? DO YOU THINK IT  
4   WOULD SPILL OVER TO THIS CASE IS WHAT I'M ASKING?

5                   JUROR JENKINS: IT PROBABLY WOULD  
6   NOT, BUT I NEED TO BE HONEST, THAT'S WHAT YOU SAID.

7                   THE COURT: I UNDERSTAND, AND I WANT  
8   YOU TO BE HONEST. AND WHAT I NEED -- IF YOU DON'T --  
9   YOU SAID, IT PROBABLY WOULD NOT. WELL, ONLY YOU KNOW,  
10  NOBODY ELSE IN THIS WORLD KNOWS, AND THAT'S WHAT I'M  
11  TRYING TO FIND OUT, HOW IT'S GOING TO AFFECT YOU.

12                  JUROR JENKINS: IT WOULDN'T AFFECT  
13  ME ON THIS CASE, LIKE I SAID, IF HE'S NOT INVOLVED WITH  
14  IT.

15                  THE COURT: OKAY.

16                  JUROR JENKINS: NOW, IF HE'S  
17  INVOLVED WITH IT -

18                  THE COURT: WELL, I DIDN'T CALL HIS  
19  NAME OUT SO I DON'T THINK HE'S INVOLVED.

20                  JUROR JENKINS: ALRIGHT, OKAY.

21                  THE COURT: IF HE'S NOT INVOLVED DO  
22  YOU THINK YOU CAN BE FAIR TO BOTH PARTIES?

23                  JUROR JENKINS: EXACTLY.

24                  THE COURT: AND YOU THINK YOU CAN  
25  BASE YOUR DECISION ON THE TESTIMONY HERE IN THE

1 COURTROOM?

2 JUROR JENKINS: YES.

3 THE COURT: AND YOU DON'T THINK YOUR  
4 DISLIKE FOR THIS PARTICULAR PERSON WOULD SPILL OVER INTO  
5 THIS CASE?

6 JUROR JENKINS: NO.

7 THE COURT: OKAY, ANY QUESTIONS, MR.  
8 SIMS?

9 MR. SIMS: NO, SIR.

10 THE COURT: SOLICITOR, ANY QUESTIONS?

11 SOLICITOR JEFFRIES: NO, QUESTIONS.

12 THE COURT: OKAY, MS. JENKINS, THANK  
13 YOU VERY MUCH.

14 SOLICITOR JEFFRIES: I WOULD HAVE A  
15 MOTION.

16 THE COURT: PARDON?

17 SOLICITOR JEFFRIES: I WOULD HAVE A  
18 MOTION.

19 THE COURT: OKAY. MR. SIMS.

20 WHAT'S YOUR MOTION?

21 SOLICITOR JEFFRIES: YOUR HONOR, I  
22 THINK SHE, AT ONE POINT SHE SAID SHE THINKS THAT SHE  
23 WOULD HAVE A PROBLEM WITH A LAW ENFORCEMENT OFFICER, AND  
24 THEN SHE EQUIVOCATED, BUT SHE DID SAY SHE THINKS SHE'D  
25 HAVE A HARD TIME, BASED ON THAT PRIOR EXPERIENCE.

1                   THE COURT:   WHAT'S YOUR POSITION,  
2   MR. SIMS?

3                   MR. SIMS:       YOUR HONOR, YOU  
4   SPECIFICALLY ASKED HER IN REGARDS TO THIS CASE AND SHE  
5   SPECIFICALLY SAID, AS LONG AS THAT OFFICER IS NOT  
6   INVOLVED IN IT SHE COULD DEFINITELY LISTEN TO THE  
7   EVIDENCE AND MAKE THE DECISION BASED UPON THE EVIDENCE.  
8   SO, -- AND HE'S NOT INVOLVED IN THIS CASE, AND THERE'S  
9   NO WAY HE'S GOING TO COME UP IN THIS CASE.

10                  THE COURT:   I'M GOING TO DENY YOUR  
11   MOTION.   OKAY?

12                  COME ON UP, SIR.   WHAT'S YOUR NAME?

13                  JUROR WOODWARD:   ALLEN WOODWARD, I  
14   THINK IT'S ONE EIGHTY-SEVEN.

15                  THE COURT:   ONE EIGHTY-SEVEN, OKAY.  
16   YES, SIR, MR. WOODWARD, YOU'RE A PASTOR OF WHAT CHURCH?

17                  JUROR WOODWARD:   CANAAN BAPTIST.

18                  THE COURT:   CANAAN BAPTIST, ALRIGHT.  
19   OKAY. WHO DO YOU KNOW THAT WAS PROSECUTED, OR WHAT WAS  
20   YOUR INVOLVEMENT?

21                  JUROR WOODWARD:   I'VE HAD AN UNCLE  
22   AND A COUSIN THAT WERE BOTH PROSECUTED AND SERVED TIME.

23                  THE COURT:   WHERE, WHAT COUNTY, OR  
24   WHERE?

25                  JUROR WOODWARD:   AIKEN COUNTY.

1                   THE COURT:   AIKEN COUNTY?

2                   JUROR WOODWARD:   MY UNCLE WAS  
3   PROBABLY THIRTY ODD YEARS AGO AND I REALLY DIDN'T KNOW  
4   MUCH ABOUT IT. MY COUSIN WAS A COUPLE OF YEARS AGO, FOR  
5   WRITING SOME BAD CHECKS.

6                   THE COURT:   OKAY.

7                   JUROR WOODWARD:   BUT I DON'T THINK  
8   IT WOULD INFLUENCE ME IN ANY WAY.

9                   THE COURT:   YOU DON'T THINK IT WOULD  
10   HAVE ANY EFFECT ON YOU IN THIS TRIAL?

11                   JUROR WOODWARD:   NO, SIR. BUT YOU  
12   DID ASK US TO LET YOU KNOW.

13                   THE COURT:   I UNDERSTAND, AND I  
14   APPRECIATE YOU COMING FORWARD. CAN YOU BE FAIR TO BOTH  
15   THE STATE AND THE DEFENDANT IN THIS CASE?

16                   JUROR WOODWARD:   YES, SIR.

17                   THE COURT:   AND BASE YOUR DECISION  
18   ON WHAT YOU HEAR IN THE COURTROOM?

19                   JUROR WOODWARD:   YES, SIR.

20                   THE COURT:   ALRIGHT, THANK YOU SO  
21   VERY MUCH.

22   (Whereupon, the following takes  
23   place in the hearing of the  
24   jury panel.)

25                   THE COURT:   IS THERE ANY MEMBER OF



1 THE JURY PANEL RELATED OR ACQUAINTED WITH ANY MEMBER OF  
2 LAW ENFORCEMENT, I MEAN, CLOSE FRIENDS OR A MEMBER OF  
3 THEIR FAMILY IN LAW ENFORCEMENT? IF SO, PLEASE STAND.  
4 (Affirmative response from jury panel.)

5 THE COURT: YES, SIR, YOUR NAME?

6 JUROR GOODWIN: WESLEY GOODWIN.

7 THE COURT: GOODWIN? DO YOU KNOW  
8 YOUR NUMBER, MR. GOODWIN?

9 JUROR GOODWIN: NO.

10 CLERK: SEVENTY-THREE.

11 THE COURT: WHAT NUMBER?

12 CLERK: SEVENTY-THREE.

13 THE COURT: MR. GOODWIN, WHO'S WITH  
14 LAW ENFORCEMENT?

15 JUROR GOODWIN: ALLEN KINSEY USED TO  
16 BE A DETECTIVE AT ORANGEBURG COUNTY.

17 COURT REPORTER: I'M SORRY, I DIDN'T  
18 HEAR ANY OF THAT.

19 JUROR GOODWIN: ALLEN KINSEY USED TO  
20 BE A DETECTIVE AT ORANGEBURG COUNTY.

21 THE COURT: HOW LONG AGO?

22 JUROR GOODWIN: IT'S BEEN A FEW  
23 YEARS. HE WAS MY DAD'S BEST FRIEND. AND MY BROTHER-IN-  
24 LAW -- EX-BROTHER-IN-LAW WAS A COP FOR BLACKVILLE.

25 THE COURT: OKAY. ARE THEY STILL

1 POLICE OFFICERS, ARE THEY RETIRED?

2 JUROR GOODWIN: MR. KINSEY'S RETIRED  
3 BUT I DON'T KNOW ABOUT THE OTHER ONE.

4 THE COURT: ALRIGHT, HOW WOULD THAT  
5 AFFECT YOU IF YOU ARE CHOSEN TO SIT ON THIS JURY?

6 JUROR GOODWIN: IT WOULDN'T AFFECT  
7 ME.

8 THE COURT: DO YOU THINK YOU CAN BE  
9 FAIR TO BOTH THE STATE AND THE DEFENDANT?

10 JUROR GOODWIN: UH HUH.

11 THE COURT: CAN YOU BASE YOUR  
12 DECISION ON THE TESTIMONY YOU HEAR IN THE COURTROOM?

13 JUROR GOODWIN: YES, SIR.

14 THE COURT: ALRIGHT, THANK YOU, MR.  
15 GOODWIN.

16 YES, MA'AM, THE LADY ON MY RIGHT.

17 JUROR KING: I HAVE A NIECE AND HER  
18 HUSBAND --

19 THE COURT: WHAT'S YOUR NAME?

20 JUROR KING: EVELYN KING, ONE O  
21 NINE.

22 THE COURT: ONE O NINE.

23 JUROR KING: I HAVE A NIECE AND HER  
24 HUSBAND IS IN LAW ENFORCEMENT IN BAMBERG COUNTY.

25 THE COURT: HERE IN ORANGEBURG?

1                    JUROR KING:   NOT IN ORANGEBURG, IN  
2   BAMBERG.

3                    THE COURT:   BAMBERG?

4                    JUROR KING:   YES.

5                    THE COURT:   ALRIGHT, DO YOU SEE THEM  
6   ON A REGULAR BASIS?

7                    JUROR KING:   NO, NOT VERY REGULAR.

8                    THE COURT:   HOW WOULD THAT AFFECT  
9   YOU IF YOU WERE CHOSEN TO SIT ON THIS JURY?

10                   JUROR KING:   IT WILL NOT AFFECT ME.

11                   THE COURT:   CAN YOU BE FAIR TO BOTH  
12   THE STATE AND THE DEFENDANT?

13                   JUROR KING:   YES.

14                   THE COURT:   THANK YOU, MS. KING.

15                   YES, MA'AM, YOUR NAME?

16                   JUROR GILLIARD:   MY NAME IS STACY  
17   GILLIARD, I'M JURY NUMBER TWENTY -- SIXTY-NINE.

18                   THE COURT:   YES, MA'AM, MS.  
19   GILLIARD?

20                   JUROR GILLIARD:   I HAVE AN UNCLE, HE  
21   RETIRED LAST YEAR, SHERIFF WILLIAM GILLIARD.

22                   THE COURT:   FROM?

23                   JUROR GILLIARD:   ORANGEBURG COUNTY.

24                   THE COURT:   THE ORANGEBURG SHERIFF'S  
25   OFFICE?

1 JUROR GILLIARD: YES, SIR.

2 THE COURT: HOW WOULD THAT AFFECT  
3 YOU IF YOU ARE CHOSEN TO SIT ON THIS JURY?

4 JUROR GILLIARD: NOT AT ALL.

5 THE COURT: IT WOULD NOT?

6 JUROR GILLIARD: NO, IT WOULDN'T.

7 THE COURT: IT WOULDN'T HAVE ANY  
8 EFFECT AT ALL?

9 JUROR GILLIARD: NO.

10 THE COURT: ALRIGHT, AND YOU COULD  
11 BE FAIR TO BOTH THE STATE AND THE DEFENDANT?

12 JUROR GILLIARD: YES.

13 THE COURT: ALRIGHT, THANK YOU, MS.  
14 GILLIARD.

15 YES, MA'AM, YOUR NAME?

16 JUROR RAVENELL: CAROLYN RAVENELL,  
17 JUROR ONE NINETY-FIVE. I HAVE A COUSIN, DEPUTY LEROY  
18 RAVENELL, WITH THE SHERIFF'S DEPARTMENT.

19 THE COURT: I'M SORRY, HANG ON A  
20 SECOND, LET ME FIND YOU ON HERE. I CAN'T TURN THE PAGES  
21 THAT QUICK. ALRIGHT, MS. RAVENELL, YOU HAVE WHO, NOW?

22 JUROR RAVENELL: A COUSIN, DEPUTY  
23 LEROY RAVENELL, WITH THE SHERIFF'S DEPARTMENT.

24 THE COURT: HOW LONG HAS HE BEEN WITH  
25 THE SHERIFF'S DEPARTMENT?

1 JUROR RAVENELL: I DON'T KNOW.

2 THE COURT: YOU DON'T KNOW?

3 JUROR RAVENELL: YEAH.

4 THE COURT: HOW OFTEN DO YOU SEE  
5 HIM?

6 JUROR RAVENELL: MAYBE ONCE A WEEK.

7 THE COURT: ONCE A WEEK? WHAT KIND  
8 OF EFFECT WOULD THAT HAVE ON YOU?

9 JUROR RAVENELL: NONE.

10 THE COURT: CAN YOU BE FAIR TO BOTH  
11 THE STATE AND THE DEFENDANT?

12 JUROR RAVENELL: YES, SIR.

13 THE COURT: ALRIGHT, THANK YOU, MS.  
14 RAVENELL.

15 NOW, THERE'S SOMEBODY HIDDEN BEHIND  
16 THE POST, I CAN'T SEE YOU, YOU'RE GOING TO HAVE TO COME  
17 OUT FROM BEHIND THE POST. WHAT'S YOUR NAME?

18 JUROR WILLIAMS: ONEAL WILLIAMS.

19 THE COURT: DO YOU KNOW YOUR NUMBER?

20 JUROR WILLIAMS: NO, SIR.

21 CLERK: ONE EIGHTY-FIVE.

22 THE COURT: ONEAL WILLIAMS, ONE  
23 EIGHTY-FIVE. YES, SIR, MR. WILLIAMS?

24 JUROR WILLIAMS: I'M THE FIRST  
25 COUSIN OF THE CHIEF OF POLICE OF SANTEE.

1                   THE COURT: SANTEE?

2                   JUROR WILLIAMS: YES, SIR.

3                   THE COURT: OKAY. HOW LONG HAS HE  
4 BEEN CHIEF OF POLICE?

5                   JUROR WILLIAMS: THIRTY SOMETHING  
6 YEARS IN LAW ENFORCEMENT.

7                   THE COURT: OKAY. WOULD THAT HAVE  
8 ANY EFFECT ON YOU IN SITTING ON THIS JURY?

9                   JUROR WILLIAMS: NO, SIR.

10                  THE COURT: CAN YOU BE FAIR TO BOTH  
11 THE STATE AND THE DEFENDANT?

12                  JUROR WILLIAMS: YES, SIR.

13                  THE COURT: ALRIGHT, THANK YOU, MR.  
14 WILLIAMS.

15                               HAS ANY MEMBER OF THE JURY PANEL OR  
16 A MEMBER OF YOUR IMMEDIATE FAMILY BEEN A VICTIM OF A  
17 CRIME? IF SO, PLEASE STAND.

18 (Negative response from jury panel.)

19                   THE COURT: DOES ANY MEMBER OF THE  
20 JURY PANEL KNOW OF ANY REASON WHATSOEVER, PERSONAL OR  
21 OTHERWISE, AS TO WHY THEY CANNOT SERVE ON THIS JURY  
22 PANEL? IF SO, PLEASE STAND.

23 (Negative response from jury panel.)

24                   THE COURT: ANY FURTHER QUESTIONS  
25 FROM THE STATE?

1                    SOLICITOR JEFFRIES:   NONE FROM THE  
2   STATE, YOUR HONOR.

3                    THE COURT:   ANY FROM THE DEFENDANT?

4                    MR. SIMS:   NONE FROM THE DEFENDANT,  
5   YOUR HONOR.

6                    THE COURT:   ALRIGHT.   ALRIGHT,  
7   LADIES AND GENTLEMEN OF THE JURY PANEL, IT IS NOW  
8   ELEVEN:THIRTY.   WE'RE GOING TO TAKE ABOUT A FIFTEEN  
9   MINUTE BREAK.   IF YOU'LL BE BACK AT ELEVEN:FORTY-FIVE,  
10   WE'LL START STRIKING THE JURY AT THAT TIME.   YOU'RE  
11   WELCOME TO STAY IN THE COURTROOM, BUT WE'RE GOING TO  
12   TAKE ABOUT A FIFTEEN OR TWENTY MINUTE BREAK AND YOU CAN  
13   GO, THERE'S NO PLACE FOR YOU TO GO OTHER THAN THE HALLS,  
14   OR OUTSIDE, BUT BE BACK IN FIFTEEN MINUTES.

15                   MR. SIMS, I UNDERSTAND YOU HAVE A  
16   MOTION, IS THAT CORRECT?

17                   MR. SIMS:   YES, SIR.

18                   THE COURT:   WE CAN PUT IT ON THE  
19   RECORD AS SOON AS WE GET THE JURY OUT.

20                   SOLICITOR, HE'S GOT A MOTION HE  
21   WANTS TO PUT ON THE RECORD AND I'LL PUT IT ON THE RECORD  
22   AT THIS TIME.

23                   MR. SIMS:   YOUR HONOR, THE JURORS  
24   ARE SITTING IN HERE, WE'LL HAVE TO DO THAT AFTER WE  
25   STRIKE THE JURY.

1                    THE COURT: WELL, I SORT OF WANTED  
2 TO DO BEFORE WE STRIKE.

3                    BAILIFFS, CAN I GET Y'ALL TO GET THE  
4 JURY OUT, BECAUSE I NEED TO HEAR A COUPLE OF MOTIONS,  
5 PLEASE.

6                    WOULD ALL MEMBERS OF THE JURY GO OUT  
7 FOR ABOUT FIVE MINUTES AND THEN YOU CAN COME BACK IN.  
8 (Whereupon, all members of the jury panel  
9 leave the courtroom and the following  
10 takes place in camera.)

11                   MR. SIMS: YOUR HONOR, AT THIS TIME  
12 THE DEFENSE WOULD MOVE FOR A CONTINUANCE IN THIS MATTER.  
13 THE BASIS FOR THE CONTINUANCE IS THAT THERE IS A YOUNG  
14 MAN, KEVIN PRINGLE, WHO IS INCARCERATED, WE DON'T KNOW  
15 WHERE HE IS INCARCERATED, AND HE COULD AND WOULD BE WHAT  
16 WE WOULD CONSIDER AND INTEGRAL PART OF THE DEFENSE IN  
17 THIS MATTER.

18                   THE COURT: HOW LONG HAVE YOU KNOWN  
19 ABOUT THE TRIAL?

20                   MR. SIMS: WELL, WE'VE KNOWN ABOUT  
21 THE TRIAL SINCE LAST WEEK. WE WERE ACTUALLY TOLD THAT  
22 WE WERE GOING TO COME UP FOR TRIAL, AND I EXPLAINED TO  
23 THE SOLICITOR AT THAT TIME THAT THERE WERE TWO THINGS  
24 GOING ON, I WAS ALSO SUMMONED TO FEDERAL COURT, AND I  
25 DIDN'T EVEN KNOW WHETHER WE WOULD BE HERE TODAY BECAUSE



1 I WAS SCHEDULED TO BE FIRST UP, OR NOT FIRST UP BUT  
2 SCHEDULED FOR FEDERAL COURT. AND THEN ON THURSDAY,  
3 WEDNESDAY OR THURSDAY IT WAS DETERMINED THAT THAT WOULD  
4 BE CONTINUED, AND I TOLD THEM ON THURSDAY I BELIEVE IT  
5 WAS, I TOLD THE STATE THAT WE WOULD BE AT, YOU KNOW,  
6 THIS TRIAL, I WOULD BE AVAILABLE THIS WEEK. BUT THEN,  
7 IN TALKING TO MY CLIENT ON YESTERDAY WE DID FIND OUT  
8 ABOUT KEVIN PRINGLE.

9 THE COURT: WHEN DID YOU FIND OUT  
10 ABOUT KEVIN PRINGLE?

11 MR. SIMS: YESTERDAY.

12 THE COURT: OKAY. AND HOW LONG HAS  
13 THE CASE BEEN PENDING?

14 MR. SIMS: IT HAS BEEN PENDING FOR -

15 THE COURT: YOUR CLIENT JUST TOLD  
16 YOU ABOUT KEVIN PRINGLE YESTERDAY?

17 MR. SIMS: YES, SIR.

18 THE COURT: OKAY. ALRIGHT. THAT'S  
19 THE FIRST YOU HEARD ABOUT IT WAS YESTERDAY FROM YOUR  
20 CLIENT?

21 MR. SIMS: YES, SIR.

22 THE COURT: ALRIGHT, ANYTHING ELSE  
23 YOU WANT TO PUT ON THE RECORD AS FAR AS MR. PRINGLE IS  
24 CONCERNED?

25 MR. SIMS: YOUR HONOR, THE ONLY

1   THING THAT HE WOULD BE, IN TERMS OF A, KIND OF AN  
2   IMPEACHMENT WITNESS FOR THE MAIN WITNESS OF THE STATE IN  
3   REGARDS TO SOME LETTERS THAT HAD BEEN WRITTEN, AND HE  
4   WOULD BE ABLE TO TESTIFY ABOUT CONVERSATIONS THAT HE HAS  
5   HAD WITH THAT WITNESS.

6                   THE COURT:   OKAY.   SOLICITOR?

7                   MR. SIMS:   AND WE ARE LOOKING FOR  
8   HIM NOW.   THEY, I BELIEVE, IF THE SOLICITOR CAN --  
9   BECAUSE THEY WILL DO IT FOR HIM QUICKER THAN THEY WILL  
10  FOR ME -- AND WHAT HIS NAME -- AND I ASKED SOMEBODY FROM  
11  SCDC WHERE HE, THEN WE MIGHT BE ABLE TO DEAL WITH THAT  
12  SITUATION.

13                  THE COURT:   ALRIGHT, WELL, WHAT I'LL  
14  DO IS -- FIRST OF ALL LET ME HEAR YOU ON THE  
15  CONTINUANCE.

16                  SOLICITOR JEFFRIES:   YOUR HONOR, THE  
17  ONLY THING I WOULD HAVE TO THAT, OBVIOUSLY, THE STATE  
18  WOULD OBJECT TO A CONTINUANCE. I WAS TOLD THAT THIS CASE  
19  WOULD BE A TRIAL BACK IN FEBRUARY.   MR. SIMS ACTUALLY  
20  TOLD ME THAT HIS CLIENT, AT HIS SECOND APPEARANCE, WOULD  
21  ASK FOR A TRIAL.   HE WAS PLACED ON THE TRIAL ROSTER AT  
22  THE END OF THE MARCH TERM OF COURT FOR THE APRIL TERM OF  
23  COURT, AND SO MR. SIMS HAS HAD AMPLE TIME TO COLLECT ANY  
24  WITNESSES AND MEET WITH HIS CLIENT TO PRODUCE A DEFENSE.

25                  THE COURT:   I'M GOING TO DENY YOUR

1 MOTION FOR A CONTINUANCE. HOWEVER, IF YOU CAN LOCATE  
2 MR. PRINGLE I'LL BE HAPPY TO SIGN A TRANSPORTATION ORDER  
3 TO HAVE MR. PRINGLE HERE IN THE MORNING, OR THIS  
4 AFTERNOON -

5 MR. SIMS: HE'S IN REMBERT, I JUST  
6 GOT THAT.

7 THE COURT: --- ACCORDING ON HOW  
8 FAST WE CAN GET HIM HERE.

9 MR. SIMS: YES, SIR. HE'S IN  
10 REMBERT, THAT CORRECTIONAL FACILITY UP IN REMBERT.

11 THE COURT: THAT'S OVER IN -- THAT'S  
12 NOT VERY FAR FROM HERE, THAT'S RIGHT DOWN SIX O ONE,  
13 ISN'T IT?

14 MR. SIMS: RIGHT, I BELIEVE SO.

15 THE COURT: OVER IN KERSHAW COUNTY,  
16 OR MAYBE IT'S SUMTER COUNTY, I DON'T KNOW WHICH.

17 MR. SIMS: I DON'T KNOW WHICH ONE IT  
18 IS BUT -

19 THE COURT: HE'S AT -- AND YOU'RE  
20 SURE HE'S THERE?

21 MR. SIMS: YES, I'VE JUST BEEN  
22 INFORMED THAT THAT'S WHERE HE IS.

23 THE COURT: OKAY. IF YOU'LL GET ME  
24 A TRANSPORTATION ORDER, WHEN DO YOU WANT HIM HERE?

25 MR. SIMS: EITHER THIS EVENING OR

1 THE FIRST THING IN THE MORNING. I'LL TRY TO DRAFT IT UP,  
2 AND GET MY SECRETARY TO TYPE IT UP.

3 THE COURT: SOLICITOR, DO Y'ALL HAVE  
4 A STANDARD TRANSPORTATION Y'ALL CAN GIVE ME THAT I CAN  
5 USE?

6 SOLICITOR JEFFRIES: WELL, WE DON'T  
7 HAVE OUR OFFICE HERE IN THE BUILDING ANYMORE, BUT I CAN  
8 GET SOMETHING SENT OVER.

9 THE COURT: CAN YOU GET ME ONE OF  
10 THE STANDARD ORDERS -- AND MR. SIMS, I'VE GOT THE NAME  
11 OF THE LADY THAT IS IN CHARGE OF THAT AND I'LL GIVE YOU  
12 THAT NAME, AND THE SOLICITOR CAN CALL AND WE CAN  
13 EXPEDITE THE PROCESS, BECAUSE WE'LL HAVE TO E-MAIL OR  
14 FAX HER THE TRANSPORTATION ORDER, BUT I'LL GET HIM HERE  
15 IN THE MORNING.

16 MR. SIMS: THANK YOU, THAT WILL BE  
17 GREAT.

18 THE COURT: OKAY, BUT I'M NOT GOING  
19 TO GRANT YOU A CONTINUANCE, BUT I WILL ACCOMMODATE YOU  
20 IN THAT RESPECT.

21 MR. SIMS: THANK YOU.

22 THE COURT: OKAY. ANYTHING ELSE  
23 BEFORE WE TAKE A SHORT BREAK? ARE Y'ALL GOING TO BE  
24 READY TO STRIKE?

25 MR. SIMS: YES, SIR.

1 THE COURT: OKAY, ALRIGHT.

2 (Recess)

3 (Whereupon, the following  
4 takes place in chambers)

5 THE COURT: MR. SHULER, I UNDERSTAND  
6 THAT YOU KNOW THE DEFENDANT, IS THAT CORRECT?

7 JUROR JAMMIE SHULER: YES, YOUR  
8 HONOR.

9 THE COURT: AND YOU DIDN'T REALIZE  
10 IT UNTIL LATER. I'M NOT FUSSING AT YOU, OKAY? YOU  
11 DIDN'T REALIZE IT UNTIL LATER AND YOU MENTIONED IT TO  
12 MR. SIMS AND MR. SIMS SAID HE COULDN'T TALK TO YOU ABOUT  
13 IT.

14 JUROR SHULER: YES, YOUR HONOR.

15 THE COURT: AND HE BROUGHT IT TO MY  
16 ATTENTION, SO I WANT TO ASK YOU A FEW QUESTIONS. HOW DO  
17 YOU KNOW THE DEFENDANT?

18 JUROR SHULER: I'M FROM BOWMAN, I  
19 LIVE IN BOWMAN.

20 THE COURT: OKAY.

21 JUROR SHULER: AND THEN, I KNOW THE  
22 YOUNG MAN THAT'S SITTING OUT ON THE OTHER SIDE.

23 THE COURT: OKAY, WHICH YOUNG MAN?

24 JUROR SHULER: TED MONTGOMERY.

25 THE COURT: MR. MONTGOMERY?

1 JUROR SHULER: YES, SIR.

2 THE COURT: HE'S RIGHT HERE. IS THAT  
3 WHO YOU KNOW?

4 JUROR SHULER: YEAH, I KNOW HIM,  
5 YEAH, ON BEHALF OF HIS PARENTS, YEAH.

6 THE COURT: HOW DO YOU KNOW HIM?

7 JUROR SHULER: YOU'RE FROM THE  
8 BOWMAN AREA, RIGHT?

9 THE COURT: DON'T ASK HIM ANY  
10 QUESTIONS.

11 JUROR SHULER: I'VE SEEN HIM AROUND  
12 IN THE BOWMAN AREA.

13 THE COURT: YOU'VE SEEN HIM IN  
14 BOWMAN, DO YOU KNOW HIS FAMILY?

15 JUROR SHULER: YES, SIR.

16 THE COURT: HOW LONG HAVE YOU KNOWN  
17 THEM?

18 JUROR SHULER: I'VE BEEN IN BOWMAN  
19 FOR FORTY YEARS.

20 THE COURT: FORTY YEARS?

21 JUROR SHULER: YES, SIR.

22 THE COURT: OKAY. AND HOW DO YOU  
23 KNOW HIS FAMILY? DO YOU KNOW HIS DAD, ARE YOU GOOD  
24 FRIENDS?

25 JUROR SHULER: YEAH, I KNOW TED.

1 THE COURT: YOU KNOW TED, HIS DADDY?

2 JUROR SHULER: UH HUH.

3 THE COURT: ARE YOU GOOD FRIENDS  
4 WITH HIM?

5 JUROR SHULER: WELL, WE TALK, BUT I  
6 HAVEN'T TALKED WITH HIM IN ABOUT TWO OR THREE WEEKS.

7 THE COURT: TWO OR THREE WEEKS. DO  
8 YOU SEE HIM ON A REGULAR BASIS?

9 JUROR SHULER: YEAH, IF I'M OUT AND  
10 ABOUT SHOPPING.

11 THE COURT: WHERE DO YOU GENERALLY  
12 SEE HIM, BECAUSE THERE'S NOT MANY PLACES TO SHOP IN  
13 BOWMAN?

14 JUROR SHULER: WELL, IGA, OR EITHER  
15 AT THE MECHANICAL SHOP OR SOMETHING LIKE THAT.

16 THE COURT: DO YOU SEE HIM A GOOD  
17 BIT?

18 JUROR SHULER: YES.

19 THE COURT: HOW DO YOU THINK THAT  
20 WOULD AFFECT YOU SITTING ON THIS JURY?

21 JUROR SHULER: IT, IT WOULDN'T.

22 THE COURT: YOU DON'T THINK IT  
23 WOULD?

24 JUROR SHULER: NO.

25 THE COURT: YOU DON'T THINK IT WOULD

1 HAVE ANY EFFECT AT ALL?

2 JUROR SHULER: NO.

3 THE COURT: YOU THINK YOU COULD PUT  
4 ALL THAT ASIDE?

5 JUROR SHULER: YES. BUT I JUST  
6 WANTED TO LET HIM KNOW BECAUSE ---

7 THE COURT: THAT'S FINE, I  
8 APPRECIATE YOU DOING THAT. I WANT TO THANK YOU FOR  
9 COMING FORWARD. BUT YOU THINK YOU CAN BE FAIR TO BOTH  
10 THE STATE AND THE DEFENDANT?

11 JUROR SHULER: UH HUH.

12 THE COURT: SOLICITOR, DO YOU HAVE  
13 ANY QUESTIONS?

14 SOLICITOR JEFFRIES: NO, SIR.

15 THE COURT: DOES THE DEFENDANT HAVE  
16 ANY QUESTIONS?

17 MR. SIMS: NO, SIR.

18 THE COURT: OKAY, THANK YOU VERY  
19 MUCH, I APPRECIATE IT.

20 COURT REPORTER: DO YOU REMEMBER  
21 YOUR NUMBER, MR. SHULER?

22 JUROR SHULER: ONE FIFTY-TWO.

23 COURT REPORTER: ONE FIFTY-TWO?  
24 OKAY.

25 THE COURT: MR. SHULER, THANK YOU SO



1 VERY MUCH.

2 HAS ANYBODY GOT ANY MOTIONS?

3 MR. SIMS: I DON'T.

4 SOLICITOR JEFFRIES: NO, SIR.

5 THE COURT: OKAY, ARE Y'ALL READY TO  
6 STRIKE THE JURY?

7 MR. SIMS: YES, SIR.

8 THE COURT: OKAY. HARRY DOT,  
9 WHENEVER YOU'RE READY.

10 COURT REPORTER: YES, SIR.

11 (Whereupon, the following takes  
12 place in open court in the  
13 presence of the jury panel.)

14 THE COURT: ALRIGHT, IS THE STATE  
15 READY TO STRIKE?

16 SOLICITOR JEFFRIES: THE STATE'S  
17 READY, YOUR HONOR.

18 THE COURT: IS THE DEFENDANT READY?

19 MR. SIMS: YES, SIR.

20 THE COURT: MADAM CLERK, IF YOU CAN  
21 GIVE US A JURY, PLEASE, MA'AM.

22 CLERK: DOES THE STATE WAIVE THE  
23 PRESENCE OF THE JURY BOY AND ALLOW THE CLERK TO DRAW?

24 SOLICITOR JEFFRIES: YES.

25 CLERK: DOES THE DEFENDANT?

1                   MR. SIMS: YES.

2                   CLERK: WHEN I CALL YOUR NAME, IF YOU  
3 WILL I NEED YOU TO COME FORWARD, JUST BRING YOUR  
4 BELONGINGS WITH YOU JUST IN CASE YOU'RE NOT GOING BACK  
5 TO YOUR SEAT. I NEED YOU TO COME UP HERE AND STAND IN  
6 FRONT OF THIS PODIUM AND JUST STAND THERE UNTIL I EITHER  
7 TELL YOU TO HAVE A SEAT IN THE JURY BOX OR TAKE YOUR  
8 SEAT BACK.

9                   JUROR NUMBER ONE SIXTY-ONE, DOROTHY  
10 SUMMERS. TURN THIS WAY.

11                  THE COURT: JUST COME ON BACK, COME  
12 ON BACK RIGHT HERE IN FRONT OF ME IF YOU WOULD. BACK UP  
13 A LITTLE BIT, DON'T FALL. EVERYBODY ELSE COME STAND  
14 RIGHT WHERE SHE'S STANDING.

15                  CLERK: WE HAVE JUROR NUMBER ONE  
16 SIXTY-ONE, MS. SUMMERS, WHAT SAYS THE STATE?

17                  SOLICITOR JEFFRIES: PLEASE PRESENT  
18 MS. SUMMERS.

19                  CLERK: WHAT SAYS THE DEFENSE?

20                  MR. SIMS: SEAT THE JUROR.

21                  CLERK: MS. SUMMERS, HAVE A SEAT IN  
22 THE JURY BOX.

23                  JUROR NUMBER FOUR, ROBERT ANDERSON.  
24 WE HAVE JUROR NUMBER FOUR, MR. ANDERSON, WHAT SAYS THE  
25 STATE?

1 SOLICITOR JEFFRIES: PLEASE PRESENT

2 MR. ANDERSON.

3 CLERK: WHAT SAYS THE DEFENSE?

4 MR. SIMS: SEAT THE JUROR.

5 CLERK: MR. ANDERSON, HAVE A SEAT IN

6 THE JURY BOX.

7 JUROR NUMBER ONE THIRTY, SHIRLEY

8 NELSON.

9 MR. SIMS: NUMBER ONE THIRTY?

10 CLERK: NUMBER ONE THIRTY. WE HAVE

11 JUROR NUMBER ONE THIRTY, MS. NELSON, WHAT SAYS THE

12 STATE?

13 SOLICITOR JEFFRIES: PLEASE PRESENT

14 MS. NELSON.

15 CLERK: WHAT SAYS THE DEFENSE?

16 MR. SIMS: EXCUSE THE JUROR.

17 CLERK: YOU'RE EXCUSED BY THE

18 DEFENSE.

19 JUROR NUMBER THIRTY, RICHARD CARSON.

20 WE HAVE JUROR NUMBER THIRTY, MR. CARSON, WHAT SAYS THE

21 STATE?

22 SOLICITOR JEFFRIES: PLEASE PRESENT

23 MR. CARSON.

24 CLERK: WHAT SAYS THE DEFENSE?

25 MR. SIMS: SEAT THE JUROR.

1                    CLERK: MR. CARSON, HAVE A SEAT IN  
2 THE JURY BOX.

3                    JUROR NUMBER SEVENTY-SIX, KYLE  
4 GRIFFITH. WE HAVE JUROR NUMBER SEVENTY-SIX, MR.  
5 GRIFFITH, WHAT SAYS THE STATE?

6                    SOLICITOR JEFFRIES: PLEASE PRESENT  
7 MR. GRIFFITH.

8                    CLERK: WHAT SAYS THE DEFENSE?

9                    MS. SIMS: EXCUSE THE JUROR.

10                   CLERK: YOU'RE EXCUSED BY THE  
11 DEFENSE.

12                   JUROR NUMBER SIXTY-NINE, STACY  
13 GILLIARD. WE HAVE JUROR NUMBER SIXTY-NINE, MS.  
14 GILLIARD, WHAT SAYS THE STATE?

15                   SOLICITOR JEFFRIES: PLEASE PRESENT  
16 MS. GILLIARD.

17                   CLERK: WHAT SAYS THE DEFENSE?

18                   MS. SIMS: SEAT THE JUROR.

19                   CLERK: HAVE A SEAT IN THE JURY BOX,  
20 MS. GILLIARD.

21                   JUROR NUMBER NINETY, ESAU ISAAC. WE  
22 HAVE JUROR NUMBER NINETY, MR. ISAAC, WHAT SAYS THE  
23 STATE?

24                   SOLICITOR JEFFRIES: PLEASE PRESENT  
25 MR. ISAAC.

1 CLERK: WHAT SAYS THE DEFENSE?

2 MR. SIMS: SEAT THE JUROR.

3 CLERK: HAVE A SEAT IN THE JURY BOX,

4 MR. ISAAC.

5 JUROR NUMBER THREE, ULASIUS AMAKER.

6 WE HAVE JUROR NUMBER THREE, MR. AMAKER, WHAT SAYS THE  
7 STATE?

8 SOLICITOR JEFFRIES: PLEASE PRESENT

9 MR. AMAKER.

10 CLERK: WHAT SAYS THE DEFENSE?

11 MR. SIMS: SEAT THE JUROR.

12 CLERK: HAVE A SEAT IN THE JURY BOX,

13 MR. AMAKER.

14 JUROR NUMBER ONE EIGHTY-SIX, TIMOTHY

15 WILSFORD. WE HAVE JUROR NUMBER ONE EIGHTY-SIX, MR.

16 WILSFORD, WHAT SAYS THE STATE?

17 SOLICITOR JEFFRIES: PLEASE PRESENT

18 MR. WILSFORD.

19 CLERK: WHAT SAYS THE DEFENSE?

20 MR. SIMS: SEAT THE JUROR.

21 CLERK: HAVE A SEAT IN THE JURY BOX,

22 MR. WILSFORD.

23 JUROR NUMBER NINETY-FIVE, JAMES

24 JEFFERSON. WE HAVE JUROR NUMBER NINETY-FIVE, MR.

25 JEFFERSON, WHAT SAYS THE STATE?

1                   SOLICITOR JEFFRIES: PLEASE PRESENT  
2 MR. JEFFERSON.

3                   CLERK: WHAT SAYS THE DEFENSE?

4                   MR. SIMS: EXCUSE THE JUROR.

5                   CLERK: MR. JEFFERSON, YOU'RE  
6 EXCUSED BY THE DEFENSE.

7                   JUROR NUMBER NINETY-EIGHT, TERRY  
8 JENKINS. WE HAVE JUROR NUMBER NINETY-EIGHT, MR.  
9 JENKINS, WHAT SAYS THE STATE?

10                  SOLICITOR JEFFRIES: PLEASE PRESENT  
11 MR. JENKINS.

12                  CLERK: WHAT SAYS THE DEFENSE?

13                  MR. SIMS: SEAT THE JUROR.

14                  CLERK: MR. JENKINS, HAVE A SEAT IN  
15 THE JURY BOX.

16                  JUROR NUMBER NINE, MARY BENJAMIN.  
17 WE HAVE JUROR NUMBER NINE, MS. BENJAMIN, WHAT SAYS THE  
18 STATE?

19                  SOLICITOR JEFFRIES: PLEASE PRESENT  
20 MS. BENJAMIN.

21                  CLERK: WHAT SAYS THE DEFENSE?

22                  MR. SIMS: SEAT THE JUROR.

23                  CLERK: HAVE A SEAT IN THE JURY BOX,  
24 MS. BENJAMIN.

25                  JUROR NUMBER ONE SEVENTY-NINE,

1 WILLIAM WATKINS. WE HAVE JUROR NUMBER ONE SEVENTY-NINE,  
2 MR. WATKINS, WHAT SAYS THE STATE?

3 SOLICITOR JEFFRIES: PLEASE PRESENT  
4 MR. WATKINS.

5 CLERK: WHAT SAYS THE DEFENSE?

6 MR. SIMS: SEAT THE JUROR.

7 CLERK: HAVE A SEAT IN THE JURY BOX,  
8 MR. WATKINS.

9 JUROR NUMBER SEVENTY-SEVEN, TSUSHIMA  
10 HAIR. WE HAVE JUROR NUMBER SEVENTY-SEVEN, MS. HAIR,  
11 WHAT SAYS THE STATE?

12 SOLICITOR JEFFRIES: PLEASE PRESENT  
13 MS. HAIR.

14 CLERK: WHAT SAYS THE DEFENSE?

15 MS. SIMS: MAY I ASK A QUESTION,  
16 YOUR HONOR? WHEN SHE SAID SHE WORKED AT ROSES, WAS SHE  
17 A CASHIER?

18 THE COURT: MS. HAIR, WHERE DID YOU  
19 WORK?

20 JUROR HAIR: ROSES.

21 THE COURT: AND WHAT DID YOU DO AT  
22 ROSES?

23 JUROR HAIR: I'M A MODEL SPECIALIST.

24 THE COURT: A WHAT?

25 JUROR HAIR: A MODEL SPECIALIST.

1                   THE COURT:   WHAT DOES THAT ENTAIL?

2                   JUROR HAIR:   YOU SET THE STORE.

3                   THE COURT:   I'M SORRY?

4                   JUROR HAIR:   YOU SET THE STORE, YOU  
5 SET UP THE DISPLAYS AND STUFF.

6                   THE COURT:   OKAY.

7                   MR. SIMS:   SEAT THE JUROR.

8                   CLERK:   JUROR NUMBER ONE EIGHTY-  
9 FOUR, MICHELLE WILLIAMS.   WE HAVE JUROR NUMBER ONE  
10 EIGHTY-FOUR, MS. WILLIAMS, WHAT SAYS THE STATE?

11                   SOLICITOR JEFFRIES:   PLEASE PRESENT  
12 MS. WILLIAMS.

13                   CLERK:   WHAT SAYS THE DEFENSE?

14                   MR. SIMS:   SEAT THE JUROR.

15                   CLERK:   HAVE A SEAT IN THE JURY BOX.

16                   THE COURT:   ONE ALTERNATE, TWO AND  
17 ONE.

18                   CLERK:   JUROR NUMBER ONE THIRTY-  
19 SEVEN, HANIE CRUM.   WE HAVE JUROR NUMBER ONE THIRTY-  
20 SEVEN, MS. CRUM, WHAT SAYS THE STATE?

21                   SOLICITOR JEFFRIES:   PLEASE EXCUSE  
22 THE JUROR FROM THE TRIAL OF THIS CASE.

23                   CLERK:   YOU'RE EXCUSED BY THE STATE.

24                   JUROR NUMBER ONE NINETY-SEVEN, JAMES  
25 LATTIMORE.   WE HAVE JUROR NUMBER ONE NINETY-SEVEN, MR.



1 LATTIMORE, DOES THE STATE CHALLENGE FOR CAUSE?

2 SOLICITOR JEFFRIES: NO, SEAT THE  
3 JUROR.

4 CLERK: WHAT SAYS THE DEFENSE?

5 MR. SIMS: EXCUSE THE JUROR.

6 CLERK: EXCUSED BY THE DEFENSE.  
7 YOU'RE EXCUSED BY THE DEFENSE.

8 JUROR NUMBER SEVENTY-TWO, DERRICK  
9 GOODEN. WE HAVE JUROR NUMBER SEVENTY-TWO, MR. GOODEN,  
10 DOES THE STATE CHALLENGE FOR CAUSE?

11 SOLICITOR JEFFRIES: PLEASE PRESENT  
12 THE JUROR.

13 CLERK: WHAT SAYS THE DEFENSE?

14 MR. SIMS: SEAT THE JUROR.

15 CLERK: HAVE A SEAT IN THE JURY BOX,  
16 MR. GOODEN.

17 THE COURT: ALRIGHT, LADIES AND  
18 GENTLEMEN OF THE JURY PANEL, WHAT I'M GOING TO ASK YOU  
19 TO DO IS GO TO THE JURY ROOM, AND I WANT YOU TO ELECT  
20 EITHER A FORELADY OR A FOREMAN. YOU MAY ELECT ANYBODY  
21 EXCEPT THE ALTERNATE, MR. GOODEN. AND AFTER YOU'VE DONE  
22 THAT WRITE THE NAME DOWN, GIVE IT TO THE BAILIFF AND  
23 I'LL GET YOU BACK INTO THE COURTROOM VERY SHORTLY AFTER  
24 THAT. DON'T DISCUSS THE CASE AMONGST YOURSELVES, AND IF  
25 YOU'LL FOLLOW THE BAILIFF SHE'LL SHOW YOU TO THE JURY

1 ROOM.

2 (Whereupon, the following takes  
3 place out of the presence of  
4 the jury.)

5 THE COURT: THANK YOU, SIR.

6 ALRIGHT, ANY MOTIONS FROM THE STATE  
7 ON DRAWING THE JURY?

8 SOLICITOR JEFFRIES: NONE FROM THE  
9 STATE, YOUR HONOR.

10 THE COURT: ANY MOTIONS FROM THE  
11 DEFENDANT ON DRAWING THE JURY?

12 MR. SIMS: NONE FROM THE DEFENSE,  
13 YOUR HONOR.

14 THE COURT: ALRIGHT. ON THE  
15 REMAINING PANEL, DO THEY HAVE A CALL IN NUMBER?

16 CLERK: YES, SIR.

17 THE COURT: HAVE YOU TOLD THEM ABOUT  
18 THE CALL IN?

19 CLERK: THE CALL IN NUMBER IS ON THE  
20 FORM THAT YOU WERE GIVEN WHENEVER YOU CAME IN.

21 (Whereupon, the remaining jury panel  
22 is excused by the court.)

23 (Whereupon, a bench conference  
24 is held out of the hearing of  
25 the court reporter.)

1                   THE COURT: THE PARTIES' ATTORNEYS  
2 HAVE AGREED TO SEQUESTER WITNESSES. FROM THE STATE'S  
3 STANDPOINT WHO IS HERE, SOLICITOR JEFFRIES, FOR  
4 WITNESSES?

5                   SOLICITOR JEFFRIES: AT THE CURRENT  
6 TIME WE HAVE MY INVESTIGATOR, DEPUTY RODRIGUEZ,  
7 LIEUTENANT CULLER. WE HAVE SEVERAL WITNESSES SCHEDULED  
8 TO BE HERE AT ONE O'CLOCK BUT I'LL MAKE SURE THEY ARE  
9 AWARE OF THIS.

10                  THE COURT: OKAY. WHAT I WANT TO  
11 EMPHASIZE, MR. JEFFRIES, IS, TELL YOUR WITNESSES WHEN  
12 THEY GET THROUGH TESTIFYING DON'T GO OUTSIDE AND TELL  
13 THE OTHER WITNESSES WHAT TRANSPIRED, OKAY? I'M GOING TO  
14 RELY ON YOU TO TELL THEM THAT, BECAUSE YOU CAN TELL THEM  
15 IF THEY DO THAT AND WE HAVE PROBLEMS IT'S GOING TO BE  
16 THEIR PROBLEM. OKAY?

17                  SOLICITOR JEFFRIES: AND AGAIN, I'D  
18 JUST ASK THAT IT BE RECIPROCAL.

19                  THE COURT: YEAH, I AM. ALRIGHT,  
20 MR. SIMS, I DON'T KNOW HOW MANY WITNESSES YOU HAVE THE  
21 COURTROOM BUT I'M GOING TO ASK THEM TO LEAVE AND I'M  
22 GOING TO ASK YOU TO INSTRUCT THEM TO NOT DISCUSS WHAT  
23 TAKES PLACE IN THE COURTROOM AFTER THEY TESTIFY. OKAY?

24                  MR. SIMS: YES, SIR.

25                  THE COURT: AND MS. WRIGHT -

1                   MR. SIMS: MS. WRIGHT, SHE'S IN THE  
2 COURTROOM.

3                   THE COURT: I THINK SHE'S THE ONLY  
4 ONE IN THE COURTROOM, I WANT YOU TO WAIT OUTSIDE, RIGHT  
5 OUTSIDE THE DOOR, BECAUSE SOLICITOR JEFFRIES IS GOING TO  
6 TALK TO YOU ABOUT ONE O'CLOCK. SO, DON'T GO ANYWHERE,  
7 DO YOU UNDERSTAND?

8                   MS. WRIGHT: YES, SIR.

9                   THE COURT: JUST WAIT RIGHT OUTSIDE  
10 IN THE HALL AND HE'LL COME OUT THERE AROUND ONE O'CLOCK,  
11 AND MR. SIMS AND MR. JEFFRIES WILL BE TALKING WITH YOU.  
12 DO YOU UNDERSTAND?

13                   MS. WRIGHT: YES, SIR.

14                   THE COURT: ALRIGHT. THANK YOU VERY  
15 MUCH.

16                   SOLICITOR JEFFRIES: YOUR HONOR,  
17 THEY DON'T NEED TO BE SEQUESTERED DURING THE OPENING, OR  
18 DO THEY?

19                   THE COURT: YEAH.

20                   SOLICITOR JEFFRIES: OKAY.

21                   THE COURT: ALRIGHT, THE FOREPERSON  
22 IS DOROTHY SUMMERS, WHO IS JUROR NUMBER ONE SIXTY-ONE,  
23 SHE IS THE FORELADY.

24                   SOLICITOR JEFFRIES: SIR, THAT'S ONE  
25 SIXTY-ONE?

1                   THE COURT: YES, SIR, THE FIRST ONE  
2 THAT WAS PICKED, JUROR NUMBER ONE SIXTY-ONE IS THE  
3 FORELADY.

4                   ALRIGHT, IS THE STATE READY FOR  
5 OPENING STATEMENTS?

6                   SOLICITOR JEFFRIES: THE STATE'S  
7 READY, YOUR HONOR.

8                   THE COURT: IS THE DEFENSE READY?

9                   MR. SIMS: THE DEFENSE IS, YOUR  
10 HONOR.

11                  THE COURT: ALRIGHT, WE'LL MAKE  
12 OPENING STATEMENTS AND AFTER THAT WE'LL TAKE A LUNCH  
13 BREAK.

14                  BRING US THE JURY, PLEASE.

15                  ARE ALL WITNESSES OUT OF THE  
16 COURTROOM? OKAY.

17                  MADAM CLERK, IF YOU'LL SWEAR THEM  
18 WHEN THEY GET IN, DON'T LET ME FORGET THAT. OKAY?

19                  CLERK: YES, SIR.

20 (Whereupon, the jury enters  
21 the courtroom and the following  
22 takes place in the presence  
23 of the jury.)

24                  THE COURT: MADAM CLERK, IF YOU'LL  
25 SWEAR THE JURY, PLEASE, MA'AM.

1                    CLERK: IF YOU WILL, PLEASE STAND  
2 AND RAISE YOUR RIGHT HAND.

3 (Whereupon, the jury is duly  
4 sworn and impaneled.)

5                    CLERK: PLEASE HAVE A SEAT.

6                    THE COURT: SOLICITOR.

7                    SOLICITOR BURBAGE: THANK YOU, YOUR  
8 HONOR, MAY IT PLEASE THE COURT.

9                    THE COURT: YES, MA'AM.

10                    OPENING STATEMENT BY SOLICITOR BURBAGE

11                    ON SEPTEMBER SEVENTEENTH, TWO  
12 THOUSAND AND SIX, IN THE EARLY MORNING HOURS, AT FIFTY-  
13 [REDACTED] [REDACTED] [REDACTED] [REDACTED] AT THE SHELL STATION,  
14 NICHOLAS HERRINGTON IS AT THE STORE, AND JAMES GREEN AND  
15 THE DEFENDANT, REGINALD MONTGOMERY, CAME INTO THAT STORE  
16 WHILE MASKED, ARMED WITH A HAND GUN, AND THEY ROBBED HIM  
17 AT GUN POINT OF MONEY FROM THE CASH DRAWER.

18                    NOW, LADIES AND GENTLEMEN, AS YOU'VE  
19 ALREADY HEARD, MY NAME IS KELLEY BURBAGE, I'M AN  
20 ASSISTANT SOLICITOR HERE IN ORANGEBURG, AND I'M HERE  
21 WITH BRIAN JEFFRIES, WHO IS THE FIRST ASSISTANT  
22 SOLICITOR HERE IN ORANGEBURG. AND LADIES AND GENTLEMEN,  
23 I JUST FIRST AND FOREMOST WANT TO THANK YOU ALL FOR YOUR  
24 TIME AND FOR YOUR ATTENTION. WE HOPE NOT TO TAKE UP TOO  
25 MUCH OF YOUR TIME, BUT I JUST WANT YOU TO KNOW HOW VERY

1    IMPORTANT THAT YOUR ATTENTION IS AND THAT YOUR TIME IS  
2    HERE FOR US TODAY.

3                                NOW, IT'S OUR DUTY AS PROSECUTORS TO  
4    PROVE THIS CASE TO YOU BEYOND A REASONABLE DOUBT.    AND  
5    BEFORE I TELL YOU WHAT BEYOND A REASONABLE DOUBT MEANS,  
6    LADIES AND GENTLEMEN, I JUST WANT TO QUICKLY TELL YOU  
7    WHAT THE DEFENDANT IS HERE TODAY FOR.    NOW, I JUST  
8    MENTIONED THE NAME, JAMES GREEN.    THERE WAS JAMES GREEN,  
9    SHAWON JOHNSON AND REGINALD MONTGOMERY ALL CHARGED IN  
10    RELATION TO THIS CRIME.    BUT LADIES AND GENTLEMEN, WE'RE  
11    HERE TODAY FOR REGINALD MONTGOMERY.    IT IS HIS DAY IN  
12    COURT.    HE'S CHARGED WITH THE CRIME OF ARMED ROBBERY.  
13    JAMES GREEN WILL HAVE HIS FUTURE -- HIS TRIAL IN THE  
14    NEAR FUTURE.    BUT WE'RE HERE TODAY BECAUSE OF REGINALD  
15    MONTGOMERY.    AND LADIES AND GENTLEMEN, LIKE I SAID, HE'S  
16    CHARGED WITH ARMED ROBBERY.

17                              ARMED ROBBERY, QUITE SIMPLY, IS THAT  
18    IT IS UNLAWFUL TO TAKE FROM THE PERSON OR PRESENCE OF  
19    ANOTHER GOODS OR MONIES WHILE ARMED WITH A DEADLY WEAPON  
20    BY FORCE OR INTIMIDATION.

21                              AND AGAIN, AS I JUST TOLD YOU, WE  
22    HAVE TO PROVE THIS CASE TO YOU BEYOND A REASONABLE  
23    DOUBT.    AND THAT IS NOT PROOF BEYOND ANY AND ALL DOUBT.  
24    LADIES AND GENTLEMEN, IF AFTER YOU HEAR ALL THE EVIDENCE  
25    FROM THIS WITNESS STAND YOU'RE LEFT FIRMLY CONVINCED OF

1 THE DEFENDANT'S GUILT, THEN IT IS YOUR DUTY TO RENDER A  
2 VERDICT OF GUILTY FOR THE CRIME OF ARMED ROBBERY.

3 NOW, AS I STATED PREVIOUSLY, THIS IS  
4 IN THE EARLY MORNING HOURS ON SEPTEMBER SEVENTEENTH.  
5 NICHOLAS HERRINGTON IS THE STORE CLERK THERE. HE'S IN  
6 THE STORE. TWO MEN COME IN MASKED. ONE IS POINTING A  
7 HAND GUN. NICHOLAS IS PUSHED BEHIND THE REGISTER,  
8 FORCED TO TAKE MONEY OUT OF THAT REGISTER, AND THESE TWO  
9 INDIVIDUALS, REGINALD MONTGOMERY AND JAMES GREEN, RUN  
10 OUT OF THE STORE ON FOOT, AND LIEUTENANT RANDY CULLER,  
11 WHO YOU'LL HEAR FROM, WHO'S WITH THE SHERIFF'S OFFICE,  
12 IS ABLE TO FOLLOW THE DIRECTION OF WHERE THEY WENT ON  
13 FOOT. HE'S ABLE TO TALK TO WITNESSES, HE'S ABLE TO THEN  
14 DEVELOP A SUSPECT OF JAMES GREEN. HE THEN TURNS THAT  
15 INFORMATION OVER TO OFFICER RODRIGUEZ, WHO'S ALSO WITH  
16 THE SHERIFF'S OFFICE, AND HE THEN FOLLOWS UP HIS  
17 INVESTIGATION, TALKS TO WITNESSES, AND HE HAS BEEN ABLE  
18 TO DEVELOP THE SUSPECT OF REGINALD MONTGOMERY.  
19 ULTIMATELY, THROUGH ALL OF HIS INVESTIGATION, RODRIGUEZ  
20 THEN IS ABLE TO CHARGE BOTH REGINALD MONTGOMERY AND  
21 JAMES GREEN.

22 NOW, LADIES AND GENTLEMEN, AGAIN,  
23 AFTER YOU HEAR ALL THE EVIDENCE AS IT'S PRESENTED FROM  
24 THIS STAND, AND YOU ARE LEFT FIRMLY CONVINCED OF THE  
25 DEFENDANT'S GUILT, THEN IT WILL BE YOUR DUTY AS JURORS



1 TO RENDER A VERDICT OF GUILTY FOR THE CRIME OF ARMED  
2 ROBBERY AGAINST REGINALD MONTGOMERY.

3 THANK YOU.

4 THE COURT: MR. SIMS.

5 MR. SIMS: MAY IT PLEASE THE COURT.

6 OPENING STATEMENT BY MR. SIMS

7 I LOOKED AT MY CLOCK BECAUSE I WANT  
8 TO BE SURE IT'S AFTERNOON, BUT GOOD AFTERNOON, LADIES  
9 AND GENTLEMEN OF THE JURY. MY NAME IS THOMAS SIMS AND  
10 I REPRESENT REGINALD MONTGOMERY.

11 THERE'S ONE GOOD THING ABOUT THIS  
12 COUNTRY, IS WHEN THE STATE CHARGES AN INDIVIDUAL WITH A  
13 CRIME, UNLIKE IN FOREIGN COUNTRIES WHEN THEY CAN JUST  
14 PUT THEM IN JAIL AND THROW AWAY THE KEY, TWELVE PEOPLE  
15 SUCH AS YOURSELVES ARE CALLED IN YOU ARE CHOSEN -- YOU  
16 WERE CHOSEN THIS MORNING, AND YOU ARE SEATED AS A JURY,  
17 YOU MAKE THE DECISION AS TO THE GUILT OR THE INNOCENT.  
18 IT'S NOT WHAT THE INDICTMENT SAYS, IT'S NOT WHAT THE  
19 SOLICITOR SAYS, IT'S NOT WHAT I SAY, BUT IT'S WHAT YOU  
20 HEAR FROM THE WITNESS STAND. AND I TELL JURIES NO  
21 MATTER WHERE I PRACTICE THAT AT THIS MOMENT, YOU HAVE  
22 BEEN ELEVATED, AND I COULD GIVE EACH ONE OF YOU A ROBE  
23 TO PUT ON, BECAUSE NOW YOU ARE ACTUALLY JUDGES OF THE  
24 FACTS OF THE CASE. THE JUDGE AS HE SITS THERE IN HIS  
25 ROBE HE'S GOING TO GIVE YOU THE LAW WHICH YOU MUST

1 FOLLOW. BUT AS YOU LISTEN TO THOSE PEOPLE WHO COME TO  
2 YOU TODAY AND SIT ON THAT CHAIR THERE, THEY WILL TELL  
3 YOU WHAT THEY SAW, AND NOBODY CAN INTERFERE WITH YOUR  
4 JUDGEMENT OR WHAT YOU DECLARE IS THE FACTS, BASED UPON  
5 WHAT YOU HEAR TODAY. WHEN YOU'RE A JUROR THERE'S NO  
6 REQUIREMENT THAT YOU LEAVE YOUR COMMON SENSE OUTSIDE  
7 THAT DOOR. YOU BRING YOUR COMMON SENSE INTO THIS  
8 COURTROOM AS YOU SAT THERE AND YOU BROUGHT YOUR COMMONS  
9 SENSE WITH YOU, AS YOU ARE NOW SEATED AS JURORS IN THIS  
10 CASE IN THE STATE OF SOUTH CAROLINA VERSUS REGINALD  
11 MONTGOMERY.

12 THE JUDGE HAS READ TO YOU THE  
13 INDICTMENT AND THEY SAID THAT BACK ON SEPTEMBER  
14 SEVENTEENTH OF TWO THOUSAND AND SIX THERE WAS AN ARMED  
15 ROBBERY. THEY HAVE GIVEN YOU A LIST OF NAMES OF PEOPLE  
16 WHO ARE GOING TO COME IN AND TELL YOU WHAT THEY SAW.  
17 BUT I WANT YOU TO LISTEN TO WHAT THEY SAY. I WANT YOU TO  
18 PAY CLOSE ATTENTION TO WHAT NICHOLAS HERRINGTON IS GOING  
19 TO SAY. HE WAS THE CLERK THAT NIGHT. I WANT YOU TO PAY  
20 CLOSE ATTENTION TO WHAT JAMES GREEN IS GOING TO SAY, THE  
21 CO-DEFENDANT, THEY SAID HIS CASE IS COMING UP SOMETIME  
22 IN THE FUTURE, BUT I WANT YOU TO LISTEN TO WHAT HE SAYS.  
23 I WANT YOU TO LISTEN TO WHAT SHAWON SAYS, AND ALL OF  
24 THESE PEOPLE THAT THEY ARE GOING TO PARADE IN FRONT OF  
25 YOU THIS MORNING, OR THIS AFTERNOON, I WANT YOU TO

1 LISTEN TO THEM AND SEE HOW MUCH COMMON SENSE DOES IT  
2 MAKE, TO SEE WHETHER YOU, AS JURORS WHO ARE GOING TO  
3 JUDGE THE CREDIBILITY OF THOSE WITNESSES, WHETHER YOU  
4 CAN BELIEVE WHAT THEY SAY. AND I ASK YOU TO LISTEN.  
5 AND I WILL TELL YOU AT THE OUTSET THAT AT THE END OF THE  
6 TRIAL I'M GOING TO STAND RIGHT HERE AGAIN AND I'M GOING  
7 TO ASK YOU TO RETURN A VERDICT OF NOT GUILTY FOR  
8 REGINALD MONTGOMERY, BECAUSE THE WITNESSES THAT THEY ARE  
9 GOING TO BRING BEFORE ARE NOT CREDIBLE. AND I'M ASKING  
10 YOU TO LISTEN TO THEM. USE YOUR COMMON SENSE. AND AT  
11 THE END OF THE TRIAL I'M SURE, OR I FEEL CONFIDENT THAT  
12 YOU WILL RETURN A VERDICT OF NOT GUILTY.

13 THANK YOU.

14 THE COURT: ALRIGHT, MADAM FORELADY,  
15 AND MEMBERS OF THE JURY, BEFORE WE START THE TESTIMONY  
16 IN THE CASE WE'RE GOING TO JUST GO AHEAD AND TAKE A  
17 LUNCH BREAK. IT IS NOW A QUARTER TO ONE OR TWENTY  
18 MINUTES TO ONE. IF YOU'LL BE BACK IN THE JURY ROOM AT  
19 TWO:FIFTEEN WE'LL GET STARTED AT THAT TIME. AND DURING  
20 LUNCH DON'T DISCUSS THE CASE WITH ANYONE. I WANT YOU TO  
21 MAKE YOUR DECISION BASED ON WHAT YOU HEAR IN THE  
22 COURTROOM NOT WHAT SOMEONE OUTSIDE THE COURTROOM SAYS,  
23 BECAUSE THEY DON'T KNOW WHAT'S GOING ON IN HERE. AND  
24 WHEN YOU COME TO THE COURT HOUSE COME STRAIGHT TO THE  
25 JURY ROOM. THE BAILIFF WILL SHOW YOU WHERE TO COME TO AT

1 TWO:FIFTEEN, AND WE'LL GET STARTED SHORTLY -- AT  
2 TWO:FIFTEEN OR SHORTLY THEREAFTER. SEE YOU AT  
3 TWO:FIFTEEN, HAVE A GOOD LUNCH.

4 (Whereupon, the jury leaves  
5 the courtroom and the following  
6 takes place out of the presence  
7 of the jury.)

8 THE COURT: ANYTHING FROM THE STATE  
9 BEFORE WE TAKE A LUNCH BREAK?

10 SOLICITOR JEFFRIES: I BEG THE  
11 COURT'S INDULGENCE. YOUR HONOR, OVER THE BREAK MR. SIMS  
12 AND I SPOKE ABOUT THE DEFENDANT'S PRIOR RECORD, AND I  
13 THINK WE AGREE ON HIS PRIOR CONVICTIONS, ALL OF WHICH,  
14 I THINK, ARE A TOTAL OF FOUR WHICH COULD BE USED TO  
15 IMPEACH HIM SHOULD HE WISH TO TESTIFY..

16 THE COURT: OKAY. IS THAT CORRECT,  
17 MR. SIMS?

18 MR. SIMS: THAT'S CORRECT. ALL OF  
19 THEM ARISE OUT OF THE SAME INCIDENT, THOUGH, YOU NEED TO  
20 BE SURE THAT --

21 THE COURT: OKAY.

22 SOLICITOR JEFFRIES: THAT'S ALL THE  
23 STATE WOULD HAVE, YOUR HONOR.

24 THE COURT: ALRIGHT, ANYTHING ELSE  
25 FROM THE DEFENDANT BEFORE WE BREAK FOR LUNCH?

1                   MR. SIMS:   NOTHING, YOUR HONOR.

2                   THE COURT:   ALRIGHT, AND SOLICITOR  
3   JEFFRIES, IF YOU'LL TALK TO MS. WRIGHT AND LET ME KNOW  
4   HOW YOU WANT TO PROCEED ON THAT ISSUE, OTHERWISE, I'LL  
5   SEE YOU AT TWO:FIFTEEN.

6                   SOLICITOR JEFFRIES: THANK YOU, YOUR  
7   HONOR.

8                   THE COURT:   OKAY.   THANK YOU VERY  
9   MUCH, WE'RE IN RECESS UNTIL TWO:FIFTEEN.

10                   (Recess)

11                   THE COURT:   HAVE YOU   TALKED WITH  
12   MRS. WRIGHT, DO WE NEED MORE TIME, OR -

13                   SOLICITOR JEFFRIES:   NO, I'M FINE.

14                   THE COURT:   YOU'RE FINE WITH MS.  
15   WRIGHT.

16                   MR. SIMS, WHERE ARE WE ON KEVIN  
17   PRINGLE ON GETTING HIM HERE?

18                   MR. SIMS:   YOUR HONOR, JUST, THE  
19   REPRESENTATIVE FROM THE SOLICITOR'S OFFICE JUST TOLD ME  
20   THAT SCDC SAID THAT THEY NEED SEVENTY-TWO HOURS NOTICE,  
21   THEY CAN'T GET HIM, BUT IF THE SHERIFF'S DEPARTMENT  
22   WOULD SEND SOMEBODY UP -

23                   THE COURT:   WHO DID SHE TALK TO?

24                   SOLICITOR BURBAGE:   I SPOKE TO --  
25   I'M SORRY, YOUR HONOR, I DON'T REMEMBER HER NAME, BUT

1 SHE'S THE LADY OVER THE TRANSPORT SECTION. SHE SAID  
2 THERE'S NO WAY THAT THEY CAN GET HIM HERE THIS  
3 AFTERNOON, NOR IN THE MORNING UNLESS WE SEND  
4 TRANSPORTATION FOR HIM.

5 THE COURT: OKAY. WELL, CAN THE  
6 SHERIFF PROVIDE SOME TRANSPORTATION?

7 INVESTIGATOR RODRIGUEZ: I'LL SPEAK  
8 TO MY SUPERVISOR, McMASTER.

9 MACK, CAN YOU INFORM THE JUDGE  
10 WHETHER WE CAN TRANSPORT?

11 MR. McMASTER: NOT AT THIS TIME,  
12 JUDGE, WE CAN TALK TO HER.

13 THE COURT: PARDON?

14 SOLICITOR BURBAGE: HE'S GOING TO  
15 CALL AND SEE.

16 THE COURT: HAVE YOU GOT THE ORDER?

17 SOLICITOR BURBAGE: YES, SIR.

18 THE COURT: BRING ME THE ORDER AND  
19 LET'S GO MAKE A PHONE CALL.

20 (Whereupon, the court leaves  
21 the courtroom momentarily  
22 and returns.)

23 THE COURT: DO YOU WANT THEM TO TAKE  
24 THE CORRECTION OFFICER?

25 SOLICITOR JEFFRIES: YES, SIR.

1 THE COURT: ANYTHING ELSE?

2 MR. SIMS: THAT'S ALL, YOUR HONOR.

3 THE COURT: MR. JEFFRIES, ARE YOU  
4 READY TO GET STARTED?

5 SOLICITOR JEFFRIES: MY NEXT WITNESS  
6 IS IN HOLDING.

7 THE COURT: OKAY.

8 SOLICITOR JEFFRIES: CAN WE GO AHEAD  
9 AND BRING HIM OUT?

10 THE COURT: YES, SIR, PLEASE DO.  
11 ALRIGHT, ANYTHING ELSE BEFORE WE  
12 BRING THE JURY OUT?

13 SOLICITOR JEFFRIES: NOTHING FROM  
14 THE STATE, YOUR HONOR.

15 MR. SIMS: NOTHING FROM -

16 THE COURT: DO THEY HAVE HIM ON --  
17 IS HE DRESSED APPROPRIATELY?

18 SOLICITOR JEFFRIES: HE'S IN A JUMP  
19 SUIT AND THAT'S FINE WITH ME.

20 THE COURT: HE'S IN A JUMP SUIT AND  
21 THAT'S FINE WITH YOU. OKAY. WE COULD TAKE THE CUFFS  
22 OFF.

23 IS THE STATE READY?

24 SOLICITOR JEFFRIES: WE ARE, YOUR  
25 HONOR.

1                   THE COURT:   ALRIGHT, BRING US THE  
2 JURY, PLEASE.

3   (Whereupon, the jury returns  
4 to the courtroom and the following  
5 takes place in the presence of  
6 the jury.)

7                   THE COURT:   ALRIGHT, SOLICITOR, IF  
8 YOU'LL CALL YOUR FIRST WITNESS, PLEASE, SIR.

9                   SOLICITOR JEFFRIES: YOUR HONOR, MAY  
10 IT PLEASE THE COURT, THE STATE CALLS SHAWON JOHNSON.

11                   THE COURT:   MR. JOHNSON, IF YOU'LL  
12 COME AROUND OVER HERE AND BE SWORN, PLEASE, SIR. RIGHT  
13 OVER HERE, I'M SORRY. PUT YOUR LEFT HAND ON THE BIBLE  
14 AND RAISE YOUR RIGHT HAND.

15   (Whereupon, Shawon Johnson  
16 is duly sworn.)

17                   THE COURT:   MR. JOHNSON, JUST HAVE  
18 A SEAT IN THE WITNESS STAND, PLEASE, SIR.

19                   CLERK:    AND STATE YOUR FULL NAME,  
20 PLEASE.

21                   WITNESS:   SHAWON RYDELL JOHNSON.

22                   COURT REPORTER: SPELL IT, PLEASE.

23                   WITNESS:   S-H-A-W-O-N, R-Y-D-E-L-L,  
24 J-O-H-N-S-O-N.



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1 DIRECT EXAMINATION OF SHAWON R. JOHNSON

2 BY SOLICITOR JEFFRIES:

3 Q. NOW, MR. JOHNSON, YOU SPEAK KIND OF SOFTLY SO I'M  
4 GOING TO ASK YOU TO RAISE YOUR VOICE SO THE JURY  
5 CAN HEAR YOU WHEN YOU SPEAK.

6 A. ALRIGHT.

7 Q. YOU'RE CURRENTLY INCARCERATED IN PRISON, IS THAT  
8 RIGHT?

9 A. YES, SIR.

10 Q. WHAT -- ARE YOU IN PRISON ON A CHARGE THAT'S  
11 CONNECTED TO AN ARMED ROBBERY AT THE SHELL STATION  
12 LAST YEAR?

13 A. YES, SIR.

14 Q. AND THAT'S THE SHELL STATION IN BOWMAN, IS IT NOT?

15 A. YES, SIR.

16 Q. OKAY. WHAT WERE YOU CONVICTED OF?

17 A. ACCESSORY BEFORE THE FACT OF A FELONY.

18 Q. AND DID YOU PLEAD GUILTY TO THAT CHARGE?

19 A. YES, SIR.

20 Q. OKAY. HOW WERE YOU INVOLVED WITH THE ARMED  
21 ROBBERY?

22 A. THE HAND GUN.

23 Q. YOU SAY THE HAND GUN, WHAT ABOUT A HAND GUN?

24 A. I GAVE IT TO A PARTNER OF MINE, THEY WENT AND  
25 ROBBED THE STORE.

1 Q. WHO WAS THIS PARTNER YOU'RE TALKING ABOUT?

2 A. JAMES GREEN.

3 Q. NOW, LET ME TAKE YOU BACK KIND OF MORE  
4 SPECIFICALLY, WE'RE TALKING ABOUT SEPTEMBER  
5 SIXTEENTH AND SEVENTEENTH OF LAST YEAR, SATURDAY  
6 NIGHT-SUNDAY MORNING, WHAT WERE YOU DOING THAT  
7 SATURDAY NIGHT?

8 A. I WAS AT A FAMILY REUNION.

9 Q. AND WHAT DID YOU DO AFTER THE FAMILY REUNION?

10 A. I WENT TO A CLUB.

11 Q. AND DO YOU REMEMBER WHAT THE NAME OF THE CLUB WAS?

12 A. ALLEN MURRAY.

13 COURT REPORTER: WHAT?

14 A. ALLEN MURRAY.

15 Q. LIKE THE NAME, ALLEN MURRAY?

16 A. UH HUH.

17 Q. WHO DID YOU GO TO THE CLUB WITH?

18 A. I GOT DROPPED OFF.

19 Q. AND WHO, IF ANYONE, DID YOU MEET UP WITH WHILE YOU  
20 WERE AT THE CLUB?

21 A. JAMES.

22 Q. DO YOU KNOW JAMES'S LAST NAME?

23 A. GREEN.

24 Q. DOES HE HAVE A NICK NAME?

25 A. COOTNEY.

DIRECT - SHAWON R. JOHNSON BY SOL. JEFFRIES

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1 Q. COOTNEY?

2 A. UH HUH.

3 COURT REPORTER: SPELL THAT?

4 A. I DON'T KNOW.

5 Q. I'M GOING TO ASK YOU THIS AND I WANT YOU TO BE  
6 HONEST, AS WE'RE TALKING ABOUT A GUN, DID ANYONE  
7 HAVE A GUN AT THE CLUB?

8 A. YES, SIR.

9 Q. WHO HAD A GUN?

10 A. I DID.

11 Q. WHAT TYPE OF GUN DID YOU HAVE?

12 A. A HIGH POINT FORTY-FIVE WITH A LASER BEAM ON IT.

13 Q. WHOSE GUN WAS THAT?

14 A. TAMEKA SPELLS.

15 Q. WHO WAS SHE TO YOU?

16 A. MY GIRL FRIEND.

17 Q. NOW, WHO DID YOU SAY YOU MET UP WITH AT THE CLUB?

18 A. JAMES.

19 Q. WAS HE WITH ANYBODY ELSE?

20 A. NO, SIR.

21 Q. OKAY. HOW FAR IS THE CLUB FROM JAMES'S HOUSE?

22 A. PROBABLY LIKE TWO MILES.

23 Q. DID Y'ALL EVENTUALLY LEAVE THE CLUB?

24 A. YES, SIR.

25 Q. WHO ALL LEFT THE CLUB WITH YOU?

DIRECT - SHAWON R. JOHNSON BY SOL. JEFFRIES

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- 1 A. ME AND JAMES AND REGINALD.
- 2 Q. REGINALD?
- 3 A. YEAH.
- 4 Q. IS THAT THE DEFENDANT RIGHT HERE?
- 5 A. YEAH.
- 6 Q. DO YOU KNOW HIS LAST NAME?
- 7 A. MONTGOMERY.
- 8 Q. HOW DID Y'ALL LEAVE THE CLUB, DID Y'ALL DRIVE OR
- 9 WALK?
- 10 A. WALKED.
- 11 Q. SO, WHERE DID Y'ALL GO FROM THERE?
- 12 A. JAMES'S HOUSE.
- 13 Q. AND THAT'S WALKING DISTANCE?
- 14 A. YES, SIR.
- 15 Q. WHO WAS AT JAMES'S HOUSE WHEN Y'ALL GOT THERE?
- 16 A. AS FAR AS I RECALL, HIS LITTLE SISTER.
- 17 Q. DO YOU REMEMBER WHAT HER NAME IS?
- 18 A. TANGY.
- 19 Q. TANGY?
- 20 A. UH HUH.
- 21 Q. WHAT DID Y'ALL DO AT JAMES'S HOUSE?
- 22 A. ME AND HIM WENT IN HIS LITTLE SISTER'S ROOM. I WAS
- 23 INTOXICATED, I LAYED ON THE BED. JAMES HAD A
- 24 FIREARM AND HE LEFT.
- 25 Q. YOU SAID YOU WERE INTOXICATED?

DIRECT - SHAWON R. JOHNSON BY SOL. JEFFRIES

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1 A. YES, SIR.

2 Q. WERE YOU DRINKING AT THE CLUB?

3 A. YES, SIR.

4 Q. HOW ABOUT THE -- WHERE DID YOU SAY YOU WERE BEFORE  
5 THE CLUB?

6 A. A FAMILY REUNION.

7 Q. WERE YOU DRINKING THEN?

8 A. YES, SIR.

9 Q. BUT YOU STILL HAD THE GUN WHEN Y'ALL WERE BACK AT  
10 JAMES'S HOUSE?

11 A. HE HAD IT.

12 Q. WHO HAD IT?

13 A. JAMES HAD IT.

14 Q. OKAY. AND HOW LONG HAVE YOU KNOWN JAMES?

15 A. ALL MY LIFE.

16 Q. DID YOU GIVE HIM THE GUN, OR DID HE TAKE THE GUN,  
17 HOW DID THAT HAPPEN?

18 A. I GAVE IT TO HIM.

19 Q. YOU GAVE IT TO HIM? WAS THAT UNUSUAL FOR HIM --  
20 FOR YOU TO GIVE HIM A GUN?

21 A. HUH UH.

22 Q. YOU HAD DONE IT BEFORE?

23 A. PLENTY OF TIMES BEFORE.

24 Q. DO YOU KNOW WHAT HE WAS GOING TO DO WITH THE GUN?

25 A. NOT TO MY KNOWING.

1 Q. DID YOU EVENTUALLY FIND OUT WHAT HE DID?

2 A. YES, SIR.

3 Q. WHAT DID HE DO WITH THE GUN?

4 A. I GUESS HE GAVE IT TO REGGIE AND THEY WENT TO ROB  
5 THE CONVENIENCE STORE.

6 MR. SIMS: OBJECTION, YOUR HONOR,  
7 CONCLUSION, I GUESS HE GAVE IT.

8 THE COURT: I'LL SUSTAIN THE  
9 OBJECTION. DISREGARD WHAT HE'S GUESSING.

10 Q. LET ME ASK YOU THIS, WHEN REGGIE AND JAMES GREEN  
11 LEFT DID YOU GO WITH THEM?

12 A. NO, SIR.

13 Q. AND IT WAS YOUR GUN, WHY DIDN'T YOU GO WITH THEM?

14 A. BECAUSE I AIN'T KNOW WHERE THEY WAS GOING.

15 Q. DID THEY LEAVE TOGETHER?

16 A. YES, SIR.

17 Q. HOW LONG WERE THEY GONE?

18 A. LIKE, TWO HOURS AND THIRTY MINUTES, THREE HOURS.

19 Q. DID THEY SAY ANYTHING ABOUT WHAT THEY WERE GOING  
20 TO DO?

21 A. THEY WAS, THEY WAS TALKING ABOUT IT.

22 Q. WHAT DID THEY SAY THEY WERE GOING TO DO?

23 A. GOING TO, THEY SAID THEY WAS GOING TO MAKE MONEY,  
24 LIKE THAT.

25 Q. AND THEY TOOK THE GUN?

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1 A. YES, SIR.

2 Q. WHAT DID YOU UNDERSTAND THAT TO MEAN?

3 A. SAY THAT AGAIN?

4 Q. WHAT DID YOU TAKE FROM THAT WHEN THEY SAID THEY  
5 WERE GOING TO MAKE MONEY, AND THEY TOOK A GUN WITH  
6 THEM?

7 A. APPARENTLY THEY WAS GOING TO ROB SOMETHING.

8 MR. SIMS: OBJECTION AGAIN, YOUR  
9 HONOR, APPARENTLY, ---

10 THE COURT: I OVERRULE THE  
11 OBJECTION.

12 Q. ABOUT HOW LONG WERE THEY GONE?

13 A. ABOUT TWO, TWO HOURS AND THIRTY MINUTES OR THREE  
14 HOURS.

15 Q. AND DID THEY RETURN TOGETHER?

16 A. (No verbal response.)

17 Q. WELL, LET ME ASK YOU THIS, WHAT HAPPENED AFTER  
18 THEY LEFT? YOU SAID IT WAS ABOUT TWO OR THREE  
19 HOURS, WHAT WAS THE NEXT THING YOU REMEMBER  
20 HAPPENING?

21 A. JAMES WAS WAKING ME UP.

22 Q. AND WHY WAS HE WAKING YOU UP?

23 A. TELLING ME MY SISTER WAS OUTSIDE.

24 Q. WHAT'S YOUR SISTER'S NAME?

25 A. APRIL JOHNSON.

DIRECT - SHAWON R. JOHNSON BY SOL. JEFFRIES

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- 1 Q. NOW, WHEN THEY LEFT TO GO -- WHEN JAMES AND  
2 REGINALD LEFT, WHAT DID YOU DO?
- 3 A. I WENT TO SLEEP.
- 4 Q. WHERE WERE YOU IN THE HOUSE WHEN YOU DID THAT?
- 5 A. IN HIS LITTLE SISTER'S ROOM.
- 6 Q. AND IS LATANGELA BELLAMY?
- 7 A. YES, SIR.
- 8 Q. NOW, YOU SAID THAT JAMES GREEN CAME AND WOKE YOU  
9 UP AND TOLD YOU YOUR SISTER WAS OUT THERE?
- 10 A. YES, SIR.
- 11 Q. DO YOU KNOW HOW THEY GOT BACK TO THE HOUSE?
- 12 A. HOW THEY GOT BACK TO JAMES'S HOUSE?
- 13 Q. UH HUH.
- 14 A. NOT AT THAT TIME.
- 15 Q. OKAY. DID YOU GET YOUR GUN BACK?
- 16 A. YES, SIR.
- 17 Q. WHO GAVE IT BACK TO YOU?
- 18 A. JAMES.
- 19 Q. DID THEY TELL YOU WHAT THEY HAD DONE?
- 20 A. NO, WE WAS, LIKE, WE DID THAT SHIT.
- 21 Q. WHAT DID YOU UNDERSTAND THAT TO MEAN?
- 22 A. THAT THEY ROBBED SOMETHING.
- 23 Q. WHAT HAPPENED TO THE GUN YOU GAVE HIM?
- 24 A. AFTER THEY GAVE IT BACK?
- 25 Q. YOU GOT IT BACK AND THEN WHAT HAPPENED?



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1 A. WELL, I WAS AT MY GIRL FRIEND'S HOUSE ONE DAY AND  
2 HER HOUSE WAS BROKEN INTO AND IT WAS STOLEN.

3 Q. SO, YOU DON'T HAVE THE GUN ANYMORE?

4 A. HUH UH.

5 Q. AND YOU DIDN'T HAVE IT BEFORE YOU WERE ARRESTED?

6 A. HUH UH.

7 Q. OKAY. DID YOU RECEIVE ANYTHING FROM REGINALD  
8 MONTGOMERY OR JAMES GREEN AFTER THE ROBBERY?

9 A. NO, SIR, JAMES GAVE ME TWENTY-FIVE DOLLARS, HE  
10 TELL ME TO SPLIT IT WITH MY SISTER TO GIVE MY  
11 SISTER SOME GAS MONEY.

12 Q. OKAY. I'M GOING TO LET YOU REPEAT THAT BECAUSE  
13 YOU SAID IT KIND OF FAST. WHAT HAPPENED?

14 A. JAMES GAVE ME TWENTY-FIVE DOLLARS, AND HE TOLD ME  
15 TO GIVE MY SISTER SOME GAS MONEY.

16 Q. BECAUSE YOUR SISTER HAD DROVE HIM OVER THERE?

17 A. I GUESS, YES, SIR.

18 Q. HOW FAR IS IT FROM -- LET ME ASK YOU THIS, DO YOU  
19 KNOW WHERE APRIL JOHNSON LIVES?

20 A. YES, SIR.

21 Q. DOES SHE LIVE, WAS SHE LIVING AT THE SAME PLACE  
22 SHAWON JOHNSON WAS LIVING?

23 A. YES, SIR.

24 Q. YOU'RE BROTHER AND SISTER?

25 A. YES, SIR.

1 Q. HOW FAR WAS IT FROM YOUR HOUSE TO THEIR HOUSE?

2 A. IT WAS, LIKE, SEVEN MILES.

3 COURT REPORTER: SEVENTY?

4 A. SEVEN.

5 Q. SO, THEY GAVE YOU TWENTY-FIVE DOLLARS, AND THAT  
6 WAS FOR GAS MONEY?

7 A. YES, SIR.

8 Q. SO, DID YOU GO HOME WITH YOUR SISTER, APRIL?

9 A. YES, SIR.

10 Q. WHO, IF ANYONE, WAS AT YOUR HOME WHEN YOU GOT HOME  
11 WITH APRIL?

12 A. WHO WAS AT MY HOME WHEN I COME HOME?

13 Q. DID YOU SEE ANYBODY?

14 A. MY MOTHER AND MY GIRL FRIEND.

15 Q. OKAY. WAS THERE ANY LAW ENFORCEMENT THERE?

16 A. THEY WASN'T THERE BUT THEY WAS, HAD GONE UP AND  
17 DOWN THE DIRT ROAD.

18 Q. OKAY. DID YOU HAVE THE OPPORTUNITY TO SPEAK WITH  
19 LAW ENFORCEMENT THAT MORNING?

20 A. YES, SIR.

21 Q. DID YOU TELL THEM ANYTHING ABOUT THE ROBBERY AT  
22 THAT POINT?

23 A. NO, SIR.

24 Q. WHAT DID YOU TELL THEM?

25 A. THEY WAS ASKING ME IF I KNOW ANYTHING ABOUT A

DIRECT - SHAWON R. JOHNSON BY SOL. JEFFRIES

101

1 ROBBERY, AND I WAS, LIKE, NO, SIR. AND ---

2 Q. WHY DIDN'T YOU TELL THEM WHAT YOU HEARD, WHAT YOU  
3 KNEW ABOUT THE ROBBERY?

4 A. YOU SAID, WHY DID I?

5 Q. WHY DIDN'T YOU TELL THEM?

6 A. OH, BECAUSE I DIDN'T KNOW ANYTHING ABOUT A ROBBERY  
7 THEN.

8 Q. YOU DIDN'T KNOW AT THAT POINT?

9 A. HUH UH.

10 Q. AND WERE YOU LATER ARRESTED IN CONNECTION WITH  
11 THAT ROBBERY?

12 A. YES, SIR, LIKE, TWO HOURS LATER.

13 Q. ABOUT TWO HOURS LATER?

14 A. YES, SIR.

15 Q. AND AGAIN, YOU'RE DOING A SENTENCE FOR ACCESSORY  
16 TO A FELONY?

17 A. YES, SIR.

18 Q. DO YOU KNOW WHAT THAT FELONY WAS?

19 A. YES, SIR.

20 Q. WHAT WAS THAT?

21 A. ARMED ROBBERY.

22 Q. NOW, DID YOU ALSO GIVE A WRITTEN STATEMENT TO LAW  
23 ENFORCEMENT?

24 A. YES, SIR.

25 Q. AND WAS THAT TO INVESTIGATOR RODRIGUEZ?

DIRECT - SHAWON R. JOHNSON BY SOL. JEFFRIES

102

1 A. YES, SIR.

2 Q. AND WHAT TYPE OF SENTENCE ARE YOU SERVING?

3 A. FIVE YEARS.

4 Q. AND DO YOU KNOW WHO THE SOLICITOR WAS IN YOUR  
5 CASE?

6 A. YES, SIR.

7 Q. WHO WAS THAT?

8 A. MR. BRIAN JEFFRIES.

9 Q. IS THAT ME?

10 A. YES, SIR.

11 Q. AND DID YOU HAVE AN ATTORNEY WHEN YOU PLEADED  
12 GUILTY?

13 A. YES, SIR.

14 Q. AND DO YOU REMEMBER WHO THAT IS?

15 A. MR. MICHAEL CULLER.

16 Q. OKAY. AND DID YOU AND I SPEAK AT ANY POINT BEFORE  
17 YOUR CASE WAS DISPOSED OF, BEFORE YOU PLED GUILTY?

18 A. DID ME AND YOU SPEAK?

19 Q. ME AND YOU?

20 A. NO, SIR.

21 Q. AND WERE YOU -

22 COURT REPORTER: YES OR NO?

23 A. NO, SIR.

24 Q. WERE YOU OFFERED ANYTHING FOR YOUR TESTIMONY HERE  
25 TODAY WITH REFERENCE TO YOUR CHARGE?

DIRECT - SHAWON R. JOHNSON BY SOL. JEFFRIES

103

1 A. NO, SIR.

2 Q. NOW, I DID SPEAK TO YOU THIS WEEK ABOUT THE TRIAL,  
3 DIDN'T I?

4 A. YES, SIR.

5 Q. AND AGAIN, MR. CULLER WAS PRESENT?

6 A. YES, SIR.

7 Q. AND THAT, AGAIN, WAS AFTER YOUR CASE WAS CLOSED?

8 A. YES, SIR.

9 Q. AND WERE YOU PROMISED ANYTHING FOR YOUR TESTIMONY  
10 HERE TODAY?

11 A. NO, SIR.

12 Q. WERE YOU THREATENED BY ME OR MS. BURBAGE OR ANYONE  
13 ELSE TO GET YOU TO TESTIFY TODAY?

14 A. NO, SIR.

15 Q. AND THE STATEMENT YOU GAVE TO INVESTIGATOR  
16 RODRIGUEZ, THAT WOULD HAVE BEEN BACK IN OCTOBER OF  
17 LAST YEAR, RIGHT?

18 A. YES, SIR.

19 Q. BEFORE YOU AND I EVER MET?

20 A. YES, SIR.

21 Q. AND WAS THAT STATEMENT THAT YOU GAVE INVESTIGATOR  
22 RODRIGUEZ THE SAME THING YOU'RE TELLING THIS JURY?

23 A. YES, SIR.

24 Q. AND IS IT THE TRUTH?

25 A. YES, SIR.

DIRECT - SHAWON R. JOHNSON BY SOL. JEFFRIES

104

1 Q. THE MAN WHO WAS WITH JAMES GREEN THE NIGHT YOU  
2 GAVE THEM THE GUN, AND THE MAN WHO RETURNED TO  
3 JAMES GREEN'S HOUSE WITH JAMES GREEN AND GAVE YOU  
4 MONEY FOR GAS AND USING YOUR GUN, DO YOU SEE HIM  
5 IN THE COURTROOM?

6 A. YES, SIR.

7 Q. CAN YOU POINT HIM OUT TO THE COURT?

8 A. (Points toward defendant.)

9 Q. IT'S THAT GENTLEMAN SITTING NEXT TO MR. SIMS?

10 A. YES, SIR.

11 SOLICITOR JEFFRIES: YOUR HONOR, FOR  
12 THE RECORD I'D ASK THAT IT REFLECT THAT HE'S IDENTIFIED  
13 THE DEFENDANT.

14 THE COURT: OKAY. THANK YOU VERY  
15 MUCH. THE COURT WILL SO FIND.

16 SOLICITOR JEFFRIES: I BEG THE  
17 COURT'S INDULGENCE. THAT'S ALL I HAVE. ANSWER ANY  
18 QUESTIONS MR. SIMS MIGHT HAVE.

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22 required by the Court. See next ensuing page for  
23 sequential continuation of record.)

CROSS - SHAWON R. JOHNSON BY MR. SIMS

105

1 CROSS-EXAMINATION OF SHAWON R. JOHNSON

2 BY MR. SIMS:

3 Q. MR. JOHNSON, I HAVE A FEW QUESTIONS FOR YOU. IN  
4 RESPONSE TO DIRECT EXAMINATION A FEW MOMENTS AGO  
5 YOU SAID THAT APPARENTLY, WHEN YOU WERE TALKING  
6 ABOUT JAMES GREEN COMING BACK TO THE HOUSE, THAT  
7 THEY HAD ROBBED, OR YOU SAID, WE HAD DONE, OR WE  
8 HAD DID THAT SHIT, THAT'S WHAT YOU SAID, AND YOU  
9 SURMISED THAT THEY HAD ROBBED SOMEBODY OR ROBBED  
10 SOMETHING, AND THAT'S WHAT YOU TOLD ON DIRECT  
11 EXAMINATION, IS THAT CORRECT?

12 A. YES, SIR.

13 Q. AND THEN WHEN YOU WERE ASKED WHETHER OR NOT YOU  
14 TALKED TO LAW ENFORCEMENT LATER THAT NIGHT YOU  
15 INDICATED TO, AGAIN IN RESPONSE TO HIS QUESTION,  
16 THAT YOU DIDN'T KNOW WHAT HAD HAPPENED. SO, YOU  
17 TOLD THEM YOU DIDN'T KNOW ANYTHING ABOUT A  
18 ROBBERY?

19 A. YES, SIR.

20 Q. SO, IF ON THE ONE HAND THEY TELL YOU, OR JAMES  
21 GREEN TELLS YOU THAT THEY HAD ROBBED SOMEBODY, AND  
22 YOU BELIEVED THAT THEY HAD ROBBED SOMEBODY, BUT  
23 WHEN LAW ENFORCEMENT COMES, THEN YOU DON'T KNOW  
24 ANYTHING ABOUT IT AND YOU DECIDE THAT YOU, WELL,  
25 YOU'RE GOING TO TELL THEM THAT YOU DON'T KNOW

- 1 ANYTHING ABOUT IT, WHAT'S TRUE, WHICH ONE IS TRUE?
- 2 DID YOU KNOW OR DID YOU NOT KNOW?
- 3 A. I KNEW.
- 4 Q. BUT YOU DECIDED THAT YOU WEREN'T GOING TO TELL?
- 5 A. AND I WAS TRYING TO COVER UP FOOT STEPS.
- 6 Q. YOU WERE TRYING TO COVER UP FOOT STEPS?
- 7 A. YES, AT THE TIME, YEAH.
- 8 Q. UH HUH. AND WHEN YOU SAID, THEY TOLD YOU -- JAMES
- 9 GREEN WAS THE ONE DOING ALL THE TALKING, ISN'T
- 10 THAT RIGHT, JAMES GREEN, COOTNEY?
- 11 A. HE WAS DOING, WHAT DO YOU MEAN, DOING ALL THE
- 12 TALKING?
- 13 Q. JAMES GREEN TOLD YOU, THEY DID THAT SHIT?
- 14 A. YEAH, HE SAID, THEY DID THAT SHIT.
- 15 Q. JAMES GREEN WAS THE ONE WHO HAD THE GUN?
- 16 A. YEAH.
- 17 Q. JAMES GREEN WAS THE ONE WHO WALKED FROM ALLEN
- 18 MURRAY, WHICH IS WAY DOWN ON HIGHWAY ONE SEVENTY-
- 19 EIGHT, Y'ALL WALKED BACK FROM ALLEN MURRAY'S,
- 20 WHICH IS ABOUT WHAT, THREE OR FOUR MILES?
- 21 A. YES, SIR.
- 22 Q. BACK INTO BOWMAN?
- 23 A. NO, WE AIN'T WENT TO BOWMAN.
- 24 Q. WHERE DID YOU GO?
- 25 A. TO HIS HOUSE, TO JAMES GREEN'S HOUSE.



CROSS - SHAWON R. JOHNSON BY MR. SIMS

107

1 Q. OKAY. SO, YOU WALKED BACK TO JAMES GREEN'S HOUSE?

2 A. YES.

3 Q. ABOUT THREE MILES BACK TO JAMES GREEN'S HOUSE.

4 A. YEAH.

5 Q. WHEN YOU GOT TO JAMES GREEN'S HOUSE, YOU -- JAMES

6 GREEN HAD THE GUN?

7 A. YES, SIR.

8 Q. OKAY. AND YOU WENT TO SLEEP?

9 A. YES, SIR.

10 Q. BECAUSE YOU WERE DRUNK?

11 A. YES, SIR.

12 Q. BUT YOU CAN REMEMBER ALL THOSE THINGS THAT HE SAID

13 TO YOU, AND YOU ADMIT THAT YOU WERE DRUNK, AND YOU

14 WENT TO SLEEP?

15 A. YES, SIR.

16 Q. OKAY. AND YOU DON'T KNOW WHO LEFT, WHO LEFT WITH

17 HIM, DO YOU? YOU DON'T KNOW WHO LEFT WITH HIM, DO

18 YOU?

19 A. REGGIE LEFT WITH HIM.

20 Q. HOW DO YOU KNOW, YOU WERE IN THE BEDROOM,

21 ACCORDING TO YOUR TESTIMONY?

22 A. WELL, I AIN'T SEEN HIM LEFT.

23 Q. HUH?

24 A. I AIN'T SEEN HIM LEFT.

25 Q. YOU DIDN'T SEE HIM LEAVE?

CROSS - SHAWON R. JOHNSON BY MR. SIMS

108

1 A. HUH UH.

2 Q. YOU DON'T -- YOU DIDN'T SEE HIM GO WITH HIM  
3 ANYWHERE?

4 A. HUH UH.

5 Q. BECAUSE YOU WERE IN THE BEDROOM DRUNK?

6 A. UH HUH.

7 Q. OKAY. SO, YOU DON'T KNOW WHO, IF ANYONE, WAS WITH  
8 JAMES GREEN WHEN HE LEFT THAT HOUSE WITH YOUR GUN?

9 COURT REPORTER: WHAT'S YOUR ANSWER?

10 Q. ISN'T THAT RIGHT?

11 A. REPEAT THAT?

12 Q. YOU DON'T KNOW WHO WAS WITH JAMES GREEN WHEN HE  
13 LEFT JAMES GREEN'S HOUSE ---

14 A. I'M NOT SLOW, I CAN HEAR YOU, MAN, YOU CAN SPEAK  
15 UP. GO AHEAD.

16 Q. WELL, I DID, YOU DIDN'T UNDERSTAND, BUT LET'S MOVE  
17 ON. YOU DON'T KNOW WHO WAS WITH HIM, DO YOU?

18 A. NO.

19 Q. OKAY. THANK YOU. NOW, YOU GAVE -- YOU SAID YOU  
20 GAVE A STATEMENT TO DETECTIVE RODRIGUEZ, IS THAT  
21 CORRECT?

22 A. YES, SIR.

23 Q. AND IS THIS THE STATEMENT THAT YOU GAVE TO  
24 DETECTIVE RODRIGUEZ? EXCUSE ME, I LEFT OFF THE  
25 LAST PAGE WHEN YOUR SIGNATURE ON IT, LET ME GIVE

CROSS - SHAWON R. JOHNSON BY MR. SIMS

109

1 YOU THIS PAGE THREE. IS THAT YOUR SIGNATURE?

2 A. YES.

3 Q. AND THAT'S THE STATEMENT YOU GAVE?

4 A. YEAH.

5 Q. ACTUALLY, THERE ARE TWO DIFFERENT HANDWRITINGS ON  
6 THAT STATEMENT, ISN'T THAT CORRECT?

7 A. YEAH.

8 Q. YOURS AND THEN DETECTIVE RODRIGUEZ'S?

9 A. YEAH.

10 Q. YOU WROTE THE FIRST PART OF THAT, DIDN'T YOU?

11 A. YES, SIR.

12 Q. AND IN THE FIRST PART OF THAT STATEMENT YOU DID  
13 NOT NAME REGINALD MONTGOMERY, DID YOU?

14 A. HUH UH.

15 Q. YOU SAID, THE OTHER GUY. SO, YOU DIDN'T TELL  
16 DETECTIVE RODRIGUEZ WHEN YOU WROTE YOUR PART OF  
17 THE STATEMENT THAT THE OTHER GUY WAS REGINALD  
18 MONTGOMERY, YOU SAID, THE OTHER GUY?

19 A. YES, SIR.

20 Q. OKAY. THE ONLY TIME THAT REGINALD MONTGOMERY'S  
21 NAME CAME UP WAS IN RESPONSE TO A STATEMENT BY  
22 DETECTIVE RODRIGUEZ, ISN'T THAT RIGHT?

23 A. YES, SIR.

24 Q. OKAY. SO, DETECTIVE RODRIGUEZ PLANTED INTO YOUR  
25 MIND THE NAME, REGINALD MONTGOMERY?

1 A. HE DIDN'T PLANT NOTHING IN MY MIND.

2 Q. YOU HAD MENTIONED IT WHEN YOU WERE WRITING THE  
3 STATEMENT. YOU DIDN'T MENTION REGINALD  
4 MONTGOMERY.

5 A. HE AIN'T PLANTED IT IN MY MIND.

6 Q. OKAY. BUT REGINALD MONTGOMERY, WHEN YOU WERE  
7 WRITING, WHEN YOU HAD THE PEN IN YOUR HAND, WHEN  
8 YOU TOOK THE INK PEN AND STARTED WRITING YOUR  
9 STATEMENT OUT, THE NAME OF REGINALD MONTGOMERY DID  
10 NOT COME UP?

11 A. HUH UH.

12 Q. AND THEN, ALL OF A SUDDEN, WHEN THE WRITING  
13 CHANGED, AND THE PERSON CHANGED WHO WAS DOING IT,  
14 THAT'S WHEN HIS NAME CAME UP, ISN'T THAT CORRECT?

15 A. YES, SIR.

16 Q. OKAY. NOW, YOU WERE VERY, VERY SPECIFIC ABOUT THE  
17 TIME, YOU SAID TWO HOURS, THIRTY MINUTES, THREE  
18 HOURS. DID YOU LOOK AT YOUR WATCH OR SOMETHING?

19 A. NO, MAN, I CAN COUNT.

20 Q. HUH?

21 A. I CAN COUNT.

22 Q. SO, DID YOU LOOK AT YOUR WATCH WHEN YOU WENT TO  
23 SLEEP?

24 A. YEAH, IT WAS, LIKE, TWO O'CLOCK WHEN WE GOT IN THE  
25 HOUSE.

CROSS - SHAWON R. JOHNSON BY MR. SIMS

111

1 Q. OKAY. AND SO, WHEN THEY CAME BACK AND GOT YOU AT  
2 TWO HOURS AND THIRTY MINUTES OR THREE HOURS, YOU  
3 LOOKED AT YOUR WATCH?

4 A. YEAH.

5 Q. OKAY. AND WHO CAME BACK?

6 A. WHO CAME BACK?

7 Q. YEAH. HOW DID THEY GET BACK TO YOUR HOUSE?

8 A. FROM THE STORE?

9 Q. OR BACK TO JAMES GREEN'S HOUSE?

10 A. OH, MY SISTER DROPPED THEM OFF.

11 Q. OKAY. AND WHAT KIND OF CAR DOES YOUR SISTER  
12 DRIVE?

13 A. A WHITE MUSTANG.

14 Q. A WHITE MUSTANG. NOW, THE GUN BELONGED TO WHO?

15 A. TAMEKA SPELLS.

16 Q. OKAY. SO, YOU WERE AT ALLEN MURRAY'S WITH -- WHAT  
17 CALIBER GUN WAS IT?

18 A. A FORTY-FIVE.

19 Q. YOU WERE AT ALLEN MURRAY'S WITH A FORTY-FIVE  
20 CALIBER -- WAS IT LOADED?

21 A. HUH UH.

22 Q. IT WASN'T LOADED, SO YOU WERE CARRYING AN UNLOADED  
23 GUN TO ALLEN MURRAY'S?

24 A. UH HUH, BECAUSE I UNLOADED IT.

25 Q. HUH?

1 A. YOU UNLOADED IT?

2 Q. YOU UNLOADED IT?

3 A. YEAH.

4 Q. DID YOU LOAD IT WHEN YOU GAVE IT BACK TO JAMES  
5 GREEN?

6 A. HUH UH.

7 Q. SO, YOU GAVE JAMES GREEN AN UNLOADED GUN?

8 A. YEAH.

9 Q. HE WENT -- SO, YOUR TESTIMONY IS THAT JAMES GREEN  
10 LEFT HIS HOUSE WITH YOUR GUN AND WENT AND ROBBED A  
11 STORE WITH AN UNLOADED GUN?

12 A. THAT'S, I MEAN, IF THAT'S WHAT YOU CALL IT.

13 MR. SIMS: ONE MOMENT, YOUR HONOR.

14 Q. HOW MUCH DID JAMES GREEN GIVE YOU?

15 A. TWENTY-FIVE DOLLARS.

16 Q. OKAY.

17 MR. SIMS: THAT'S ALL THE QUESTIONS  
18 I HAVE.

19 THE COURT: ANY REDIRECT?

20 SOLICITOR JEFFRIES: BRIEFLY, YOUR  
21 HONOR.

22 (NOTE: Blank lines on this page do not indicate any  
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25 required by the Court.)

REDIRECT - SHAWON R. JOHNSON BY SOL. JEFFRIES

113

1 REDIRECT EXAMINATION OF SHAWON R. JOHNSON

2 BY SOLICITOR JEFFRIES:

3 Q. MR. SIMS ASKED YOU A BUNCH OF QUESTIONS ABOUT HOW  
4 DO YOU KNOW IT WAS REGGIE MURRAY -- REGGIE  
5 MONTGOMERY, WHO DID YOU COME BACK TO THE CLUB WITH  
6 -- COME BACK FROM THE CLUB WITH, TO JAMES GREEN'S  
7 HOUSE?

8 A. ME, JAMES AND REGGIE.

9 Q. WHO CAME BACK AFTER -- WAIT A MINUTE, WHO WAS  
10 TALKING ABOUT GOING TO ROB SOMETHING, WHO WAS  
11 TALKING ABOUT GOING TO GET SOME MONEY WITH THE  
12 GUN?

13 A. JAMES AND REGGIE.

14 Q. AND WHO CAME BACK FROM THE STORE WITH YOUR SISTER?

15 A. JAMES.

16 Q. AND WHO ELSE?

17 A. REGGIE.

18 Q. ANYBODY ELSE?

19 A. NO, SIR.

20 Q. MR. SIMS -

21 MR. SIMS: YOUR HONOR, I'M GOING TO  
22 HAVE TO OBJECT.

23 THE COURT: WHAT'S YOUR LEGAL  
24 OBJECTION?

25 MR. SIMS: MY OBJECTION IS THAT HE'S

REDIRECT - SHAWON R. JOHNSON BY SOL. JEFFRIES

114

1 LEADING THE WITNESS, HE'S NOT ASKING HIM, HE'S LEADING  
2 HIM AND GIVING HIM ANSWERS. THAT'S MY OBJECTION.

3 THE COURT: OKAY. ALRIGHT. I'LL  
4 SUSTAIN -- WAIT UNTIL HE ASKS THE QUESTION, OKAY?

5 MR. SIMS: YES, SIR.

6 THE COURT: SOLICITOR, DON'T LEAD  
7 YOUR WITNESS. OKAY. THE QUESTION HAD ALREADY BEEN  
8 ASKED AND ANSWERED BEFORE YOU OBJECTED, BUT DON'T LEAD  
9 YOUR WITNESS, SOLICITOR.

10 Q. MR. SIMS ASKED YOU ABOUT YOUR STATEMENT TO  
11 INVESTIGATOR RODRIGUEZ AND WHETHER OR NOT YOU  
12 MENTIONED REGGIE MONTGOMERY AT THE TOP PORTION.

13 WHO DID YOU KNOW BETTER, JAMES OR REGINALD?

14 A. JAMES.

15 Q. WHO DID YOU KNOW THE LONGEST?

16 A. JAMES.

17 Q. AND DO YOU KNOW REGGIE OTHER THAN THROUGH JAMES?

18 A. HUH UH.

19 SOLICITOR JEFFRIES: THAT'S ALL I'D  
20 HAVE.

21 THE COURT: OKAY. THANK YOU VERY  
22 MUCH.

23 YOU MAY STEP DOWN, MR. JOHNSON.

24 SOLICITOR JEFFRIES: MAY HE BE  
25 EXCUSED?



1 THE COURT: YES, SIR.

2 CALL YOUR NEXT WITNESS.

3 SOLICITOR JEFFRIES: THE STATE WOULD

4 CALL JAMES GREEN.

5 THE COURT: OKAY. BRING JAMES GREEN

6 IN, PLEASE, SIR.

7 (Whereupon, the witness

8 enters the courtroom.)

9 CLERK: PLEASE PLACE YOUR LEFT HAND

10 ON THE BIBLE AND RAISE YOUR RIGHT.

11 (Whereupon, James Allen Green

12 is duly sworn.)

13 CLERK: HAVE A SEAT AND STATE YOUR

14 FULL NAME.

15 WITNESS: MY NAME IS JAMES ALLEN

16 GREEN.

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20 required by the Court. See next ensuing page for

21 sequential continuation of record.)

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

116

1 DIRECT EXAMINATION OF JAMES A. GREEN

2 BY SOLICITOR JEFFRIES:

3 Q. MR. GREEN, I WANT YOU TO DO JUST LIKE THAT, SPEAK  
4 INTO THE MICROPHONE SO EVERYBODY CAN HEAR YOU. DO  
5 YOU KNOW WHY YOU'RE HERE TODAY?

6 A. YES, SIR.

7 Q. AND I SEE YOU'RE WEARING A JUMP SUIT, WHERE ARE  
8 YOU BEING DETAINED, WHERE ARE YOU CURRENTLY  
9 LIVING?

10 A. FIVE O THREE FOLIAGE STREET.

11 Q. AND RIGHT NOW WHERE ARE YOU, WHERE DID YOU JUST  
12 COME FROM, ARE YOU AT THE JAIL?

13 A. YEAH, DETENTION CENTER.

14 Q. AND WHAT ARE YOU CHARGED WITH?

15 A. ARMED ROBBERY.

16 Q. IS THAT THE ARMED ROBBERY, THE SAME ARMED ROBBERY  
17 THAT THE DEFENDANT IS CHARGED WITH?

18 A. YES, SIR.

19 Q. DO YOU KNOW THIS DEFENDANT?

20 A. YES, SIR.

21 Q. WHERE ARE YOU FROM, MR. GREEN?

22 A. BOWMAN, SOUTH CAROLINA.

23 Q. AND HOW OLD ARE YOU?

24 A. TWENTY-THREE.

25 Q. WHERE DID YOU GO TO HIGH SCHOOL?

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

117

- 1 A. BOWMAN HIGH SCHOOL.
- 2 Q. AND HOW LONG HAVE YOU KNOWN THE DEFENDANT, MR.
- 3 MONTGOMERY?
- 4 A. OVER, ABOUT, OVER TEN YEARS.
- 5 Q. WHO IS OLDER?
- 6 A. HE IS.
- 7 Q. HOW MUCH OLDER, DO YOU KNOW HOW MUCH OLDER?
- 8 A. NO, SIR.
- 9 Q. DO YOU KNOW A YOUNG MAN NAMED SHAWON JOHNSON?
- 10 A. YES, SIR.
- 11 Q. HOW LONG HAVE YOU KNOWN HIM?
- 12 A. SINCE I BEEN GOING TO HIGH SCHOOL.
- 13 Q. WHO'S OLDER, YOU OR SHAWON?
- 14 A. I'M OLDER.
- 15 Q. SO, REGINALD WOULD BE THE OLDEST, WITH YOU IN THE
- 16 MIDDLE, AND SHAWON'S THE YOUNGEST?
- 17 A. YES, S IR.
- 18 Q. AND DO YOU KNOW A YOUNG LADY NAMED APRIL JOHNSON?
- 19 A. YES, SIR.
- 20 Q. WHO IS SHE?
- 21 A. SHAWON'S SISTER.
- 22 Q. OKAY. LET ME TAKE YOU BACK TO THE NIGHT OF THE
- 23 ROBBERY. ON SATURDAY, SEPTEMBER SIXTH, OF LAST
- 24 YEAR WHAT WERE YOU DOING, DID YOU GO OUT THAT
- 25 NIGHT?

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

118

1 A. I JUST GOT OFF FROM WORK, SO ---

2 Q. WHERE WERE YOU WORKING -- LET ME STOP YOU, WHERE  
3 WERE YOU WORKING?

4 A. KFC IN ST. GEORGE.

5 Q. IN ST. GEORGE?

6 A. YES, SIR.

7 Q. OKAY. AND I'M SORRY, I DIDN'T MEAN TO INTERRUPT  
8 YOU, GO AHEAD.

9 A. SO, WE STOPPED TO THE CLUB, ALLEN MURRAY'S, RIGHT  
10 UP THE ROAD FROM MY HOUSE. SO, I SEEN SHAWON  
11 STANDING OUT THERE. HE SAID HE GOT DROPPED OFF TO  
12 CHILL, YOU KNOW. SO, ---

13 COURT REPORTER: HE SAID WHAT?

14 A. HE STOPPED OFF, HE GOT DROPPED OFF TO ALLEN  
15 MURRAY'S TO CHILL WITH ME. SO, I START TO GO TO  
16 ANOTHER CLUB IN TOWN OR GO HOME, SO I AIN'T WANT  
17 TO LEAVE HIM OUT THERE OR NOTHING BY HIMSELF, AND  
18 HE DIDN'T WANT TO GO TO THE OTHER CLUB. SO, WE  
19 STAYED AT ALLEN MURRAY'S UNTIL LIKE ABOUT THREE  
20 SOMETHING. SO, WE START WALKING DOWN TO MY HOUSE.  
21 SO, REGGIE TOLD US TO HOLD UP, HE WAS GOING TO  
22 WALK ON WITH US. HE LIVED RIGHT UP THE ROAD FROM  
23 ME.

24 Q. WHO DID YOU GO TO THE CLUB WITH, OR GET DROPPED  
25 OFF WITH, BY YOURSELF?

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

119

1 A. NO, MY COUSIN, TRAVIS ELDER.

2 Q. OKAY. AND WHO DID YOU MEET UP WITH WHILE YOU WERE  
3 THERE?

4 A. REGGIE AND SHAWON.

5 Q. OKAY. AND WHERE DID YOU GO FROM -- YOU SAID ALLEN  
6 MURRAY'S, IS THAT THE CLUB YOU WERE AT?

7 A. YES, SIR.

8 Q. AND WHERE DID Y'ALL GO FROM THERE?

9 A. WE START WALKING TO MY HOUSE. SO, THE BOYS START  
10 TALKING ABOUT, WE NEED SOME MORE MONEY. SO, THEY  
11 START TALKING ABOUT ROBBING A STORE, AND LIKE, IF  
12 YOU DO IT I'LL DO IT, LIKE, NOBODY DON'T SNITCH. I  
13 WASN'T SAYING NOTHING BECAUSE I WAS HIGH. SO,  
14 THEN THEY ASKED ME, COOTNEY, ARE YOU DOWN? SO, I  
15 WAS, LIKE, YEAH.

16 Q. LET ME BACK YOU UP, YOU SAID COOTNEY, IS THAT YOUR  
17 NICK NAME?

18 A. YES, SIR.

19 Q. AND THAT CAME UP A LITTLE BIT EARLIER, HOW DO YOU  
20 SPELL THAT?

21 A. C-O-O-T-N-E-Y.

22 Q. OKAY. AND YOU SAID THEY WERE TALKING ABOUT  
23 GETTING MONEY AND ROBBING A STORE. WHO WAS  
24 TALKING?

25 A. REGGIE AND SHAWON.

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

120

1 Q. AND WHERE DID Y'ALL GO FROM ALLEN MURRAY'S?

2 A. TO MY HOUSE.

3 Q. OKAY. WHAT WAS AT YOUR HOUSE?

4 A. MY MOTHER, MY LITTLE SISTER, AND MY LITTLE NIECE.

5 Q. WHAT'S YOUR LITTLE SISTER'S NAME?

6 A. LATANGELA BELLAMY.

7 Q. HOW DID Y'ALL GET FROM ALLEN MURRAY'S TO YOUR  
8 HOUSE?

9 A. WE WALKED.

10 Q. NOW, DID REGGIE AND SHAWON KNOW EACH OTHER, OR HOW  
11 DID THAT WORK?

12 A. THEY KNOW EACH OTHER BUT THEY DON'T KNOW EACH  
13 OTHER LIKE THAT.

14 Q. OKAY. BUT BOTH OF THEM KNOW YOU?

15 A. YES, SIR.

16 Q. HOW FAR IS THE CLUB, ALLEN MURRAY'S, FROM YOUR  
17 HOUSE?

18 A. BY WALKING, I GET THERE LIKE ABOUT IN FIVE  
19 MINUTES.

20 Q. AND WHO WAS -- YOU SAID, WHO WAS ALL HOME AT YOUR  
21 HOUSE?

22 A. MY MOTHER, MY LITTLE SISTER, AND MY LITTLE NIECE.

23 Q. OKAY. WHERE WERE Y'ALL IN THE HOUSE WHEN Y'ALL  
24 CAME BACK?

25 A. I WAS IN MY ROOM, I WENT TO CHANGE MY CLOTHES

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

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1 BECAUSE I STILL HAD ON MY WORK CLOTHES.

2 Q. YOU WORE YOUR WORK CLOTHES TO THE CLUB?

3 A. YES, SIR.

4 Q. OKAY. AND WHERE WAS SHAWON AND REGGIE?

5 A. THEY WAS ON THE PORCH WAITING ON ME TO GET BACK

6 OUT. BUT WHEN I WAS ABOUT TO COME BACK OUT,

7 SHAWON WAS, LIKE, HE COULDN'T DO IT. I WAS, LIKE,

8 WHY? HE SAID HE STILL WAS ON PAPERS.

9 Q. WHAT DOES THAT MEAN, ON PAPERS?

10 A. ON PROBATION.

11 Q. OKAY. OKAY, HE COULDN'T DO WHAT?

12 A. HE COULDN'T GO WITH US TO THE STORE.

13 Q. SO, WHAT DID HE DO?

14 A. HE GAVE REGGIE THE GUN.

15 Q. OKAY. AND WHAT WAS THE PLAN?

16 A. HE STAYED THERE UNTIL WE GET BACK, ME AND REGGIE

17 GO ROB THE STORE, UNTIL WE GET BACK.

18 Q. HOW FAR IS THE STORE FROM THE HOUSE, FROM YOUR

19 HOUSE?

20 A. MAYBE ABOUT THREE, ABOUT THREE MILES, OR FOUR.

21 Q. OKAY. HOW DID Y'ALL GET THERE?

22 A. WE WALKED.

23 Q. AND AGAIN, WHERE WAS SHAWON?

24 A. AT MY HOUSE.

25 Q. DO YOU KNOW WHERE YOU LEFT HIM AT YOUR HOUSE?

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

122

1 A. IN MY ROOM.

2 Q. WHAT -- DID Y'ALL HAVE A WEAPON TO GO ROB THE  
3 STORE?

4 A. YES, SIR.

5 Q. WHOSE WEAPON WAS IT?

6 A. SHAWON'S.

7 Q. AND WHAT DID IT LOOK LIKE?

8 A. LIKE A NINE.

9 COURT REPORTER: LIKE WHAT?

10 A. WITH A BEAM ON IT. A NINE MILLIMETER.

11 Q. WITH A WHAT?

12 A. WITH A LASER ON IT.

13 Q. SO, WHEN YOU GOT TO THE STORE WHAT DID YOU DO?

14 A. SO, REGGIE HESITATED, SO I TELL HIM, LET ME HOLD  
15 THE GUN. SO, WE PUT ON THESE WHITE STOCKING CAPS  
16 THAT I HAD, AND WE WENT IN THE STORE AND IT WAS  
17 THREE PEOPLE IN THERE, IT WAS TWO BLACK PEOPLE AND  
18 IT WAS ONE DUDE IN THERE NAME NICHOLAS.

19 Q. DO YOU KNOW NICHOLAS?

20 A. YES, SIR.

21 Q. HOW DO YOU KNOW NICHOLAS?

22 A. I WENT TO SCHOOL WITH HIM.

23 Q. OKAY. AND WHAT DOES HE LOOK LIKE?

24 A. HE'S WHITE, PROBABLY LIKE FIVE-THREE, OR SOMETHING  
25 LIKE THAT.



DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

123

1 Q. OKAY. AND AT THIS POINT YOU HAD THE GUN YOU SAID?

2 A. YES, SIR.

3 Q. WHO APPROACHED THE DOOR FIRST?

4 A. REGGIE.

5 Q. COULD YOU TELL ME WHAT HAPPENED WHEN Y'ALL GOT TO  
6 THE DOOR?

7 A. ALRIGHT, WHEN WE GOT TO THE DOOR REGGIE WENT ON  
8 IN. SO, I CAME IN A LITTLE BIT BEHIND HIM, BUT  
9 SEE, NICHOLAS, HE WAS STANDING WHERE THE DINING  
10 ROOM AREA AT, WITH THE OTHER PEOPLE, WHERE THEY  
11 EAT AT. SO, HE CAME FROM AROUND THERE AND ASKED  
12 WHAT WE WANT, AND REGGIE TELL HIM, YOU KNOW, WE  
13 WANT YOU TO OPEN THE CASH REGISTER. SO, I JUST  
14 HOLD THE BEAM ON HIM.

15 Q. WHAT DO YOU MEAN, HOLD THE BEAM ON HIM?

16 A. I PUT THE LASER ON HIM.

17 Q. OKAY. THE LASER ON THE GUN?

18 A. YES, SIR.

19 Q. DID YOU SAY ANYTHING TO NICHOLAS?

20 A. NO, I AIN'T SAID NOTHING.

21 Q. WHAT HAPPENED NEXT?

22 A. ALL I DID WAS STAND IN THE DOOR HALF WAY, TO HOLD  
23 THE DOOR OPEN, BECAUSE IF I -- I SAID TO MYSELF,  
24 IF I WENT ON IN, HE PROBABLY COULD HAVE PRESSED  
25 THE BUTTON AND LOCKED THE DOOR.

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

124

- 1 Q. OKAY. AND YOU HAD THE GUN, WHAT WAS REGGIE DOING?
- 2 A. GETTING THE MONEY.
- 3 Q. WHERE DID HE GET THE MONEY FROM?
- 4 A. OUT OF THE CASH REGISTER AND SOME BUCKETS UNDER
- 5 THE BOTTOM.
- 6 Q. ANY SHOTS FIRED?
- 7 A. NO, SHOTS.
- 8 Q. DO YOU KNOW IF THE GUN HAD ANY ---
- 9 A. NO, IT AIN'T HAD NOTHING IN IT.
- 10 Q. OKAY. HOW LONG DO YOU THINK Y'ALL WERE IN THERE?
- 11 A. WE AIN'T BEEN IN THERE FIVE MINUTES.
- 12 Q. NOW, WHEN YOU HAD THE GUN WAS IT POINTED -- YOU
- 13 SAID YOU HAD THE, YOU PUT THE BEAM ON HIM, ---
- 14 A. I PUT THE LASER ON HIM.
- 15 Q. --- SO YOU HAD TO POINT THE GUN AT THEM?
- 16 A. NO, I AIN'T POINT NO GUN AT THEM, I POINT THE
- 17 LASER AT THEM.
- 18 Q. OKAY. AND WHO DID YOU POINT IT AT?
- 19 A. I POINTED IT AT NICK, THEN I POINTED IT AT THE
- 20 PEOPLE IN THE BACK SO THEY COULD SEE IT IN THE
- 21 BACK.
- 22 Q. AND WHAT WAS NICK DOING?
- 23 A. HE WAS SITTING THERE JUST OPENING THE CASH
- 24 REGISTER, JUST WAS LOOKING.
- 25 Q. OKAY. AND YOU SAID YOU WERE AT THE DOOR WITH THE

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

125

1 GUN, AND NICK IS AT THE CASH REGISTER, WHERE ARE  
2 THESE OTHER PEOPLE THAT YOU'RE POINTING AT?

3 A. THEY'RE STILL IN THE DINING ROOM AREA, ON THE LEFT  
4 SIDE.

5 Q. ON YOUR LEFT SIDE, SO YOU WOULD BE ---

6 A. AT THE CASH REGISTER ON THE RIGHT. AS SOON AS YOU  
7 GO IN THE CASH REGISTER IS RIGHT THERE.

8 Q. WHERE DID YOU GO AFTER, AFTER Y'ALL GOT THE MONEY?

9 A. I WENT DOWN TO SHAWON'S HOUSE, I WENT TO TELL HIS  
10 SISTER TO TAKE ME HOME BECAUSE MY GIRL FRIEND LEFT  
11 ME AT THE STORE BECAUSE SHE SAW ME TALKING TO  
12 ANOTHER GIRL.

13 Q. OKAY. AND YOU'RE BACK HERE -- FIRST OF ALL, WHO  
14 DID YOU GO WITH WHEN YOU WENT TO SHAWON'S HOUSE?

15 A. ME AND REGGIE.

16 Q. AND HOW FAR IS SHAWON'S HOUSE FROM THE SHELL  
17 STATION, THAT'S WHERE YOU WERE COMING FROM?

18 A. NOT OVER A MINUTE.

19 Q. AND WHO WAS THERE AT SHAWON'S HOUSE?

20 A. HIS MOTHER AND HIS SISTER.

21 Q. AND WHO DID YOU SPEAK TO?

22 A. I SPEAK TO HIS MOTHER AT FIRST, AND THEN HIS  
23 SISTER CAME TO THE DOOR AND SHE HAD A FRIEND THERE  
24 WITH HER.

25 Q. AND WHAT DID YOU TELL HER?

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

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- 1 A. I TOLD HER, MY GIRLFRIEND SAW ME TALKING TO  
2 ANOTHER GIRL AT THE STORE, THAT'S WHY SHE LEFT ME.  
3 Q. AND WHY DID YOU TELL HER THAT?  
4 A. BECAUSE I AIN'T WANT TO TELL HER WHAT I JUST DID  
5 BECAUSE WE'RE REAL CLOSE.  
6 Q. AND WHAT WERE YOU -- WHAT WERE YOU WANTING FROM  
7 HER?  
8 A. A RIDE TO MY HOUSE.  
9 Q. AND DID SHE GIVE YOU THAT RIDE?  
10 A. YES, SIR.  
11 Q. AND WHO WAS ALL IN THE CAR?  
12 A. IT WAS ME, I DON'T KNOW THE GUY'S NAME, THAT WAS  
13 MY FIRST TIME SEEING HER FRIEND.  
14 Q. HER FRIEND?  
15 A. YEAH. AND REGGIE.  
16 Q. SO, IT WAS FOUR OF Y'ALL IN THE CAR?  
17 A. YES, SIR.  
18 Q. AND WHERE DID Y'ALL GO FROM THERE, YOU SAID BACK  
19 TO WHERE?  
20 A. WE WENT TO MY HOUSE.  
21 Q. AND WHO WAS THERE?  
22 A. SHAWON STILL WAS THERE AND MY SISTER AND MY MAMA  
23 WAS THERE.  
24 Q. WHERE WAS SHAWON IN THE HOUSE?  
25 A. HE WAS IN MY SISTER'S ROOM THEN.

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

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- 1 Q. AND DID SHAWON RECEIVE ANY MONEY?
- 2 A. YEAH.
- 3 Q. HOW MUCH MONEY DID HE GET?
- 4 A. I GAVE HIM, LIKE, TWENTY DOLLARS.
- 5 Q. AND WHAT WAS THAT FOR?
- 6 A. FOR GIVING US THE GUN TO USE TO ROB THE STORE.
- 7 Q. HOW MUCH MONEY DID Y'ALL GET?
- 8 A. CLOSE TO THREE HUNDRED.
- 9 Q. AND WHAT HAPPENED TO THE REST OF THE MONEY?
- 10 A. I AIN'T KNOW, REGGIE HAD IT. YOU SEE, REGGIE GAVE
- 11 ME SOME OF THE MONEY, I AIN'T REALLY COUNT IT.
- 12 Q. SO, YOU GOT SOME OF THE MONEY?
- 13 A. YES, SIR.
- 14 Q. YOU GAVE SHAWON SOME MONEY?
- 15 A. YES, SIR.
- 16 Q. AND REGGIE KEPT THE REST?
- 17 A. YES, SIR.
- 18 Q. NOW, THIS WAS SHAWON'S GUN?
- 19 A. YES, SIR.
- 20 Q. WHY DID HE NOT GO TO COMMIT THE ROBBERY, HIMSELF?
- 21 A. I HAVE NO IDEA.
- 22 Q. YOU TESTIFIED EARLIER ABOUT PAPERS?
- 23 A. YES, SIR.
- 24 Q. AND HE WAS ON PROBATION, IS THAT RIGHT?
- 25 A. YES, SIR.

DIRECT' - JAMES A. GREEN BY SOL. JEFFRIES

128

1 Q. WHAT DID SHAWON DO WHEN HIS SISTER GOT THERE?

2 A. HE WAS ---

3 Q. WHEN Y'ALL ALL GOT THERE?

4 A. OKAY. WHEN WE GOT THERE HE WAS ASLEEP. I WOKE HIM  
5 UP. I TOLD HIM, I SAID, YOU MIGHT AS WELL LET YOUR  
6 GUN STAY HERE, BECAUSE OF WHAT WE JUST DID. AND  
7 HE, LIKE, BALKED AT IT, IT'S MY GUN, I'M TAKING IT  
8 WITH ME. SO, HE TOOK HIS GUN WITH HIM. I GAVE  
9 HIM TWENTY DOLLARS, AND I TELL HIM TO GIVE HIS  
10 SISTER FIVE DOLLARS SO SHE COULD PUT IN FOR GAS IN  
11 BRINGING ME HOME.

12 Q. LET ME ASK YOU THIS, WHILE Y'ALL WERE LEAVING, DID  
13 YOU SEE ANYBODY WHEN YOU WERE LEAVING FROM  
14 SHAWON'S HOUSE?

15 A. WE SEE A CAR PASS US AND PUT ON THE BRAKE LIGHTS,  
16 BUT IT AIN'T NEVER TURNED AROUND.

17 Q. WHAT KIND OF CAR WAS IT?

18 A. LIKE A CROWN VIC.

19 Q. NOW, DID YOU GET ARRESTED THAT DAY?

20 A. NO, SIR.

21 Q. WHEN DID YOU GET ARRESTED?

22 A. THAT NEXT WEEK.

23 Q. AND WAS IT INVESTIGATOR RODRIGUEZ OVER HERE THAT  
24 ARRESTED YOU?

25 A. YES, SIR.

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

129

1 Q. DID YOU GIVE HIM A STATEMENT?

2 A. YES, SIR.

3 Q. DID YOU TELL HIM WHO YOU WERE WITH WHEN YOU  
4 COMMITTED THE ROBBERY?

5 A. YES, SIR.

6 Q. AND WHO WAS THAT?

7 A. REGGIE.

8 Q. AND DID YOU TELL HIM WHERE YOU GOT THE GUN FROM?

9 A. YES, SIR.

10 Q. AND WHERE DID YOU GET THE GUN FROM?

11 A. SHAWON.

12 Q. NOW, WERE YOU TOTALLY HONEST IN YOUR STATEMENT TO  
13 HIM, THE WRITTEN STATEMENT YOU GAVE INVESTIGATOR  
14 RODRIGUEZ?

15 A. THE ONLY THING I WASN'T HONEST ABOUT WAS THE GUN  
16 PART.

17 Q. WHAT DID TELL HIM ABOUT THE GUN?

18 A. I TOLD HIM REGGIE HAD THE GUN.

19 Q. BUT WHO HAD THE GUN?

20 A. I HAD THE GUN.

21 Q. AND WHY DID YOU LIE?

22 A. BECAUSE I THOUGHT IT WOULD HAVE BEEN WORSE ON ME.

23 Q. BUT YOU WERE STILL CHARGED WITH ARMED ROBBERY?

24 A. YES, SIR.

25 Q. AND HE WAS CHARGED WITH ARMED ROBBERY?

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

130

- 1 A. YES, SIR.
- 2 Q. AND YOU UNDERSTAND NOW, IT DOESN'T MATTER WHO HAD  
3 THE GUN?
- 4 A. YES, SIR.
- 5 Q. WHAT WAS MONTGOMERY'S -- IF YOU HAD THE GUN WHAT  
6 WAS HIS PART, WHAT DID HE DO?
- 7 A. HE TOOK THE MONEY.
- 8 Q. WAS EVERYTHING ELSE TRUE THAT YOU TOLD  
9 INVESTIGATOR RODRIGUEZ BESIDES WHO HAD THE GUN?
- 10 A. YES, SIR.
- 11 Q. AND YOU SWORE ON THAT BIBLE TODAY TO TELL THE  
12 TRUTH?
- 13 A. YES, SIR.
- 14 Q. WERE YOU -- BACK WHEN YOU GAVE INVESTIGATOR  
15 RODRIGUEZ A STATEMENT WERE YOU THREATENED OR  
16 COERCED IN ANY WAY TO GIVE THAT STATEMENT?
- 17 A. NO, I WEREN'T THREATENED AT ALL.
- 18 Q. DID HE PROMISE YOU ANYTHING IN ORDER FOR YOU TO  
19 GIVE HIM THAT STATEMENT?
- 20 A. HE AIN'T PROMISED ME NOTHING.
- 21 Q. DID I PROMISE YOU ANYTHING OR MS. BURBAGE IN  
22 REFERENCE TO YOUR CHARGES IN ORDER FOR YOU TO COME  
23 AND TESTIFY TODAY?
- 24 A. NO ONE PROMISED ME NOTHING.
- 25 Q. AND YOU ARE STILL CHARGED WITH ARMED ROBBERY?



DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

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- 1 A. YES, SIR.
- 2 Q. AND ARE YOU REPRESENTED BY AN ATTORNEY?
- 3 A. MS. PEGGY HINDS.
- 4 Q. AND HAS SHE PROMISED YOU OR THREATENED YOU IN ANY
- 5 WAY TO GET YOU TO COME AND TESTIFY?
- 6 A. NO, SIR.
- 7 Q. AND I DID MEET WITH YOU AND MS. HINDS EARLIER THIS
- 8 WEEK, IS THAT RIGHT?
- 9 A. YES, SIR.
- 10 Q. AND LAST WEEK?
- 11 A. YES, SIR.
- 12 Q. AND WHAT DID I TELL YOU YOU SHOULD TELL THIS JURY
- 13 WHEN YOU TESTIFIED?
- 14 A. TELL THE TRUTH.
- 15 Q. AND IS WHAT YOU TOLD THIS JURY THE TRUTH?
- 16 A. YES, SIR.
- 17 Q. AND IS WHAT YOU TOLD THIS JURY THE SAME THING YOU
- 18 TOLD INVESTIGATOR RODRIGUEZ?
- 19 A. YES, SIR.
- 20 Q. WITH THE EXCEPTION OF WHAT?
- 21 A. THAT I LIED ABOUT THE GUN PART.
- 22 Q. AND THAT STATEMENT YOU GAVE INVESTIGATOR RODRIGUEZ
- 23 WAS BACK IN SEPTEMBER, IS THAT CORRECT?
- 24 A. YES, SIR.
- 25 Q. AND THAT WAS BEFORE YOU AND I EVER MET, IS THAT

DIRECT - JAMES A. GREEN BY SOL. JEFFRIES

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1 CORRECT?

2 A. YES, SIR.

3 Q. AND YOU ADMITTED COMMITTING A ROBBERY BACK THEN,  
4 DIDN'T YOU?

5 A. YES, SIR.

6 Q. THE MAN WHO ROBBED THE SHELL STATION WITH YOU, THE  
7 MAN WHO WENT BEHIND THE COUNTER AND GOT THE MONEY  
8 WHILE YOU HELD THE GUN, DO YOU SEE HIM IN THE  
9 COURTROOM TODAY?

10 A. YES, SIR.

11 Q. AND WHERE IS HE?

12 A. RIGHT THERE.

13 SOLICITOR JEFFRIES: YOUR HONOR, MAY  
14 THE RECORD REFLECT THAT HE'S IDENTIFIED THE DEFENDANT?

15 THE COURT: YES, SIR.

16 SOLICITOR JEFFRIES: PLEASE ANSWER  
17 ANY QUESTIONS MR. SIMS HAS.

18 (NOTE: Blank lines on this page do not indicate any  
19 part of record has been omitted. Headers on testimony  
20 pages and hard page breaks between testimony are now  
21 required by the Court. See next ensuing page for  
22 sequential continuation of record.)

CROSS - JAMES A. GREEN BY MR. SIMS

133

1 CROSS-EXAMINATION OF JAMES A. GREEN

2 BY MR. SIMS:

3 Q. MR. GREEN, I'VE GOT A FEW QUESTIONS FOR YOU. YOU  
4 SAID THAT YOU LIED BACK ON THE TWENTY-SIXTH OF  
5 SEPTEMBER OF O-SIX, YOU LIED TO DETECTIVE  
6 RODRIGUEZ, IS THAT CORRECT?

7 A. YES, SIR.

8 Q. AND YOU SAID THAT TODAY BECAUSE YOU SWORE ON THAT  
9 BIBLE THAT YOU ARE TELLING THE TRUTH?

10 A. YES, SIR.

11 Q. DIDN'T YOU SWEAR, OR WASN'T THIS A NOTARIZED  
12 SIGNATURE THAT YOU GAVE AND SWORE BACK ON  
13 SEPTEMBER TWENTY-FIFTH OF O-SIXTH, YOUR NAME AND  
14 ISN'T THERE A NOTARY PUBLIC SIGNATURE ON THAT?

15 A. YES, SIR.

16 Q. SO, THAT WAS UNDER OATH AND YOU LIED, TODAY UNDER  
17 OATH, WHAT'S THE DIFFERENCE, YOU LIED BACK THEN  
18 AND YOU'RE LYING NOW?

19 A. NO, SIR.

20 Q. SO, REGGIE DIDN'T HAVE THE GUN, YOU HAD THE GUN?

21 A. YES, SIR.

22 Q. SO, THE LIE THAT YOU TOLD BACK ON THE TWENTY-SIXTH  
23 OF SEPTEMBER OF O-SIX, YOU WANT TO STRAIGHTEN IT  
24 OUT TODAY?

25 A. YES, SIR.

1 Q. AND WHICH ONE ARE WE TO BELIEVE, THAT LIE OR THIS  
2 ONE?

3 A. IT'S NO LIE.

4 Q. OKAY. AND IN YOUR STATEMENT TO DETECTIVE  
5 RODRIGUEZ YOU SAID, REGGIE TOLD SHAWON THAT HE WAS  
6 GOING TO ROB THE SHELL STATION, THAT'S WHAT YOU  
7 TOLD DETECTIVE RODRIGUEZ?

8 A. BOTH OF THEM START TALKING ABOUT IT.

9 Q. AND TODAY YOU'RE SAYING THAT YOU TALKED ABOUT IT  
10 AS YOU LEFT ALLEN MURRAY, ALL OF Y'ALL TALKED  
11 ABOUT IT?

12 A. NO, SIR, THEY TALKED ABOUT IT, I AGREED WITH THEM.

13 Q. OKAY. SO, THEY TALKED ABOUT IT, AND YOU AGREED  
14 WITH THEM. SO, IN ALL THIS EVERYBODY ELSE WAS  
15 DOING EVERYTHING BUT YOU WERE JUST GOING ALONG FOR  
16 THE RIDE?

17 A. YES, SIR.

18 Q. BUT GOING ALONG FOR THE RIDE YOU DECIDE, WHEN THEY  
19 GET TO YOUR HOUSE AND SHAWON BACKS OUT, YOU DECIDE  
20 THAT YOU ARE GOING TO TAKE THE GUN AND GO ROB THE  
21 STORE?

22 A. NO, SIR, I DID NOT DECIDE THAT.

23 Q. WELL, YOU GOT THE GUN.

24 A. YEAH, WHEN WE GOT TO THE STORE.

25 Q. OH, SO SHAWON NEVER GAVE YOU THE GUN, HE GAVE IT

CROSS - JAMES A. GREEN BY MR. SIMS

135

1 TO REGGIE?

2 A. NO, HE GAVE IT TO REGGIE.

3 Q. NOW, I REMIND YOU, YOU JUST SAID THAT YOU SWORE ON  
4 THAT BIBLE?

5 A. I DID.

6 Q. SO, SHAWON DID NOT GIVE YOU THE GUN?

7 A. NO, SIR.

8 Q. HE GAVE IT TO REGGIE?

9 A. YES, SIR.

10 Q. WAS THE GUN EMPTY OR DID THE GUN HAVE ANY BULLETS  
11 IN IT?

12 A. THE GUN WAS EMPTY.

13 Q. HOW DO YOU KNOW THE GUN WAS EMPTY?

14 A. BECAUSE I HAD IT AT THE CLUB.

15 Q. OKAY. NOW, YOU HAD THE GUN AT THE CLUB?

16 A. YES, SIR.

17 Q. AND IT DIDN'T HAVE ANY BULLETS AT THE CLUB?

18 A. NO, SIR.

19 Q. THEN, YOU GAVE IT BACK TO SHAWON?

20 A. YES, SIR.

21 Q. AND THEN SHAWON GAVE IT TO REGGIE?

22 A. NO, SIR, NOT RIGHT THEN.

23 Q. HE GAVE IT TO REGGIE AT YOUR HOUSE?

24 A. WHEN WE GOT TO MY HOUSE.

25 Q. OKAY. AND WHEN YOU GOT TO YOUR HOUSE, INSTEAD OF

1 GOING TO YOUR SISTER'S ROOM IN THE BEGINNING, HE  
2 WENT TO YOUR ROOM?

3 A. YES, SIR.

4 Q. AND WHEN YOU CAME BACK HE WAS IN YOUR SISTER'S  
5 ROOM?

6 A. YES, SIR.

7 Q. AND THEN WHEN YOU WENT TO SHAWON'S HOUSE, WHO WAS  
8 WITH YOU, OR YOU SAID REGGIE, YOU ---

9 A. NO, JUST ME AND REGGIE.

10 Q. YOU AND REGGIE?

11 A. YES, SIR.

12 Q. OKAY.. AND HIS SISTER CARRIED YOU OFF SOMEWHERE,  
13 IS THAT CORRECT?

14 A. TO MY HOUSE.

15 Q. TO YOUR HOUSE. OKAY. AND DID YOU TALK WITH THE  
16 POLICE LATER THAT NIGHT?

17 A. NO, SIR.

18 Q. OKAY. WELL, WHERE DID REGGIE GO?

19 A. REGGIE WENT BACK UP TO HIS FATHER'S HOUSE, AS FAR  
20 AS I KNOW.

21 Q. SO, HE LEFT WALKING?

22 A. YES, SIR.

23 Q. AND YOUR CHARGES ARE STILL PENDING, AREN'T THEY,  
24 YOUR CHARGES ARE STILL PENDING?

25 A. YES, SIR.

CROSS - JAMES A. GREEN BY MR. SIMS

137

1 Q. AND YOU HAVE NOT BEEN SENTENCED YET?

2 A. NO, SIR.

3 Q. SO, YOU -- ANYTHING THAT YOU CAN DO TO HELP  
4 YOURSELF, YOU'RE GOING TO DO IT, ISN'T THAT RIGHT?

5 A. BY TELLING THE TRUTH, I HOPE SO.

6 Q. YEAH. SO, YOU EXPECT THAT BY COMING IN HERE  
7 TESTIFYING, THAT YOU'RE GOING TO GET SOME HELP IN  
8 YOUR SENTENCE, DON'T YOU?

9 A. NO, SIR.

10 Q. OH, SO YOU JUST CAME IN OUT OF THE GOODNESS OF  
11 YOUR HEART AND DECIDED YOU WERE GOING TO TESTIFY?

12 A. IT BEEN ON MY MIND FOR A LONG TIME THAT I WAS  
13 LYING. I FEEL BETTER NOW ABOUT IT, BY TELLING THE  
14 TRUTH.

15 Q. OKAY. SO, YOU, YOUR CONSCIOUS BOTHERED YOU WHEN  
16 YOU LIED TO DETECTIVE RODRIGUEZ BACK IN SEPTEMBER  
17 OF LAST YEAR?

18 A. YES, SIR, BECAUSE I LIED TO MY MOTHER ALSO.  
19 THAT'S THE ONLY REASON I DID THAT.

20 Q. UH HUH. AND YOU DON'T EXPECT TO GET ANYTHING FROM  
21 YOUR TESTIMONY?

22 A. NO, SIR.

23 Q. YOU DON'T EXPECT TO GET A LIGHTER SENTENCE?

24 A. NO, SIR.

25 Q. YOU DON'T EXPECT THE SOLICITOR'S OFFICE TO SAY,

CROSS - JAMES A. GREEN BY MR. SIMS

138

1 JAMES, WE THANK YOU, BECAUSE YOU CAME IN HERE  
2 TODAY AND TOLD US ALL THESE GOOD THINGS, THAT  
3 WE'RE GOING TO GIVE YOU A BREAK ON YOUR SENTENCE?

4 A. NO, SIR.

5 Q. AND YOU SAID YOU TOLD THAT LIE BACK IN SEPTEMBER  
6 BECAUSE YOU THOUGHT IT WOULD LOOK WORSE FOR YOU?

7 A. NO, SIR.

8 Q. WELL, WHY DID YOU LIE, THEN, IF YOU -- I THOUGHT  
9 THAT'S WHAT YOU SAID INITIALLY?

10 A. I DID NOT LIE JUST NOW, YES, SIR.

11 Q. YOU PUT THE GUN IN REGGIE'S HAND BACK IN SEPTEMBER  
12 IN YOUR STATEMENT TO DETECTIVE RODRIGUEZ BECAUSE  
13 YOU SAID IT MADE YOU LOOK, IT WOULD HAVE MADE YOU  
14 LOOK WORSE IF YOU HAD THE GUN, IF YOU HAD TOLD THE  
15 TRUTH?

16 A. YES, SIR, IT WOULD HAVE MADE, IT MAKES SENSE.

17 Q. AND IT MAKES SENSE TODAY FOR YOU TO COME IN HERE  
18 AND SAY ALL THESE GOODS THINGS SO THAT IT WILL  
19 MAKE YOU FEEL, OR LOOK BETTER NOW, DOESN'T IT?

20 A. NO, SIR. AND ANOTHER REASON ABOUT ME TELLING THE  
21 TRUTH, BECAUSE HE SAY HE HAD NOT BEEN THERE AT  
22 ALL.

23 Q. DO YOU KNOW -- YOU KNEW NICHOLAS HERRINGTON, ISN'T  
24 THAT CORRECT?

25 A. YES, I DO.



CROSS - JAMES A. GREEN BY MR. SIMS

139

1 Q. AND NICHOLAS HERRINGTON ALSO KNEW REGINALD  
2 MONTGOMERY, ISN'T THAT CORRECT?

3 A. YES, SIR.

4 Q. Y'ALL ALL GREW UP AROUND TOGETHER, DIDN'T YOU?

5 A. YES, SIR.

6 Q. NICHOLAS HERRINGTON IDENTIFIED YOU, DIDN'T HE?

7 A. LIKE I SAID, HE DID NOT IDENTIFY ME, IF HE  
8 IDENTIFIED ME, THE FIRST INVESTIGATOR THAT CAME  
9 THERE, THEY WOULD HAVE CAME STRAIGHT TO MY HOUSE.

10 Q. YOU WERE SUBSEQUENTLY IDENTIFIED BY NICHOLAS  
11 HERRINGTON, ISN'T THAT CORRECT?

12 SOLICITOR JEFFRIES: OBJECTION, YOUR  
13 HONOR, HE DOESN'T HAVE ANY BASIS TO ANSWER THAT  
14 QUESTION. HE'S ASKING IF ANOTHER WITNESS -

15 THE COURT: WHAT'S THE LEGAL  
16 OBJECTION?

17 SOLICITOR JEFFRIES: THAT IT'S, THE  
18 WITNESS DOESN'T HAVE ANY BASIS FOR ANSWERING THAT  
19 QUESTION.

20 THE COURT: ALRIGHT, I'LL SUSTAIN  
21 THE OBJECTION UNLESS YOU LAY SOME KIND OF FOUNDATION  
22 WHERE HE WOULD BE AWARE OF THAT INFORMATION.

23 Q. OKAY. DO YOU KNOW WHETHER OR NOT A PHOTOGRAPHIC  
24 LINEUP WAS EVER GIVEN WITH YOUR PICTURE IN IT?

25 A. THEY SHOWED ME A LINEUP WITH MY PICTURE IN IT,

CROSS - JAMES A. GREEN BY MR. SIMS

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1           THERE BEEN A LOT OF THEM THAT LOOKED LIKE ME.

2       Q.   DO YOU KNOW WHETHER OR NOT THAT PHOTOGRAPHIC  
3           LINEUP WAS SHOWN TO NICHOLAS HERRINGTON?

4       A.   NO, SIR.

5       Q.   OKAY. SO, YOU DON'T KNOW. OKAY. AND APRIL KNOWS  
6           YOU, OF COURSE, SHE KNOWS YOU, IS THAT RIGHT,  
7           APRIL JOHNSON KNOWS YOU?

8       A.   YES, SIR.

9       Q.   AND SHE KNEW THAT YOU WERE THE ONE IN THAT CAR  
10          THAT NIGHT, IS THAT CORRECT?

11      A.   YES, SIR.

12      Q.   AND SHE KNEW WHERE SHE HAD TAKEN YOU?

13      A.   YES, SIR.

14      Q.   AND LATANGELA BELLAMY KNOWS YOU ALSO?

15      A.   YES, SIR, THAT'S MY SISTER.

16                               MR. SIMS: THAT'S ALL I HAVE AT THIS  
17      TIME, YOUR HONOR.

18                               THE COURT: REDIRECT?

19                               SOLICITOR JEFFRIES:       JUST ONE  
20      QUESTION, YOUR HONOR.

21      (NOTE: Blank lines on this page do not indicate any  
22      part of record has been omitted. Headers on testimony  
23      pages and hard page breaks between testimony are now  
24      required by the Court. See next ensuing page for  
25      sequential continuation of record.)

REDIRECT - JAMES A. GREEN BY SOL. JEFFRIES

141

1 REDIRECT EXAMINATION OF JAMES A. GREEN  
2 BY SOLICITOR JEFFRIES:

3 Q. MR. SIMS ASKED YOU REPEATEDLY ABOUT THE STATEMENT  
4 YOU GAVE TO INVESTIGATOR RODRIGUEZ BACK IN  
5 SEPTEMBER, AND YOUR TESTIMONY HERE TODAY. WHO DID  
6 YOU TELL INVESTIGATOR RODRIGUEZ YOU WERE WITH ON  
7 SEPTEMBER SEVENTH, WHEN Y'ALL ROBBED THE STORE?

8 A. REGGIE MONTGOMERY.

9 Q. YOU TOLD HIM THAT BACK IN SEPTEMBER?

10 A. YES, SIR.

11 Q. AND ARE YOU TESTIFYING TO THAT TODAY?

12 A. YES, SIR.

13 SOLICITOR JEFFRIES: THANK YOU.

14 THE COURT: YOU MAY STEP DOWN, THANK  
15 YOU VERY MUCH.

16 CALL YOUR NEXT WITNESS.

17 MR. SIMS: YOUR HONOR, I WOULD LIKE  
18 TO HAVE HIM RETAINED FOR POSSIBLY CALLING HIM AGAIN.

19 THE COURT: OKAY. DO YOU WANT HIM  
20 TO STAY HERE THIS AFTERNOON OR -

21 MR. SIMS: YES.

22 THE COURT: CAN Y'ALL HOLD HIM IN THE  
23 HOLDING CELL, PLEASE, SIR?

24 SOLICITOR BURBAGE: THE STATE CALLS  
25 RAMISE KEITT.

1                   THE COURT: I'M SORRY, WHO ARE YOU  
2 CALLING?

3                   SOLICITOR BURBAGE: RAMISE KEITT.

4                   SOLICITOR JEFFRIES: R-A-M-I-S-E.

5 (Whereupon, the witness  
6 enters the courtroom.)

7                   CLERK: MR. KEITT, STEP AROUND OVER  
8 HERE. PLEASE PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE  
9 YOUR RIGHT.

10 (Whereupon, Ramise Keitt  
11 is duly sworn.)

12                   CLERK: HAVE A SEAT AND STATE YOUR  
13 FULL NAME.

14 (NOTE: Blank lines on this page do not indicate any  
15 part of record has been omitted. Headers on testimony  
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18 sequential continuation of record.)

DIRECT - RAMISE KEITT BY SOL. BURBAGE

143

1 DIRECT EXAMINATION OF RAMISE KEITT

2 BY SOLICITOR BURBAGE:

3 Q. MR. KEITT, WHERE DO YOU CURRENTLY LIVE?

4 A. SANTEE.

5 Q. IF YOU COULD, JUST TELL THE COURT, ARE YOU  
6 FAMILIAR WITH THE SHELL STATION LOCATED AT FIFTY-

7

8 A. YES.

9 Q. WHERE IS THAT LOCATED?

10 A. HIGHWAY TWO TEN, OFF OF TWENTY-SIX, IN BOWMAN,  
11 SOUTH CAROLINA.

12 Q. IN BOWMAN, IS THAT IN ORANGEBURG COUNTY?

13 A. YES.

14 Q. AND MR. KEITT, WERE YOU AT THE SHELL STATION ON  
15 SEPTEMBER SEVENTEENTH, TWO THOUSAND AND SIX, IN  
16 THE EARLY MORNING HOURS?

17 A. YES.

18 Q. AND ABOUT WHAT TIME WERE YOU THERE?

19 A. IT WAS ABOUT THREE, I WAS GETTING SOME BREAKFAST.

20 Q. WHY WERE YOU THERE?

21 A. GETTING SOME BREAKFAST.

22 Q. AND IF YOU COULD JUST TELL THE JURY THE LAYOUT OF  
23 THE STORE, WHERE WERE YOU IN THE STORE ABOUT THAT  
24 TIME?

25 A. I WAS IN THE DINING AREA.

DIRECT - RAMISE KEITT BY SOL. BURBAGE

144

1 Q. THERE'S A DINING AREA WITHIN THE SHELL STATION?

2 A. YES.

3 Q. AND JUST TELL THE COURT WHAT HAPPENED WHILE YOU  
4 WERE AT THE SHELL STATION THAT MORNING?

5 A. TWO GUYS CAME IN THE STORE WITH STOCKING CAPS ON  
6 THEIR FACE, AND THEY HELD THE STORE UP AT GUN  
7 POINT.

8 Q. DO YOU REMEMBER ANYTHING SPECIFIC ABOUT WHEN THEY  
9 CAME IN THE STORE?

10 A. I KNOW THEY HAD -- WELL, ONE WENT BEHIND THE  
11 COUNTER WITH THE GUY WHO RAN THE STORE AND THE  
12 OTHER ONE STOOD AT THE DOOR WHILE THE OTHER ONE  
13 STOOD BEHIND THE COUNTER WITH THE GUY. ONE WAS  
14 TALL AND ONE WAS KIND OF SHORT, THEY WENT BEHIND  
15 THE COUNTER, AND THEN THEY DID WHAT THEY HAD TO DO  
16 AND THEN THEY LEFT. WHEN THEY LEFT THEY WAS  
17 POINTING THE GUNS AT THE STORE WHERE I WAS SITTING  
18 AT. THE GUNS HAD SOME LIGHT, SOME RED LIGHT THAT  
19 SHINED IN THE STORE.

20 Q. LIKE A LASER?

21 A. YEAH, LIKE A, YEAH, A LASER LIGHT.

22 Q. AND YOU SAID THEY RAN OUT THE DOOR?

23 A. YEAH.

24 Q. ABOUT HOW LONG WERE THEY IN THE STORE?

25 A. IT DIDN'T TAKE MAYBE TEN MINUTE, TEN OR FIFTEEN

DIRECT - RAMISE KEITT BY SOL. BURBAGE

145

1 MINUTES, MAYBE, YEAH, ABOUT TEN OR FIFTEEN  
2 MINUTES, I GUESS.

3 SOLICITOR BURBAGE: I BEG THE  
4 COURT'S INDULGENCE. I HAVE NO FURTHER QUESTIONS, PLEASE  
5 ANSWER ANY QUESTIONS MR. SIMS MIGHT HAVE FOR YOU.

6 (NOTE: Blank lines on this page do not indicate any  
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9 required by the Court. See next ensuing page for  
10 sequential continuation of record.)

CROSS - RAMISE KEITT BY MR. SIMS

146

1 CROSS-EXAMINATION OF RAMISE KEITT

2 BY MR. SIMS:

3 Q. JUST ONE QUESTION, YOU DID NOT GIVE THE ORANGEBURG  
4 COUNTY SHERIFF'S DEPARTMENT ANY IDENTIFICATION, OR  
5 YOU NEVER IDENTIFIED ANYBODY, DID YOU?

6 A. NO, I COULDN'T, THEY HAD STOCKING CAPS ON THEIR  
7 FACE.

8 MR. SIMS: THAT'S ALL I HAVE.

9 THE COURT: OKAY. ANY REDIRECT?

10 SOLICITOR BURBAGE: NOTHING, YOUR  
11 HONOR.

12 THE COURT: OKAY, YOU MAY STEP DOWN,  
13 THANK YOU, MR. KEITT.

14 WITNESS: THANK YOU.

15 SOLICITOR BURBAGE: YOUR HONOR, MAY  
16 HE BE EXCUSE?

17 THE COURT: YES, MA'AM.

18 SOLICITOR JEFFRIES: THE STATE CALLS  
19 NICHOLAS HERRINGTON.

20 (Whereupon, the witness  
21 enters the courtroom.)

22 CLERK: MR. HERRINGTON, PLEASE PLACE  
23 YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.

24 (Whereupon, Nicholas Herrington  
25 is duly sworn.)



1                    CLERK:   HAVE A SEAT AND STATE YOUR  
2   FULL NAME.

3                    COURT REPORTER:   STATE YOUR FULL  
4   NAME, SIR.

5                    WITNESS:   NICHOLAS HERRINGTON.

6   (NOTE:   Blank lines on this page do not indicate any  
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9   required by the Court.   See next ensuing page for  
10   sequential continuation of record.)

DIRECT - NICHOLAS HERRINGTON BY SOL. JEFFRIES

148

1 DIRECT EXAMINATION OF NICHOLAS HERRINGTON

2 BY SOLICITOR JEFFRIES:

3 Q. MR. HERRINGTON, I'M GOING TO ASK YOU TO SPEAK, TRY  
4 TO SPEAK LOUDLY SO THE JURY CAN HEAR EVERYTHING  
5 YOU SAY, AS WELL AS THE COURT REPORTER. WHAT TOWN  
6 DO YOU LIVE IN?

7 A. BOWMAN, SOUTH CAROLINA.

8 Q. AND WHERE DO YOU WORK?

9 A. CURRENTLY, PROVIDENCE HOSPITAL IN COLUMBIA.

10 Q. IN COLUMBIA? WHERE WERE YOU WORKING BACK IN  
11 SEPTEMBER OF LAST YEAR?

12 A. AT BOWMAN SHELL.

13 Q. AT BOWMAN SHELL? DO YOU REMEMBER THAT ADDRESS?

14 A. IT'S [REDACTED]

15 Q. WHAT DID YOU DO AT THE SHELL?

16 A. I WAS A CASHIER.

17 Q. WHAT TYPE OF BUSINESS -- DESCRIBE THE SHELL  
18 STATION?

19 A. IT'S A TRUCK STOP, SLASH, CONVENIENCE STORE, WITH  
20 A RESTAURANT IN IT.

21 Q. OKAY. WHERE IS THE RESTAURANT INSIDE THE SHELL  
22 STATION?

23 A. KIND OF ON THE BACK SIDE.

24 Q. HOW LONG DID YOU WORK THERE?

25 A. SIX YEARS.

DIRECT - NICHOLAS HERRINGTON BY SOL. JEFFRIES

149

1 Q. LET ME TAKE YOU BACK TO SEPTEMBER -- SPECIFICALLY,  
2 SEPTEMBER SEVENTEENTH OF LAST YEAR, WERE YOU  
3 WORKING THAT MORNING?

4 A. YES, I WAS.

5 Q. DO YOU REMEMBER WHAT DAY OF THE WEEK IT WAS?

6 A. IT WAS SATURDAY NIGHT AND SUNDAY MORNING.

7 Q. AND WHAT WERE THE STORE HOURS BACK THEN?

8 A. TWENTY-FOUR/SEVEN.

9 Q. TWENTY-FOUR/SEVEN? WHO ELSE WAS IN THE STORE THAT  
10 MORNING, THE MORNING OF THE ROBBERY, AT THE TIME  
11 OF THE ROBBERY?

12 A. A COOK AND ONE CUSTOMER.

13 Q. DO YOU KNOW THE CUSTOMER, HAD YOU MET HIM BEFORE,  
14 WAS HE A REGULAR CUSTOMER?

15 A. UH HUH.

16 Q. DO YOU KNOW WHAT HIS NAME WAS?

17 A. YEAH.

18 Q. WHAT'S HIS NAME?

19 A. RAMISE KEITT.

20 Q. TELL THIS JURY WHAT HAPPENED WHILE YOU WERE  
21 WORKING AT THE SHELL STATION THAT MORNING?

22 A. IT WAS ABOUT THREE:THIRTY, FOUR O'CLOCK IN THE  
23 MORNING, IT WAS, YOU KNOW, KIND OF OUR DOWN TIME,  
24 SO I THOUGHT I HAD LOCKED THE DOOR WITH THE LITTLE  
25 SWITCH BEHIND THE CASH REGISTER, AND I WAS GOING

DIRECT - NICHOLAS HERRINGTON BY SOL. JEFFRIES

150

1        AROUND TO SIT IN THE DINING ROOM JUST TO SIT DOWN,  
2        AND JUST CHILL A LITTLE WHILE UNTIL ANOTHER  
3        CUSTOMER CAME IN. AND I HEARD SOMETHING KIND OF  
4        RATTLE THE DOOR RIGHT BEFORE I WENT TO GO SIT  
5        DOWN. AND I KIND OF LEANED BACK AND LOOKED AND SAW  
6        TWO GUYS STANDING TO THE DOOR WITH MASKS AND STUFF  
7        OVER THEIR HEAD. AND YOU KNOW, THEY OPENED THE  
8        DOOR AND CAME ON IN AND POINTED -- ONE OF THEM  
9        POINTED A GUN AT ME AND SAID, THIS IS A ROBBERY.  
10       AND THE FIRST THING I THOUGHT WAS, I WAS GETTING  
11       READY TO TELL THE GUY, PUT THAT TOY DOWN, STOP  
12       PLAYING, YOU KNOW, THIS AIN'T NOT TIME FOR JOKES.

13 Q.    WHY DID YOU THINK, WHY DID THAT EVEN CROSS YOUR  
14       MIND?

15 A.    BECAUSE I KIND OF RECOGNIZED THE GUY'S FACE  
16       THROUGH THE MASK.

17 Q.    I'M SORRY, I DIDN'T MEAN TO INTERRUPT YOU, GO  
18       AHEAD.

19 A.    AND BASICALLY, ONE OF THEM, I DON'T KNOW WHICH  
20       ONE, TOLD ME TO GET BEHIND, YOU KNOW, START  
21       WALKING BEHIND THE COUNTER, BUT I IMMEDIATELY  
22       STARTED WALKING BEHIND THE COUNTER. ONE OF THEM  
23       FOLLOWED ME, THE GUY THAT HAD THE GUN STAYED RIGHT  
24       AT THE DOOR AND KIND OF POINTED AND FOLLOWED ME  
25       AROUND AS I WENT BEHIND THE COUNTER. AND THEN THE

DIRECT - NICHOLAS HERRINGTON BY SOL. JEFFRIES

151

1 ONE BEHIND THE COUNTER TOLD ME TO OPEN THE DRAWER,  
2 AND THEN HE STARTED GETTING THE MONEY. AND THEN  
3 HE GOT THE MONEY THAT WAS UP UNDER THE COUNTER AND  
4 ANOTHER DRAWER THAT WE HAD UP UNDER THE COUNTER,  
5 HE GOT IT OUT OF THERE, TOO.

6 Q. LET ME STOP YOU RIGHT THERE. YOU SAY HE WENT  
7 BEHIND THE COUNTER AND WAS GETTING MONEY. WHO WAS  
8 ACTUALLY GETTING THE MONEY FROM THE REGISTER, WAS  
9 IT YOU OR HIM?

10 A. NOT ME.

11 Q. OKAY. DID YOU OPEN THE REGISTER FOR HIM?

12 A. ALL I DID WAS OPEN THE REGISTER FOR HIM.

13 Q. AND HE ACTUALLY TOOK THE MONEY OUT?

14 A. UH HUH.

15 Q. AND WHERE DID HE TAKE THE MONEY FROM?

16 A. FROM THE OTHER DRAWER WE HAD UNDER THERE, THE  
17 DRAWER OUT OF THE CASH REGISTER, AND THEN WE HAD A  
18 LITTLE SPOT UP UNDER THERE THAT WE KEPT EXTRA  
19 MONEY.

20 Q. OKAY. DESCRIBE THE TWO MEN, WERE THEY ABOUT THE  
21 SAME SIZE, SAME HEIGHT OR ---

22 A. ONE WAS A LITTLE BIT TALLER THAN ME AND THE OTHER  
23 ONE WAS A GOOD BIT SHORTER THAN ME.

24 Q. OKAY. AND YOU SAID YOU RECOGNIZED ONE OF THEM  
25 THROUGH THE MASK, WHICH ONE WAS THAT?

DIRECT - NICHOLAS HERRINGTON BY SOL. JEFFRIES

152

- 1 A. THAT WAS THE ONE THAT HAD THE GUN.
- 2 Q. OKAY. WAS HE THE SHORTER ONE OR THE TALLER ONE?
- 3 A. THE SHORTER ONE.
- 4 Q. OKAY. AND WHERE WAS HE DURING MOST OF THIS TIME?
- 5 A. HE STAYED AT THE DOOR, RIGHT AT THE TWO DOORS.
- 6 Q. AND THAT WAS THE GUY YOU RECOGNIZED?
- 7 A. UH HUH.
- 8 Q. CAN YOU DESCRIBE THE GUN THAT HE HAD?
- 9 A. IT SORT OF LOOKED LIKE WHAT THE POLICE OFFICERS
- 10 CARRY, WITH A LITTLE LASER ON THE BOTTOM.
- 11 Q. OKAY. WHERE WAS THE -- YOU SAID THE COOK WAS IN
- 12 THE STORE AND ALSO THE CUSTOMER, WHERE WERE THEY
- 13 WHEN THE ROBBERY WAS GOING ON?
- 14 A. THEY WERE SITTING OUT IN THE DINING ROOM ALREADY.
- 15 Q. OKAY. THE AREA THAT YOU HAD LEFT FROM TO GO TO
- 16 THE DOOR?
- 17 A. UH HUH.
- 18 Q. NOW, YOU INDICATED THEY HAD MASKS ON THEIR FACES,
- 19 WHAT KIND OF MASKS ARE WE TALKING ABOUT?
- 20 A. IT WAS LIKE A, IT WAS KIND OF LIKE AN OLD PAIR OF
- 21 STOCKINGS THAT LADIES WEAR, KIND OF AN OLDER PAIR,
- 22 BECAUSE IT WAS REAL EASY TO SEE THROUGH.
- 23 Q. AND THE ONE YOU RECOGNIZED, HOW DID YOU KNOW HIM?
- 24 A. FROM SCHOOL. HE WAS A COUPLE OF YEARS BEHIND ME.
- 25 Q. AND HAD YOU SEEN HIM, WHEN WAS THE LAST TIME YOU

DIRECT - NICHOLAS HERRINGTON BY SOL. JEFFRIES

153

1 SAW HIM BEFORE THAT?

2 A. A FEW NIGHTS BEFORE THAT.

3 Q. AND WHERE WAS THAT?

4 A. AT THE STORE.

5 Q. DID YOU IMMEDIATELY REMEMBER HIS NAME?

6 A. NOT IMMEDIATELY, NO, SIR.

7 Q. OKAY. SO, YOU KNEW HIM BUT DIDN'T REMEMBER HIS  
8 NAME IMMEDIATELY?

9 A. RIGHT.

10 Q. WERE Y'ALL IN THE SAME GRADE IN SCHOOL OR ---

11 A. NO, HE WAS JUST A COUPLE OF GRADES BEHIND ME.

12 Q. OKAY. WHEN HE WOULD COME TO THE STORE, OR WHEN  
13 YOU HAD SEEN HIM AT THE STORE A FEW DAYS EARLIER  
14 DID Y'ALL TALK, SOCIALIZE?

15 A. NOT REALLY.

16 Q. OKAY.

17 A. BASICALLY, HE HAD A BUNCH OF CHANGE HE WANTED TO  
18 CASH IN.

19 Q. ALRIGHT, NOW, LET ME ASK YOU ABOUT THE GUY THAT  
20 WENT BEHIND THE REGISTER WITH YOU. NOW, I KNOW  
21 THIS IS A LITTLE BIT EMBARRASSING, BUT WERE YOU  
22 AFRAID AT THIS TIME?

23 A. A LITTLE, A LITTLE.

24 Q. AND AT THIS POINT DID YOU REALIZE THIS, THIS WAS  
25 SERIOUS, IT WAS A REAL ROBBERY?

- 1 A. UH HUH. AS I STARTED WALKING BEHIND THE COUNTER  
2 IS WHEN I REALIZED IT WAS SERIOUS.
- 3 Q. OKAY. WERE YOU LOOKING AT THE GUY BEHIND THE  
4 COUNTER ---
- 5 A. I WAS MORE ---
- 6 Q. --- DID YOU GET A LOOK AT HIS FACE?
- 7 A. --- I WAS MORE SO AIMED AT THE GUY, LOOKING AT THE  
8 GUY THAT HAD THE GUN, BECAUSE I DIDN'T WANT -- I  
9 WANTED TO BE READY IF IT WENT OFF.
- 10 Q. RIGHT. OKAY. NOW, WHAT HAPPENED AFTER THEY GOT  
11 THE MONEY, WERE ANY SHOTS FIRED?
- 12 A. NO, SIR. AFTER THEY GOT THE MONEY THEY RAN BACK  
13 OUT THE DOOR AND TURNED TO THE LEFT AND WENT KIND  
14 OF BEHIND THE BUILDING.
- 15 Q. AND WHAT DID YOU DO THEN?
- 16 A. I IMMEDIATELY CALLED FOR THE COOK TO COME AND MAKE  
17 SURE THE DOOR WAS PULLED ALL THE WAY SHUT SO I  
18 COULD LOCK IT GOOD, AND I DIALED NINE ONE ONE.
- 19 Q. OKAY. AND DID THE POLICE RESPOND?
- 20 A. YES, THEY DID.
- 21 Q. THE SHERIFF'S OFFICE?
- 22 A. UH HUH.
- 23 Q. DID YOU SPEAK TO THEM THAT MORNING?
- 24 A. YES, I DID.
- 25 Q. AND DID YOU HAVE THE OPPORTUNITY TO MEET WITH



DIRECT - NICHOLAS HERRINGTON BY SOL. JEFFRIES

155

1 INVESTIGATOR RODRIGUEZ DAYS AFTER?

2 A. YES, I DID.

3 Q. AND WERE YOU ABLE AT THAT POINT TO GIVE THEM ANY  
4 NAMES OF EITHER OF THE SUSPECTS?

5 A. I HAD HIS FIRST NAME, IT WAS -- I KNEW HIS FIRST  
6 NAME.

7 Q. WHAT WAS THAT?

8 A. JAMES.

9 Q. THE GUY YOU WENT TO SCHOOL WITH?

10 A. UH HUH.

11 Q. AND DID YOU -- DID YOU EVEN GET A CHANCE TO LOOK  
12 AT THE OTHER GUY'S FACE?

13 A. NOT REALLY. IT WAS MORE SO AS HE WALKED TOWARDS ME  
14 WHEN I WENT TO GO BEHIND THE COUNTER, HE FOLLOWED  
15 ME BEHIND THE COUNTER, SO I WASN'T GOING TO TURN  
16 AROUND.

17 Q. HOW MUCH MONEY WAS TAKEN?

18 A. AROUND ABOUT SIX HUNDRED DOLLARS.

19 Q. AND AFTER YOU MET WITH INVESTIGATOR RODRIGUEZ DID  
20 YOU DETERMINE IT WAS THIS GUY, JAMES, DETERMINE  
21 WHAT HIS LAST NAME WAS?

22 A. YES, I DID.

23 Q. AND WHAT WAS THAT?

24 A. GREEN.

25 Q. AND THAT WAS THE MAN WITH THE GUN AT THE DOOR?

DIRECT - NICHOLAS HERRINGTON BY SOL. JEFFRIES

156

1 A. YES, IT WAS.

2 Q. WAS THERE ANY QUESTION THAT THAT WAS THE MAN AT  
3 THE DOOR, JAMES GREEN?

4 A. NONE AT ALL, BECAUSE MY EYES WERE ON HIM NINETY  
5 PER CENT OF THE TIME.

6 Q. AND DID YOU TELL INVESTIGATOR RODRIGUEZ ALL OF  
7 THAT, THE SAME AS YOU'RE TELLING THIS JURY?

8 A. YES, I DID.

9 Q. AND YOU'VE BEEN TRUTHFUL TO THIS JURY TODAY?.

10 A. YES, I HAVE.

11 SOLICITOR JEFFRIES: ANSWER ANY  
12 QUESTIONS MR. SIMS MIGHT HAVE FOR YOUR.

13 A. ALRIGHT.

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18 sequential continuation of record.)

CROSS - NICHOLAS HERRINGTON BY MR. SIMS

157

1 CROSS-EXAMINATION OF NICHOLAS HERRINGTON

2 BY MR. SIMS:

3 Q. MR. HERRINGTON, I HAVE A FEW QUESTIONS FOR YOU. I  
4 KNOW THIS WAS A TRAUMATIC EXPERIENCE FOR YOU. DO  
5 YOU KNOW REGINALD MONTGOMERY?

6 A. YES, I DO.

7 Q. AND HOW LONG HAVE YOU KNOWN HIM?

8 A. PRETTY MUCH EVER SINCE WE WAS IN SCHOOL TOGETHER.

9 Q. Y'ALL WERE IN SCHOOL TOGETHER, YOU WOULD RECOGNIZE  
10 HIS VOICE, TOO, WOULDN'T YOU?

11 A. UH HUH.

12 Q. AND THE PERSON WHO WAS WALKING YOU, OR WALKING  
13 BEHIND YOU, HE WAS TALKING TO YOU, AND THAT WAS  
14 NOT REGINALD MONTGOMERY'S VOICE, WAS IT?

15 A. NOT FROM -- NO, I WOULDN'T SAY IT WOULD HAVE BEEN,  
16 NO.

17 Q. OKAY. AND I BELIEVE YOU SAID THAT THE PERSON WHO  
18 WAS WALKING BEHIND YOU WAS A LITTLE TALLER THAN  
19 YOU, IS THAT CORRECT?

20 A. YES, IT WAS.

21 Q. AND THE OTHER ONE WAS SHORTER THAN YOU?

22 A. RIGHT.

23 Q. AND HOW TALL ARE YOU?

24 A. ABOUT FIVE-SIX, FIVE-SEVEN.

25 Q. OKAY. AND REGGIE MONTGOMERY IS ABOUT SIX

1 SOMETHING, ISN'T THAT CORRECT?

2 A. UH HUH.

3 Q. SO, HE WOULD HAVE BEEN REAL TALL ---

4 A. RIGHT.

5 Q. --- OVER YOU? OKAY. SO, THAT, TOO, WOULD LEAD  
6 YOU TO BELIEVE THAT THAT WAS NOT REGINALD  
7 MONTGOMERY?

8 A. YES, IT WOULD.

9 Q. OKAY. AND IF REGGIE HAD HAD ON A MASK YOU WOULD  
10 HAVE BEEN ABLE TO IDENTIFY HIM THROUGH A MASK  
11 ALSO?

12 A. IF HE WOULD HAVE HAD THE SAME TYPE AS THE OTHER  
13 GUY DID, YES.

14 Q. OKAY. BUT ON THAT NIGHT, SEPTEMBER SEVENTEENTH,  
15 THE MAN WHO WAS IN THERE WAS, IN YOUR MIND, NOT  
16 REGGIE MONTGOMERY?

17 A. IN MY MIND, YES, SIR.

18 Q. OKAY. AS A MATTER OF FACT, YOU TALKED TO HIS  
19 MOTHER, IS THAT CORRECT?

20 A. WHOSE MOTHER?

21 Q. REGINALD MONTGOMERY'S MOTHER.

22 A. AH, ---

23 Q. OR SISTER OR SOMEBODY?

24 A. NOT, NOT THAT NIGHT, NO, SIR.

25 Q. NOT THAT NIGHT, LATER ON.

CROSS - NICHOLAS HERRINGTON BY MR. SIMS

159

1 A. I TALKED WITH, IT MIGHT HAVE BEEN HIS AUNT, I'M  
2 NOT SURE EXACTLY HOW THE LADY WAS RELATED, BUT  
3 WHEN I WAS WORKING AT THE FORD PLACE AT  
4 ORANGEBURG, AFTER I LEFT THE STORE, ---

5 Q. UH HUH.

6 A. --- I WENT TO McDONALD'S TO GET SOMETHING TO EAT  
7 ONE DAY FOR LUNCH AND SHE WAS IN THERE.

8 Q. AND YOU TOLD HER THAT THE PERSON WHO ROBBED YOU  
9 WASN'T HIM?

10 A. I TOLD HER, AS FAR AS I KNEW IT WASN'T HIM. I  
11 COULDN'T SAY THAT IT WAS AND I COULDN'T SAY THAT  
12 IT ONE HUNDRED PER CENT WASN'T.

13 Q. OKAY. AND I BELIEVE DETECTIVE RODRIGUEZ SHOWED  
14 YOU A LINEUP, IS THAT CORRECT?

15 A. YES, HE DID.

16 Q. AND IT HAD, WHAT, ABOUT SIX OR EIGHT PICTURES ON  
17 IT?

18 A. YES, IT DID.

19 Q. AND FROM THAT LINEUP YOU IDENTIFIED JAMES GREEN,  
20 IS THAT CORRECT?

21 A. THAT'S CORRECT.

22 Q. AND IF I MAY APPROACH YOU -- HOW CLOSE -- TELL ME  
23 TO STOP WHEN YOU CAN SAY HOW CLOSE THE SECOND  
24 PERSON WAS?

25 A. NOT THE ONE - THE ONE BEHIND THE COUNTER OR ---

CROSS - NICHOLAS HERRINGTON BY MR. SIMS

160

1 Q. THE ONE BEHIND THE COUNTER.

2 A. GO A LITTLE FARTHER BACK.

3 Q. A LITTLE FARTHER BACK?

4 A. YEAH. ABOUT RIGHT THERE.

5 Q. ABOUT RIGHT HERE?

6 A. UH HUH.

7 Q. SO, YOU HAD A GOOD CHANCE TO HEAR HIS VOICE, AND A  
8 GOOD CHANCE TO OBSERVE ---

9 A. AS HE WAS BEHIND ME, YES, SIR.

10 Q. AND HOW TALL HE WAS.

11 A. YES.

12 MR. SIMS: THAT'S ALL I HAVE, YOUR  
13 HONOR.

14 THE COURT: REDIRECT?

15 SOLICITOR JEFFRIES: JUST BRIEFLY,  
16 YOUR HONOR.

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REDIRECT - NICHOLAS HERRINGTON BY SOL. JEFFRIES

161

1 REDIRECT EXAMINATION OF NICHOLAS HERRINGTON

2 BY SOLICITOR JEFFRIES:

3 Q. YOU SAID YOU WEREN'T LOOKING AT THE MAN THAT WAS  
4 FOLLOWING BEHIND YOU, IS THAT CORRECT?

5 A. NO, THE ONLY TIME I SAW HIM WAS WHEN HE, WHEN I  
6 WALKED BESIDE HIM, HE WAS, LIKE, YOU KNOW, HE WAS,  
7 LIKE, HERE, AND AS I WALKED HE KIND OF FOLLOWED ME  
8 AROUND BEHIND. AFTER HE GOT BEHIND ME I NEVER DID  
9 TURN BACK AROUND.

10 Q. AND YOU SAID IT COULD HAVE BEEN HIM, REGINALD  
11 MONTGOMERY, OR IT MIGHT NOT HAVE BEEN HIM, AND YOU  
12 NEVER TOLD INVESTIGATOR RODRIGUEZ IT WAS REGINALD  
13 MONTGOMERY, DID YOU?

14 A. NO.

15 Q. YOU JUST TOLD HIM YOU KNEW THE OTHER ONE WAS JAMES  
16 GREEN?

17 A. RIGHT.

18 Q. AND YOU SAID THE MASKS THEY HAD, THE ONE THAT  
19 JAMES GREEN HAD, HOW WOULD YOU DESCRIBE THAT?

20 A. JUST LIKE A PAIR OF STOCKINGS A LADY WOULD WEAR,  
21 EXCEPT FOR, IT LOOKED LIKE IT WAS A KIND OF AN  
22 OLDER PAIR.

23 Q. AND HE WAS WEARING A DIFFERENT -- THE OTHER GUY  
24 WAS WEARING A BETTER MASK?

25 A. I COULDN'T, I CAN'T REALLY SAY THAT HE WAS WEARING

REDIRECT - NICHOLAS HERRINGTON BY SOL. JEFFRIES

162

1 A BETTER MASK, BECAUSE I DIDN'T PAY HIM TOO MUCH  
2 ATTENTION, I JUST SAW HIM AND THAT WAS IT.

3 Q. YOU JUST WEREN'T LOOKING AT HIM?

4 A. RIGHT.

5 SOLICITOR JEFFRIES: THANK YOU.

6 THE COURT: YOU MAY STEP DOWN, THANK  
7 YOU VERY MUCH.

8 MR. SIMS: YOUR HONOR, ---

9 THE COURT: WE'RE NOT -- WE HAVEN'T  
10 BEEN DOING RECROSS.

11 MR. SIMS: OKAY, I KNOW, BUT -

12 THE COURT: YOU MAY STEP DOWN.  
13 THANK YOU VERY MUCH.

14 SOLICITOR BURBAGE: THE STATE CALLS  
15 LIEUTENANT RANDY CULLER.

16 (Whereupon, the witness  
17 enters the courtroom.)

18 CLERK: PLEASE PLACE YOUR LEFT HAND  
19 ON THE BIBLE AND RAISE YOUR RIGHT HAND.

20 (Whereupon, Randy Culler  
21 is duly sworn.)

22 CLERK: HAVE A SEAT AND STATE YOUR  
23 FULL NAME.

24 (NOTE: Blank lines on this page do not indicate any  
25 part of record has been omitted.)



DIRECT - RANDY CULLER BY SOL. BURBAGE

163

1 DIRECT EXAMINATION OF RANDY CULLER

2 BY SOLICITOR BURBAGE:

3 Q. LIEUTENANT CULLER, WHERE ARE YOU CURRENTLY  
4 EMPLOYED?

5 A. ORANGEBURG COUNTY SHERIFF'S OFFICE.

6 Q. AND IN WHAT CAPACITY?

7 A. INVESTIGATOR.

8 Q. AND HAVE YOU ALWAYS HELD THAT SAME POSITION?

9 A. YES, MA'AM. WELL, NO, MA'AM, I WAS ON PATROL,  
10 I'VE BEEN A PATROL, ON PATROL, A PATROL SUPERVISOR  
11 AND THEN AN INVESTIGATOR.

12 Q. IS YOUR CURRENT POSITION LIEUTENANT?

13 A. YES, MA'AM.

14 Q. AND YOU WORK SPECIFICALLY WHERE IN THE SHERIFF'S  
15 OFFICE?

16 A. RIGHT NOW I WORK WITH THE NARCOTICS DIVISION.

17 Q. AND WHAT ARE YOUR DUTIES -- WHAT WERE YOUR DUTIES  
18 BACK IN SEPTEMBER WHEN YOU WERE A PATROLMAN?

19 A. I WAS A PATROL SERGEANT, WHICH MEANS I WAS A  
20 SUPERVISOR ON A SHIFT THAT WAS IN THE PATROL  
21 DIVISION.

22 Q. AND GOING SPECIFICALLY TO SEPTEMBER SIXTEENTH OF  
23 TWO THOUSAND AND SIX, THE NIGHT TIME HOURS, AS  
24 WELL AS SEPTEMBER SEVENTEENTH, EARLY MORNING  
25 HOURS, WERE YOU PATROLLING ON THOSE DATES?

DIRECT - RANDY CULLER BY SOL. BURBAGE

164

1 A. YES, MA'AM, I WAS.

2 Q. AND DID YOU HAVE AN OPPORTUNITY TO RESPOND TO

3 [REDACTED] [REDACTED] [REDACTED] [REDACTED], THE SHELL  
4 STATION IN BOWMAN?

5 A. I DID.

6 Q. IS THAT IN ORANGEBURG COUNTY?

7 A. YES, MA'AM.

8 Q. AND WHY WERE YOU RESPONDING TO THAT LOCATION?

9 A. EXCUSE ME. BASICALLY, I WAS RESPONDING, ONE OF  
10 THE OTHER DEPUTIES ON MY SHIFT, WE WERE GIVEN AN  
11 ARMED ROBBERY CALL AT THAT LOCATION WHICH WAS A  
12 SHELL STATION, AND BEING THE PATROL SUPERVISOR, HE  
13 WAS A LITTLE CLOSER THAN I WAS, SO I RESPONDED TO  
14 THE SCENE WITH HIM TO ASSESS THE SITUATION AND SEE  
15 EXACTLY WHAT WE HAD.

16 Q. WHEN YOU ARRIVED WERE ANY SUSPECTS PRESENT AT THE  
17 SHELL STATION?

18 A. NO, MA'AM, THEY WEREN'T.

19 Q. AND WHAT THEN DID YOU DO?

20 A. BASICALLY I, I HAD DEPUTY KETCHERSIDE, WHO WAS THE  
21 INITIAL OFFICER, I HAD HIM TO REMAIN AT THE STORE  
22 TO SECURE THE SCENE UNTIL THE INVESTIGATORS  
23 ARRIVED, AND I GOT IN MY PATROL VEHICLE AND I  
24 BEGAN TO RIDE THE AREA, TO CANVAS THE AREA TO SEE  
25 IF I COULD LOCATE ANY SUSPECTS ON FOOT OR ANY

DIRECT - RANDY CULLER BY SOL. BURBAGE

165

1 VEHICLES IN THE AREA THAT MAY LEAD TO A POSSIBLE  
2 SUSPECT OR JUST ANYTHING I COULD FIND THAT MAY BE  
3 RELATED TO THAT INCIDENT.

4 Q. AND SPECIFICALLY, IF YOU COULD JUST TELL THE COURT  
5 EVERYTHING YOU DID TO FOLLOW UP ON THAT CASE?

6 A. BASICALLY I LEFT THE STORE AND THE LOCATION WHERE  
7 I WAS LEAVING FROM, THAT SHELL STATION, THERE'S  
8 SEVERAL PAVED ROADS DOWN THE ROAD FROM IT BUT WHEN  
9 I LEFT THE PARKING LOT THERE I WENT TOWARD BOWMAN  
10 FROM I-TWENTY-SIX, FROM THE SHELL STATION, AND THE  
11 ROAD THAT I CAME TO, THE FIRST DIRT ROAD THAT I  
12 CAME TO ON MY LEFT HAND SIDE, WHICH WAS -- EXCUSE  
13 ME ONE MINUTE.

14 Q. DO YOU HAVE A REPORT IN THIS CASE, LIEUTENANT  
15 CULLER?

16 A. YES, MA'AM, I DO.

17 Q. IS THAT WHAT YOU'RE REFERRING TO NOW TO REFRESH  
18 YOUR MEMORY?

19 A. YES, MA'AM, JUST MY SUPPLEMENTAL REPORT. PATRICK  
20 DERRY ROAD, THAT'S A DIRT ROAD THAT'S JUST DOWN TO  
21 THE LEFT FROM THE STORE THAT WAS INVOLVED IN THE  
22 ARMED ROBBERY. AS I RODE DOWN THERE, AS I WAS  
23 TURNING ONTO THAT ROAD I SAW A WHITE IN COLOR  
24 MUSTANG PULLING OUT OF A DRIVEWAY, WHICH AT THAT  
25 POINT I DIDN'T HAVE A WHOLE LOT OF REASON TO STOP

DIRECT - RANDY CULLER BY SOL. BURBAGE

166

1        THEM FOR ANYTHING, THEY WERE JUST BASICALLY  
2        PULLING OUT OF A YARD, AND I HADN'T SEEN ANYTHING  
3        AT THAT POINT, SO I WENT DOWN THE DIRT ROAD A  
4        SHORT DISTANCE AND I BEGAN TO LOOK ON THE DIRT  
5        ROAD IN THE SAND TO SEE IF I COULD SEE ANY  
6        FOOTWEAR IMPRESSIONS WHERE ANYONE MAY HAVE WALKED  
7        DOWN THE ROAD OR RUN DOWN THE ROAD OR ANYTHING  
8        LIKE THAT, AND AS I GOT OUT AND STARTED LOOKING I  
9        SAW TWO SETS OF FOOT TRACKS COMING FROM THAT ROAD,  
10       WALKING DOWN THAT ROAD AND GOING OUT TO THE PAVED  
11       ROAD WHICH WAS HIGHWAY TWO TEN. I ALSO, ON THE  
12       OTHER SIDE, JUST BESIDE THOSE TRACKS I SAW THE  
13       SAME FOOT TRACKS COMING BACK GOING THE SAME  
14       DIRECTION THEY HAD COME FROM. THE FIRST SET  
15       APPEARED THEY WERE WALKING, THE SECOND SET  
16       APPEARED THAT THEY MAY HAVE BEEN RUNNING, DUE TO  
17       THE FACT THERE WAS DIRT KICKED ALL AROUND, AND THE  
18       IMPRESSIONS, YOU KNOW, IT JUST APPEARED SOMEBODY  
19       HAD BEEN RUNNING DOWN THE ROAD, AND IT WAS TWO  
20       DIFFERENT SETS OF TRACKS. SO, AT THAT POINT I  
21       STARTED LOOKING AT THAT AND I WAS STILL WAITING ON  
22       INVESTIGATOR RODRIGUEZ AND THEM TO ARRIVE. AND AS  
23       I WAS LOOKING TO TRY TO DETERMINE WHERE THE  
24       RUNNING TRACKS HAD GONE TO I CAME TO A POINT WHERE  
25       I LOST THEM, WHERE IT APPEARED THAT THEY HAD WENT

DIRECT - RANDY CULLER BY SOL. BURBAGE

167

1 TO THE LEFT INTO A WOODED AREA, SO I WAS BASICALLY  
2 STANDING BY THERE UNTIL I COULD GET SOMEONE ELSE  
3 OVER TO ME. AT THAT POINT I OBSERVED THE SAME  
4 WHITE MUSTANG THAT I SAW LEAVING OUT OF THE  
5 DRIVEWAY, I SAW IT COMING BACK INTO THE SAME  
6 DRIVEWAY TO WHERE IT HAD JUST PULLED OUT A SHORT  
7 TIME BEFORE THAT. SO, AT THAT POINT I GOT ANOTHER  
8 UNIT TO GET THERE WITH ME, WHICH WAS, I BELIEVE  
9 CORPORAL ANDERSON, AND WE WENT TO THAT RESIDENCE  
10 AND I MADE CONTACT WITH THE PERSONS AT THAT  
11 RESIDENCE. BASICALLY, I WAS JUST STOPPING TO ASK  
12 THEM IF THEY HAD SEEN ANYBODY AROUND, AND TO ASK  
13 WHOEVER WAS IN THAT VEHICLE IF THEY HAD SEEN  
14 ANYBODY OR ANYTHING TO THAT EFFECT BECAUSE OF THE  
15 SITUATION THAT WE HAD IN THE AREA. SO, AT THAT  
16 POINT I MADE CONTACT WITH MS. APRIL JOHNSON, AND  
17 ALSO HER MOTHER AND ANOTHER FAMILY MEMBER, WHICH  
18 WOULD BE, I BELIEVE HER SMALLER BROTHER. I HAD  
19 ASKED THEM, THEY BASICALLY ALL CAME TO THE DOOR AT  
20 THE SAME TIME WHEN I KNOCKED ON THE DOOR, DUE TO  
21 THE TIME, I GUESS. AND I EXPLAINED TO THEM WHO I  
22 WAS, WHY I WAS THERE, AND I ASKED THEM HAD ANYBODY  
23 BEEN TO THEIR HOUSE RECENTLY OR IF THEY HAD HEARD  
24 OR SEEN ANYBODY IN THE AREA. AND THEY ALL  
25 BASICALLY TOLD ME THAT TWO PEOPLE HAD JUST CAME

DIRECT - RANDY CULLER BY SOL. BURBAGE

168

1       THERE AND KNOCKED ON APRIL'S WINDOW ASKING FOR A  
2       RIDE. I ASKED, DID SHE KNOW THESE PEOPLE, AND SHE  
3       TOLD ME THAT SHE KNEW ONE BY THE NAME OF COOTNEY,  
4       WHICH SHE ALSO THOUGHT WAS POSSIBLY HIS REAL NAME  
5       HAD SOMETHING TO DO WITH JAMES, AND ANOTHER GUY  
6       WHO SHE REALLY DID NOT, OR COULDN'T IDENTIFY AT  
7       THAT POINT HIS NAME. SHE, I BELIEVE TOLD ME THAT  
8       SHE HAD SEEN HIM AROUND BUT SHE COULDN'T TELL ME  
9       EXACTLY WHAT HIS NAME WAS AT THAT POINT. AND SHE  
10      BASICALLY TOLD ME THAT THEY KNOCKED ON HER WINDOW  
11      AND ASKED HER IF SHE WOULD GIVE THEM A RIDE HOME  
12      TO A LOCATION WHERE HER LITTLE BROTHER WAS AT  
13      BECAUSE HE NEEDED A RIDE TO COME BACK HOME ANYWAY.  
14      SO, THEY WERE ASKING HER FOR A RIDE TO GO TO THIS  
15      SPOT. SO, AT THAT POINT BASICALLY SHE SAID THAT  
16      SHE GOT UP AND GAVE THEM A RIDE TO THAT, TO A  
17      LOCATION, WHICH WAS OVER OFF OF, IF I REMEMBER  
18      CORRECTLY, FOLIAGE STREET, AND SHE SHOWED US  
19      WHERE, OR TOLD ME ABOUT WHERE SHE HAD DROPPED THEM  
20      OFF AT. AND SHE ALSO REMEMBERED, SHE HAD TOLD ME  
21      WHEN SHE WAS LEAVING OUT, WHEN I SAW HER LEAVING  
22      OUT THE FIRST TIME THAT SHE HAD HAD THEM IN THE  
23      CAR WITH HER AND THAT'S WHEN SHE WAS LEAVING HER  
24      RESIDENCE TO TAKE THEM. AND THEN, WHEN SHE CAME  
25      BACK AND I SAW HER PULL BACK UP, SHE HAD CAME

DIRECT - RANDY CULLER BY SOL. BURBAGE

169

1 STRAIGHT BACK HOME. AND YOU KNOW, I ASKED HER, I  
2 SAID, WELL, DID ANYTHING APPEAR OUT OF THE  
3 ORDINARY WITH THEM? AND SHE JUST SAID THAT THEY  
4 ACTED VERY NERVOUS, SHE DIDN'T KNOW WHAT WAS GOING  
5 ON WITH THEM, THEY DIDN'T SEEM TO BE ACTING  
6 NORMAL, AT LEAST FOR THE ONE GUY WHO SHE KNEW, AND  
7 SHE SAID IT APPEARED THEY WERE SWEATING AND STUFF  
8 LIKE THAT, LIKE THEY HAD BEEN RUNNING. AND SHE  
9 TOLD ME THAT ONE OF THEM HAD SAID THAT A GIRL HAD  
10 LEFT THEM AT THE STORE UP BY THE INTERSTATE, AND  
11 THAT THEY HAD JUST WALKED DOWN THERE TO GET HER TO  
12 GIVE THEM A RIDE HOME BECAUSE THEY HAD GOTTEN INTO  
13 AN ARGUMENT WITH ANOTHER FEMALE AT THAT STORE.  
14 AND BASICALLY, FROM THAT POINT I WAITED UNTIL  
15 INVESTIGATOR RODRIGUEZ GOT THERE AND I BEGAN TO  
16 OBTAIN WRITTEN STATEMENTS FROM BOTH APRIL JOHNSON  
17 AND HER MOTHER AS TO WHAT HAD HAPPENED, AND ONCE  
18 INVESTIGATOR RODRIGUEZ AND INVESTIGATOR EIKOFF  
19 ARRIVED I BASICALLY EXPLAINED TO THEM WHAT I HAD  
20 LIKE I EXPLAINED TO Y'ALL, AND THEY TOOK OVER THE  
21 INVESTIGATION FROM THERE.

22 Q. AND IF I COULD JUST GO BACK TO SOMETHING YOU SAID,  
23 YOU SAID THAT PATRICK DERRY ROAD WAS THE ROAD YOU  
24 WERE ONE?

25 A. THAT'S CORRECT.

DIRECT - RANDY CULLER BY SOL. BURBAGE

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1 Q. AND IT'S JUST, YOU SAID IT WAS JUST DOWN FROM THE  
2 SHELL STATION, ---

3 A. WELL, WHEN ---

4 Q. --- JUST ABOUT HOW FAR IS THAT ROAD YOU WERE ON  
5 FROM THE SHELL STATION?

6 A. JUST MAKING AN ESTIMATED GUESS I WOULD SAY IT'S  
7 MAYBE HALF A MILE, THREE-QUARTERS OF A MILE.

8 Q. AND AGAIN, ALL THE INFORMATION THAT YOU OBTAINED,  
9 YOU THEN TURNED THAT OVER TO WHO?

10 A. INVESTIGATOR RODRIGUEZ.

11 Q. AND WOULD THAT HAVE BEEN THE EXTENT OF YOUR  
12 INVOLVEMENT IN THIS CASE?

13 A. YES, MA'AM.

14 SOLICITOR BURBAGE: I BEG THE  
15 COURT'S INDULGENCE. I HAVE NO FURTHER QUESTIONS, PLEASE  
16 ANSWER ANY QUESTIONS MR. SIMS MAY HAVE FOR YOU.

17 THE COURT: CROSS-EXAMINATION.

18 (NOTE: Blank lines on this page do not indicate any  
19 part of record has been omitted. Headers on testimony  
20 pages and hard page breaks between testimony are now  
21 required by the Court. See next ensuing page for  
22 sequential continuation of record.)



CROSS - RANDY CULLER BY MR. SIMS

171

1 CROSS-EXAMINATION OF RANDY CULLER

2 BY MR. SIMS:

3 Q. LIEUTENANT CULLER, JUST A COUPLE OF QUESTIONS FOR  
4 YOU. WHEN YOU TALKED TO MS. JOHNSON DID YOU, DID  
5 SHE TELL YOU HOW MANY PEOPLE WERE IN THE CAR WITH  
6 HER WHEN SHE SAW YOU AT FIRST?

7 A. SHE, IF I REMEMBER CORRECTLY, I BELIEVE SHE HAD  
8 TOLD ME IT WAS HER AND THE TWO GENTLEMEN WHO HAD  
9 CAME AND WOKE HER UP, WHO SHE GAVE A RIDE TO. ONE  
10 GOT IN THE FRONT SEAT AND I BELIEVE ONE GOT IN THE  
11 BACK, IF I REMEMBER CORRECTLY.

12 Q. SO, IT WASN'T FOUR PEOPLE, IT WAS ONLY THREE, HER  
13 AND THE TWO GUYS?

14 A. LET ME -- BEAR WITH ME JUST A MINUTE AND LET ME  
15 MAKE SURE. FROM WHAT I HAVE DOCUMENT, YES, SIR,  
16 THAT'S WHAT SHE TOLD ME, YES, SIR.

17 Q. JUST THREE PEOPLE?

18 A. YES, SIR.

19 Q. AND SHE SAID SHE DID NOT KNOW THE OTHER PERSON.  
20 SHE KNEW JAMES, COOTNEY, OR JAMES, SHE KNEW HIM  
21 BUT SHE DIDN'T KNOW ANYBODY ELSE?

22 A. RIGHT, SHE BASICALLY TOLD ME THAT, THAT COOTNEY,  
23 SHE THOUGHT, SHE KNEW HIM BASICALLY BY HIS NICK  
24 NAME OF COOTNEY, BUT SHE THOUGHT HIS NAME MAY HAVE  
25 BEEN JAMES, AND SHE HAD TOLD ME THAT THE GUY THAT

CROSS - RANDY CULLER BY MR. SIMS

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1 WAS ALONG WITH HIM, THAT SHE THOUGHT SHE HAD SEEN  
2 HIM BEFORE BUT SHE WASN'T QUITE SURE OF HIS NAME,  
3 AND DUE TO THE FACT OF IT BEING NIGHT TIME AND  
4 DARK OUTSIDE, SHE WASN'T REALLY LOOKING AT HIM  
5 THAT HARD, SHE JUST GOT IN THE CAR, AND THE  
6 GENTLEMAN WHO SHE DIDN'T KNOW I BELIEVE GOT INTO  
7 THE BACK SEAT, AND THE GUY SHE KNEW WAS SITTING IN  
8 THE FRONT SEAT WITH HER, AND SHE SAID SHE WASN'T  
9 ACTUALLY TURNING AROUND AT THAT POINT LOOKING AT  
10 HIM, IN HIS FACE AT THAT POINT, JUST THE  
11 CONVERSATION THAT THEY HAD HAD IN THE YARD THERE.

12 MR. SIMS: THAT'S ALL I HAVE.

13 THE COURT: REDIRECT?

14 SOLICITOR BURBAGE: NOTHING FURTHER,  
15 YOUR HONOR.

16 THE COURT: PARDON?

17 SOLICITOR BURBAGE: NOTHING FURTHER.

18 THE COURT: YOU MAY STEP DOWN, THANK  
19 YOU VERY MUCH.

20 SOLICITOR BURBAGE: THE STATE CALLS  
21 APRIL JOHNSON.

22 (Whereupon, the witness  
23 enters the courtroom.)

24 CLERK: PLEASE PLACE YOUR LEFT HAND  
25 ON THE BIBLE AND RAISE YOUR RIGHT HAND.

1 (Whereupon, April Johnson  
2 is duly sworn.)

3 CLERK: HAVE A SEAT AND STATE YOUR  
4 FULL NAME.

5 WITNESS: MY NAME IS APRIL JOHNSON.

6 (NOTE: Blank lines on this page do not indicate any  
7 part of record has been omitted. Headers on testimony  
8 pages and hard page breaks between testimony are now  
9 required by the Court. See next ensuing page for  
10 sequential continuation of record.)

DIRECT - APRIL JOHNSON BY SOL. BURBAGE

174

1 DIRECT EXAMINATION OF APRIL JOHNSON

2 BY SOLICITOR BURBAGE:

3 Q. MS. JOHNSON, WHERE DO YOU CURRENTLY LIVE?

4 A. BOWMAN.

5 Q. CAN YOU GIVE US, WHAT'S YOUR STREET ADDRESS?

6 A. [REDACTED]

7 Q. AND WHERE IS YOUR HOUSE IN RELATION TO THE SHELL  
8 STATION THAT'S ON [REDACTED] [REDACTED] [REDACTED]  
9 ROAD?

10 A. IT'S MAYBE LIKE A MILE AND A HALF.

11 Q. AND MS. JOHNSON, ARE YOU RELATED TO SHAWON  
12 JOHNSON?

13 A. YES, MA'AM.

14 Q. HOW ARE YOU RELATED TO HIM?

15 A. THAT'S MY BROTHER.

16 Q. AND DO YOU KNOW JAMES GREEN?

17 A. YES, MA'AM.

18 Q. WHAT DO YOU CALL JAMES GREEN?

19 A. COOTNEY.

20 Q. AND I'M GOING TO TAKE YOU DIRECTLY TO SEPTEMBER  
21 SIXTEENTH OF TWO THOUSAND AND SIX AND SEPTEMBER  
22 SEVENTEENTH OF TWO THOUSAND AND SIX, DID YOU SEE  
23 YOUR BROTHER THAT NIGHT AND EARLY MORNING HOURS?

24 A. YES, MA'AM.

25 Q. JUST TELL THE COURT BRIEFLY ALL THE CONTACT YOU

DIRECT - APRIL JOHNSON BY SOL. BURBAGE

175

1 HAD WITH YOUR BROTHER BETWEEN THOSE TWO DAYS?

2 A. WELL, EARLIER THAT DAY WE HAD A, WE HAD A PARTY  
3 FOR MY FATHER, SO WE WAS TOGETHER ALL DAY UNTIL I  
4 DROPPED HIM OFF -- THE LAST TIME I SEEN MY LITTLE  
5 BROTHER I DROPPED HIM OFF AT A CLUB CALLED ALLEN  
6 MURRAY IN BOWMAN. AND SO, I CAME BACK -- DO YOU  
7 WANT TO JUST KNOW THE STORY OF THAT NIGHT OR ---

8 Q. THAT'S FINE, YOU SAID YOU WERE WITH HIM EARLIER IN  
9 THE DAY?

10 A. I WAS WITH HIM EARLIER THAT DAY, I DROPPED HIM OFF  
11 AT ALLEN MURRAY, AND THEN I PICKED HIM UP LATER  
12 THAT MORNING FROM JAMES GREEN'S RESIDENCE.

13 Q. OKAY. AND IF YOU COULD JUST, YOU SAID YOU DROPPED  
14 HIM OFF AT THE CLUB ABOUT WHAT TIME?

15 A. MAYBE IT WAS CLOSE TO -- I KNOW IT WAS LATE, MAYBE  
16 CLOSE TO TWELVE, I'M THINKING, I'M NOT TOO SURE.

17 Q. OKAY. AND HOW DID -- YOU SAID YOU ENDED UP AT  
18 JAMES GREEN'S, TELL US HOW YOU ENDED UP OVER AT  
19 JAMES'S HOUSE?

20 A. I WENT TO DROP JAMES GREEN AND A GUY THAT WAS WITH  
21 HIM TO THE RESIDENCE, BECAUSE THEY CAME TO MY  
22 HOUSE. JAMES GREEN CAME TO MY HOUSE, HE ASKED ME  
23 FOR A RIDE. I TOOK HIM HOME, AND THAT'S THE WAY I  
24 GOT MY LITTLE BROTHER, BECAUSE HE WAS ALREADY OVER  
25 THERE.

DIRECT - APRIL JOHNSON BY SOL. BURBAGE

176

1 Q. YOUR LITTLE BROTHER WAS WHERE?

2 A. SHAWON WAS ALREADY AT JAMES GREEN'S RESIDENCE.

3 Q. DO YOU KNOW WHAT STREET JAMES GREEN'S HOUSE IS ON?

4 A. NO, MA'AM.

5 Q. THAT'S OKAY. YOU WENT TO PICK YOUR BROTHER UP,  
6 AND YOU SAID THERE WAS SOMEONE ELSE IN THE CAR  
7 WITH YOU?

8 A. YES, MA'AM.

9 Q. WAS IT JUST THE THREE OF Y'ALL IN THE CAR?

10 A. NO, IT WAS FOUR OF US.

11 Q. WHO ALL WAS IN THE CAR, THAT YOU KNOW OF?

12 A. IT WAS ME, A FRIEND GUY OF MINE NAMED TERRANCE,  
13 IT WAS JAMES AND IT WAS REGGIE.

14 Q. WHEN YOU SAY, IT WAS REGGIE, DO YOU SEE THAT  
15 PERSON THAT WAS IN THE VEHICLE ALONG WITH JAMES  
16 GREEN AND THE OTHER FRIEND, TERRANCE, HERE IN THE  
17 COURTROOM TODAY?

18 A. YES, MA'AM.

19 Q. WHERE IS HE SITTING?

20 A. RIGHT THERE.

21 SOLICITOR BURBAGE: I'D JUST LIKE  
22 THE RECORD TO REFLECT THAT SHE'S IDENTIFIED THE  
23 DEFENDANT AS THE PERSON THAT WAS IN THAT VEHICLE.

24 THE COURT: YES, MA'AM.

25 SOLICITOR BURBAGE: I BEG THE

DIRECT - APRIL JOHNSON BY SOL. BURBAGE

177

1 COURT'S INDULGENCE.

2 Q. MS. JOHNSON, IS THERE ANY DOUBT IN YOUR MIND AS TO  
3 WHO WAS IN THAT VEHICLE WITH YOU?

4 A. NO, MA'AM.

5 SOLICITOR BURBAGE: NOTHING FURTHER,  
6 PLEASE ANSWER ANY QUESTIONS MR. SIMS MAY HAVE.

7 THE COURT: CROSS-EXAMINATION.

8 (NOTE: Blank lines on this page do not indicate any  
9 part of record has been omitted. Headers on testimony  
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11 required by the Court. See next ensuing page for  
12 sequential continuation of record.)

CROSS - APRIL JOHNSON BY MR. SIMS

178

1 CROSS-EXAMINATION OF APRIL JOHNSON

2 BY MR. SIMS:

3 Q. MS. JOHNSON, YOU GAVE A STATEMENT BACK ON THE  
4 SEVENTEENTH OF SEPTEMBER?

5 A. UH HUH.

6 Q. AND IN THAT STATEMENT YOU SAID YOU COULD NOT  
7 RECOGNIZE THE OTHER GUY?

8 A. I TOLD THEM AT THE TIME WHEN I -- I KNEW THE GUY,  
9 I DID NOT KNOW HIS NAME AT THE TIME. I MEAN, I  
10 KNOW HIM, BUT BEING THAT I HAVEN'T SEEN HIM IN SO  
11 LONG I DID NOT KNOW HIS NAME.

12 Q. LET ME ---

13 A. BECAUSE THEY ASKED ME COULD I, COULD I TELL THEM  
14 THE PERSON'S NAME.

15 Q. LET ME LET YOU LOOK AT YOUR STATEMENT AGAIN,  
16 BECAUSE THIS IS THE STATEMENT THAT YOU GAVE BACK  
17 ON THE SEVENTEENTH OF SEPTEMBER.

18 A. OKAY.

19 Q. AND ON THAT STATEMENT DID YOU NOT SAY THAT YOU HAD  
20 NEVER SEEN HIM BEFORE, THE GUY WHO WAS WITH YOU?

21 A. I NEVER SEEN HIM WITH COOTNEY BEFORE.

22 Q. LET ME -- READ ---

23 A. I CAN READ, IT SAYS, I SAW JAMES, COOTNEY AT MY  
24 WINDOW AND ANOTHER GUY I NEVER SAW BEFORE. THEY  
25 ASKED ME WHO WAS THE GUY THAT WAS WITH COOTNEY, I



CROSS - APRIL JOHNSON BY MR. SIMS

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1 SAID I NEVER SAW THAT GUY WITH COOTNEY BEFORE.

2 Q. AND IT'S NOT IN THE STATEMENT THAT YOU NEVER SAW  
3 THAT GUY WITH COOTNEY BEFORE, YOU SAID, I NEVER  
4 SAW THAT GUY BEFORE?

5 A. OKAY. BUT THAT'S WHAT THEY ASKED ME, AND THAT'S  
6 WHAT I TOLD THEM, I SIGNED OFF -- THE OFFICER  
7 THAT WAS AT THE HOUSE THAT DAY.

8 Q. THE OFFICER AT THE HOUSE WROTE THAT?

9 A. YES, WROTE THE STATEMENT FOR ME.

10 Q. AND YOU SIGNED IT?

11 A. UH HUH.

12 Q. AND HE TOLD YOU WHAT WAS -- HE LET YOU LOOK AT IT?

13 A. YEAH, HE ASKED ME TO TELL HIM WHAT HAPPENED THAT  
14 NIGHT. I TOLD HIM EXACTLY WHAT HAPPENED THAT  
15 NIGHT, AND THEN HE ASKED ME TO SIGN OFF ON IT.

16 Q. UH HUH.

17 A. I NEVER READ BACK OVER IT BUT I TOLD HIM EXACTLY  
18 WHAT HAPPENED, SO I WAS ASSUMING HE WAS GOING TO  
19 WRITE EXACTLY WHAT HAPPENED.

20 Q. YOU WERE ASSUMING ---

21 A. YEAH.

22 Q. --- THAT HE WAS GOING TO WRITE ---

23 A. SO, I JUST SIGN OFF. IF YOU CAN LOOK, THAT'S MY  
24 HANDWRITING.

25 Q. YEAH.

1 A. OKAY.

2 Q. AND THAT'S WHERE I WANT TO GO WITH YOU. YOU SAID,  
3 THE GUY WITH JAMES WAS SLIM, WAS DARK SKINNED, I  
4 NEVER SAW HIM BEFORE, I DID NOT SEE WHAT THEY WERE  
5 WEARING BECAUSE IT WAS DARK OUTSIDE. OKAY. YOUR  
6 CAR, YOU'VE GOT A NINETEEN NINETY-NINE MUSTANG?

7 A. NO, I DO NOT HAVE A NINETEEN NINETY-NINE.

8 Q. WHAT KIND OF CAR DO YOU HAVE?

9 A. I HAVE A TWO THOUSAND.

10 Q. A TWO THOUSAND MUSTANG, WHITE?

11 A. UH HUH.

12 Q. AND THE DOME LIGHTS WORK? THOSE ARE THOSE LIGHTS  
13 ON THE INSIDE?

14 A. OF COURSE, I SHOULD KNOW WHAT IT IS.

15 Q. OKAY. AND WHEN YOU OPEN THEM UP THE LIGHT COMES  
16 ON?

17 A. OKAY.

18 Q. AND WHEN THE, I ASSUME THEY DIDN'T GET THROUGH THE  
19 WINDOW, THEY JUST OPENED THE DOOR, THE LIGHTS CAME  
20 ON, AND YOU COULD SEE WHAT THEY WERE WEARING AT  
21 THAT TIME?

22 A. IF YOU WAS EVER AT MY RESIDENCE, WE DON'T HAVE ANY  
23 BACK LIGHTS IN THE BACK. AND WHERE JAMES AND THEM  
24 WAS STANDING, EVEN IF THE LIGHT WOULD COME ON,  
25 THEY'RE NOT SITTING INSIDE THE CAR YET. SO, WHAT

CROSS - APRIL JOHNSON BY MR. SIMS

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1 I'M -- I MEAN, WHAT YOU WANT ME TO DO, USE THE  
2 LIGHT TO LOOK AROUND AT EVERYBODY? I MEAN, WHAT'S  
3 YOUR POINT? I MEAN ---

4 Q. MY POINT IS THAT WHEN YOU GET INTO A CAR ---

5 A. OKAY.

6 Q. --- AND THE LIGHTS COME ON, YOU CAN SEE THE PEOPLE  
7 IN YOUR CAR.

8 A. SO, YOU -- BASICALLY YOU'RE ASKING ME DID I TURN  
9 AROUND TO LOOK. IF THEY WAS GETTING IN THE BACK  
10 SEAT, I MEAN, IT'S LIKE YOU'RE TRYING TO GET ME TO  
11 -- I MEAN, YOUR POINT ---

12 Q. NO, I'M TRYING TO GET YOU TO TELL THE TRUTH.

13 A. I AM TELLING THE TRUTH.

14 Q. WERE YOU EVER, DID YOU EVER IDENTIFY TO THIS  
15 OFFICER, OFFICER RODRIGUEZ, ---

16 A. UH HUH.

17 Q. --- CALL HIM UP AND SAY, REGINALD MONTGOMERY WAS  
18 THE GUY?

19 A. HAVE I EVER CALLED HIM?

20 Q. YEAH.

21 A. NO.

22 Q. DID YOU EVER CALL THE ORANGEBURG COUNTY SHERIFF'S  
23 DEPARTMENT, SINCE SEPTEMBER SEVENTEENTH OF O-SIX,  
24 AT TWO:THIRTY A.M., AND SAY, HEY, Y'ALL, I KNOW  
25 THE GUY WHO WAS IN THE CAR WITH COOTNEY?

1 A. THAT'S NOT MY JOB.

2 Q. AND WERE YOU EVER SHOWED A PHOTOGRAPHIC LINEUP OF  
3 ANYBODY, TO SAY THAT THAT WAS JAMES ---

4 A. I HAVE -- THEY HAVE SHOWN ME SOME PICTURES AND  
5 ASKED ME COULD I IDENTIFY THE GUY THAT PROBABLY  
6 WAS IN THE -- I MEAN, THAT WAS WITH COOTNEY, YEAH,  
7 I HAVE DID THAT.

8 Q. AND YOU COULDN'T IDENTIFY HIM?

9 A. YEAH, I POINTED OUT A PICTURE.

10 Q. WHEN WAS THAT?

11 A. LAST, LAST WEEK.

12 Q. LAST WEEK. AND WHO WAS THERE WITH YOU AT THAT  
13 TIME?

14 A. WHAT YOU MEAN, WHO WAS WITH ME?

15 Q. I MEAN, WHO WERE THE OFFICERS?

16 A. THE OFFICERS?

17 Q. YEAH.

18 A. IT WASN'T ANY OFFICERS.

19 Q. OH, WHO WAS THE SOLICITORS?

20 A. BRIAN AND, I'M ---

21 Q. ALRIGHT. BUT ON THE SEVENTEENTH OF SEPTEMBER, YOU  
22 DIDN'T KNOW, BY YOUR OWN STATEMENT THAT WAS SIGNED  
23 BY YOU, YOU DIDN'T KNOW WHO THIS PERSON WAS?

24 A. I KNEW WHO THE -- I MEAN, I CAN LOOK AT ANYBODY, I  
25 MEAN, AND TELL WHO THEY -- I MEAN, BUT I DIDN'T

CROSS - APRIL JOHNSON BY MR. SIMS

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1 KNOW HIS NAME. LIKE I TOLD THEM, AND I TOLD THEM,  
2 I DON'T HAVE ANYTHING TO HIDE, WHEN I SEEN THE  
3 GUY, I HAVEN'T SEEN REGGIE IN, LIKE, HOW MANY  
4 YEARS, I DID NOT KNOW IT WAS REGGIE. THEY WAS  
5 ASKING ME TO GIVE THEM A NAME. I CANNOT GIVE YOU  
6 A NAME IF I DIDN'T -- HOW AM I GOING TO GIVE YOU A  
7 NAME? I CAN'T GIVE YOU A NAME. I TOLD THEM, I  
8 SAID, THE GUY THAT I SEEN, I NEVER SAW HIM WITH  
9 COOTNEY BEFORE, I NEVER SAW HIM WITH COOTNEY. I  
10 NEVER SEEN REGGIE WITH COOTNEY BEFORE.

11 Q. AND, BUT IT WAS TOO DARK FOR YOU TO SAY WHAT THEY  
12 WERE WEARING?

13 A. IT WAS. THEY COULDN'T EVEN TELL YOU WHAT I WAS  
14 WEARING.

15 Q. SO, IF IT WAS TOO DARK FOR YOU TO SAY WHAT THEY  
16 WERE WEARING, IT WAS TOO DARK FOR YOU TO SEE THEIR  
17 FACES?

18 A. HOW WAS IT TOO -- LISTEN, WHEN I DROPPED COOTNEY  
19 AND THEM OFF AT THE RESIDENCE, I DID NOT HAVE TO  
20 SEE THEM WHEN THEY LEFT THE VEHICLE. WHEN WE GOT  
21 TO COOTNEY'S RESIDENCE, COOTNEY DO HAVE LIGHTS.

22 Q. UH HUH.

23 A. THE LIGHTS THAT WE DO NOT HAVE IN OUR BACK -- ANY  
24 OF THE OFFICERS THAT CAME TO MY RESIDENCE COULD  
25 TELL YOU, OUR BACK IS OUT -- MAYBE IF THEY WOULD

1 HAVE CAME IN THE FRONT YARD IT WOULD HAVE BEEN  
2 BETTER, BUT WE DON'T, LIKE, WE DON'T HAVE ANY BACK  
3 LIGHTS AT ALL, IT'S NOTHING BUT TREES. WE DON'T  
4 HAVE NO LIGHT, NO LIGHT WITH THE LIGHT, WE DON'T  
5 HAVE ANY OF THAT IN THE BACK. MY MOTHER DON'T  
6 EVEN HAVE A BACK PORCH LIGHT.

7 Q. OKAY. SO, COOTNEY HAS LIGHTS AT HIS RESIDENCE?

8 A. UH HUH.

9 Q. SO, WHEN THEY GOT OUT OF THE CAR YOU COULD SEE?

10 A. I SEEN THEM WHEN THEY GOT -- YEAH, WHEN THEY GOT  
11 OUT THE CAR. AS A MATTER OF FACT, MY CAR IS A  
12 COOP, RIGHT, DON'T YOU HAVE TO GET OUT YOUR CAR,  
13 RIGHT?

14 Q. UH HUH.

15 A. TO PULL THE SEAT BACK. COOTNEY WAS SITTING BEHIND  
16 ME, REGGIE WAS SITTING BEHIND TERRANCE. TERRANCE  
17 IS TALL, TERRANCE HAD TO GET OUT. THAT'S WHEN WE  
18 GOT ANOTHER LOOK AT HIM BECAUSE AT THE TIME HE WAS  
19 GOING TO CUT ON THE LIGHT IN THE CAR, AND SAY,  
20 COOTNEY'S GOT, YOU KNOW, LIKE, JUST MESSING AROUND  
21 WITH HIM OR WHATEVER LIKE THAT. AFTER WE GOT TO  
22 THE RESIDENCE THAT'S HOW I GOT ANOTHER LOOK AT  
23 REGGIE BECAUSE REGGIE CAME TO THE CAR AND TOLD ME,  
24 THEY'LL BE HERE IN A MINUTES. AND THEN HE RAN  
25 ACROSS THE YARD. SO, I SEEN HIM, I GOT TWO GOOD

CROSS - APRIL JOHNSON BY MR. SIMS

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1 LOOKS, I MEAN, ---

2 Q. BUT YOU DIDN'T TELL THE POLICE OFFICERS THAT ON  
3 THE SEVENTEENTH WHEN THEY TALKED TO YOU.

4 A. YES, I DID.

5 Q. YOU TOLD THIS DETECTIVE OR WHOEVER YOU TALKED TO  
6 ON THE SEVENTEENTH THAT THEY WHEN THEY GOT OUT OF  
7 THE CAR AT COOTNEY'S HOUSE, I SAW THEIR FACES.

8 A. DIDN'T I JUST SAY THAT, AM I THE ONLY ONE  
9 LISTENING? I JUST TOLD YOU WHEN -- DIDN'T I JUST  
10 TELL YOU I GOT ANOTHER LOOK WHEN MY FRIEND,  
11 TERRANCE, HAD TO GET OUT THE VEHICLE TO LET HIM  
12 GET OUT?

13 Q. AND YOU STILL ---

14 A. THEY GOT IN THE VEHICLE BEFORE -- AS A MATTER OF  
15 FACT, TO EVEN, TO BREAK IT DOWN TO YOU, TO BE REAL  
16 ---

17 Q. PLEASE DO, BE REAL.

18 A. TO BE REAL WITH YOU, SINCE IT SEEMS LIKE YOU DON'T  
19 UNDERSTAND, ---

20 Q. NO, I DON'T, GO SLOW.

21 A. WHEN JAMES -- I'LL JUST DO THIS, WHEN JAMES GREEN  
22 CAME TO THE HOUSE THAT NIGHT, HIM AND THE UNKNOWN  
23 GUY AT THE TIME ASKED MY -- TOLD MY MOM TO TELL ME  
24 TO COME TO THE DOOR. COOTNEY ASKED, COULD I TAKE  
25 THEM HOME, RIGHT, TAKE HIM HOME -- LET ME CLEAR

CROSS - APRIL JOHNSON BY MR. SIMS

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1        THAT UP, NOT THEM, BUT TO TAKE HIM HOME. SO, I  
2        UNLOCKED THE DOOR. MY MOTHER SAID, APRIL, COOTNEY  
3        GOT A GUY OUTSIDE WITH HIM, COULD YOU ASK MEKA TO  
4        GET UP AND RIDE WITH YOU? I SAID, MA, WHY WOULD I  
5        WORRY ABOUT COOTNEY? COOTNEY'S LIKE ONE OF THE  
6        FAMILY MEMBERS. SO, WHAT, SO I STILL ASKED MY  
7        FRIEND, TERRANCE, TO GET UP. WHEN TERRANCE GOT  
8        UP, TERRANCE UNLOCKED THE DOOR AND UNLOCKED THE  
9        CAR, AND WHEN I GOT THERE THE GUY WAS SITTING IN  
10       THE BACK SEAT BEHIND TERRANCE, I WAS SITTING IN  
11       THE -- COOTNEY WAS SITTING BEHIND MY SEAT. SO I  
12       GOT IN THE CAR AND I SAID, COOTNEY, WHAT'S UP?  
13       HE'S WAS, LIKE, SIS, YOU GOING TO TAKE ME TO THE  
14       HOUSE? BAM, SHUT THE CAR DOOR, PULL OFF. I DIDN'T  
15       TURN AROUND AND SAY, LET ME SEE WHO COOTNEY GOT  
16       WITH HIM. I ALREADY KNOW COOTNEY SO WHY AM I  
17       WORRYING ABOUT COOTNEY LIKE THAT? BUT WHEN WE GOT  
18       TO THE RESIDENCE, WHEN WE GOT TO COOTNEY'S  
19       RESIDENCE THAT'S WHEN I HAD TO MOVE MY SEAT UP SO  
20       COOTNEY COULD GET OUT. THAT'S WHEN YOU'RE TALKING  
21       ABOUT THE LIGHTS THAT COMES ON IN THE TOP OF THE  
22       CAR, THEY CAME ON, RIGHT. COOTNEY GOT OUT, I  
23       MEAN, THE GUY THAT WAS SITTING BEHIND TERRANCE,  
24       TERRANCE HAD TO GET OUT BECAUSE MY CAR IS SMALL,  
25       YOU HAVE TO PULL UP A LITTLE SWITCH TO PUSH THE



CROSS - APRIL JOHNSON BY MR. SIMS

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1 SEAT BACK. THAT'S WHEN I SEEN THE GUY AGAIN. AND  
2 I SAID, GUY, I SAID, I DON'T KNOW HIM LIKE, DON'T  
3 KNOW HIM, BUT I SEEN THIS GUY BEFORE, BUT IT  
4 WASN'T GOING THROUGH MY MIND THAT HE WAS THINKING,  
5 WHO HE WAS FOR WHAT, BECAUSE I DIDN'T KNOW  
6 ANYTHING AT THAT TIME. SO, WHEN COOTNEY GOT OUT  
7 OF THE CAR COOTNEY WENT BEHIND THE HOUSE AND THE  
8 GUY WENT BEHIND THE HOUSE ALSO BUT HE RAN BACK  
9 THROUGH AND SAID, STOPPED TO THE CAR, AND SAID,  
10 THEY ON THEIR WAY COMING BACK OUT. SO, ARE YOU  
11 GOING TO TELL ME I COULDN'T LOOK WHEN I WAS  
12 LETTING THEM OUT?

13 Q. WHAT WERE THEY WEARING?

14 A. I CAN'T, LIKE I TOLD THEM I THINK IT WAS SOME DARK  
15 JEANS. I'M NOT GOING TO SIT THERE AND STARE AT  
16 WHAT THEY'RE WEARING. I MEAN, WHAT THEY PROBABLY  
17 WAS TRYING TO DESCRIBE, AS IN WHAT THEY PROBABLY  
18 HAD ON, HOW DO YOU FIGURE THEY'RE GOING TO HAVE  
19 THAT ON WHEN THEY COME TO MY RESIDENCE? LIKE I  
20 TOLD THEM, I CANNOT REMEMBER. I'M PRETTY SURE  
21 THEY HAD ON JEANS AND A SHIRT. I THINK EVERYBODY'S  
22 GOT ON CLOTHES, SO I'M NOT TO SURE WHAT WAS IT.

23 MR. SIMS: I HAVE NOTHING FURTHER.

24 A. THANK YOU.

25 THE COURT: ANY DIRECT?

CROSS - APRIL JOHNSON BY MR. SIMS

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1                                    SOLICITOR BURBAGE:   BRIEFLY, YOUR  
2 HONOR.

3 (NOTE: Blank lines on this page do not indicate any  
4 part of record has been omitted. Headers on testimony  
5 pages and hard page breaks between testimony are now  
6 required by the Court. See next ensuing page for  
7 sequential continuation of record.)

REDIRECT - APRIL JOHNSON BY SOL. BURBAGE

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1 REDIRECT EXAMINATION OF APRIL JOHNSON

2 BY SOLICITOR BURBAGE:

3 Q. MS. JOHNSON, ---

4 A. UH HUH.

5 Q. THE PERSON THAT YOU SAW IN THAT CAR ON THE EARLY  
6 MORNING HOURS -

7 MR. SIMS: ASKED AND ANSWERED, YOUR  
8 HONOR.

9 THE COURT: HOLD ON A SECOND, SHE'S  
10 ON REPLY. GO AHEAD. LET ME HEAR THE QUESTION.

11 Q. IS THAT PERSON HERE IN THE COURTROOM HERE TODAY?

12 A. YES.

13 THE COURT: WELL, HOLD ON A SECOND.  
14 WHAT'S YOUR LEGAL OBJECTION?

15 MR. SIMS: ASKED AND ANSWERED,  
16 ALREADY ASKED AND ANSWERED.

17 THE COURT: OVERRULED. GO AHEAD.

18 Q. ASIDE FROM NAMES, ---

19 A. OKAY, THANKS.

20 Q. --- IS THAT PERSON IN THE COURTROOM HERE TODAY?

21 A. YES, MA'AM, THAT PERSON, THE UNKNOWN PERSON IS IN  
22 HERE TODAY.

23 SOLICITOR BURBAGE: THANK YOU,  
24 NOTHING FURTHER.

25 THE COURT: YOU MAY STEP DOWN.

1   THANK YOU VERY MUCH.

2                   ALRIGHT, WE'LL TAKE A SHORT BREAK AT  
3   THIS TIME, LADIES AND GENTLEMEN OF THE JURY. IF YOU NEED  
4   ANYTHING OR IF YOU NEED TO TAKE A SMOKE LET THE BAILIFFS  
5   KNOW AND THEY'LL TAKE YOU TO THE APPROPRIATE PLACE. OR  
6   IF YOU NEED ANYTHING ELSE LET THE BAILIFFS KNOW. WE'LL  
7   TAKE ABOUT A TWENTY MINUTE BREAK AT THIS TIME.

8                   MR. SIMS:   YOUR HONOR, THERE IS A  
9   MATTER WE NEED TO TAKE UP.

10                  THE COURT:   OKAY, ALRIGHT.

11   (Whereupon, the jurors retire  
12   to the jury room and the following  
13   takes place out of the presence  
14   of the jury.)

15                  THE COURT:   YES, SIR, MR. SIMS.

16                  MS. SIMS:   YOUR HONOR, THIS YOUNG  
17   LADY TESTIFIED ON THE STAND THAT SHE HAD BEEN SHOWN A  
18   PHOTOGRAPHIC LINEUP IN WHICH SHE APPARENTLY SAID SHE HAD  
19   PICKED OUT MY CLIENT.   THAT LINEUP HAS NEVER BEEN  
20   PROVIDED TO ME, A LINEUP INVOLVING -

21                  THE COURT:   I DON'T THINK -- DID SHE  
22   SAY SHE HAD PICKED ANYBODY OUT?   SHE JUST SAID THAT  
23   PICTURES HAD BEEN SHOWN TO HER AND SHE PICKED SOMEONE  
24   OUT.   I DON'T THINK SHE EVER IDENTIFIED WHO SHE PICKED  
25   OUT.   IS THAT RIGHT OR IS THAT WRONG?

1                   SOLICITOR JEFFRIES: WHAT SHE SAID  
2 IS, SHE WAS SHOWN SOME PICTURE BY ME -

3                   THE COURT: RIGHT.

4                   SOLICITOR JEFFRIES: --- LAST WEEK,  
5 WHICH WE DID.

6                   THE COURT: RIGHT.

7                   SOLICITOR JEFFRIES: AND SHE PICKED  
8 HIM OUT.

9                   MR. SIMS: RIGHT. BUT THE  
10 IMPLICATION IS, WHEN YOU SAY THAT TO THE JURY, IS THAT  
11 SHE PICKED OUT -

12                   SOLICITOR JEFFRIES: HE OPENED THE  
13 DOOR.

14                   THE COURT: WHOA, WHOA, WAIT A  
15 MINUTE, NOW, HOLD ON A SECOND. DON'T INTERRUPT EACH  
16 OTHER. OKAY. SOLICITOR, I'LL GIVE YOU AN OPPORTUNITY  
17 TO MAKE WHATEVER ARGUMENT YOU WANT TO MAKE. LET ME  
18 LISTEN TO MR. SIMS. I CAN'T LISTEN TO BOTH OF YOU AT  
19 THE SAME TIME, AND SHE CAN'T TAKE IT DOWN. OKAY.  
20 WHAT'S YOUR OBJECTION?

21                   MR. SIMS: MY OBJECTION IS, YOUR  
22 HONOR, THAT INFORMATION THAT WAS USED IN REGARDS TO  
23 PHOTOGRAPHS WAS NOT PROVIDED TO ME PURSUANT TO THE RULES  
24 OF DISCOVERY IN WHICH I WAS TO BE GIVEN ALL OF THAT  
25 INFORMATION. I WAS GIVEN A PHOTOGRAPHIC LINEUP OF, OF

1 COOTNEY, JAMES GREEN. AND WITH THE INFORMATION ON IT  
2 THAT HE, THAT HAD BEEN SIGNED. I HAD NO KNOWLEDGE THAT  
3 ANOTHER LINEUP, OR PICTURE HAD BEEN SHOWN. THE BASIS  
4 FOR MY CROSS-EXAMINATION IN REGARDS TO THIS WAS THE FACT  
5 THAT NO LINEUP HAD BEEN SHOWN, NO PICTURES HAD BEEN  
6 SHOWN, AND THEN TO BE CAUGHT OFF GUARD THAT THERE ARE  
7 OTHER PICTURES THAT I HAVE NOT SEEN, NOR WERE GIVEN THE  
8 OPPORTUNITY IN ORDER TO PREPARE FOR MY TRIAL OF THIS  
9 MATTER.

10 THE COURT: OKAY. WELL, WHAT ARE YOU  
11 ASKING THE COURT TO DO?

12 MR. SIMS: AND IN THAT REGARD I MOVE  
13 FOR A MISTRIAL.

14 THE COURT: OKAY, THAT'S WHAT I WAS  
15 WONDERING, WHAT WERE YOU ASKING THE COURT TO DO. YOU  
16 FILED A RULE FIVE MOTION?

17 MR. SIMS: YES, SIR.

18 THE COURT: OKAY. ALRIGHT,  
19 SOLICITOR, LET ME HEAR FROM YOU. I'LL HEAR FROM BOTH OF  
20 YOU SINCE IT WAS HER WITNESS. I'LL BE GLAD TO HEAR FROM  
21 BOTH OF YOU.

22 SOLICITOR JEFFRIES: IF IT PLEASES  
23 THE COURT I'LL ADDRESS IT, BUT IF YOU WANT TO HEAR FROM  
24 MS. BURBAGE --

25 THE COURT: OKAY, THAT'S FINE, I WAS

1 JUST SAYING, I'LL BE GLAD TO HEAR FROM BOTH OF YOU.

2 SOLICITOR JEFFRIES: YOUR HONOR,  
3 IT'S QUITE SIMPLE, THAT SHE WAS NEVER SHOWN A PHOTO  
4 LINEUP. SO, THERE IS NO PHOTO LINEUP TO SHOW HIM. SHE  
5 CAME TO MY OFFICE, I WANTED TO ABLE TO MAKE SURE SHE  
6 COULD IDENTIFY HIM WHEN SHE SAID SHE KNEW THIS GUY. WE  
7 NEVER ASKED HER ABOUT A PHOTO LINEUP. FOR THAT VERY  
8 REASON, SHE'S NEVER BEEN SHOWN A PHOTO LINEUP. MR. SIMS  
9 CONFUSES HER, ASKING HER ABOUT PICTURES, SHE SAID, YEAH,  
10 I SAW SOME PICTURES IN THE OFFICE. BUT SHE WAS NEVER  
11 SHOWN A PHOTO LINEUP, NEVER ASKED TO PICK OUT THE  
12 DEFENDANT. SHE NEVER DID. BY THE TIME WE GOT TO THE  
13 POINT WHERE WE DEVELOPED REGGIE MONTGOMERY AS A SUSPECT  
14 AND SHE TALKED TO INVESTIGATORS SHE HAD ALREADY REALIZED  
15 THAT SHE KNEW THIS GUY, BUT SHE WAS NEVER SHOWN A PHOTO  
16 LINEUP BY LAW ENFORCEMENT. SO, THERE'S NO PHOTO LINEUP  
17 TO TURN OVER TO HIM.

18 THE COURT: ALRIGHT. DID YOU SHOW  
19 HER ANY PHOTOS?

20 SOLICITOR JEFFRIES: I SHOWED HER A  
21 PHOTO.

22 THE COURT: A PHOTO?

23 SOLICITOR JEFFRIES: YES.

24 THE COURT: AND WHOSE PHOTO DID YO  
25 SHOW HER?

1                   SOLICITOR JEFFRIES: I SHOWED HER  
2 BOOKING PHOTOS.

3                   THE COURT: OF WHO?

4                   SOLICITOR JEFFRIES: OF THE  
5 DEFENDANT. BUT THIS WAS, I MEAN, SHE TOLD ME SHE KNEW  
6 HIM BY NAME AND SIGHT, AND THAT'S ALL IN THE  
7 INVESTIGATIVE REPORT. SHE WENT -- SHE KNEW HIM THROUGH  
8 HER BROTHER, HAD KNOWN HIM FROM THE NEIGHBORHOOD.

9                   THE COURT: SO, YOU SHOWED HER A  
10 PHOTO LAST WEEK OF THE DEFENDANT, IS THAT CORRECT?

11                   SOLICITOR JEFFRIES: YES, AFTER SHE  
12 TOLD ME SHE KNEW HIM.

13                   THE COURT: AND THEN SHE, WHAT DID  
14 SHE -- HOW DID SHE RESPOND WHEN YOU SHOWED HER THE  
15 PHOTO?

16                   SOLICITOR JEFFRIES: SHE PICKED HIM,  
17 SHE KNEW, SHE KNEW HIM. SHE SAID, YES, THAT'S HIM,  
18 THAT'S REGINALD. I JUST WANTED TO MAKE SURE --

19                   THE COURT: THAT SHE KNEW HIM?

20                   SOLICITOR JEFFRIES: THAT SHE KNEW  
21 HIM. SHE SAID SHE KNEW HIM, AND SHE DID.

22                   THE COURT: OKAY. SO, IT WAS NOT,  
23 IT WAS NOT A LOT OF PHOTOS?

24                   SOLICITOR JEFFRIES: NO.

25                   THE COURT: IT WAS JUST ONE PHOTO?



1 SOLICITOR JEFFRIES: RIGHT.

2 THE COURT: OKAY. ALRIGHT.

3 SOLICITOR JEFFRIES: AND IT'S THE  
4 BOOKING PHOTO THAT'S IN THE DISCOVERY THAT WAS PROVIDED  
5 TO MR. SIMS.

6 MR. SIMS: YOUR HONOR, IF I HAD  
7 KNOWN THAT, HAD BEEN GIVEN MY INFORMATION, THEN MY  
8 MOTION, I WOULD HAVE HAD A PRETRIAL MOTION TO PREVENT AN  
9 IN COURT IDENTIFICATION BASED UPON AN OUT OF COURT SHOW  
10 UP. BECAUSE THAT'S WHAT THIS IS, THIS IS AN OUT OF  
11 COURT SHOW UP, ONE PICTURE, AND THAT'S MY CLIENT'S  
12 PICTURE, THE ONLY PERSON WHO IS SITTING AT THIS SEAT  
13 WITH ME IS THE PICTURE THAT SHE SAW. AND I WOULD HAVE  
14 BEEN ABLE TO MAKE A MOTION THAT SHE HAD BEEN SHOWN A ONE  
15 PERSON SHOW-UP, AND THAT THAT IDENTIFICATION WOULD HAVE  
16 BEEN TAINTED BASED UPON THE FACT THAT SHE HAD ONLY SEEN  
17 ONE BOOKING PICTURE OF MY CLIENT.

18 THE COURT: WELL, HAS THERE EVER  
19 BEEN ANY QUESTION AT ALL THAT SHE COULD IDENTIFY THE  
20 DEFENDANT? I MEAN, HAS THERE EVER BEEN ANY ISSUE, HAS  
21 THAT EVER EVEN BEEN AN ISSUE? I MEAN, GENERALLY, WHEN  
22 YOU'RE TALKING ABOUT A SHOW-UP PHOTO AND LINEUPS, IT'S  
23 A QUESTION OF MIS-IDENTIFICATION. IS THERE ANY ISSUE AT  
24 ALL ABOUT MIS-IDENTIFICATION? SHE SAYS THIS WAS THE GUY  
25 THAT GOT IN THE CAR, THIS IS THE GUY THAT WAS IN THE CAR

1 WITH HER BROTHER. SO, HOW HAS THERE BEEN ANY -

2 MR. SIMS: HER STATEMENT, WHICH WAS  
3 TAKEN ON SEPTEMBER SEVENTEENTH, SPECIFICALLY SAYS, THE  
4 GUY WITH JAMES WAS SLIM, WITH DARK SKIN. I NEVER SAW HIM  
5 BEFORE. I DID NOT SEE WHAT THEY WERE WEARING BECAUSE IT  
6 WAS DARK OUTSIDE. SO, IN HER STATEMENT, IN WHICH I AM  
7 PREPARING MY CROSS-EXAMINATION OF HER, SPECIFICALLY SAYS  
8 THAT SHE HAD NEVER SEEN HIM BEFORE. SO, ---

9 THE COURT: THAT WAS AT THE -- OKAY.  
10 ALRIGHT, GO AHEAD, MR. JEFFRIES.

11 SOLICITOR JEFFRIES: I MIGHT BE  
12 INCLINED TO AGREE WITH MR. SIMS, FIRST OF ALL, IF I HAD  
13 BROUGHT THAT OUT IN MY CASE IN CHIEF. I NEVER BROUGHT  
14 OUT THAT SHE WAS SHOWN A PHOTO LINEUP, THAT SHE  
15 IDENTIFIED HIM OR DIDN'T IDENTIFIED HIM, BECAUSE SHE WAS  
16 NEVER SHOWN A PHOTO LINEUP BY LAW ENFORCEMENT. MR. SIMS  
17 THEN ASKED HER ABOUT PICTURES, AND SHE REMEMBERED THAT  
18 SHE SAW SOME PICTURES IN MY OFFICE, BUT AT THAT POINT  
19 SHE HAD ALREADY ESTABLISHED THAT SHE KNOWS THIS MAN BY  
20 SIGHT. AND AT THIS POINT SHE REMEMBERED HIS NAME. BUT  
21 SHE DIDN'T KNOW HIS NAME WHEN SHE GAVE HER STATEMENT,  
22 BUT AT THIS POINT HE'S BEEN ARRESTED, AND SHE'S, OH,  
23 THAT'S THE GUY, I KNOW THE FACE, BUT NOW I ACTUALLY  
24 REMEMBER THE NAME. AND MR. SIMS WAS THE ONE THAT ASKED  
25 HER ABOUT IT, WE NEVER IN OUR CASE IN CHIEF, ON DIRECT,

1 ASKED HER ABOUT A PHOTO LINEUP. SHE WAS NEVER SHOWN A  
2 PHOTO LINEUP. SHE WAS NEVER SHOWN A PHOTO LINEUP IN  
3 ORDER TO -- AND SHE KNOWS HIM BY NAME AND SIGHT. AND I  
4 THINK ALL THE CASE LAW STATES THAT THERE'S NO QUESTION  
5 ABOUT MIS-IDENTIFICATION WHEN THE DEFENDANT -- WHEN THE  
6 WITNESS KNOWS THE DEFENDANT BY NAME AND SIGHT.

7 THE COURT: I MEAN, IT HAPPENS QUITE  
8 FREQUENTLY WHERE PEOPLE CAN IDENTIFY SOMEBODY, THEY JUST  
9 CAN'T PUT A NAME TO IT. I MEAN, WHERE -- ALRIGHT, SO,  
10 LET'S ASSUME YOU ARE CORRECT. AND HOW HAVE YOU BEEN  
11 PREJUDICED, AND WHAT WOULD JUSTIFY GIVING YOU A MISTRIAL  
12 AT THIS POINT IN TIME, BASED ON PREJUDICE TO YOU AND TO  
13 THE DEFENDANT?

14 MR. SIMS: BECAUSE, YOUR HONOR,  
15 BASED UPON THE INFORMATION THAT HAD BEEN PROVIDED TO ME,  
16 THE INFORMATION, HER STATEMENT, WHICH INDICATED THAT SHE  
17 DID NOT KNOW THIS PERSON, IN TRIAL PREPARATION I  
18 DESIGNED MY TRIAL PREPARATION AROUND THE FACT THAT SHE  
19 HAD, SHE DID NOT KNOW THIS GUY, BASED UPON INFORMATION  
20 THAT HAD BEEN PROVIDED TO ME. NOW SHE COMES UP AND SHE  
21 IS SHOWN A PICTURE OF ONE PERSON, ONE PERSON ONLY, AND  
22 THAT IS MY CLIENT. AND THEN, THE PERSON THAT SHE SEES  
23 IN THE COURTROOM WHEN SHE COMES INTO THE COURTROOM IS MY  
24 CLIENT. THERE'S NO ONE ELSE IN THE COURTROOM. SO, THEN  
25 SHE SAYS, OH, YES, I KNOW WHO HE IS NOW, AND THAT'S

1 REGGIE MONTGOMERY. SO, IT PLACES ME AT A DISADVANTAGE  
2 AND IT FORCES ME TO OPEN UP AN AREA THAT I PROBABLY  
3 WOULD NOT HAVE GONE INTO. HAD I KNOWN SHE HAD SEEN A  
4 PICTURE OF MY CLIENT I WOULD HAVE BEEN ABLE TO MAKE A  
5 MOTION AT THAT POINT, AND AT LEAST HAD IT ARGUED BEFORE  
6 THE COURT PRIOR TO THIS INFORMATION COMING OUT, PRIOR  
7 TO, AND THEN I WOULD HAVE BEEN ABLE TO ADJUST  
8 ACCORDINGLY. BUT NOT KNOWING, AND FINDING OUT LATER,  
9 THAT'S WHAT THE WHOLE POINT OF THIS DISCOVERY IS ABOUT,  
10 IS TO PREVENT SURPRISE AND ATTACK AND EVERYTHING ELSE.

11 THE COURT: I KNOW THAT, BUT MOST OF  
12 THE CASES WHERE YOU'RE, IN THE REALM OF YOUR MOTION, OR  
13 WHEN THERE'S A PROBLEM OF IDENTIFICATION AND THE STATE  
14 PROMPTS THAT IDENTIFICATION. IN OTHER WORDS, THE STATE  
15 SHOWS THE PICTURE AND IT'S SUGGESTIVE THAT THIS IS THE  
16 PERSON. BUT IN THIS SITUATION, THE WITNESS, FROM WHAT  
17 I UNDERSTAND, HAS ALWAYS RECOGNIZED HIM, SHE JUST  
18 COULDN'T PUT A NAME TO HIM, UNTIL LATER ON, AFTER THE  
19 ARREST.

20 MR. SIMS: SHE PUT A NAME TO IT WHEN  
21 SHE SAW THE PICTURE.

22 THE COURT: WELL, I DON'T KNOW, I'M  
23 NOT SURE ABOUT THAT. OKAY. ANYTHING ELSE YOU WANT TO  
24 PUT ON THE RECORD?

25 SOLICITOR JEFFRIES: NOTHING FROM

1 THE STATE, YOUR HONOR.

2 THE COURT: MR. SIMS, ANYTHING ELSE  
3 YOU WANT TO PUT ON THE RECORD?

4 MR. SIMS: NO, SIR.

5 THE COURT: WELL, LET ME ASK YOU  
6 THIS, WHEN DID SHE PUT A NAME TO THE PERSON THAT WAS IN  
7 HER BROTHER'S CAR THE NIGHT OF SEPTEMBER SEVENTEENTH,  
8 TWO THOUSAND AND SIX?

9 SOLICITOR JEFFRIES: YOUR HONOR, I  
10 WOULD JUST TELL YOU THAT IN OUR VERY FIRST MEETING WITH  
11 HER SHE TOLD US, AS HER STATEMENT SAYS, SHE DIDN'T KNOW  
12 HIS NAME BUT SHE KNEW HIM. AND THAT'S WHAT SHE TOLD US,  
13 YOU KNOW, WHEN WE MET WITH HER. IT WAS ONLY AFTER THAT  
14 THAT I SHOWED THE PICTURES JUST TO BE SURE WE'RE TALKING  
15 ABOUT THE SAME PERSON.

16 THE COURT: OKAY. ALRIGHT.

17 SOLICITOR JEFFRIES: BUT SHE WAS  
18 NEVER SHOWN A PHOTO LINEUP BY LAW ENFORCEMENT.

19 THE COURT: OKAY. WE'LL TAKE A  
20 SHORT BREAK. THANK YOU VERY MUCH.

21 (Recess)

22 THE COURT: MR. JEFFRIES, AS FAR AS  
23 THE QUESTIONS ABOUT THE PHOTOGRAPH, I BELIEVE YOU STATED  
24 EARLIER IT WAS JUST ONE, BUT YOU WERE INCORRECT, AND  
25 YOUR MEMORY HAS BEEN REFRESHED, AND I THINK YOU WANT TO

1 PUT SOMETHING ON THE RECORD?

2 SOLICITOR JEFFRIES: THAT'S CORRECT,  
3 YOUR HONOR. I MIS-SPOKE WHEN I STATED EARLIER THAT THE  
4 PHOTO THAT MS. JOHNSON, THE LAST TESTIFYING WITNESS, SAW  
5 WAS A SINGLE PHOTO. IN FACT, THERE WAS A SIX PACK  
6 LINEUP, IT WAS A LINEUP THAT WAS SHOWN BY INVESTIGATOR  
7 RODRIGUEZ TO ANOTHER WITNESS, IN FACT, THE CO-DEFENDANT,  
8 JAMES GREEN, WHERE HE HAD IDENTIFIED THE DEFENDANT. I  
9 THEN TOOK THAT PHOTO, OR A CARBON COPY OF THAT PHOTO,  
10 WHITED IT OUT WHERE HE CIRCLED THE DEFENDANT, RAN OFF  
11 ANOTHER COPY, AND THEN AT THE VERY END OF OUR INTERVIEW,  
12 AFTER MS. JOHNSON TOLD ME SHE KNOWS THE DEFENDANT BY  
13 NAME AND SIGHT, I SHOWED HER THE PHOTO LINEUP JUST TO  
14 SEE, FOR MY OWN PREPARATION FOR TRIAL, THAT SHE COULD  
15 IDENTIFY THE DEFENDANT, AND SHE DID.

16 THE COURT: ALRIGHT, IF YOU WOULD,  
17 GO AHEAD AND MARK THAT PHOTO THAT YOU SHOWED HER AS A  
18 COURT'S EXHIBIT.

19 SOLICITOR JEFFRIES: YOUR HONOR, I  
20 WOULD NEED TO -- THE ONLY PHOTO I HAVE STILL HAS IT  
21 CIRCLED. THE ONE I DID, I WHITED THAT OUT.

22 THE COURT: THAT'S FINE, JUST MARK  
23 IT AS A COURT'S EXHIBIT.

24 (Court's Exhibit One  
25 marked and filed.)

1                   THE COURT:   ALRIGHT, I'M GOING TO  
2 DENY YOUR MOTION FOR A MISTRIAL.

3                   MR. SIMS:   YES, SIR.

4                   THE COURT:   HOWEVER, YOU HAD MADE A  
5 RULE FIVE REQUEST, AND RULE FIVE TALKS ABOUT ALL  
6 PHOTOGRAPHS USED IN TRIAL AND THAT PHOTOGRAPH WAS NOT --  
7 IT WAS PRODUCED, BUT IT WAS PRODUCED ON THE CO-DEFENDANT  
8 AND NOT IN REFERENCE TO THIS PARTICULAR WITNESS.

9                   MR. SIMS:   YES, SIR.

10                  THE COURT:   AND I WILL -- WHAT I'M  
11 GOING TO DO IS ALLOW YOU TO TALK TO THE WITNESS, APRIL  
12 JOHNSON, GO OVER THE PHOTOGRAPH, AND GIVE YOU THE  
13 OPPORTUNITY TO RECALL HER FOR CROSS, AND WE'LL CALL HER  
14 OUT OF ORDER OR WHATEVER YOU WANT TO DO, AND RECALL HER  
15 IF YOU SO CHOOSE.

16                  MR. SIMS:   YES, SIR, THANK YOU.

17                  THE COURT:   OKAY. AND I'LL GIVE THE  
18 STATE AN OPPORTUNITY TO OFFER ANY REPLY TESTIMONY TO  
19 THAT ADDITIONAL CROSS-EXAMINATION.   OKAY?

20                  MR. SIMS:   THANK YOU, YOUR HONOR.

21                  THE COURT:   ALRIGHT. AND I BELIEVE  
22 THE STATE WANTS TO CALL A MS. BELLAMY, IS THAT CORRECT,  
23 BEFORE WE BREAK FOR THE EVENING?

24                  SOLICITOR BURBAGE:   THAT'S CORRECT.

25                  THE COURT:   IS SHE HERE?

1                   SOLICITOR BURBAGE: YES, YOUR HONOR.

2                   THE COURT: AND APRIL JOHNSON, WHERE  
3 IS SHE?

4                   SOLICITOR BURBAGE: I HAD HER STEP  
5 BACK IN THE HALL SINCE SHE WAS SEQUESTERED, I SENT HER  
6 BACK OUT.

7                   THE COURT: OKAY. JUST MAKE SURE  
8 SHE DOESN'T LEAVE, PLEASE, MA'AM.

9                   SOLICITOR BURBAGE: DO YOU WANT ME  
10 TO HAVE HER COME IN?

11                   THE COURT: NO, JUST KEEP HER WHERE  
12 SHE IS, SINCE SHE MAY TESTIFY, BUT SOMEBODY PLEASE TELL  
13 HER NOT TO LEAVE.

14 (Whereupon, Witness Latangela Bellamy  
15 enters the courtroom.)

16                   THE COURT: ALRIGHT, BRING US THE  
17 JURY, PLEASE, MA'AM.

18                   MS. BELLAMY, JUST STAND RIGHT THERE  
19 BESIDE THE SOLICITOR FOR A SECOND, PLEASE, MA'AM, UNTIL  
20 WE GET THE JURY IN HERE.

21 (Whereupon, the jury enters  
22 the courtroom and the following  
23 takes place in the presence  
24 of the jury.)

25                   THE COURT: ALRIGHT. THE JURY IS



1 PRESENT. IF YOU'LL CALL YOUR NEXT WITNESS, PLEASE,  
2 MA'AM.

3 SOLICITOR BURBAGE: THE STATE CALLS  
4 LATANGELA BELLAMY.

5 THE COURT: MS. BELLAMY, IF YOU'LL  
6 COME AROUND AND BE SWORN, PLEASE, IF YOU'LL COME UP AND  
7 PUT YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.  
8 (Whereupon, Latangela Bellamy  
9 is duly sworn.)

10 CLERK: HAVE A SEAT AND STATE YOUR  
11 FULL NAME, AND YOU MIGHT WANT TO SPELL YOUR FIRST.

12 WITNESS: MY NAME IS LATANGELA  
13 BELLAMY.

14 (NOTE: Blank lines on this page do not indicate any  
15 part of record has been omitted. Headers on testimony  
16 pages and hard page breaks between testimony are now  
17 required by the Court. See next ensuing page for  
18 sequential continuation of record.)

DIRECT - LATANGELA BELLAMY BY SOL. BURBAGE

204

1 DIRECT EXAMINATION OF LATANGELA BELLAMY

2 BY SOLICITOR BURBAGE:

3 Q. CAN YOU SPELL YOUR FIRST NAME FOR THE COURT  
4 REPORTER?

5 A. L-A-T-A-N-G-E-L-A.

6 Q. AND YOU MIGHT JUST SPEAK UP BECAUSE I KNOW YOU'RE  
7 SOFT SPOKEN, YOU MIGHT JUST SPEAK UP SO THAT  
8 EVERYONE IN THE COURTROOM CAN HEAR YOU.

9 A. UH HUH.

10 Q. MS. BELLAMY, HOW OLD ARE YOU?

11 A. EIGHTEEN.

12 Q. AND WHERE DO YOU LIVE?

13 A. IN BOWMAN, SOUTH CAROLINA.

14 Q. WHAT'S YOUR ADDRESS?

15 A. [REDACTED]

16 Q. THAT'S FOLIAGE STREET?

17 A. FOLIAGE.

18 Q. AND IS THAT, ABOUT HOW FAR IS THAT FROM THE SHELL  
19 STATION THAT'S ON THE VANCE ROAD?

20 A. ABOUT FIVE MINUTES.

21 Q. AND MS. BELLAMY, HOW DO YOU KNOW JAMES GREEN?

22 A. THAT'S MY BROTHER.

23 Q. AND DO YOU CALL HIM JAMES OR WHAT, DOES HE GO BY A  
24 NICK NAME?

25 A. COOTNEY.

DIRECT - LATANGELA BELLAMY BY SOL. BURBAGE

205

1 Q. MS. BELLAMY, IF YOU COULD TELL THE COURT WHAT YOU  
2 WERE DOING ON SEPTEMBER THE SIXTEENTH AT NIGHT,  
3 AND SEPTEMBER SEVENTEENTH OF THE EARLY MORNING  
4 HOURS OF TWO THOUSAND AND SIX?

5 A. HOME IN MY BED.

6 Q. YOU WERE HOME IN YOUR BED?

7 A. UH HUH.

8 Q. DID ANYTHING HAPPEN DURING THE NIGHT?

9 A. WELL, LATER ON THAT MORNING I WAS WOKEN.

10 Q. YOU WERE WOKEN?

11 A. UH HUH.

12 THE COURT: MS. BELLAMY, MOVE THAT  
13 MICROPHONE OVER IN FRONT OF YOU IF YOU WOULD, PLEASE, OR  
14 TURN YOUR HEAD AND SPEAK INTO IT SO WE CAN HEAR YOU.

15 COURT REPORTER: HUH UH, THE OTHER  
16 WAY.

17 Q. YOU SAID YOU WERE WOKEN?

18 A. YES, MA'AM.

19 Q. WHAT WOKE YOU UP?

20 A. MY BROTHER.

21 Q. AND JUST TELL THE COURT WHAT HAPPENED?

22 A. MY BROTHER CAME AND KNOCKED ON MY WINDOW, SENT ME  
23 TO OPEN THE DOOR. HIM AND SHAWON JOHNSON CAME IN  
24 THE HOUSE. THEY TALKED FOR A LITTLE BIT, AND THEN  
25 MY BROTHER LEFT, BUT SHAWON STAYED AT MY HOUSE.

DIRECT - LATANGELA BELLAMY BY SOL. BURBAGE

206

1 I'D SAY ABOUT FOUR HOURS LATER MY BROTHER CAME  
2 BACK AND HE WAS -- WELL, HE KNOCK ON MY WINDOW AND  
3 TELL ME TO OPEN THE DOOR. SO, WHEN I OPENED THE  
4 DOOR THEY WAS OUT THERE, SHAWON'S SISTER WAS OUT  
5 THERE IN HER WHITE MUSTANG, AND I SEEN THEM OUT  
6 THERE, AND I SEEN REGGIE OUTSIDE MY HOUSE.

7 Q. YOU SAW ANOTHER PERSON OUTSIDE THE HOUSE OTHER  
8 THAN SHAWON?

9 A. HIM, MY BROTHER -

10 COURT REPORTER: SPEAK LOUDER,  
11 PLEASE.

12 A. HIM, MY BROTHER AND REGGIE.

13 Q. THE PERSON YOU SAW OUTSIDE OF THE HOUSE THAT  
14 NIGHT, OR THAT MORNING, IS THAT PERSON IN THE  
15 COURTROOM TODAY?

16 A. YES, MA'AM.

17 Q. COULD YOU POINT HIM OUT FOR THE COURT?

18 A. (Defendant points towards defendant.)

19 SOLICITOR BURBAGE: JUST LET THE  
20 RECORD REFLECT THAT SHE'S POINTING OUT THE DEFENDANT AS  
21 THE PERSON SHE SAW OUTSIDE OF HER HOUSE.

22 THE COURT: YES, MA'AM.

23 Q. MS. BELLAMY, DID YOU TELL, DID YOU HAVE AN  
24 OPPORTUNITY TO SPEAK TO LAW ENFORCEMENT ABOUT THIS  
25 CASE?

DIRECT - LATANGELA BELLAMY BY SOL. BURBAGE

207

1 A. YES.

2 Q. DID YOU SPEAK TO THEM -- DID YOU TELL THEM  
3 EVERYTHING THAT YOU'RE TELLING US HERE TODAY?

4 A. YEAH, LATER.

5 Q. LATER? DOES THAT MEAN AT SOME POINT YOU DIDN'T  
6 TELL THEM WHAT YOU'RE TELLING US HERE TODAY?

7 A. NOT THE FIRST TIME WHEN I SPOKE TO THEM.

8 Q. WHY DIDN'T YOU TELL THEM THE FIRST TIME?

9 A. BECAUSE I DIDN'T REALLY KNOW WHAT WAS GOING ON.

10 Q. BUT TODAY, HERE IN COURT TODAY ARE YOU TELLING THE  
11 TRUTH ABOUT EVERYTHING THAT HAPPENED?

12 A. YES, MA'AM.

13 Q. HAVE YOU TOLD US EVERYTHING THAT HAPPENED?

14 A. YES, MA'AM.

15 Q. AND YOU'VE BEEN ENTIRELY TRUTHFUL TODAY?

16 A. YES, MA'AM.

17 Q. HERE IN YOUR TESTIMONY?

18 A. UH HUH.

19 SOLICITOR BURBAGE: I BEG THE  
20 COURT'S INDULGENCE.

21 Q. MS. BELLAMY, DURING THE TIME THAT SHAWON JOHNSON  
22 WAS AT YOUR HOUSE DID YOU GO ANYWHERE?

23 A. NO, MA'AM.

24 Q. YOU STAYED AT THE HOUSE THE WHOLE TIME?

25 A. YES, MA'AM.

1                    SOLICITOR BURBAGE:     I HAVE NO  
2 FURTHER QUESTIONS. PLEASE ANSWER ANY QUESTIONS MR. SIMS  
3 MIGHT HAVE.

4                    THE COURT: CROSS-EXAMINATION, MR.  
5 SIMS?

6 (NOTE: Blank lines on this page do not indicate any  
7 part of record has been omitted. Headers on testimony  
8 pages and hard page breaks between testimony are now  
9 required by the Court. See next ensuing page for  
10 sequential continuation of record.)

CROSS - LATANGELA BELLAMY BY MR. SIMS

209

1 CROSS-EXAMINATION OF LATANGELA BELLAMY

2 BY MR. SIMS:

3 Q. MS. BELLAMY, YOU GAVE A STATEMENT ON THE TWENTY-  
4 FIFTH OF SEPTEMBER, O-SIX, IS THAT CORRECT?

5 A. YES, SIR.

6 Q. AND IN THAT STATEMENT -- I'M GOING TO HAND YOU A  
7 COPY -- YOU SAID IT WAS A TALL, DARK SKINNED  
8 PERSON OUT THERE, DID YOU NOT?

9 A. YES, I DID SAY THAT.

10 Q. AND YOU DID NOT SAY REGGIE MONTGOMERY WAS OUTSIDE?

11 A. NO.

12 Q. AND THIS WAS, LIKE -- THIS HAPPENED ON THE  
13 SEVENTEENTH OF SEPTEMBER, SO SOME EIGHT DAYS LATER  
14 YOU WERE QUESTIONED BY THE ORANGEBURG COUNTY  
15 SHERIFF'S DEPARTMENT, AND IN THAT QUESTIONING YOU  
16 DID NOT SAY REGGIE MONTGOMERY WAS OUT THERE?

17 A. I DIDN'T SAY IT IN MY FIRST AND SECOND STATEMENT,  
18 BUT LATER I TOLD THEM.

19 Q. SO, YOU DIDN'T SAY IT -- SO, YOU HAD TWO TIMES ---

20 A. UH HUH.

21 Q. --- YOU TOLD THEM ON THE SEVENTEENTH THAT IT WAS A  
22 DARK GUY, DARK SKINNED PERSON, AND THEN YOU TOLD  
23 THEM ON THE TWENTY-FIFTH THAT IT WAS A DARK  
24 SKINNED PERSON, AND THEN ARE YOU TELLING US THAT  
25 LATER, AFTER THAT, THEN YOU TOLD THEM?

CROSS - LATANGELA BELLAMY BY MR. SIMS

210

1 A. UH HUH.

2 Q. WHEN DID YOU TELL THEM?

3 A. I CAN'T REMEMBER EXACTLY WHAT DAY IT WAS, BUT I  
4 TOLD THEM.

5 Q. SO, TWO TIMES YOU REFUSED TO TELL THEM REGGIE  
6 MONTGOMERY'S NAME, AND THEN ON THE THIRD TIME YOU  
7 DECIDED TO TELL THEM?

8 A. UH HUH.

9 Q. DID -- WAS A STATEMENT WRITTEN AT THAT TIME?

10 A. THE THIRD TIME?

11 Q. YEAH, WAS A STATEMENT WRITTEN, DID YOU WRITE  
12 ANOTHER STATEMENT?

13 A. I THINK I ONLY WROTE TWO.

14 Q. I'M SORRY?

15 COURT REPORTER: I THINK WHAT?

16 A. I THINK I JUST WROTE TWO STATEMENTS.

17 Q. OKAY. YOU THINK YOU JUST WROTE TWO STATEMENTS.  
18 WHEN DID YOU GIVE THEM THE THIRD STATEMENT?

19 A. IT WAS A COUPLE OF DAYS LATER WHEN THEY CAME BACK  
20 TO MY HOUSE.

21 Q. OKAY, NOW, THEY CAME ON THE SEVENTEENTH, THAT WAS  
22 THE NIGHT IT HAPPENED, ---

23 A. UH HUH.

24 Q. --- AND YOU DIDN'T TELL THEM. EIGHT DAYS LATER I  
25 BELIEVE, IF MY MATH IS RIGHT, ON THE TWENTY-FIFTH,



CROSS - LATANGELA BELLAMY BY MR. SIMS

211

1           YOU WROTE ANOTHER STATEMENT AND YOU DID NOT TELL  
2           THEM, YOU SAID IT WAS A TALL GUY?

3   A.    UH HUH.

4   Q.    AND THEN, HOW MANY DAYS AFTER THAT DID YOU TELL  
5           THEM THAT IT WAS REGINALD MONTGOMERY?

6   A.    I DON'T KNOW HOW MANY DAYS IT WAS AFTER THAT.

7   Q.    NOW, WHERE WERE THEY STANDING WHEN YOU WENT TO THE  
8           DOOR?

9   A.    THEY WAS, LIKE, WHERE MY ROOM IS?

10  Q.    UH HUH.

11  A.    MY ROOM IS ONE THE SIDE, I HAVE A SIDE WINDOW.  
12           THEY WAS, LIKE, RIGHT THERE IN THE CORNER.

13  Q.    AND WHAT WERE THEY WEARING?

14  A.    I CAN'T REMEMBER WHAT THEY WAS WEARING.

15  Q.    I'M SORRY?

16  A.    I DON'T REMEMBER WHAT THEY WAS WEARING.

17  Q.    AND YOU SAID, OUR HOURS LATER -- LET ME HAVE THAT  
18           BACK, PLEASE -- YOU SAID ABOUT FOUR HOURS, AND IN  
19           YOUR STATEMENT, WHEN YOU ASKED BY DETECTIVE  
20           RODRIGUEZ YOU SAID, THEY LEFT THE HOUSE ABOUT  
21           TWO:THIRTY OR THREE:THIRTY A.M., IS THAT CORRECT?

22  A.    IF THAT'S WHAT I WROTE.

23  Q.    NO, HE WROTE THAT, HE WROTE THAT IN RESPONSE TO  
24           THE QUESTION, ASKING YOU. NOW, FOUR HOURS LATER,  
25           THREE O'CLOCK, THAT WOULD HAVE BEEN, LIKE, SEVEN

1 O'CLOCK IN THE MORNING?

2 A. NO. THEY LEFT THE HOUSE, IT WAS ABOUT ONE.

3 Q. WELL, LET ME SHOW YOU YOUR FIRST STATEMENT, WHEN  
4 DETECTIVE RODRIGUEZ ASKED YOU, "THEY LEFT THE  
5 HOUSE AROUND TWO:THIRTY A.M. OR THREE, THEY LEFT  
6 MY HOUSE TOGETHER AND WHEN THEY CAME BACK JAMES  
7 GREEN TOLD ME TO LOCK THE DOOR." THIS IS WHAT HE  
8 WROTE THAT YOU TOLD HIM YOU SAID.

9 A. THEY GOT THE SAME TIME, I JUST SAID WHAT TIME THEY  
10 CAME TO THE HOUSE.

11 Q. BUT TODAY YOU SAID THEY CAME BACK ABOUT FOUR HOURS  
12 LATER.

13 A. UH HUH.

14 Q. SO, EVEN IF YOU TAKE TWO:THIRTY, AND ADD FOUR  
15 HOURS TO THAT, YOU WOULD BE SAYING SIX:THIRTY IN  
16 THE MORNING. IF YOU TAKE THREE O'CLOCK, YOU WOULD  
17 BE SAYING SEVEN O'CLOCK IN THE MORNING. SO, IN  
18 TWO STATEMENTS YOU DID NAME, THE TWO STATEMENTS  
19 THAT YOU WROTE, YOU DIDN'T SAY REGINALD, AND THEN  
20 A THIRD STATEMENT -- DID YOU WRITE A STATEMENT THE  
21 THIRD TIME?

22 A. I DON'T THINK SO.

23 Q. WHO DID YOU TELL?

24 A. WHO DID I TELL?

25 Q. YEAH, THE THIRD TIME?

CROSS - LATANGELA BELLAMY BY MR. SIMS

213

1 A. RODRIGUEZ, MR. RODRIGUEZ.

2 MR. SIMS: THAT'S ALL I HAVE, YOUR  
3 HONOR.

4 THE COURT: ANY RECROSS?

5 SOLICITOR BURBAGE: NOTHING FURTHER,  
6 YOUR HONOR.

7 THE COURT: OKAY. YOU MAY STEP  
8 DOWN. THANK YOU VERY MUCH.

9 CAN I SEE THE ATTORNEYS UP HERE JUST  
10 A SECOND, PLEASE.

11 (Whereupon, a bench conference  
12 is held out of the hearing of  
13 the jury and court reporter.)

14 THE COURT: MADAM FORELADY, AND  
15 LADIES AND GENTLEMEN OF THE JURY, I WAS TRYING TO  
16 DISCUSS WITH THE ATTORNEYS HOW MUCH IS LEFT AND HOW MANY  
17 MORE WITNESSES WE HAVE, AND WE'RE NOT GOING TO HAVE ONE  
18 WITNESS HERE UNTIL TWELVE O'CLOCK TOMORROW, AND I DIDN'T  
19 WANT YOU SITTING IN THE JURY ROOM WAITING ON THAT  
20 WITNESS TO GET HERE AT TWELVE O'CLOCK. SO, WHAT I'M  
21 GOING TO DO IS, WE'RE GOING TO ADJOURN FOR THIS  
22 AFTERNOON, AND I'M GOING TO ASK YOU TO BE BACK IN YOUR  
23 JURY ROOM ELEVEN O'CLOCK IN THE MORNING AND WE'LL GET  
24 STARTED WITH THE TESTIMONY AT THAT TIME. IF YOU'LL BE  
25 BACK IN THE JURY ROOM, AND DON'T DISCUSS THE CASE

1 AMONGST YOURSELVES OR WITH ANYBODY ELSE, I WANT YOU TO  
2 MAKE YOUR DECISION ON WHAT YOU HEAR IN THE COURTROOM,  
3 NOT WHAT SOMEONE OUTSIDE THE COURTROOM TELLS. SO, BE  
4 BACK AT ELEVEN O'CLOCK IN THE MORNING AND WE'LL GET  
5 STARTED AT THAT TIME.

6 ALRIGHT, I DON'T KNOW IF THERE'S  
7 GOING TO BE ANYTHING IN THE NEWSPAPER ABOUT IT TOMORROW,  
8 IN THE TIMES AND DEMOCRAT OR ANY OTHER PAPER, BUT DON'T  
9 READ IT. OKAY? SEE YOU TOMORROW.

10 (Whereupon, the jury leaves  
11 the courtroom for the day.)

12 THE COURT: ALRIGHT, ANYTHING FROM  
13 THE STATE BEFORE WE ADJOURN FOR THE DAY?

14 SOLICITOR JEFFRIES: NOTHING FROM  
15 THE STATE, YOUR HONOR.

16 THE COURT: ANYTHING FROM THE  
17 DEFENDANT?

18 MR. SIMS: YES, SIR.

19 THE COURT: MR. SIMS.

20 MR. SIMS: YOUR HONOR, AGAIN, I'M  
21 CAUGHT IN NOT KNOWING THERE WAS A THIRD STATEMENT THAT'S  
22 SUPPOSED TO HAVE BEEN MADE BY A WITNESS WHO I'M SHOWN A  
23 FIRST AND STATEMENT WRITTEN STATEMENT -

24 THE COURT: WELL, I DIDN'T TAKE IT  
25 SHE HAD GIVEN A WRITTEN STATEMENT, I TOOK IT SHE

1 IDENTIFIED, SHE HAD MADE A STATEMENT TO SOMEONE  
2 IDENTIFYING AND PUTTING A NAME TO THE DEFENDANT. I  
3 DIDN'T THINK THERE WAS -- I DIDN'T GET THE IMPRESSION  
4 THERE WAS A WRITTEN STATEMENT. IS THAT CORRECT,  
5 SOLICITOR?

6 SOLICITOR JEFFRIES: IT IS NOT A  
7 WRITTEN STATEMENT. I'M NOT ABSOLUTELY SURE WHAT WE'RE  
8 REFERRING TO, TO BE HONEST, BUT WHICH STATEMENT ARE YOU  
9 TALKING ABOUT?

10 MR. SIMS: SHE SAID SHE GAVE A  
11 SUBSEQUENT THIRD STATEMENT TO DETECTIVE RODRIGUEZ.

12 THE COURT: I UNDERSTAND, YOU  
13 PHRASED IT AS A STATEMENT, BUT WHAT SHE ACTUALLY  
14 TESTIFIED TO WAS THAT SHE HAD PUT A NAME TO THE  
15 DEFENDANT.

16 MR. SIMS: SHE TOLD --

17 THE COURT: AND IF YOU WANT TO CALL  
18 IT A STATEMENT I UNDERSTAND, BUT --

19 MR. SIMS: YES, THAT'S WHAT I'M  
20 CALLING IT, A STATEMENT, BECAUSE --

21 THE COURT: OKAY, ALRIGHT.

22 MR. SIMS: --- THAT'S WHAT I  
23 BELIEVE, YOUR HONOR.

24 THE COURT: OKAY, WHAT'S YOUR  
25 MOTION?

1                    MR. SIMS: AGAIN, YOUR HONOR, THIS  
2 IS ANOTHER INDICATION OF NOT BEING GIVEN ALL OF THE  
3 INFORMATION IN REGARDS TO WHAT THESE PEOPLE ARE GOING TO  
4 SAY. SO, I RENEW MY MOTION.

5                    THE COURT: WELL, LET ME HEAR FROM  
6 THE STATE.

7                    SOLICITOR JEFFRIES: YOUR HONOR, YOU  
8 KNOW, I DON'T KNOW THAT WE'RE ENTITLED TO, OR REQUIRED  
9 TO LET HIM KNOW WHAT COMES OUT OF EVERY INTERVIEW WE  
10 HAVE. I DON'T KNOW EXACTLY WHERE HE'S GOING WITH THIS,  
11 YOU KNOW, HAD HE INTERVIEWED ANY OF THESE WITNESSES,  
12 WHICH, HE DIDN'T TRY TO INTERVIEW ANY OF THEM, YOU KNOW,  
13 THEY WOULD HAVE TOLD HIM WHAT THEIR TESTIMONY WOULD BE.  
14 I CAN'T TOTALLY TELL YOU WHAT THEIR TESTIMONY IS GOING  
15 TO BE OTHER THAN WHAT, I HAVE THE SAME STATEMENTS HE  
16 HAS. AND IF ADDITIONAL INFORMATION WAS GIVEN TO OFFICER  
17 RODRIGUEZ, DEPUTY RODRIGUEZ, YOU KNOW, IF SHE'S  
18 QUESTIONED ABOUT THAT THEN SHE'S GOING TO ANSWER  
19 TRUTHFULLY, I WOULD HOPE, AND THAT'S WHAT HAPPENED, AND  
20 I DON'T KNOW THAT THAT'S MY RESPONSIBILITY.

21                    THE COURT: WELL, YOU'RE ASK -- WHAT  
22 ARE YOU ASKING THE COURT TO DO, MR. SIMS?

23                    MR. SIMS: I RENEWED MY MOTION, YOUR  
24 HONOR, FOR ANOTHER MISTRIAL.

25                    THE COURT: ALRIGHT, MOTION DENIED.

1                    MR. SIMS: JUST NOTE IT ON THE  
2 RECORD.

3                    THE COURT: ALRIGHT. ANYTHING ELSE?

4                    MR. SIMS: NOTHING, YOUR HONOR.

5                    THE COURT: OKAY. ALRIGHT.

6                    (Recess for the day.)

7 DATE:

8 APRIL 4, 2007

9                    THE COURT: IS THE STATE READY TO  
10 PROCEED?

11                    SOLICITOR JEFFRIES: JUDGE, WE NEED  
12 TO SPEAK WITH YOU IN CHAMBERS BEFORE WE START BACK UP.

13                    THE COURT: OH, OKAY. ALRIGHT.

14 (Whereupon, a conference is  
15 had in chambers, and then  
16 the judge and attorneys  
17 return to open court.)

18                    THE COURT: ALRIGHT, ANYTHING ELSE  
19 FROM THE STATE BEFORE WE BRING THE JURY?

20                    SOLICITOR JEFFRIES: I JUST WANT TO  
21 -- WE HAVE SOME WITNESSES IN THE COURTROOM AND THEY NEED  
22 TO BE SEQUESTERED.

23 (Whereupon, all witnesses  
24 leave the courtroom.)

25                    THE COURT: DO WE HAVE JAMES GREEN,

1 IS HE COMING?

2 SOLICITOR JEFFRIES: HE'S ALREADY

3 HERE.

4 THE COURT: OH, HE'S ALREADY HERE.

5 OKAY.

6 BAILIFF: NO, HE'S ON HIS WAY,

7 JUDGE.

8 THE COURT: THAT'S PRINGLE.

9 MR. SIMS: YOU MEAN JAMES GREEN, YOU

10 SAID JAMES PRINGLE, YOU MEAN JAMES GREEN?

11 THE COURT: I MEAN JAMES GREEN.

12 THAT'S PRINGLE.

13 BAILIFF: HE'S AT THE JAIL.

14 THE COURT: ALRIGHT, TAKE PRINGLE ON

15 BACK IN THE HOLDING CELL, IF YOU WOULD.

16 ALRIGHT, ANYTHING ELSE BEFORE WE

17 BRING THE JURY?

18 SOLICITOR JEFFRIES: THE STATE'S

19 READY TO PROCEED.

20 THE COURT: BRING US THE JURY,

21 PLEASE, MA'AM.

22 (Whereupon, the jury enters

23 the courtroom and the following

24 takes place in the presence

25 of the jury.)



1                   THE COURT: CALL YOUR NEXT WITNESS,  
2 PLEASE, SIR.

3                   SOLICITOR JEFFRIES: THANK YOU, YOUR  
4 HONOR, MAY IT PLEASE THE COURT, THE STATE CALLS DEPUTY  
5 RODRIGUEZ.

6                   CLERK: PLACE YOUR LEFT HAND ON THE  
7 BIBLE AND RAISE YOUR RIGHT HAND.  
8 (Whereupon, Roman Rodriguez  
9 is duly sworn.)

10                   CLERK: PLEASE HAVE A SEAT AND STATE  
11 YOUR FULL NAME.

12 (NOTE: Blank lines on this page do not indicate any  
13 part of record has been omitted. Headers on testimony  
14 pages and hard page breaks between testimony are now  
15 required by the Court. See next ensuing page for  
16 sequential continuation of record.)

DIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

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1 DIRECT EXAMINATION OF ROMAN E. RODRIGUEZ

2 BY SOLICITOR JEFFRIES:

3 Q. STATE YOUR NAME FOR THE RECORD?

4 A. DEPUTY ROMAN E. RODRIGUEZ.

5 Q. AND WHERE ARE YOU EMPLOYED?

6 A. ORANGEBURG COUNTY SHERIFF'S OFFICE.

7 Q. AND HOW LONG HAVE YOU BEEN WITH THE SHERIFF'S  
8 OFFICE?

9 A. EIGHT AND A HALF YEARS.

10 Q. AND HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT  
11 ALTOGETHER?

12 A. ABOUT SEVENTEEN YEARS.

13 Q. AND WERE YOU EMPLOYED WITH THE SHERIFF'S OFFICE,  
14 OBVIOUSLY, BACK IN NOVEMBER, OR SEPTEMBER OF LAST  
15 YEAR?

16 A. YES, I WAS.

17 Q. AND WERE YOU EMPLOYED AS AN INVESTIGATOR?

18 A. YES.

19 Q. AND DID YOU BECOME INVOLVED IN THE INVESTIGATION  
20 AT THE SHELL -- OF AN ARMED ROBBERY AT THE SHELL  
21 STATION AT [REDACTED] [REDACTED] [REDACTED] [REDACTED] IN  
22 BOWMAN?

23 A. YES, I WAS.

24 Q. AND IS THAT HERE IN ORANGEBURG COUNTY?

25 A. IT IS IN ORANGEBURG COUNTY.

DIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

221

- 1 Q. WHAT DAY OF THE WEEK WAS THAT, IF YOU RECALL?
- 2 A. BETWEEN EARLY SATURDAY MORNING -- EARLY SUNDAY
- 3 MORNING -- SATURDAY NIGHT AND EARLY SUNDAY
- 4 MORNING, AROUND FOUR:THIRTY A.M.
- 5 Q. SATURDAY NIGHT AND SUNDAY MORNING?
- 6 A. RIGHT.
- 7 Q. OKAY. WHAT TIME -- WHAT TIME DID THE INCIDENT
- 8 TAKE PLACE?
- 9 A. FROM THE INCIDENT REPORT, IT TOOK PLACE AROUND
- 10 FOUR:THIRTY A.M. IN THE MORNING.
- 11 Q. AND DID YOU HAVE THE OPPORTUNITY TO ACTUALLY
- 12 RESPOND TO THE SHELL STATION?
- 13 A. YES, I DID.
- 14 Q. OKAY. WHAT TIME DID YOU RESPOND THERE?
- 15 A. I GOT THERE ANYWHERE BETWEEN A LITTLE AFTER FIVE
- 16 A.M. IN THE MORNING.
- 17 Q. OKAY. AND WERE THERE OTHER OFFICERS ALREADY
- 18 PRESENT AT THE SHELL STATION?
- 19 A. YES, THERE WERE SEVERAL OFFICERS THERE.
- 20 Q. ALRIGHT. WHAT, IF ANY, OFFICERS DID YOU SPEAK TO
- 21 TO KIND OF GET A PRELIMINARY ON WHAT YOU WERE
- 22 DEALING WITH?
- 23 A. I SPOKE WITH LIEUTENANT CULLER, I'M SORRY,
- 24 SERGEANT CULLER, SERGEANT AT THAT TIME. HE WAS ONE
- 25 OF THE OFFICERS THAT RESPONDED OUT THERE.

DIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

222

1 Q. LIEUTENANT CULLER, IS THAT THE OFFICER THAT  
2 TESTIFIED EARLIER THIS WEEK?

3 A. YES, THAT'S CORRECT.

4 Q. OKAY. AND WERE YOU ABLE TO GET SOME PRELIMINARY  
5 INFORMATION FROM LIEUTENANT CULLER?

6 A. YES, SIR, HE GAVE ME SOME INFORMATION IN REFERENCE  
7 TO THE ARMED ROBBERY THAT TOOK PLACE THERE AT THE  
8 STORE.

9 Q. OKAY. AND BEING THAT YOU WERE IN INVESTIGATIONS  
10 BACK IN SEPTEMBER, WERE YOU ASSIGNED TO THIS  
11 INVESTIGATION?

12 A. YES, I WAS THE INVESTIGATOR ON CALL AND SO I HAD  
13 TO RESPOND OUT TO THE SCENE.

14 Q. OKAY. AND DID YOU SPEAK TO ANY EMPLOYEES AT THE  
15 STORE WHEN YOU RESPONDED?

16 A. YES, I DID, I SPOKE WITH A COUPLE OF EMPLOYEES  
17 THERE AT THE STORE WHEN I GOT THERE.

18 Q. OKAY. APPROXIMATELY WHAT TIME DID THE ROBBERY  
19 TAKE PLACE?

20 A. I WAS INFORMED THAT IT TOOK PLACE AROUND  
21 FOUR:THIRTY A.M. IN THE MORNING.

22 Q. OKAY. AND WAS THE STORE OPEN OR CLOSED OR ---

23 A. IT WAS OPEN.

24 Q. DID YOU FIND OUT HOW MANY SUSPECTS WERE INVOLVED  
25 IN THE ROBBERY?

DIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

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1 A. YES, WHEN I SPOKE WITH THE VICTIM THERE AND ALSO  
2 FROM LIEUTENANT CULLER I WAS INFORMED THERE WAS  
3 POSSIBLY TWO -- THERE WAS TWO SUBJECTS INVOLVED IN  
4 THE ARMED ROBBERY.

5 Q. DID YOU GET ANY INFORMATION ABOUT WHAT TYPE OF  
6 WEAPON MIGHT HAVE BEEN USED?

7 A. THE ONLY THING THAT -- YES, I WAS INFORMED IT WAS  
8 A BLACK IN COLOR HAND GUN WITH A LASER ON IT.

9 Q. WERE YOU ABLE TO DETERMINE WHAT, IF ANYTHING, WAS  
10 STOLEN DURING THE ROBBERY?

11 A. AT THE TIME I WAS INFORMED THERE WAS AN  
12 UNDETERMINED AMOUNT OF MONEY THAT WAS STOLEN AND  
13 TAKEN FROM THE STORE.

14 Q. DID YOU INQUIRE AS TO VIDEO, SOME STORES HAVE  
15 VIDEO CAMERAS?

16 A. YES, I DID. BUT AT THE TIME THEY INFORMED ME THAT  
17 THE VIDEO WASN'T ON.

18 Q. OKAY. IT WASN'T ON. BUT THEY DID HAVE A VIDEO  
19 SYSTEM?

20 A. RIGHT, BUT THEY SAID IT WASN'T ON.

21 Q. OKAY. DID YOU GET A DESCRIPTION OF THE SUSPECTS  
22 AT ALL, CLOTHING OR ANYTHING LIKE THAT?

23 A. YES, THEY GAVE ME A DESCRIPTION, THEY SAID THE  
24 SUBJECTS CAME IN WITH A MASK OVER THEIR FACES, TWO  
25 SUBJECTS.

1 Q. DID THEY DESCRIBE WHAT KIND OF MASK?

2 A. I BELIEVE THEY SAID IT WAS KIND OF LIKE A WHITE IN  
3 COLOR MASK THAT THEY WERE WEARING, BOTH OF THEM  
4 WERE WEARING.

5 Q. ALRIGHT. AND SPECIFICALLY, MR. HERRINGTON, WAS HE  
6 ABLE TO RECOGNIZE ANY OF THE SUSPECTS?

7 A. HE TOLD ME THAT ONE OF THE SUBJECTS LOOKED  
8 FAMILIAR TO HIM.

9 Q. AND WERE YOU ABLE TO GIVE A DESCRIPTION OVER THE  
10 RADIO TO KIND OF GIVE OTHER LAW ENFORCEMENT IN THE  
11 AREA LOOKING FOR THESE INDIVIDUALS?

12 A. YES, WE DID.

13 Q. OKAY. AND DID YOU GET ANY RESPONSES FROM ANYONE?

14 A. NO, NOT -- NO, WE DIDN'T LOCATE ANYONE ON FOOT  
15 WALKING AROUND THE AREA OF THE STORE AFTER THE  
16 ROBBERY OCCURRED.

17 Q. WHAT DID SERGEANT CULLER DO, DID HE STAY IN THE  
18 STORE OR WHAT DID HE DO?

19 A. WELL, AFTER I ARRIVED AT THE STORE SERGEANT CULLER  
20 LEFT THE SCENE, STARTED PATROLLING THE AREA,  
21 CANVASSING THE AREA TO SEE IF HE COULD LOCATE SOME  
22 SUBJECTS PROBABLY WALKING AROUND IN THE AREA.

23 Q. AND DON'T TELL ME WHAT HE SAID, BUT DID SERGEANT  
24 CULLER CONTACT YOU?

25 A. SERGEANT CULLER CONTACTED ME AND, AND -- IN

DIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

225

1 REFERENCE TO LOCATING A VEHICLE DRIVING AROUND UP  
2 AND DOWN THE AREA.

3 Q. AND LATER THAT MORNING WAS HE ABLE TO GIVE YOU  
4 SOME INFORMATION THAT FURTHERED YOUR  
5 INVESTIGATION?

6 A. YES, HE DID.

7 Q. OKAY. AND SPECIFICALLY, WERE THERE ANY SUSPECTS  
8 DEVELOPED FROM THAT INFORMATION?

9 A. ONE POSSIBLE SUSPECT DEVELOPED FROM THAT  
10 INFORMATION, THE SECOND SUBJECT WE DIDN'T KNOW WHO  
11 HE WAS.

12 Q. OKAY. AND WHAT WAS THE NAME OF THE FIRST SUSPECT?

13 A. THE FIRST SUSPECT THAT WE HAD WAS JAMES GREEN.

14 Q. OKAY. AND THAT MORNING, SEPTEMBER SEVENTEENTH,  
15 DID YOU SPEAK TO ANYONE ELSE THAT MIGHT HAVE HAD  
16 INFORMATION ABOUT THE ROBBERY?

17 A. YES, I DID.

18 Q. WHO DID YOU SPEAK TO?

19 A. ON THE SEVENTEENTH -- IF I MAY, HOLD ON FOR A  
20 SECOND. IT SHOULD HAVE BEEN JAMES GREEN.

21 Q. AND LET ME SAY, SPECIFICALLY, AFTER SPEAKING TO  
22 SERGEANT CULLER DID YOU GET -- WHERE DID YOU GO IN  
23 REFERENCE TO WHAT HE HAD TOLD YOU?

24 A. AFTER I SPOKE WITH SERGEANT CULLER WE ARRIVED ON  
25 PATRICK DERRY ROAD, BECAUSE THAT'S WHERE HE

1 SPOTTED A CAR RIDING UP AND DOWN THE ROADWAY, SO  
2 WE WENT TO THAT -- I ARRIVED AT THAT -- RESPONDED  
3 TO THAT LOCATION WITH THEM.

4 Q. AND DID YOU SPEAK TO ANYBODY OVER THERE?

5 A. I SPOKE WITH SEVERAL PEOPLE THERE AT THAT  
6 RESIDENCE?

7 Q. WHO DID YO SPEAK TO?

8 A. I SPOKE WITH SHAWON JOHNSON, I SPOKE WITH HIS  
9 SISTER, APRIL JOHNSON, AND THOSE WERE THE TWO  
10 FOLKS THAT I SPOKE WITH THERE.

11 Q. OKAY. AND SPECIFICALLY, SHAWON JOHNSON, AT THAT  
12 TIME WAS HE A SUSPECT?

13 A. NO, AT THAT TIME HE WASN'T.

14 Q. OKAY. AND WAS HE UNDER ARREST?

15 A. NO, HE WASN'T UNDER ARREST EITHER.

16 Q. OKAY. AND NOW, BACK TO THE INCIDENT LOCATION, THE  
17 SHELL STATION, WERE YOU ABLE TO PROCESS THE SCENE  
18 FOR FINGERPRINTS?

19 A. YES, I DID.

20 Q. AND DID YOU FIND ANY FINGERPRINTS?

21 A. NO, I DIDN'T FIND ANY LATENT PRINTS THERE.

22 Q. OKAY. YOU SAY, NO LATENTS WERE THERE, WERE YOU  
23 ABLE TO FIND ANY INDICATION OF FINGERPRINTS IN THE  
24 AREA?

25 A. WE SAW DIFFERENT FINGERPRINTS IN THE AREA BUT



DIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

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1           NOTHING THAT WE COULD HAVE GOT TO GET A GOOD MATCH  
2           OF, THEY WEREN'T GOOD PRINTS AT ALL THAT WE, THAT  
3           I TRIED TO LIFT AT THE SCENE THERE.

4   Q.    IS THAT UNUSUAL IN YOUR EXPERIENCE?

5   A.    NO, IT ISN'T.

6   Q.    WHY IS THAT?

7   A.    WELL, SOMETIMES IT ALL DEPENDS ON IF THE, WHATEVER  
8           INVESTIGATOR, IF SOMEONE PUT THEIR HANDS ON  
9           SOMETHING, IF THEY LEFT GOOD PRINTS OR NOT,  
10          SOMETIMES THEY DON'T. THEY CAN WEAR GLOVES, OR  
11          THE PRINTS THAT WERE THERE COULD BE SMUDGED PRETTY  
12          BAD WITH OVERLAPPING PRINTS, SO IT COULD BE A LOT  
13          OF REASONS WHY WE JUST CAN'T, DON'T LOCATE PRINTS  
14          A LOT.

15   Q.    OKAY. WAS ANYBODY ARRESTED THAT DAY OF THE  
16          ROBBERY, SEPTEMBER SEVENTEENTH?

17   A.    NO ONE WAS ARRESTED ON THE DAY OF THE INCIDENT.

18   Q.    OKAY. DID YOU CONTINUE TO INVESTIGATE THIS CASE  
19          DURING THE FOLLOWING DAYS?

20   A.    YES, I DID.

21   Q.    AND LET ME TAKE YOU SPECIFICALLY TO SEPTEMBER THE  
22          NINETEENTH, TWO DAYS LATER, DID YOU HAVE THE  
23          OPPORTUNITY TO FOLLOW UP WITH ANY OF THE EMPLOYEES  
24          AT THE SHELL STATION?

25   A.    YES, I DID.

1 Q. WHO DID YOU SPEAK TO?

2 A. I SPOKE WITH MR. -- ONE OF THE EMPLOYEES OF THE  
3 STORE, MR. -- I FORGET HIS NAME, ONE SECOND,  
4 PLEASE.

5 Q. OKAY.

6 A. MR. HERRINGTON, I SPOKE WITH HIM.

7 Q. OKAY. AND IS THAT THE GENTLEMAN THAT TESTIFIED  
8 YESTERDAY?

9 A. THAT WAS THE GENTLEMAN THAT TESTIFIED THE OTHER  
10 DAY.

11 Q. OKAY. NOW, AGAIN, DON'T TELL ME WHAT HE SAID, BUT  
12 WERE YOU ABLE TO CONFIRM THE NAME, JAMES GREEN,  
13 FROM HIM?

14 A. WELL, HE PICKED HIM OUT OF A LINEUP, OKAY, HE  
15 WASN'T FAMILIAR WITH THE FULL NAME AT THE TIME BUT  
16 HE SAID HE WAS FAMILIAR WITH ONE OF THE GUYS AND  
17 THAT'S WHY, FROM THE INFORMATION THAT I HAD DURING  
18 A FOLLOWUP IN THE INVESTIGATION I DEVELOPED A NAME  
19 AND SHOWED HIM THE PICTURE, AND HE PICKED HIM OUT  
20 OF A PHOTO LINEUP THAT CONSISTED OF SIX PEOPLE IN  
21 THAT LINEUP.

22 Q. OKAY. SO, DID HE INDICATE THAT THAT WAS ONE OF  
23 THE INDIVIDUALS THAT WAS INVOLVED?

24 A. YES, HE DID, HE INDICATED THAT WAS ONE OF THE  
25 SUBJECTS IN THE STORE THAT HE IDENTIFIED.

DIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

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1 Q. DID YOU PURSUE A WARRANT AGAINST JAMES GREEN?

2 A. YES, I DID.

3 Q. AND FOR WHAT CHARGE?

4 A. ARMED ROBBERY.

5 Q. AND AGAIN, THAT WAS ON SEPTEMBER NINETEENTH?

6 A. CORRECT.

7 Q. TWO DAYS AFTER THE ROBBERY?

8 A. TWO DAYS AFTER.

9 Q. NOW, LET ME TAKE YOU TO SEPTEMBER TWENTY-FIFTH,  
10 WHAT, IF ANYTHING, DID YOU DO WITH REGARDS TO YOUR  
11 INVESTIGATION ON THAT DAY?

12 A. ON SEPTEMBER THE TWENTY-FIFTH ---

13 Q. DID YOU HAVE THE OPPORTUNITY TO FIND JAMES GREEN  
14 AFTER YOU ISSUED THAT WARRANT?

15 A. YES, I DID. WE LOCATED JAMES GREEN.

16 Q. OKAY. AND I'LL LET YOU LOOK AT YOUR NOTES, WAS  
17 THAT ON SEPTEMBER TWENTY-FIFTH?

18 A. THAT'S CORRECT, ON SEPTEMBER TWENTY-FIFTH, AND I  
19 SPOKE TO HIM AROUND TWELVE:THIRTY NOON.

20 Q. OKAY. AND YOU ARRESTED HIM AT THAT TIME?

21 A. YES, I DID.

22 Q. AND DID YOU GIVE HIM THE OPPORTUNITY TO GIVE YOU A  
23 STATEMENT?

24 A. YES, I DID.

25 Q. AND DID HE AGREE TO GIVE YOU A STATEMENT?

DIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

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1 A. YES, HE GAVE ME A WRITTEN STATEMENT OF THE  
2 INCIDENT.

3 Q. AND DID YOU -- DID HE TELL YOU PRETTY MUCH WHAT  
4 HAD HAPPENED?

5 A. THAT'S CORRECT, HE DID.

6 Q. AND DID HE TELL YOU WHEN IT HAPPENED AND WHERE IT  
7 HAPPENED?

8 A. THAT'S CORRECT.

9 Q. AT THAT TIME THE DEFENDANT, JAMES GREEN, WAS IN  
10 CUSTODY, IS THAT CORRECT?

11 A. YES, HE WAS IN MY CUSTODY.

12 Q. CHARGED WITH ARMED ROBBERY?

13 A. ON THE CHARGE OF ARMED ROBBERY.

14 Q. OKAY. AND LET ME ASK YOU THIS, BEFORE YOU TOOK  
15 HIS STATEMENT WHAT, IF ANYTHING, DID YOU ADVISE  
16 HIM OF?

17 A. I ADVISED HIM OF HIS RIGHTS, MIRANDA RIGHTS, I  
18 ADVISED HIM OF HIS RIGHTS AND MADE SURE HE  
19 UNDERSTOOD THAT HE DIDN'T HAVE TO TALK TO ME IF HE  
20 DIDN'T WANT TO TALK TO ME ABOUT THE INCIDENT.

21 Q. AND DID HE SEEM TO UNDERSTAND THAT?

22 A. HE UNDERSTOOD THAT.

23 Q. AND DID HE KNOW WHY HE WAS THERE AND WHAT THIS WAS  
24 ALL ABOUT?

25 A. YES, HE KNEW WHY HE WAS THERE AND WHAT IT WAS ALL

DIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

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1 ABOUT.

2 Q. AND YOU INDICATED HE DID GIVE YOU A STATEMENT?

3 A. YES, HE GAVE ME A STATEMENT.

4 Q. WHAT KIND OF STATEMENT DID HE GIVE, KIND OF  
5 DESCRIBE WHAT HE ---

6 A. WHAT WE DO, AFTER WE MIRANDIZE SOMEONE WE'LL GIVE  
7 HIM A FORM AND EXPLAIN EVERYTHING TO HIM, AND WE  
8 GOT HIM TO GIVE ME A WRITTEN DEFENDANT AFFIDAVIT  
9 IN REFERENCE TO THE STATEMENT ON THE ARMED ROBBERY  
10 THAT OCCURRED.

11 Q. OKAY. AND IS THE STATEMENT IN YOUR WRITING, HIS  
12 WRITING, OR BOTH?

13 A. IT'S IN BOTH.

14 Q. OKAY. HOW IS THAT, IS THERE A NARRATIVE PORTION  
15 WHERE HE'S WRITING?

16 A. THAT'S CORRECT, HE DID THE NARRATIVE PORTION, AND  
17 THEN I DID A QUESTION AND ANSWER PORTION OF THE  
18 STATEMENT WHERE I ASKED HIM SOME QUESTIONS AND I  
19 RECORDED HIS ANSWERS, AND AFTER I RECORDED HIS  
20 ANSWER I ALSO GOT HIM TO INITIAL BY EACH ANSWER  
21 THAT HE GAVE ME, WHERE HE HAD TO READ THE ANSWER  
22 AND THEN I TOLD HIM TO INITIAL BY IT.

23 Q. DID YOU THREATEN HIM OR COERCE HIM OR ANYTHING TO  
24 GIVE YOU A STATEMENT?

25 A. NO, I DID NOT.

1 Q. DID YOU PROMISE HIM ANYTHING?

2 A. I DIDN'T PROMISE HIM ANYTHING.

3 Q. AT ANYTIME SINCE THEN HAVE YOU PROMISED HIM  
4 ANYTHING?

5 A. NO, I HAVEN'T.

6 Q. AND TO YOUR KNOWLEDGE WAS THAT WRITTEN STATEMENT  
7 HE GAVE YOU FREELY AND VOLUNTARILY GIVEN?

8 A. YES, IT WAS.

9 Q. AND DID HE SIGN THE STATEMENT?

10 A. YES, HE DID SIGN THE STATEMENT.

11 Q. IN HIS OWN WRITING?

12 A. YES, CORRECT.

13 Q. OKAY. NOW, LET ME ASK YOU, DID YOU ALSO SPEAK TO  
14 MS. LATANGELA BELLAMY?

15 A. YES, I DID.

16 Q. THEN ALSO ON SEPTEMBER TWENTY-FIFTH DID YOU  
17 FOLLOWUP WITH ISSUING WARRANTS TO ANY OTHER  
18 SUSPECTS AFTER YOU TALKED TO JAMES GREEN?

19 A. YES, I DID.

20 Q. WHO DID YOU GO LOOKING FOR AFTER YOU TALKED TO  
21 JAMES GREEN?

22 A. THERE WERE TWO SUSPECTS, ONE WAS SHAWON JOHNSON  
23 LATER ON, BUT THEN ALSO AFTER I SPOKE WITH JAMES  
24 GREEN HE INDICATED TO ME THAT MR. MONTGOMERY -

25 MR. SIMS: OBJECTION, WHEN HE

DIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

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1 INDICATED, YOUR HONOR.

2 THE COURT: OVERRULED.

3 A. HE GAVE ME A STATEMENT AND STATED THAT MR.  
4 MONTGOMERY WAS ALSO WITH THE ARMED ROBBERY WITH  
5 HIM AT THE STORE.

6 Q. OKAY. AND LET ME BACK UP, YOU SAID, SHAWON  
7 JOHNSON WAS ALSO CHARGED?

8 A. YES, HE WAS ALSO CHARGED.

9 Q. WHAT WAS HE CHARGED WITH?

10 A. HE KNEW THE ROBBERY WAS GOING TO OCCUR, AND HE  
11 GAVE THEM, SUPPLIED THEM WITH THE WEAPON TO COMMIT  
12 THE ARMED ROBBERY AT THE STORE.

13 Q. SO WHAT WAS HE CHARGED WITH?

14 A. ACCESSORY TO A FELONY.

15 Q. OKAY. AND NOW, BACK TO THE DEFENDANT, REGINALD  
16 MONTGOMERY, YOU ISSUED WARRANTS FOR HIM, TOO?

17 A. YES, THAT'S CORRECT, I DID.

18 Q. AND SPECIFICALLY, DID YOU ISSUE A WARRANT FOR  
19 ARMED ROBBERY?

20 A. YES, I DID.

21 Q. OKAY. LET ME TAKE YOU TO OCTOBER FOURTH, AND LET  
22 ME JUST ASK YOU, DID YOU HAVE THE OPPORTUNITY TO  
23 ARREST MR. MONTGOMERY?

24 A. YES, I DID.

25 Q. AND DID YOU SERVE HIM WITH A WARRANT FOR ARMED

1 ROBBERY?

2 A. YES, I DID.

3 Q. AND DID YOU HAVE THE OPPORTUNITY TO ARREST MR.  
4 JOHNSON, SHAWON JOHNSON?

5 A. YES, I LATER ARRESTED HIM ALSO.

6 Q. AND WHEN YOU ARRESTED SHAWON JOHNSON DID YOU ALSO  
7 GIVE HIM AN OPPORTUNITY TO GIVE YOU A STATEMENT?

8 A. YES, I DID.

9 Q. AND DID HE DO THAT, GIVE YOU A STATEMENT?

10 A. YES, HE GAVE ME A WRITTEN STATEMENT, YES, SIR.

11 Q. AND DID YOU -- THE SAME WAY YOU DID WITH JAMES  
12 GREEN, READ HIM HIS MIRANDA RIGHTS, DID YOU DO  
13 THAT WITH SHAWON JOHNSON?

14 A. THAT'S CORRECT.

15 Q. AND WAS HE ABLE TO INDICATE WHO WAS INVOLVED WITH  
16 THE ROBBERY?

17 A. YES, HE DID.

18 Q. AND WHO DID HE SAY WAS INVOLVED?

19 A. HE INFORMED ME THAT MONTGOMERY AND JAMES GREEN  
20 WERE INVOLVED IN THE ARMED ROBBERY.

21 Q. LET ME ASK YOU ABOUT THE, THE GUN THAT MR. GREEN  
22 INDICATED HE USED, DID YOU ATTEMPT TO RECOVER IT?

23 A. YES, I DID.

24 Q. AND WHAT DID YOU DO TO TRY TO RECOVER IT?

25 A. AFTER I OBTAINED A SEARCH WARRANT I WENT TO HIS



DIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

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1 HOUSE, AND FROM THAT SEARCH WARRANT THAT I  
2 OBTAINED I WENT TO THE HOUSE AND TRIED TO SEE IF I  
3 COULD LOCATE THE GUN INSIDE THE HOUSE THERE.

4 Q. WERE YOU ABLE TO LOCATE THE GUN?

5 A. NO, I WAS UNABLE TO LOCATE THE GUN.

6 Q. AND DID YOU GET INFORMATION FROM SHAWON JOHNSON  
7 ABOUT WHAT HAPPENED TO THE GUN?

8 A. FIRST HE TOLD ME THAT SOMEHOW THE GUN WAS STOLEN  
9 FROM THE RESIDENCE, BUT HE INDICATED TO ME THAT  
10 THAT WAS THE GUN THAT WAS USED.

11 Q. OKAY. AND DID YOU RETRIEVE ANYTHING ELSE FROM MR.  
12 JOHNSON?

13 A. YES, I RETRIEVED AN AMOUNT OF WEAPONS -- FORTY-  
14 FIVE CALIBER BULLETS THAT WERE FOR THAT GUN, I  
15 RETRIEVED THAT OUT OF HIS BEDROOM.

16 Q. AND THE GUN THAT HE INDICATED WAS USED, WHAT KIND  
17 OF GUN WAS THAT?

18 A. A FORTY-FIVE.

19 Q. OKAY, SO YOU FOUND THE BULLETS THAT WOULD GO TO A  
20 FORTY-FIVE IN SHAWON JOHNSON'S HOUSE?

21 A. THAT'S CORRECT.

22 Q. OKAY.

23 SOLICITOR JEFFRIES: I BEG THE  
24 COURT'S INDULGENCE. PLEASE ANSWER ANY QUESTIONS MR.  
25 SIMS MIGHT HAVE. THAT'S ALL I HAVE, YOUR HONOR.

DIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

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1                   THE COURT: YES, SIR, MR. SIMS.

2                   MR. SIMS: YES, SIR.

3 (NOTE: Blank lines on this page do not indicate any  
4 part of record has been omitted. Headers on testimony  
5 pages and hard page breaks between testimony are now  
6 required by the Court. See next ensuing page for  
7 sequential continuation of record.)

CROSS - ROMAN E. RODRIGUEZ BY MR. SIMS

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1 CROSS-EXAMINATION OF ROMAN E. RODRIGUEZ

2 BY MR. SIMS:

3 Q. DETECTIVE RODRIGUEZ, YOU INDICATED THAT ON  
4 SEPTEMBER TWENTY-FIFTH OF O-SIX YOU TOOK A  
5 STATEMENT FROM JAMES GREEN, IS THAT CORRECT?

6 A. THAT'S CORRECT.

7 Q. AND NOW YOU FIND THAT THAT STATEMENT WAS A LIE, IS  
8 THAT CORRECT?

9 A. THAT'S CORRECT, HE INFORMED ME THE OTHER DAY THAT  
10 HE WASN'T TOTALLY HONEST WITH ME ON THAT  
11 STATEMENT.

12 Q. AND YOU TOOK A STATEMENT FROM SHAWON JOHNSON ALSO?

13 A. YES, I DID.

14 Q. AND DO YOU FIND ALSO NOW THAT THAT STATEMENT WAS A  
15 LIE?

16 A. HE ADDED SOME THINGS TO ME, HE TOLD ME HE WASN'T  
17 PERFECTLY HONEST WITH ME ON THAT DAY.

18 Q. AND I BELIEVE YOU TOOK A STATEMENT FROM LATANGELA  
19 BELLAMY, AND I BELIEVE YOU TOOK TWO STATEMENTS  
20 FROM HER?

21 A. THAT'S CORRECT.

22 Q. AND THEN, SUBSEQUENTLY, SHE CHANGED AND GAVE YOU  
23 ANOTHER STORY?

24 A. THAT'S CORRECT.

25 Q. AND YOU TOOK A STATEMENT, OR SOMEWHAT TOOK A

1 STATEMENT FROM APRIL JOHNSON?

2 A. I DID NOT TAKE A STATEMENT FROM APRIL JOHNSON, IT  
3 WAS ANOTHER OFFICER THAT TOOK THAT STATEMENT.

4 Q. BUT YOU DO KNOW THAT HER STATEMENT CHANGED ALSO?

5 SOLICITOR JEFFRIES: OBJECTION, YOUR  
6 HONOR, IT CALLS FOR SPECULATION, HE JUST SAID HE DIDN'T  
7 TAKE HER STATEMENT.

8 THE COURT: WELL, HE SAID DID HE  
9 KNOW ABOUT THE STATEMENT. OVERRULED.

10 A. I CAN'T -- NOT -- I'D HAVE TO LOOK THROUGH IT AND  
11 TRY TO FAMILIARIZE EXACTLY WHAT SHE SAID.

12 Q. YOU WERE IN COURT YESTERDAY WHEN SHE SAID THAT HER  
13 STATEMENT CHANGED?

14 A. I CAN'T REMEMBER EXACTLY WHAT MS. JOHNSON SAID  
15 YESTERDAY.

16 MR. SIMS: THAT'S ALL I HAVE, YOUR  
17 HONOR.

18 THE COURT: OKAY. ANY REDIRECT?

19 SOLICITOR JEFFRIES: BRIEFLY, YOUR  
20 HONOR.

21 (NOTE: Blank lines on this page do not indicate any  
22 part of record has been omitted. Headers on testimony  
23 pages and hard page breaks between testimony are now  
24 required by the Court. See next ensuing page for  
25 sequential continuation of record.)

REDIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

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1 REDIRECT EXAMINATION OF ROMAN E. RODRIGUEZ

2 BY SOLICITOR JEFFRIES:

3 Q. JUST TO BE CLEAR, MR. SIMS ASKED YOU ABOUT JAMES  
4 GREEN -- JAMES GREEN AND THE FACT THAT HE LIED  
5 ABOUT SOMETHING, WHAT SPECIFICALLY WAS HE NOT  
6 TOTALLY FORTHCOMING ABOUT?

7 A. THE ONLY THING MR. GREEN STATED WAS THAT HE  
8 ADMITTED TO ME THAT HE WAS THERE AT THE STORE  
9 COMMITTING THE ROBBERY, BUT THE ONLY THING THAT HE  
10 LIED ABOUT, NOT BEING IN THE POSSESSION OF THE  
11 GUN.

12 MR. SIMS: OBJECTION, YOUR HONOR,  
13 AGAIN, THAT CALLS FOR SPECULATION ABOUT WHAT JAMES GREEN  
14 -

15 THE COURT: OVERRULED.

16 MR. SIMS: WILL I GET A CHANCE TO RE  
17 -

18 THE COURT: NO, SIR, OVERRULED.

19 Q. I'M SORRY, FINISH YOUR ---

20 A. YES, HE INDICATED THAT HE DID NOT HAVE THE GUN  
21 DURING THE TIME OF THE ROBBERY, BUT LATER HE SAID  
22 THAT HE WAS IN POSSESSION OF THE GUN, AND HE SAID  
23 THAT REASON WHY HE DIDN'T SAY HE WAS IN POSSESSION  
24 OF THE GUN HE THOUGHT HE WOULD GET MORE TIME FOR  
25 BEING IN POSSESSION OF THE HAND GUN.

1 Q. WHO DID HE ORIGINALLY SAY HE WAS WHEN HE COMMITTED  
2 THE ROBBERY -- WHO WAS HE WITH?

3 A. HE WAS WITH MONTGOMERY.

4 Q. AND AGAIN, MR. SIMS ASKED YOU IF YOU WERE HERE  
5 YESTERDAY WHEN HE TESTIFIED, WHO DID HE SAY HE WAS  
6 WITH WHEN HE TESTIFIED YESTERDAY?

7 A. HE WAS WITH MR. MONTGOMERY.

8 Q. AND IN ALL THIS -

9 MR. SIMS: EXCUSE ME, YOUR HONOR,  
10 MAY WE APPROACH, PLEASE?

11 THE COURT: YES, SIR.

12 (Whereupon, a bench conference  
13 is had out of the hearing of  
14 the jury and court reporter.)

15 THE COURT: MADAM FORELADY, AND  
16 MEMBERS OF THE JURY, I NEED TO HEAR SOME MOTIONS FROM  
17 THE PARTIES AT THIS TIME, AND SO I'M GOING TO ASK YOU TO  
18 GO TO THE JURY ROOM. I HOPE TO GET YOU BACK VERY  
19 SHORTLY. DON'T DISCUSS THE CASE AMONGST YOURSELVES, AND  
20 IF YOU'LL FOLLOW THE BAILIFF TO THE JURY ROOM.

21 (Whereupon, the jury retires  
22 to the jury room and the following  
23 takes place out of the presence  
24 of the jury.)

25 THE COURT: ALRIGHT, MR. SIMS, YOU

REDIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

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1 MAY PUT ON THE RECORD WHAT YOU WANT TO PUT ON CONCERNING  
2 THE OBJECTION ABOUT DETECTIVE RODRIGUEZ'S QUESTIONS AND  
3 ANSWERS CONCERNING JAMES GREEN'S STATEMENT.

4 MR. SIMS: YES, SIR. YOUR HONOR, I  
5 FEEL THAT WHEN THE COURT ALLOWED THE STATE TO GO INTO  
6 THE SUBSTANCE OF THE CHANGE IT CREATED A BOLSTERING OF  
7 THE TESTIMONY OF SOMEONE WHO HAD ALREADY TESTIFIED. I  
8 ASKED THE WITNESS ON CROSS-EXAMINATION DID HE LIE ABOUT  
9 THE FIRST STATEMENT? YES, HE DID LIE. AND I ASKED HIM  
10 ABOUT DID HE LIE, DID SHAWON JOHNSON ALSO LIE? YES.  
11 AND ON REDIRECT THE STATE WAS ALLOWED TO GO INTO THE  
12 SUBSTANCE OF EACH ONE OF THE ALLEGATIONS TO THE POINT  
13 WHERE THE DETECTIVE BECAME JAMES GREEN ON THE STAND  
14 TESTIFYING AND CLARIFYING THINGS THAT THEY COULD HAVE  
15 GOTTEN OUT OF JAMES GREEN THEMSELVES WHEN I RAISED THOSE  
16 ISSUES WITH JAMES GREEN, HIMSELF. SO, THEN DETECTIVE  
17 RODRIGUEZ BECAME JAMES GREEN, IN EFFECT. AND I THINK  
18 THAT TESTIMONY IS HIGHLY PREJUDICIAL, IT GIVES THE JURY  
19 THE IDEA THAT HE IS VOUCHING FOR THE NEW TESTIMONY THAT  
20 JAMES GREEN GAVE WHEN HE WAS IN HERE.

21 THE COURT: OKAY, THANK YOU, MR.  
22 SIMS.

23 SOLICITOR, IS THERE ANYTHING YOU  
24 WOULD LIKE TO PUT ON THE RECORD --

25 SOLICITOR JEFFRIES: NO, YOUR HONOR.

1                   THE COURT: --- IN REFERENCE TO HIS  
2 MOTION?

3                   SOLICITOR JEFFRIES: NO, YOUR HONOR,  
4 I'LL RELY ON THE COURT'S ORIGINAL RULING.

5                   THE COURT:    OKAY.    ALRIGHT, MR.  
6 SIMS, DO YOU HAVE ANY MOTIONS?

7                   MR. SIMS: YES, SIR. YOUR HONOR, AT  
8 THIS TIME WE'D ASK FOR A DIRECTED VERDICT IN FAVOR OF  
9 THE DEFENDANT. TAKING THE EVIDENCE IN THE LIGHT MOST  
10 FAVORABLE TO THE DEFENDANT, THERE IS NO EVIDENCE IN  
11 REGARDS TO REGINALD MONTGOMERY CREATING OR BEING  
12 INVOLVED IN THIS ARMED ROBBERY. THE MAIN PERSON WHO WAS  
13 THERE, NICHOLAS HERRINGTON, WHO KNEW BOTH MR. GREEN, I  
14 MEAN, -- YEAH, JAMES GREEN AND MY CLIENT INDICATED ON  
15 DIRECTION QUESTIONING OF HIM THAT HE DID NOT BELIEVE  
16 THAT THE OTHER PERSON WHO WAS THERE WAS REGINALD  
17 MONTGOMERY. THE ONLY OTHER TESTIMONY IS THAT OF  
18 ADMITTED CO-DEFENDANTS AND OTHER PEOPLE WHO HAVE AN  
19 INTEREST AS IT RELATES TO THEIR EITHER LOVER OR THEIR  
20 BROTHER BEING INVOLVED IN THIS MATTER, AND ALL OF THEIR  
21 STATEMENTS HAVE BASICALLY BEEN IMPEACHED IN THE CONTEXT  
22 THAT THEY HAVE CHANGED THEIR STATEMENT, AT ONE TIME THE  
23 STATEMENTS INDICATED THAT THEY DID NOT KNOW WHO THE  
24 OTHER PERSON -- WHO THE OTHER ALLEGED PERSON WAS WHO WAS  
25 WITH JAMES GREEN ON THE NIGHT THAT THIS HAPPENED, AND



REDIRECT - ROMAN E. RODRIGUEZ BY SOL. JEFFRIES

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1 THEN ALL OF A SUDDEN IN COURT THE AMNESIA CLEARS UP AND  
2 THEY SAY, NOW WE KNOW WHO HE IS. YOUR HONOR, I BELIEVE  
3 THAT IT WOULD REQUIRE THE JURY TO TOTALLY SPECULATE IN  
4 TERMS OF THIS MATTER, AND I DO NOT THINK THERE IS  
5 SUFFICIENT EVIDENCE TO TAKE THIS MATTER TO THE JURY.

6 THE COURT: OKAY. THANK YOU, MR.  
7 SIMS.

8 SOLICITOR.

9 SOLICITOR JEFFRIES: YOUR HONOR,  
10 JUST BRIEFLY IN RESPONSE, I THINK, FIRST OF ALL, THE  
11 TESTIMONY OF JAMES GREEN ALONE, LOOKING AT THE EVIDENCE  
12 IN THE LIGHT MOST FAVORABLE TO THE STATE, WOULD  
13 ESTABLISH A CASE FOR THE JURY TO HEAR. IN ADDITION TO  
14 THAT YOU HAVE SEVERAL WITNESSES WHO PUT THE DEFENDANT  
15 AND THE CO-DEFENDANT TOGETHER IMMEDIATELY BEFORE AND  
16 IMMEDIATELY AFTER THE ROBBERY. IT'S A JURY QUESTION.

17 THE COURT: OKAY. MR. SIMS, YOUR  
18 MOTION IS DENIED. ANY OTHER MOTIONS?

19 MR. SIMS: YOUR HONOR, I DON'T  
20 BELIEVE SO. COULD I HAVE A FEW MINUTES TO TALK WITH MY  
21 CLIENT, YOUR HONOR, BEFORE WE PROCEED?

22 THE COURT: YEAH. LET ME FIND OUT  
23 FROM THE STATE - DOES THE STATE HAVE ANY MOTIONS?

24 SOLICITOR JEFFRIES: NO MOTIONS FROM  
25 THE STATE, YOUR HONOR.

1                   THE COURT: OKAY. ALRIGHT, HOW MUCH  
2 TIME DO YOU NEED BEFORE WE START YOUR CASE?

3                   MR. SIMS: IF I COULD HAVE ABOUT TEN  
4 OR FIFTEEN MINUTES, I NEED TO TALK WITH HIM ABOUT A  
5 STRATEGIC MATTER, YOUR HONOR.

6                   THE COURT: OKAY. IT'S TEN MINUTES  
7 TO TWELVE, WE'LL START BACK AT TWELVE O'CLOCK. OKAY?  
8 TEN MINUTES.

9                   MR. SIMS: YES, SIR, THANK YOU.

10                  THE COURT: OKAY, THANK YOU VERY  
11 MUCH.

12                                   (Recess)

13                  THE COURT: OKAY, MR. SIMS.

14                  MR. SIMS: YOUR HONOR, WE CAN DO  
15 THIS RIGHT NOW. I'VE HAD THE OPPORTUNITY TO TALK WITH MY  
16 CLIENT, AND WE HAVE DECIDED THAT WE ARE NOT GOING TO PUT  
17 UP ANY EVIDENCE.

18                  THE COURT: OKAY. ALRIGHT.

19                                 MR. MONTGOMERY, I WANT TO EXPLAIN TO  
20 YOU A COUPLE OF THINGS, OKAY?

21 (NOTE: Blank lines on this page do not indicate any  
22 part of record has been omitted. Headers on testimony  
23 pages and hard page breaks between testimony are now  
24 required by the Court. See next ensuing page for  
25 sequential continuation of record.)

EXAM, IN CAMERA-REGINALD MONTGOMERY BY THE COURT

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1 EXAMINATION, IN CAMERA, OF REGINALD MONTGOMERY

2 BY THE COURT:

3 Q. FIRST OF ALL, THE FIFTH AMENDMENT CONSTITUTION  
4 PROVIDES THAT NO ONE CAN BE COMPELLED IN A  
5 CRIMINAL CASE TO TESTIFY AGAINST THEMSELVES, OKAY?

6 A. YES, SIR.

7 Q. AND THAT'S A PERSONAL PRIVILEGE WHICH YOU HAVE.  
8 AND ONLY YOU CAN WAIVE THAT RIGHT. DO YOU  
9 UNDERSTAND?

10 A. YES, SIR.

11 Q. YOU HAVE THE RIGHT TO TESTIFY OR NOT TO TESTIFY,  
12 AND YOU'VE ALREADY TALKED TO YOUR ATTORNEY BUT I  
13 WILL GIVE YOU THE OPPORTUNITY TO TALK TO YOUR  
14 ATTORNEY FURTHER IF YOU WANT TO TALK HIM ABOUT  
15 WHETHER YOU WOULD LIKE TO TESTIFY OR NOT. DO YOU  
16 UNDERSTAND?

17 A. YES, SIR.

18 Q. NOW, IF YOU DECIDE NOT TO TESTIFY I WILL TELL THE  
19 JURY, OR I WILL CHARGE THE JURY THAT YOUR FAILURE  
20 TO TESTIFY CANNOT BE USED BY THE STATE AS AN  
21 INFERENCE OF GUILT AND YOUR FAILURE TO TESTIFY  
22 CANNOT BE CONSIDERED BY THE JURY IN ITS  
23 DELIBERATIONS. DO YOU UNDERSTAND?

24 A. YES, SIR.

25 Q. NOW, IF YOU DECIDE TO TESTIFY THEN YOU WILL ASSUME

1 THE ROLE OF A WITNESS AND YOU WILL HAVE TO ANSWER  
2 ALL OF THE QUESTIONS. IN OTHER WORDS, YOU CAN'T  
3 SIT ON THE WITNESS STAND AND TAKE THE FIFTH  
4 AMENDMENT TO ONE QUESTION AND ANSWER THE OTHER  
5 QUESTIONS. IF YOU TAKE THE WITNESS STAND AND IT'S  
6 A RELEVANT QUESTION, IT'S NOT OBJECTIONABLE UNDER  
7 THE RULES OF EVIDENCE, YOU'RE GOING TO HAVE TO  
8 ANSWER IT. DO YOU UNDERSTAND?

9 A. YES, SIR.

10 Q. YOU EITHER TAKE THE FIFTH AMENDMENT IN WHOLE AND  
11 NOT TESTIFY, OR YOU TESTIFY. DO YOU UNDERSTAND?

12 A. YES, SIR.

13 Q. ALRIGHT, NOW, THIS DECISION NOT TO TESTIFY OR TO  
14 TESTIFY MUST BE FREELY AND VOLUNTARILY ENTERED  
15 INTO. DO YOU UNDERSTAND?

16 A. YES, SIR.

17 Q. DO YOU WANT TO DISCUSS IT WITH YOUR ATTORNEY?

18 A. NO, SIR.

19 Q. HAVE YOU DISCUSSED IT WITH YOUR ATTORNEY SOME UP  
20 TO THIS POINT?

21 A. YES, SIR.

22 Q. HAVE YOU UNDERSTOOD WHAT HE'S TOLD YOU AT THIS  
23 POINT?

24 A. FULLY.

25 Q. ALRIGHT. DO YOU HAVE ANY QUESTIONS OF THE COURT

EXAM, IN CAMERA-REGINALD MONTGOMERY BY THE COURT

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1 OF WHAT I'VE JUST EXPLAINED TO YOU?

2 A. NO, SIR.

3 Q. ALRIGHT. NOW, YOU INDICATED THAT YOU WANTED TO  
4 TALK TO YOUR ATTORNEY SOME MORE ABOUT WHETHER YOU  
5 WOULD LIKE TO TESTIFY OR NOT TESTIFY, IS THAT  
6 CORRECT?

7 A. I'M CLEAR ON THAT.

8 Q. ALRIGHT, HOW MUCH MORE TIME DO YOU NEED TO TALK TO  
9 YOUR ATTORNEY ABOUT WHETHER YOU'RE GOING TO  
10 TESTIFY OR NOT TESTIFY, OR OFFER ANY EVIDENCE?

11 A. AS FAR AS I'M CONCERNED, I'M CLEAR ON THAT, I  
12 DON'T WANT TO TESTIFY.

13 Q. OKAY, SO YOU'VE MADE YOUR DECISION, YOU DO NOT  
14 WANT TO TESTIFY?

15 A. YES, I HAVE.

16 THE COURT: ALRIGHT, MR. SIMS, YOU  
17 SAID YOU NEED SOME MORE TIME TO TALK TO YOUR CLIENT, HOW  
18 MUCH MORE TIME DO YOU NEED?

19 MR. SIMS: WELL, HE'S JUST CLEARED  
20 IT UP, HE JUST SAID HE DID NOT WANT TO TESTIFY NOR PUT  
21 UP ANY EVIDENCE, YOUR HONOR.

22 Q. IS THAT CORRECT?

23 A. YES, IT IS.

24 Q. YOU DO NOT WANT TO PUT UP ANY EVIDENCE ON YOUR  
25 BEHALF?

1 A. NO, I DO NOT.

2 Q. DO YOU UNDERSTAND?

3 A. YES, SIR.

4 Q. ALRIGHT, DO YOU HAVE ANY QUESTIONS ABOUT IT?

5 A. NO, SIR.

6 THE COURT: OKAY. THANK YOU, MR.  
7 MONTGOMERY.

8 DEFENDANT MONTGOMERY: YOU'RE  
9 WELCOME.

10 THE COURT: ALRIGHT, LET ME SEE THE  
11 ATTORNEYS UP HERE.

12 MR. SIMS: YES, SIR.

13 (Whereupon, a bench conference  
14 is had out of the hearing of  
15 the court reporter.)

16 THE COURT: I DON'T THINK YOU'LL  
17 HAVE TO REST, I'LL JUST TELL THE JURY THE DEFENDANT IS  
18 NOT GOING TO OFFER ANY TESTIMONY OR TESTIFY.

19 MR. SIMS: THAT'S FINE, YOUR HONOR.

20 THE COURT: OKAY. WILL YOU BRING US  
21 THE JURY, PLEASE.

22 I HAVE MY CHARGE IF Y'ALL WANT TO  
23 TAKE A LOOK AT IT BEFORE YOU DO YOUR CLOSING ARGUMENTS.

24 MR. SIMS: YES, SIR.

25 (Whereupon, the jury returns

1 to the courtroom and the following  
2 takes place in the presence of  
3 the jury.)

4 THE COURT: ALRIGHT, SOLICITOR, YOU  
5 MAY PROCEED.

6 SOLICITOR JEFFRIES: YOUR HONOR, AT  
7 THIS TIME THE STATE WOULD REST.

8 THE COURT: LADIES AND GENTLEMEN OF  
9 THE JURY, THE DEFENDANT IS NOT GOING TO PUT UP ANY  
10 TESTIMONY ON HIS BEHALF, AND SO, THE ONLY THING THAT'S  
11 LEFT WILL BE CLOSING ARGUMENTS AND THE CHARGE, AND IT'S  
12 NOW ALMOST TEN MINUTES AFTER TWELVE, SO INSTEAD OF DOING  
13 THAT BEFORE LUNCH WHAT WE'LL DO IS TAKE A LUNCH BREAK.  
14 AND IF YOU'LL BE BACK AT ONE:THIRTY, AT THAT TIME WE'LL  
15 HAVE CLOSING ARGUMENTS AND THE CHARGE AT THAT TIME, AT  
16 ONE:THIRTY.

17 NOW, DON'T DISCUSS THE CASE AMONGST  
18 YOURSELVES, AND I'LL SEE YOU BACK AT ONE:THIRTY AND  
19 WE'LL FINISH UP AT THAT TIME.

20 NOW, ONE THING I WANT TO TELL YOU,  
21 WHEN A DEFENDANT DOES NOT TESTIFY YOU CANNOT USE THAT  
22 AGAINST HIM. HE HAS THAT RIGHT IN THIS COUNTRY NOT TO  
23 TESTIFY, AND YOU'RE NOT TO USE THAT IN YOUR  
24 DELIBERATIONS IN ANY MANNER WHATSOEVER, OR USE THAT  
25 AGAINST HIM FOR ANY REASON. AND IT DOES NOT MEAN OR

1 INSINUATE THAT HE IS GUILTY IN ANY MANNER WHATSOEVER.  
2 THE RESPONSIBILITY IN SOUTH CAROLINA IS ON THE STATE TO  
3 PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT,  
4 THE DEFENDANT DOES NOT HAVE TO PROVE HIS INNOCENCE, AND  
5 I WANTED TO EXPLAIN THAT TO YOU VERY BRIEFLY.

6 I'LL SEE YOU AT ONE:THIRTY, HAVE A  
7 GOOD LUNCH.

8 (Whereupon, the jury leaves  
9 the courtroom, and the following  
10 takes place out of the presence  
11 of the jury.)

12 THE COURT: YOU CAN TAKE MR. PRINGLE  
13 BACK TO WATEREE CORRECTIONAL INSTITUTION. THANK YOU SO  
14 VERY MUCH FOR BEING HERE, I HOPE YOU ENJOYED THE TRIP.

15 AND AS FAR AS JAMES GREEN, Y'ALL CAN  
16 TAKE HIM BACK WHEREVER Y'ALL ARE TAKING HIM. OKAY?

17 THANK YOU VERY MUCH, WE'RE IN RECESS  
18 UNTIL ONE:THIRTY. TAKE A LOOK AT THE CHARGE BOOK SO  
19 YOU'LL KNOW WHAT'S IN IT. IF YOU SEE ANYTHING GLARING  
20 THAT'S NOT IN THERE PLEASE LET ME KNOW. OKAY?

21 THANK YOU VERY MUCH.

22 (Recess)

23 THE COURT: ALRIGHT, ANYTHING FROM  
24 THE STATE BEFORE WE BRING IN THE JURY?

25 SOLICITOR JEFFRIES: WE'RE MISSING



1 ONE JUROR, I'M TOLD.

2 THE COURT: OH, WE'RE MISSING ONE  
3 JUROR?

4 BAILIFF: YOUR HONOR, WE'RE MISSING  
5 A JUROR.

6 THE COURT: OKAY. WELL, WE'LL WAIT  
7 UNTIL THAT JUROR GETS HERE. OKAY.

8 BAILIFF: YOUR HONOR, THEY ARE ALL  
9 HERE NOW.

10 THE COURT: OKAY, BRING THE JURY IN,  
11 PLEASE.

12 (Whereupon, the jury enters  
13 the courtroom and the following  
14 takes place in the presence  
15 of the jury.)

16 THE COURT: MR. JEFFRIES.

17 SOLICITOR JEFFRIES: THANK YOU, YOUR  
18 HONOR, MAY IT PLEASE THE COURT.

19 THE COURT: YES, SIR.

20 CLOSING ARGUMENT BY SOLICITOR JEFFRIES:

21 MADAM FORELADY AND LADIES AND  
22 GENTLEMEN OF THE JURY, IF WE'VE LEARNED NOTHING DURING  
23 THE COURSE OF THIS TRIAL THIS WEEK WE'VE LEARNED ONE  
24 THING, AND THAT'S THAT ARMED ROBBERY IS RISKY BUSINESS.  
25 IT'S A DANGEROUS GAME TO PLAY AND THOSE WHO TAKE IT UPON

1 THEMSELVES TO COMMIT ARMED ROBBERY, THEY ASSUME A NUMBER  
2 OF RISKS. WHEN YOU TAKE IT UPON YOURSELF TO TAKE A HAND  
3 GUN AND GO TO THE STORE WITH THE INTENT TO STEAL MONEY,  
4 YOU ASSUME A RISK. YOU ASSUME THE RISK, FIRST OF ALL,  
5 THAT YOU COULD GET HURT. YOU DON'T KNOW WHO IS IN THAT  
6 STORE, THE TELLER OR SOMEBODY ELSE IN THE BACK MAY HAVE  
7 A GUN, YOU DON'T KNOW. BUT THAT'S THE RISK YOU ASSUME  
8 WHEN YOU GO TO ROBE SOMEONE. AND YOU ASSUME THE RISK  
9 THAT YOU COULD HURT SOMEONE ELSE. IN THIS CASE WE HEARD  
10 THE GUN WASN'T LOADED. OKAY. BUT LADIES AND GENTLEMEN,  
11 TAKE -- BEING A PROSECUTOR I'VE SEEN IT MANY TIMES, WHEN  
12 PEOPLE ARE PUT IN STRESSFUL SITUATIONS THINGS CAN GET  
13 OUT OF HAND VERY QUICKLY, THINGS CAN ESCALATE AND PEOPLE  
14 CAN GET HURT, WHETHER THAT WAS THE INTENT OR NOT. BUT  
15 THAT'S THE RISK YOU ASSUME WHEN YOU GO TO ROB A STORE.  
16 BUT LADIES AND GENTLEMEN, MORE PRACTICAL, AND AS WAS THE  
17 CASE HERE IN THIS TRIAL, YOU ASSUME THE RISK THAT YOU'RE  
18 GOING TO GET CAUGHT. AND THAT'S WHAT HAPPENED.  
19 REGINALD MONTGOMERY, ALONG WITH JAMES GREEN AND SHAWON  
20 JOHNSON, THEY GOT CAUGHT. AND THAT'S WHAT THIS CASE IS  
21 ABOUT, LADIES AND GENTLEMEN.

22 I WANT TO FIRST OF ALL THANK YOU,  
23 AND I KNOW MR. SIMS AND MS. BURBAGE, JUDGE NICHOLSON,  
24 THEY ALL JOIN ME IN THANKING YOU FOR YOUR TIME AND  
25 ATTENTION THIS WEEK. I KNOW YOU DIDN'T VOLUNTEER TO BE

1 HERE, BUT I CAN TELL YOU THAT YOUR SERVICE, YOUR  
2 PRESENCE IN THIS COURTROOM IS ABSOLUTELY CRUCIAL TO OUR  
3 SYSTEM OF JUSTICE, OUR COURT SYSTEM. WE'D COME TO A  
4 SCREECHING HALT IF WE DIDN'T HAVE FAIR MINDED  
5 INDIVIDUALS SUCH AS YOURSELVES TO COME IN AND DECIDE  
6 THESE CASES. SO, I THANK YOU.

7 ALSO, I KNOW THIS HASN'T BEEN A LONG  
8 TRIAL, BUT I'VE WATCHED YOU, YOU'VE BEEN VERY ATTENTIVE,  
9 LISTENED TO THE JUDGE WHEN HE SPOKE TO YOU, LISTENED TO  
10 THE ATTORNEYS, THE WITNESSES, AND WE THANK YOU FOR THAT.

11 NOW, I SAY, IT HASN'T BEEN A LONG  
12 TRIAL, NOT LIKE THE ONES YOU SEE ON T.V. OR READ ABOUT  
13 THAT TAKE WEEKS AND MONTHS AND SOMETIMES MORE THAN A  
14 YEAR TO TRY. BUT DON'T LET THE FACT THAT THIS WAS A  
15 SHORT TRIAL LEAD YOU TO BELIEVE THAT IT'S NOT AN  
16 IMPORTANT TRIAL, BECAUSE IT'S A VERY IMPORTANT TRIAL.  
17 IT'S IMPORTANT TO THE DEFENDANT WHO'S CHARGED WITH A  
18 VERY SERIOUS CRIME. IT'S IMPORTANT TO THE STATE BECAUSE  
19 THIS IS OUR ONE AND ONLY OPPORTUNITY TO HOLD HIM  
20 RESPONSIBLE FOR HIS PART IN THE ARMED ROBBERY LAST YEAR,  
21 SEPTEMBER SEVENTEENTH. IT'S IMPORTANT TO THE VICTIMS,  
22 NICHOLAS HERRINGTON AND RAMISE KEITT, WHO WERE HELD UP.  
23 IT'S IMPORTANT TO THE CITIZENS OF ORANGEBURG COUNTY WHO  
24 FIND IT UNACCEPTABLE FOR AN INDIVIDUAL TO BE RUNNING  
25 AROUND TOTING GUNS AND ROBBING STORES.

1 LADIES AND GENTLEMEN, I ALSO WANT TO  
2 APOLOGIZE, I DON'T THINK I DID IN THIS CASE BUT A LOT OF  
3 TIMES DURING A TRIAL I GET ANIMATED, I GET EXCITED,  
4 SOMETIMES LOUD, AND I DON'T THINK THAT WAS THE CASE THIS  
5 WEEK, BUT JUST IN CASE, I WANT TO APOLOGIZE IF I SAID OR  
6 DID ANYTHING TO OFFEND ANYONE IN THIS COURTROOM. AND  
7 THAT'S JUST THE WAY I DO MY JOB, I GET ANIMATED  
8 SOMETIMES. BUT DON'T HOLD THAT AGAINST THE STATE OF  
9 SOUTH CAROLINA, DON'T HOLD IT AGAINST THE ORANGEBURG  
10 SHERIFF'S DEPARTMENT, OR ANYONE AT THE SHELL STATION FOR  
11 THE WAY I DO MY JOB.

12 LADIES AND GENTLEMEN, WE ALL HAVE  
13 JOBS IN THIS COURTROOM. MY JOB AS A PROSECUTOR, AS A  
14 SOLICITOR, IS TO PRESENT TO YOU THE EVIDENCE SO YOU CAN  
15 DECIDE THIS CASE. CONTRARY TO WHAT MANY PEOPLE THINK,  
16 IT'S NOT MY JOB TO PROSECUTE SOMEBODY OR TO CONVICT  
17 SOMEONE. IT'S MY JOB TO SEEK JUSTICE. AND I HAVE THE  
18 RESPONSIBILITY BY THE CODE, THE ETHICS CODE OF THIS  
19 STATE TO MAKE SURE HE RECEIVES A FAIR TRIAL, MAKE SURE  
20 HIS RIGHTS ARE PROTECTED, AND THAT'S ALSO OBVIOUSLY THE  
21 DUTY HIS ATTORNEY HAS, AS WELL, AND THE JUDGE, THE WHOLE  
22 COURT SYSTEM. AND I SUBMIT TO YOU, LADIES AND  
23 GENTLEMEN, HIS RIGHTS HAVE BEEN PROTECTED. HE HAS  
24 RECEIVED A FAIR TRIAL. AND NOT ONLY THAT, MR. SIMS HAS  
25 THE ADDITIONAL TASK OF ZEALOUSLY REPRESENTING HIS

1 CLIENT, AND I SUBMIT TO YOU, HE'S BEEN ZEALOUSLY  
2 REPRESENTED. MR. SIMS HAS DONE A VERY GOOD JOB  
3 REPRESENTING HIS CLIENT.

4 NOW, THE JUDGE ALSO HAS THE ROLE OF  
5 MAKING SURE THE DEFENDANT'S RIGHTS ARE PROTECTED, MAKING  
6 SURE HE RECEIVES A FAIR TRIAL. AND THE JUDGE ALSO ACTS  
7 AS A REFEREE, YOU KNOW, BETWEEN THE TWO PARTIES. HE  
8 DECIDES ALL ISSUES OF LAW, WHAT EVIDENCE COMES IN, WHAT  
9 EVIDENCE DOESN'T COME IN, AND WHEN I'M THROUGH AND WHEN  
10 MR. SIMS IS THROUGH THE JUDGE WILL INSTRUCT YOU ON THE  
11 LAW AND TELL YOU WHAT THE LAW IS AND HOW TO APPLY IT TO  
12 THE FACTS. LET ME CAUTION OF ONE THING, IF I SAY  
13 ANYTHING DURING MY CLOSING PRESENTATION TO YOU, OR IF  
14 MR. SIMS SAYS ANYTHING IN HIS CLOSING PRESENTATION THAT  
15 CONTRADICTS WHAT JUDGE NICHOLSON TELLS YOU, YOU MUST  
16 TAKE THE LAW FROM THE JUDGE. HE IS THE SOLE JUDGE OF  
17 THE LAW IN THIS CASE. AND IF I SAY SOMETHING CONTRADICTS  
18 THE JUDGE IT'S NOT INTENTIONAL, BUT INTENTIONAL OR NOT  
19 YOU MUST TAKE THE LAW FROM THE JUDGE. AND THAT GOES FOR  
20 EVERYTHING THE ATTORNEYS SAY.

21 WHAT WE SAY IS NOT EVIDENCE, OKAY,  
22 THE ONLY EVIDENCE CAME FROM THAT WITNESS STAND, THE  
23 TESTIMONY YOU HEARD. AND I SUBMIT TO YOU, WHEN MR. SIMS  
24 GETS UP YOU'RE GOING TO HEAR A LOT OF SPECULATION AND  
25 CONJECTURE, BUT THAT'S NOT EVIDENCE. THE TESTIMONY FROM

1 THE WITNESS STAND IS THE EVIDENCE.

2 NOW, I'M GOING TO TALK TO YOU  
3 BRIEFLY ABOUT THE LAW AND THE FACTS AND HOW TO APPLY THE  
4 LAW TO THE FACTS IN THIS CASE. AND I'M GOING TO SIT DOWN  
5 AND MR. SIMS IS GOING TO GIVE YOU HIS PRESENTATION. I'M  
6 NOT GOING TO HAVE ANOTHER OPPORTUNITY TO SPEAK TO YOU,  
7 SO I'M ASKING YOU TO HEAR WHAT I'M SAYING, KEEP AN OPEN  
8 MIND AND LISTEN TO MR. SIMS, BUT DON'T FORGET WHAT  
9 YOU'VE HEARD, AND DON'T DECIDE UNTIL YOU'VE HEARD ALL OF  
10 THE CLOSING PRESENTATION.

11 NOW, ONE THING YOU WILL REALIZE WHEN  
12 YOU GET BACK INTO YOUR JURY ROOM AND START DELIBERATING  
13 IS THAT YOU WON'T HAVE ANY DEPOSITIONS OR STATEMENTS.  
14 YOU HEARD A LOT DURING THIS TRIAL ABOUT STATEMENTS, SO  
15 AND SO GAVE A STATEMENT. YOU WON'T HAVE THOSE  
16 STATEMENTS. AND THAT'S THE WAY OUR CRIMINAL JUSTICE  
17 SYSTEM WORKS. IN CRIMINAL COURT WHEN SOMEBODY IS  
18 CHARGED WITH A CRIMINAL OFFENSE THEY HAVE THE  
19 CONSTITUTIONAL RIGHT TO CONFRONT EACH WITNESS AGAINST  
20 HIM. THAT MEANS THAT WITNESS HAS TO GIVE LIVE TESTIMONY  
21 IN FRONT OF THE JURY SO THEY CAN BE CROSS-EXAMINED AND  
22 QUESTIONED IN FRONT OF THE JURY. SO, WHAT YOU HAD WAS  
23 LIVE TESTIMONY, YOU'RE NOT GOING TO HAVE ANY STATEMENTS.  
24 AND THAT'S NOT MY FAULT, THAT'S NOT MR. SIMS'S FAULT,  
25 THAT'S NOT THE COURT'S FAULT, THAT'S JUST THE WAY THE

1 SYSTEM WORKS.

2 ANOTHER THING THE STATE IS NOW  
3 ALLOWED TO DO IS, I CAN'T COME IN HERE AND PARADE IN  
4 FIFTY WITNESSES TO COME AND TESTIFY TO THE EXACT SAME  
5 THING. SO, WHAT YOU GOT WAS TESTIMONY FROM WITNESSES  
6 WHO HAD KNOWLEDGE OF WHAT HAPPENED, BUT THEY HAD  
7 DIFFERENT VANTAGE POINTS. SOME PEOPLE TESTIFIED AS TO  
8 WHAT HAPPENED IMMEDIATELY BEFORE THE ARMED ROBBERY  
9 BECAUSE THEY DIDN'T SEE THE ARMED ROBBERY. SOME PEOPLE  
10 TESTIFIED, IN JAMES GREEN'S CASE, AS TO THE ARMED  
11 ROBBERY ITSELF, BECAUSE HE WAS THERE. SOME PEOPLE  
12 TESTIFIED AS TO WHAT HAPPENED IMMEDIATELY AFTER. SO,  
13 PEOPLE WHO HAD SOMETHING TO ADD TESTIFIED AND THEY COULD  
14 ONLY TELL YOU WHAT THEY KNEW OF THEIR OWN VOLITION.

15 NOW, LET'S TALK ABOUT THE LAW IN  
16 THIS CASE. THE DEFENDANT IS CHARGED WITH ONE COUNT OF  
17 ARMED ROBBERY. NOW, FIRST OF ALL, THE JUDGE IS GOING TO  
18 READ YOU THE DEFINITION OF ARMED ROBBERY, AND IT'S A  
19 FAIRLY LENGTHY DEFINITION. BUT BASICALLY, I'VE GOT DOWN  
20 ON THIS BOARD IS WHAT CONSTITUTES ARMED ROBBERY IS.  
21 IT'S TAKING GOODS OR PROPERTY FROM THE PERSON OF ANOTHER  
22 OR THE IMMEDIATE PRESENCE OF ANOTHER WHILE ARMED, OR  
23 ALLEGED TO BE ARMED WITH A DEADLY WEAPON.

24 LADIES AND GENTLEMEN, THE STATE IS  
25 NOT ALLEGING THAT REGINALD MONTGOMERY HAD THE GUN. IN

1 FACT, WE PUT A WITNESS UP THERE WHO TOLD YOU HE HAD THE  
2 GUN, JAMES GREEN. WE'RE NOT SAYING REGINALD MONTGOMERY  
3 HAD THE GUN. HOWEVER, THE LAW STATES THAT YOU'RE GUILTY  
4 OF ARMED ROBBERY IF YOU'RE THE ONE TAKING THE MONEY OUT  
5 OF THE REGISTER WHILE THE PERSON YOU ARE WITH IS HOLDING  
6 THE PISTOL, YOU'RE GUILTY OF ARMED ROBBERY. THAT'S TWO  
7 PEOPLE ACTING IN CONCERT TO ACHIEVE ONE GOAL, AND THAT'S  
8 TO ROB THE SHELL STATION. IT DOESN'T MATTER THAT HE  
9 DIDN'T HAVE THE GUN. BUT EVEN FURTHER THAN THAT, THE  
10 JUDGE IS GOING TO INSTRUCT YOU ON WHAT THE LAW IS IN  
11 SOUTH CAROLINA WITH REGARDS TO THAT TYPE OF SITUATION,  
12 IT'S CALLED THE HAND OF ONE IS THE HAND OF ALL. AND  
13 AGAIN, THIS IS A FAIRLY LENGTHY DEFINITION, TOO, BUT  
14 WHEN TWO OR MORE PEOPLE BASICALLY CONSPIRE TO ROB A  
15 STORE IN THIS CASE, OR TO COMMIT ANY CRIME, THEN EACH  
16 INDIVIDUAL IS RESPONSIBLE FOR THE OTHER INDIVIDUAL'S  
17 ACTIONS DURING THE COMMISSION OF THAT CRIME. AND IN  
18 THIS CASE YOU HEARD THAT JAMES GREEN WAS THE ONE WITH  
19 THE GUN, BUT THAT REGINALD MONTGOMERY WAS THE ONE THAT  
20 WENT INTO THE REGISTER TO STEAL THE MONEY. LADIES AND  
21 GENTLEMEN, THANK GOD, NOBODY WAS HURT IN THAT STORE, BUT  
22 I SUBMIT TO YOU THAT IF SOMEBODY WOULD HAVE BEEN HURT  
23 REGINALD MONTGOMERY WOULD HAVE BEEN JUST AS RESPONSIBLE  
24 AS JAMES GREEN FOR THOSE INJURIES, BECAUSE THEY WERE  
25 ACTING IN CONCERT, AND IN THE STATE OF SOUTH CAROLINA



1 THE HAND OF ONE IS THE HAND OF ALL. AND THE JUDGE IS  
2 GOING TO INSTRUCT YOU ON THAT.

3 I ALSO WANT TO TALK ABOUT THE  
4 STANDARD OF PROOF, AND I DON'T HAVE A BOARD FOR THAT.  
5 THE STANDARD OF PROOF WHICH YOU'VE HEARD A COUPLE OF  
6 TIMES ALREADY, IN THE STATE OF SOUTH CAROLINA AND IN ANY  
7 STATE IN OUR COUNTRY SOMEONE WHO IS CHARGED WITH A  
8 CRIMINAL OFFENSE MUST BE PROVEN GUILTY BEYOND A  
9 REASONABLE DOUBT. BEYOND A REASONABLE DOUBT. AND DON'T  
10 GET HUNG UP ON ANY PART OF THAT, THAT MEANS EXACTLY WHAT  
11 IT SOUNDS LIKE, A REASONABLE DOUBT. NOT PROOF BEYOND  
12 ANY POSSIBLE DOUBT, NOT PROOF BEYOND THE SHADOW OF A  
13 DOUBT, PROOF BEYOND A REASONABLE DOUBT. AND THAT'S  
14 IMPORTANT, BECAUSE YOU CAN DOUBT ANYTHING. YOU CAN  
15 DOUBT THAT THE SUN'S GOING TO COME UP TOMORROW, BUT IS  
16 THAT A REASONABLE DOUBT? AND I SUBMIT TO YOU, IT'S NOT.  
17 WHAT PROOF BEYOND A REASONABLE DOUBT MEANS IS THAT IF  
18 THE EVIDENCE THAT YOU'VE HEARD FROM THAT WITNESS STAND,  
19 IF IT LEAVES YOU FIRMLY CONVINCED, JUST FIRMLY CONVINCED  
20 OF THE DEFENDANT'S GUILT, YOU MUST FIND HIM GUILTY. AND  
21 LADIES AND GENTLEMEN, I SUBMIT TO YOU THAT THE EVIDENCE  
22 IN THIS CASE SHOULD LEAVE YOU A LOT MORE THAN FIRMLY  
23 CONVINCED. THE ONLY EVIDENCE YOU'VE HEARD IN THIS CASE  
24 IS THAT THE DEFENDANT WAS WITH JAMES GREEN ROBBING A  
25 SHELL STATION ON SEPTEMBER SEVENTEENTH. THAT'S THE

1 EVIDENCE, BEYOND ANY DOUBT.

2 THE JUDGE IS ALSO GOING TO INSTRUCT  
3 YOU ON THE TWO DIFFERENT TYPES OF EVIDENCE. THERE'S  
4 DIRECT EVIDENCE AND THERE'S CIRCUMSTANTIAL EVIDENCE.  
5 DIRECT EVIDENCE IS EVIDENCE THAT INVOLVES YOUR SENSES,  
6 YOUR FIVE SENSES, SOMETHING YOU SEE, TOUCH, SMELL.  
7 JAMES GREEN PRESENTED TO YOU DIRECT EVIDENCE, WHAT HE  
8 SAW AT THE SHELL STATION, WHICH WAS HIS CO-DEFENDANT,  
9 HIS FRIEND, REGINALD MONTGOMERY, TAKING THE MONEY OUT OF  
10 THE REGISTER WHILE HE HELD THE GUN. THAT'S DIRECT  
11 EVIDENCE. SHAWON JOHNSON TESTIFIED THAT HE GAVE THEM  
12 THE GUN AND THEY TOLD HIM THEY WERE GOING TO ROB THE  
13 SHELL STATION, THEY WERE GOING TO DO THAT S-H-I-T, OR  
14 WHEN THEY GOT BACK THAT, WE DID THAT S-H-I-T. THAT'S  
15 CIRCUMSTANTIAL EVIDENCE, HE DIDN'T SEE THEM DO IT, BUT  
16 THEY TOLD HIM THEY WERE GOING TO DO IT, AND HE GAVE THEM  
17 THE GUN, AND WHEN THEY CAME BACK THEY GAVE HIM MONEY.  
18 SO, CIRCUMSTANTIAL EVIDENCE DEALS WITH AN INFERENCE TO  
19 BE DRAWN. ALTHOUGH YOU DON'T SEE SOMETHING, YOU CAN  
20 INFER SOMETHING HAPPENED JUST BY THE CIRCUMSTANCE.  
21 SHAWON JOHNSON INFERRED THAT THEY HAD COMMITTED THAT  
22 ROBBERY BECAUSE THEY SAID THEY WERE GOING TO DO IT, HE  
23 GAVE THEM THE GUN TO DO IT, AND THEY CAME BACK AND SAID,  
24 WE DID IT, AND GAVE HIM MONEY. SO, THAT WAS THE  
25 INFERENCE TO BE DRAWN. DEPUTY RODRIGUEZ, AMONGST OTHER

1 THINGS, TOOK A STATEMENT FROM JAMES GREEN. JAMES GREEN  
2 TOLD HIM WHAT HAPPENED, TOLD HIM THAT THEY ROBBED THE  
3 STORE, IT WAS HIM AND REGGIE. THAT'S DIRECT EVIDENCE,  
4 THAT'S EXACTLY WHAT HE WAS TELLING YOU, THAT WAS  
5 SOMETHING HE HEARD.

6 LADIES AND GENTLEMEN, PROBABLY THE  
7 CRUX OF THIS CASE IS CREDIBILITY -- CREDIBILITY OF THE  
8 WITNESSES. HOW DO YOU JUDGE CREDIBILITY? LADIES AND  
9 GENTLEMEN, NONE OF YOU WENT TO SCHOOL OR A TRAINING  
10 COURSE TO BECOME JURORS, BUT I'D SUBMIT TO YOU THAT  
11 YOU'VE BEEN TRAINED YOUR ENTIRE LIVES TO BE JURORS.  
12 BECAUSE TO BE A JUROR MEANS TO BE ABLE TO JUDGE  
13 CREDIBILITY. AND YOU DO THAT EVERY DAY AT WORK, AT  
14 HOME, YOU NEED TO BE ABLE TO LOOK AT SOMEONE AND TELL IF  
15 THEY'RE TELLING YOU THE TRUTH. THOSE OF YOU WHO HAVE  
16 CHILDREN ARE DEFINITELY EXPERTS AT CREDIBILITY BECAUSE  
17 YOU'VE GOT TO BE ABLE TO KNOW IF YOUR CHILD IS BEING  
18 STRAIGHTFORWARD OR IF THEY'RE ADDING SOMETHING OR NOT  
19 STATING SOMETHING TO YOU. CREDIBILITY CAN BE DETERMINED  
20 BASED ON LOOKING AT THE WITNESS AS THEY TESTIFY. LOOK  
21 AT THEIR DEemeanor, ARE THEY HESITANT OR FORTHRIGHT? WAS  
22 THEIR TESTIMONY CONSISTENT WITH THE OTHER EVIDENCE? AND  
23 I SUBMIT TO YOU, LADIES AND GENTLEMEN, THE TESTIMONY IN  
24 THIS CASE IS ALL CONSISTENT. IS THEIR TESTIMONY  
25 CORROBORATED BY OTHER WITNESSES? AND WHAT THAT MEANS

1 IS, IF SHAWON JOHNSON TELLS YOU THAT HE GAVE THE GUN TO  
2 REGINALD MONTGOMERY AND JAMES GREEN, AND THEN JAMES  
3 GREEN TELLS YOU THEY TOOK THAT GUN AND WENT AND ROBBED  
4 THE SHELL STATION, JAMES GREEN HAS JUST CORROBORATED  
5 WHAT SHAWON JOHNSON SAID. AND WHEN NICHOLAS HERRINGTON  
6 TELLS YOU THAT THE SHORT MAN WAS AT THE DOOR AND HE  
7 KNOWS HIM TO BE JAMES GREEN, AND THE TALLER MAN WHO HE  
8 COULDN'T SEE BECAUSE HE WASN'T LOOKING AT HIM, CAME  
9 BEHIND THE COUNTER, HE'S CORROBORATING JAMES GREEN'S  
10 STORY THAT HE WAS THE ONE AT THE DOOR WITH THE GUN AND  
11 REGINALD MONTGOMERY WAS THE OTHER MAN. SO, THEY  
12 CORROBORATE EACH OTHER. AND ANOTHER WAY YOU DETERMINE  
13 CREDIBILITY IS, ASK YOURSELF, DID THE WITNESS HAVE A  
14 GRIEVANCE AND BIAS, OR PREJUDICE? AND THAT'S IMPORTANT  
15 IN THIS CASE. IT'S VERY IMPORTANT IN THIS CASE BECAUSE  
16 THE STATE, WE PUT UP TWO INDIVIDUALS, JAMES GREEN AND  
17 SHAWON JOHNSON, WHO ARE CRIMINALS. OKAY, THEY ARE  
18 CRIMINALS. WE DIDN'T TRY TO HIDE THAT. SHAWON JOHNSON  
19 HAS BEEN CONVICTED OF ACCESSORY BEFORE THE FACT TO A  
20 FELONY, THAT FELONY BEING ROBBERY. AND WHERE DID THAT  
21 COME FROM? THIS INCIDENT, BECAUSE THAT MAN, ALONG WITH  
22 JAMES GREEN, ROBBED THE SHELL STATION. HE'S A CRIMINAL,  
23 BUT WHO WAS HE WITH? THESE AREN'T MY FRIENDS, JAMES  
24 GREEN AND SHAWON JOHNSON, THOSE AREN'T MY FRIENDS.  
25 OKAY, THE STATE, OR PROSECUTOR, WE TAKE THE WITNESSES AS

1 WE FIND THEM. AND IF THEY HAVE BAGGAGE THEN WE JUST  
2 HAVE TO ACCEPT THAT. THESE ARE HIS FRIENDS, THESE ARE  
3 PEOPLE HE CHOSE TO BE WITH. HE CHOSE TO ROB THE SHELL  
4 STATION WITH JAMES GREEN USING SHAWON JOHNSON'S GUN.  
5 SO, I DON'T APOLOGIZE FOR HAVING TO PUT UP THESE  
6 INDIVIDUALS WHO HAVE CRIMINAL RECORDS. THE TERM, BIRDS  
7 OF A FEATHER, YOU'VE HEARD THAT, WELL, THESE ARE HIS  
8 FRIENDS, THEY FLOCK TOGETHER. AND HE DID THE SAME  
9 ROBBERY THAT JAMES GREEN DID. BUT THAT'S HOW YOU JUDGE  
10 CREDIBILITY.

11 AND REMEMBER ANOTHER THING, THE  
12 STATE'S WITNESSES, JAMES GREEN, SHAWON JOHNSON, LAW  
13 ENFORCEMENT, EVERYBODY, THEY DIDN'T HAVE SEVEN MONTHS TO  
14 GET THEIR STORIES STRAIGHT. OKAY, THEY GAVE STATEMENTS  
15 BACK IN SEPTEMBER AND OCTOBER. INVESTIGATOR RODRIGUEZ  
16 DID HIS INVESTIGATIVE WORK BACK THEN BEFORE HE ARRESTED  
17 THESE PEOPLE. AND WHAT THEY TOLD YOU NOW, WHEN THEY  
18 TESTIFIED, THEY'RE TELLING YOU WHAT THEY DID BACK THEN.  
19 SO, IT'S NOT LIKE THEY CAME UP WITH THESE STORIES THIS  
20 WEEK.

21 LADIES AND GENTLEMEN, I'VE NEVER  
22 SERVED ON A JURY, I THINK FOR ME IT WOULD BE DIFFICULT  
23 BECAUSE IN ORDER TO BE A JUROR YOU HAVE TO LISTEN, AND  
24 I LIKE TO TALK. YOU HAVE TO LISTEN TO THE WITNESSES,  
25 LISTEN TO THE JUDGE, LISTEN TO THE ATTORNEYS, AND YOU

1 NEVER HAVE THE OPPORTUNITY TO SPEAK, TO ASK ANY  
2 QUESTIONS. BUT THIS IS MY OPPORTUNITY TO TRY TO ANSWER  
3 YOUR QUESTIONS. AND WHAT'S IRONIC IS THAT AT THE CLOSE  
4 OF THIS TRIAL, WHEN YOU'VE HEARD FROM ME AND MR. SIMS  
5 AND THE JUDGE, YOU ARE GOING TO HAVE THE LOUDEST VOICE  
6 OF ANYONE IN THIS COURTROOM. I'M GOING TO ASK YOU TO USE  
7 THAT VOICE TO FIND HIM GUILTY. THIS IS THE STATE'S ONE  
8 AND ONLY OPPORTUNITY, ONE AND ONLY OPPORTUNITY TO FIND  
9 HIM GUILTY, TO HOLD HIM RESPONSIBLE. IF HE'S FOUND NOT  
10 GUILTY THERE'S NO RESPONSIBILITY ATTACHED, HE WALKS FREE  
11 AS IF IT NEVER HAPPENED. YOU HAVE AN OPPORTUNITY TO  
12 MAKE A STATEMENT TO THE PEOPLE OF ORANGEBURG COUNTY THAT  
13 THIS TYPE OF BEHAVIOR IS UNACCEPTABLE, AND THERE IS  
14 RESPONSIBILITY THAT HAS TO BE ATTACHED.

15 NOW, WHEN I'M PREPARING FOR A TRIAL  
16 LIKE THIS TRIAL OR ANY OTHER TRIAL I'VE DONE, I FIND  
17 MYSELF IN THE POSITION OF HAVING TO TRY TO ANTICIPATE  
18 WHAT THE DEFENSE WILL DO, WHAT ARE THEY GOING TO SAY  
19 WHEN THEY GET INTO THE TRIAL, BECAUSE THEY DON'T HAVE TO  
20 TELL ME. SO, I HAVE TO BASICALLY GUESS. AND IN A CASE  
21 LIKE THIS, AN ARMED ROBBERY WITH THE CO-DEFENDANT  
22 TESTIFYING, GENERALLY, IT'S GOING TO COME DOWN TO, WELL,  
23 MISIDENTIFICATION, THEY'VE GOT THE WRONG GUY. THAT  
24 DEFENSE DOESN'T WORK IN THIS CASE, LADIES AND GENTLEMEN,  
25 BECAUSE JAMES GREEN, THE OTHER MAN WHO WAS IN THE STORE

1 CLEARLY TELLS YOU WHO HE WAS WITH. AND SO DOES SHAWON  
2 JOHNSON. AND THE OTHER WITNESSES TELL YOU THAT THEY SAW  
3 THEM TOGETHER IMMEDIATELY BEFORE AND IMMEDIATELY AFTER.  
4 SO, THAT DEFENSE DOESN'T WORK. SO, THEN, IT'S MAYBE, I  
5 WAS THERE, BUT I DIDN'T DO IT. WELL, THAT DOESN'T WORK,  
6 EITHER, BECAUSE JAMES GREEN TOLD YOU WHAT HE DID, AND HE  
7 TOLD YOU WHAT REGINALD MONTGOMERY DID. SO, WHAT ARE  
8 THEY LEFT WITH? I SUBMIT TO YOU THAT WHAT MR. SIMS IS  
9 GOING TO DO WHEN HE STANDS UP IS, ASK YOU TO SPECULATE.  
10 HE'S GOING TO TRY TO TAKE YOUR ATTENTION AWAY FROM THE  
11 FACTS. HE'S GOING TO HARP ON THESE INDIVIDUALS' STORIES,  
12 WHETHER OR NOT THEY CHANGED, AND I SUBMIT TO YOU THAT  
13 TWO THINGS NEVER CHANGED, THERE WAS ONLY TWO PEOPLE THAT  
14 ROBBED THAT SHELL STATION, JAMES GREEN AND REGINALD  
15 MONTGOMERY. BUT HE'S GOING TO TRY TO DIVERT YOUR  
16 ATTENTION, MAKE YOU FOCUS ON OTHER THINGS, BUT LADIES  
17 AND GENTLEMEN, THE FACTS REMAIN, YOU CAN'T WISH THEM  
18 AWAY, YOU CAN'T SPECULATE THEM AWAY. THE ONLY EVIDENCE  
19 IN THIS CASE IS THAT REGINALD MONTGOMERY ROBBED THAT  
20 STORE WITH JAMES GREEN, THAT'S THE ONLY EVIDENCE IN THIS  
21 CASE, AND THAT'S THE -- IF YOU BELIEVE THAT THEN YOU  
22 MUST FIND HIM GUILTY.

23 NOW, LADIES AND GENTLEMEN, MR. SIMS  
24 ATTACKED APRIL JOHNSON AND LATANGELA BELLAMY ABOUT  
25 WHETHER OR NOT THEY WERE TOTALLY TRUTHFUL. AND TALKING

1 ABOUT CREDIBILITY, ASK YOURSELF IF THAT'S UNREASONABLE,  
2 ASK YOURSELF IF THAT'S UNUSUAL THAT INDIVIDUALS AREN'T  
3 TOTALLY FORTHCOMING TO LAW ENFORCEMENT, ESPECIALLY WHEN  
4 THEIR FAMILY MEMBERS ARE INVOLVED? IS THAT REASONABLE?  
5 ASK YOURSELF THAT. AND DOES THAT MEAN THEY WERE LYING?  
6 BECAUSE LET'S LOOK AT APRIL JOHNSON, HER BROTHER HAS  
7 BEEN CONVICTED, SHAWON JOHNSON, HE'S DOING FIVE YEARS.  
8 WHAT REASON WOULD SHE HAVE TO COME IN HERE AND LIE TO  
9 YOU IN ORDER TO FRAME THAT MAN? WHY IS HE SO SPECIAL?  
10 WHO IS HE THAT EVERYBODY WANTS TO COME TOGETHER IN THIS  
11 GREAT CONSPIRACY TO CONVICT HIM? JAMES GREEN EVEN  
12 ADMITS HE'S THE MAN WITH THE GUN. WHAT REASON DOES HE  
13 HAVE TO LIE ABOUT WHAT WHO HE WAS WITH? AND HE'S  
14 CORROBORATED BY ALL THE OTHER EVIDENCE. ASK YOURSELF  
15 THAT.

16 LET'S TALK ABOUT THOSE WITNESSES.  
17 SHAWON JOHNSON, LADIES AND GENTLEMEN, HE'S TWENTY-FOUR  
18 YEARS OLD, CONVICTED OF ACCESSORY TO ROBBERY, FROM THIS  
19 INCIDENT. HE TOLD YOU HE WAS OUT AT THE CLUB, DRINKING  
20 TOO MUCH, THEY DECIDED THEY WERE GOING TO GO ROB THE  
21 SHELL STATION, AND HE DECIDED NOT TO GO BUT HE GAVE THEM  
22 THE GUN, AND THAT'S WHY HE'S CONVICTED OF ACCESSORY  
23 BEFORE THE FACT. THE TWO MEN HE SAID HE WENT BACK FROM  
24 THE CLUB TO JAMES GREEN'S HOUSE, REGINALD MONTGOMERY AND  
25 JAMES GREEN. WHEN THEY LEFT IT WAS JAMES GREEN AND



1 REGINALD MONTGOMERY WHO WENT TO THE SHELL STATION SAYING  
2 THEY WERE GOING TO ROB IT. AND WHEN THEY CAME BACK SOME  
3 THREE OR FOUR HOURS LATER, THEY SAID, WE DID THAT. AND  
4 WHO WAS IT THAT SAID THAT? JAMES GREEN AND REGINALD  
5 MONTGOMERY. THERE'S NO QUESTION ABOUT THAT, LADIES AND  
6 GENTLEMEN.

7 THEN YOU HEARD FROM JAMES GREEN,  
8 HIMSELF. AND HE TOLD YOU WHO HE WAS WITH WHEN HE ROBBED  
9 THE SHELL STATION. HE TOLD YOU HE HAD THE GUN, HE TOLD  
10 YOU THAT HE LIED ABOUT HAVING THE GUN, HE FELT LIKE HE  
11 WOULDN'T BE IN AS MUCH TROUBLE IF HE SAID HE WASN'T THE  
12 ONE WITH THE GUN. ASK YOURSELF, IS THAT REASONABLE?  
13 ASK YOURSELF, IS THAT CREDIBLE? AND THEN HE TOLD YOU  
14 THAT WHEN HE REALIZED IT DIDN'T MATTER IF HE HAD THE GUN  
15 OR NOT, HE WAS GOING TO BE GUILTY OF ARMED ROBBERY, HE  
16 CAME FORWARD AND TOLD THE TRUTH. BUT EVEN BEFORE THAT  
17 HE TOLD LAW ENFORCEMENT WHO HE WAS WITH, REGINALD  
18 MONTGOMERY, THE SAME PERSON THAT SHAWON JOHNSON TOLD LAW  
19 ENFORCEMENT COMMITTED THE ROBBERY.

20 YOU HEARD FROM RAMISE KEITT, AND  
21 RAMISE KEITT COULDN'T TELL YOU WHO ROBBED THE STORE.  
22 AND THE BIGGEST THING ABOUT HIS TESTIMONY IS, HE  
23 CORROBORATED JAMES GREEN, BECAUSE HE SAID THERE WERE TWO  
24 MEN, ONE HAD THE GUN WITH THE LIGHT BEAM ON IT, THE SAME  
25 THING JAMES GREEN TOLD YOU. HE COULDN'T TELL YOU ANY

1 MORE THAN THAT BUT IT WAS IMPORTANT THAT HE COULD  
2 CORROBORATE WHAT THEY WERE SAYING. BECAUSE WHEN YOU'RE  
3 TALKING ABOUT CREDIBILITY YOU HAVE TO LOOK AT THOSE  
4 THINGS, ARE WHAT THEY'RE SAYING CORROBORATED BY OTHER  
5 PEOPLE, DO THE STORIES FIT? AND I SUBMIT TO YOU THAT  
6 ALL THE PIECES FIT IN THIS CASE, LADIES AND GENTLEMEN.

7 NICHOLAS HERRINGTON, HE TOLD YOU  
8 THAT TWO MEN CAME IN. HE RECOGNIZED ONE OF THEM AND THAT  
9 WAS THE MAN WITH THE GUN. AND WHAT DID JAMES GREEN TELL  
10 YOU? HE WAS THE ONE WITH THE GUN AND HE KNOWS NICHOLAS,  
11 THEY BOTH KNEW NICHOLAS. BUT NICHOLAS TOLD YOU HE  
12 COULDN'T SEE THE OTHER MAN BECAUSE HE WASN'T LOOKING AT  
13 HIM, HE WAS LOOKING AT THE MAN WITH THE GUN. HE SAID,  
14 I WAS WAITING FOR IT TO GO OFF. HE SAID, I WASN'T GOING  
15 TO TURN AROUND AND LOOK AT THAT MAN, HE WAS FOLLOWING ME  
16 TO THE REGISTER, I WASN'T GOING TO TURN AROUND. I JUST  
17 WANTED IT TO BE OVER. AND MR. SIMS MADE A BIG DEAL OUT  
18 OF IT, DO YOU THINK THAT WAS REGINALD MONTGOMERY? I  
19 DON'T KNOW, IT COULD BE, OR IT MIGHT NOT BE. AND MR.  
20 SIMS TRIED TO GET HIM TO SAY IT WASN'T HIM, AND HE TOLD  
21 YOU HE DIDN'T KNOW. HE SAID, I KNOW IT WAS JAMES GREEN  
22 BECAUSE I LOOKED AT HIS FACE. HE HAD THE GUN, I LOOKED  
23 AT HIM. I ASKED HIM, I SAID, DID YOU LOOK AT THE OTHER  
24 MAN? NO. HE FOLLOWED ME FROM BEHIND AND I JUST DIDN'T  
25 WANT TO TURN AROUND BECAUSE I WAS WAITING FOR SOMETHING

1 TO HAPPEN. AND THAT'S TOTALLY CORROBORATED BY WHAT  
2 JAMES GREEN SAID.

3 YOU HEARD FROM LIEUTENANT RANDY  
4 CULLER. HE WAS IMPORTANT BECAUSE HE TRACKS, AFTER HE  
5 RESPONDS TO THE SHELL STATION, HE TRACKS THE TWO  
6 INDIVIDUALS THAT WERE RUNNING, HE SAID HE COULD SEE THE  
7 TRACKS IN THE SAND AND THEY HAD BEEN RUNNING, AND  
8 BASICALLY HE ENDED UP AT APRIL JOHNSON'S HOUSE, AND  
9 SPOKE TO THE PEOPLE THERE, SPOKE TO SHAWON JOHNSON, AND  
10 SHAWON TOLD HIM HE DIDN'T KNOW ANYTHING ABOUT IT AT THE  
11 TIME, WHICH IS THE SAME THING HE TOLD YOU WHEN HE  
12 TESTIFIED, THAT HE LIED. AND LADIES AND GENTLEMEN, IS  
13 IT CREDIBLE THAT SHAWON JOHNSON KNOWS THAT THE GUN HE  
14 USED IN A ROBBERY, OR HE GAVE TO THEM TO USE IN A  
15 ROBBERY ACTUALLY WAS USED IN A ROBBERY AND NOW THE  
16 POLICE ARE LOOKING, AND THEY ASK HIM IF HE KNOWS  
17 ANYTHING ABOUT THE ARMED ROBBERY. HE REALIZES IF THEY  
18 GET IN TROUBLE HE'S IN TROUBLE. SO, IS IT UNREASONABLE  
19 TO BELIEVE THAT HE TOLD THEM HE DIDN'T KNOW ANYTHING  
20 ABOUT IT AT FIRST? BUT AS SOON AS HE'S ARRESTED HE  
21 TELLS THEM WHAT HE DID, HE GAVE THEM THE GUN. HE TOOK  
22 RESPONSIBILITY, HE PLED GUILTY, AND HE'S DOING HIS TIME.  
23 BUT THAT'S WHAT LIEUTENANT CULLER TELLS YOU, HOW THEY  
24 GOT TO APRIL JOHNSON, WHO TELLS HIM, YEAH, I JUST TOOK  
25 TWO GUYS OUT TO JAMES GREEN'S HOUSE, THEY WERE ACTING

1 KIND OF NERVOUS, THEY WERE SWEATY, IT LOOKED LIKE THEY  
2 HAD BEEN RUNNING, AND THAT'S TOTALLY CONSISTENT WITH  
3 WHAT HAPPENED. AGAIN, CORROBORATION, EVERYBODY'S  
4 CORROBORATING EACH OTHER. AND THAT WAS WHAT APRIL  
5 JOHNSON TOLD YOU.

6 AND LADIES AND GENTLEMEN, APRIL  
7 JOHNSON, YOU KNOW, I'M NOT GOING TO APOLOGIZE FOR HER  
8 TESTIMONY. I WILL APOLOGIZE FOR HER BEHAVIOR, I THINK  
9 SHE KIND OF GOT A LITTLE TOO EXCITED, BUT SHE FELT LIKE  
10 SHE WAS BEING CHALLENGED AS TO HER TRUTHFULNESS, ACCUSED  
11 OF LYING, AND SHE TOOK IT PERSONALLY, SHE TOOK IT MAYBE  
12 A LITTLE TOO PERSONALLY AND GOT EXCITED. BUT IT'S  
13 IMPORTANT THAT SHE WOULD NOT ALLOW MR. SIMS TO PUT WORDS  
14 IN HER MOUTH. WHAT SHE TOLD ME IS THE SAME THING SHE  
15 TOLD MR. SIMS, AND IT'S THE SAME THING SHE TOLD LAW  
16 ENFORCEMENT, I SAW THE MAN, I KNEW HIM, I COULD NOT  
17 REMEMBER HIS NAME, I HADN'T SEEN HIM IN A LONG TIME. I  
18 RECOGNIZED HIM. LATER ON SHE REALIZED HOW SHE KNEW HIM  
19 AND WHO HE WAS, REGINALD MONTGOMERY, BUT SHE KNEW WHO IT  
20 WAS THE ENTIRE TIME, SHE JUST DID NOT KNOW HIS NAME. HE  
21 WAS NOT HER FRIEND, HE WAS JAMES GREEN'S FRIEND. HER  
22 BROTHER, SHAWON JOHNSON, ONLY KNEW HIM THROUGH JAMES  
23 GREEN, BUT SHE HAD SEEN HIM BEFORE. AND THAT'S WHAT SHE  
24 TOLD US, AND MR. SIMS BASICALLY GOT HER EXCITED, TOLD  
25 HER SHE WASN'T BEING TRUTHFUL, AND SHE GOT VERY EXCITED.

1 AND YOU KNOW, I WON'T APOLOGIZE FOR HER TESTIMONY, BUT  
2 I WILL APOLOGIZE FOR HER BEHAVIOR.

3 AND LATANGELA BELLAMY -- WELL, NO,  
4 LET ME GO BACK TO APRIL JOHNSON. WE WERE TALKING ABOUT  
5 HER CREDIBILITY, AND MR. SIMS CHALLENGED THAT  
6 CREDIBILITY. ASK YOURSELF THIS, APRIL JOHNSON IS SHAWON  
7 JOHNSON'S SISTER. SHAWON JOHNSON GOT NOTHING FOR HIS  
8 TESTIMONY, HE'S ALREADY DOING HIS TIME, FIVE YEARS.  
9 WHAT REASON DID SHE HAVE TO HELP THE STATE? I CAN'T DO  
10 ANYTHING FOR HER BROTHER, HIS CASE IS GONE. I CAN'T DO  
11 ANYTHING FOR HER, WHY DID SHE COME IN HERE AND TELL YOU  
12 NOT ONLY IS REGINALD MONTGOMERY GUILTY, BUT SHAWON  
13 JOHNSON, HER OWN BROTHER, WAS GUILTY, AND JAMES GREEN,  
14 WHO SHE SAID WAS A FAMILY FRIEND, HE WAS LIKE HER OTHER  
15 BROTHER. WHAT REASON DID SHE HAVE TO LIE?

16 AND THE SAME IS TRUE OF LATANGELA  
17 BELLAMY, WHOSE BROTHER IS JAMES GREEN, WHO HAS A PENDING  
18 CASE, WHO IS CHARGED WITH ARMED ROBBERY, JAMES GREEN IS.  
19 WHAT REASON DID SHE HAVE TO COME IN HERE AND TELL YOU,  
20 REGINALD MONTGOMERY IS GUILTY, WHEN SHE'S ALSO TELLING  
21 YOU THAT HER BROTHER, JAMES GREEN, IS GUILTY, EXCEPT  
22 THAT IT'S THE TRUTH? THERE'S NO OTHER EXPLANATION WHY  
23 SHE WOULD DO THAT OTHER THAN IT'S THE TRUTH. AND SHE  
24 TOLD US, SHE TOLD YOU THE SAME THING SHE TOLD  
25 INVESTIGATOR RODRIGUEZ WAY BACK IN SEPTEMBER, WHEN SHE

1 WAS IMMEDIATELY QUESTIONED IN THE BEGINNING SHE WASN'T  
2 TOTALLY FORTHCOMING, SHE LEFT SOME THINGS OUT, BUT SHE  
3 TOLD YOU THAT SHE GAVE HIM ANOTHER STATEMENT AND TOLD  
4 THEM EVENTUALLY THAT SHE KNEW IT WAS REGINALD  
5 MONTGOMERY. AGAIN, SHE COULDN'T REMEMBER HIS NAME  
6 IMMEDIATELY BUT SHE KNEW THE MAN OUTSIDE. IN FACT, I  
7 DON'T THINK SHE SAID SHE STILL KNEW HIS NAME BUT SHE  
8 SAID IT WAS THAT MAN, WHATEVER, THE UNKNOWN MAN IS THAT  
9 MAN, WHATEVER HIS NAME IS, THAT MAN, THAT'S WHAT SHE  
10 TOLD YOU. AND THAT'S TOTALLY CONSISTENT WITH THE  
11 EVIDENCE, AND THAT'S TOTALLY CORROBORATED BY THE OTHER  
12 WITNESSES.

13 NOW, DEPUTY RODRIGUEZ OBVIOUSLY WAS  
14 THE INVESTIGATING OFFICER, AND AMONGST OTHER THINGS HE  
15 TOLD YOU ABOUT THE STATEMENTS HE TOOK AND HE TOLD YOU  
16 ABOUT HIS INVESTIGATION. AND I SUBMIT TO YOU, LADIES  
17 AND GENTLEMEN, HE JUMPED THROUGH ALL THE HOOPS, THE  
18 POLICE WORK IN THIS CASE WAS DONE BY THE BOOK. AND HE  
19 TOLD YOU THAT EVERYBODY WAS CONSISTENT ON ONE FACT IF  
20 NOTHING ELSE, THAT REGINALD MONTGOMERY AND JAMES GREEN  
21 COMMITTED THE ARMED ROBBERY.

22 LADIES AND GENTLEMEN, THAT'S  
23 IMPORTANT WHEN WE'RE TALKING ABOUT CORROBORATION, THAT  
24 ALL THE WITNESSES CORROBORATED EACH OTHER. THEY HAD  
25 DIFFERENT VANTAGE POINTS, PEOPLE SAW DIFFERENT THINGS,

1 BUT IT WAS ALL IN REFERENCE TO THE SAME INCIDENT.

2 NOW, LIKE I TOLD YOU, THIS IS THE  
3 LAST CHANCE I HAVE TO SPEAK TO YOU, AND I FEEL LIKE MY  
4 VOICE IS GOING NOW. MR. SIMS WILL SPEAK LAST. BUT LIKE  
5 I SAID, DON'T LET HIM DIVERT YOUR ATTENTION FROM THESE  
6 FACTS. THE ONLY FACTS IN EVIDENCE ARE THAT REGINALD  
7 MONTGOMERY AND JAMES GREEN COMMITTED THIS ROBBERY.  
8 THOSE ARE THE FACTS. FACTS ARE STUBBORN, YOU CAN'T  
9 SPECULATE THEM AWAY. HE WILL ASK YOU TO CONSIDER  
10 EVERYTHING UNDER THE SUN, ARE THESE PEOPLE TRUTHFUL? BUT  
11 REMEMBER ONE THING, THEY ALL CORROBORATE EACH OTHER, AND  
12 THAT'S THE ONLY EVIDENCE YOU HAVE IN THIS CASE, AND IT  
13 ALL LEADS TO ONE, AND ONE AND ONLY CONCLUSION. HE GOT  
14 CAUGHT, HE GOT CAUGHT, AND NOW IT'S UP TO YOU TO HOLD  
15 HIM RESPONSIBLE, TO SHOW HIM THE TIME FOR HIDING, THE  
16 TIME FOR LYING IS OVER. HE GOT CAUGHT AND IT'S UP TO YOU  
17 TO HOLD HIM RESPONSIBLE FOR HIS RISKY AND RECKLESS  
18 BEHAVIOR AND FOR VIOLATING THE LAWS OF THIS STATE.

19 THANK YOU.

20 THE COURT: MR. SIMS.

21 MR. SIMS: MAY IT PLEASE THE COURT.

22 MR. JEFFRIES, MS. BURBAGE.

23 I'M GOING TO HAVE TO MOVE THIS,  
24 LADIES AND GENTLEMEN, I CAN'T STAND BEHIND PODIUMS AND  
25 -- LET ME MOVE SOME OF THIS STUFF.

CLOSING ARGUMENT BY MR. SIMS

1  
2 WHILE I'M MOVING STUFF AROUND, MR.  
3 JEFFRIES ASKED YOU WHAT REASON WOULD THEY HAVE TO LIE,  
4 AND JAMES GREEN HASN'T BEEN, GONE TO TRIAL YET.  
5 REMEMBER, HE'S STILL WAITING TRIAL, SO HIS SISTER, WHO  
6 LOVES HER BROTHER, LATANGELA BELLAMY, SHAWON, WHO IS HIS  
7 GOOD FRIEND, ANYTIME YOU TAKE A MAN TO YOUR HOUSE AND  
8 OPEN YOUR SISTER'S BEDROOM FOR HIM, YOU DON'T THINK THAT  
9 THEY LIKED EACH OTHER AND KNOW EACH OTHER, AND HAVE  
10 SOMETHING GOING ON FOR EACH OTHER? APRIL JOHNSON IS  
11 GOOD FRIENDS OF EVERYBODY. SO, THEY'RE A CLOSE KNIT  
12 GROUP OF PEOPLE. AND YOU DON'T THINK THAT THEY CAME IN  
13 HERE TO HELP JAMES GREEN WHEN HIS TIME COMES UP? YOU  
14 DON'T THINK THAT JAMES GREEN WANTS TO GET SOME BROWNIE  
15 POINTS FOR COMING INTO THIS COURTROOM SO THAT WHEN HIS  
16 TIME COMES HE CAN STAND UP BEFORE A JUDGE LIKE THIS OR  
17 ANOTHER JUDGE, AND SAY, YOUR HONOR, I CAME IN AND I GAVE  
18 THE STATE SOMETHING, SO I SHOULD GET SOMETHING FOR IT?  
19 BUT WHEN YOU GO AND YOU START TALKING TO THAT CASE TO  
20 THE SOLICITOR, REMEMBER, I HELPED YOU OUT, I DESERVE A  
21 BROWNIE POINT, SOMETHING. BUT LET ME GO WHERE I WAS  
22 GOING, THAT WAS DOWN IN MY ARGUMENT, BUT I WANTED TO  
23 REMEMBER THAT BEFORE I GOT INTO SOME OF THE OTHER  
24 THINGS.

25 MADAM FORELADY, AND LADIES AND



1 GENTLEMEN OF THE JURY, I DO THANK YOU FOR BEING HERE  
2 TODAY, BECAUSE AS I SAID TO YOU IN THE BEGINNING, THIS  
3 IS THE ONLY COUNTRY THAT I KNOW OF IN OUR SYSTEM WHERE  
4 PEOPLE SUCH AS YOURSELVES ARE ALLOWED TO COME IN AND SIT  
5 IN JUDGEMENT IN A CONTROVERSY BETWEEN THE STATE OF SOUTH  
6 CAROLINA AND ONE OF ITS CITIZENS.

7 I TOLD YOU ON THE OTHER DAY THAT IF  
8 I HAD A ROBE I COULD GIVE EACH AND EVERYONE OF YOU A  
9 ROBE BECAUSE YOU, TOO, ARE JUDGES NOW. AND I TOLD YOU  
10 THAT THE JUDGE WILL GIVE YOU THE LAW AND YOU MUST FOLLOW  
11 THE LAW. BUT I ALSO TOLD YOU THAT YOU ARE JUDGES OF THE  
12 FACTS. NOBODY CAN JUDGE THE FACTS BUT YOU TWELVE MEN AND  
13 WOMEN. I TOLD YOU THAT WHEN YOU BECAME A JUROR YOU  
14 DIDN'T LEAVE YOUR COMMON SENSE AT HOME, YOU DIDN'T LEAVE  
15 THEM AT THE DOOR, THERE WAS NO REQUIREMENT THAT YOU  
16 CHECK YOUR COMMON SENSE AT THE DOOR, BUT YOU BROUGHT  
17 THEM WITH YOU WHEN YOU SAT OUT THERE, AND YOU BROUGHT  
18 THEM WITH YOU WHEN YOU WERE SEATED OVER HERE.

19 NOW, LET'S GO THROUGH WHAT WE HAVE  
20 HERE. AND YOU HEARD THE TESTIMONY, AND I'D SAY TO YOU  
21 THAT IF I MIS-STATE SOMETHING YOU RELY UPON WHAT YOU  
22 REMEMBER, BECAUSE YOU ARE THE JUDGES OF THE FACTS.

23 JAMES GREEN, IN HIS FIRST STATEMENT  
24 BACK ON NINE/TWENTY-FIVE/O-SIX, HE PUT EVERYTHING ON  
25 REGINALD MONTGOMERY. REGGIE HAD THE GUN, REGGIE HAD THE

1 GUN AT THE STORE, REGGIE GAVE SHAWON THE MONEY, REGGIE,  
2 REGGIE, REGGIE, PUTTING EVERYTHING ON REGINALD  
3 MONTGOMERY. BUT THEN, BY THE TIME WE'RE GETTING READY  
4 TO GO TO TRIAL -- NOW, REMEMBER, THIS HAPPENED BACK IN  
5 O-SIX, THIS IS O-SEVEN NOW, HE -- AND DON'T YOU THINK  
6 THAT HE'S HAD A TIME TO TALK TO HIS SISTER, TO TALK TO  
7 OTHER PEOPLE ABOUT WHAT'S GOING ON? DON'T YOU KNOW THAT  
8 HE HAD THE OPPORTUNITY TO TALK WITH THE SOLICITOR. HE  
9 HAD THE OPPORTUNITY FROM THAT DAY TO THIS TO TALK WITH  
10 INVESTIGATOR RODRIGUEZ WHO'S SITTING BACK THERE, AND  
11 SOMEBODY TOLD HIM, WELL, SHAWON SAID YOU HAD THE GUN.  
12 SO, NOW I'VE GOT TO STRAIGHTEN IT OUT. SHAWON SAID I  
13 HAD THE GUN SO NOW I'VE GOT TO GET OUR STORIES RIGHT.  
14 AND HE COMES IN HERE AND HE SAYS, YEAH, I LIED BACK ON  
15 SEPTEMBER TWENTY-FIFTH WHEN THEY ARRESTED ME, I HAD THE  
16 GUN, I WAS THE ONE WHO WAS HOLDING THE GUN AT THE STORE.  
17 NOW, TO ME, ME, ME, SO HE'S FORCED NOW TO TELL THE TRUTH  
18 BECAUSE HE'S BEEN CAUGHT.

19 SHAWON, SHAWON SAYS -- AND WANTS TO  
20 NAME HIM ALSO. BUT ASK YOURSELF, WHEN THEY COME TO THE  
21 HOUSE, WHO COMES TO THE HOUSE WHERE THE BELLAMY GIRL  
22 WAS, WHERE JAMES GREEN'S SISTER WAS, WHO COMES TO THE  
23 HOUSE? YOU HEARD HER TESTIMONY, DID SHE EVER SAY  
24 REGINALD MONTGOMERY CAME TO THE HOUSE BEFORE THEY LEFT?  
25 WHAT WAS HER TESTIMONY? SHAWON. WHAT WAS HER

1 TESTIMONY? SHAWON AND JAMES CAME TO THE HOUSE. WHAT  
2 WAS REGINALD MONTGOMERY SUPPOSED TO DO, DEMATERIALIZE  
3 AND THEN MATERIALIZE AGAIN? YOU SEE, WHEN THEY WERE  
4 GETTING THEIR LIES TOGETHER THE LEFT OUT LITTLE PIECES.  
5 NOW, WHAT ELSE DID SHE SAY? THEY STAYED AT THE HOUSE  
6 FOR A WHILE, AND THEN THEY LEFT. DID SHE SAY WHAT  
7 REGINALD MONTGOMERY WAS DOING AT THE HOUSE WHILE THEY  
8 WERE THERE? WHAT WAS HE SUPPOSED TO BE DOING, STAYING  
9 OUTSIDE SOMEWHERE IN THE WOODS WHILE SHAWON AND JAMES  
10 CAME IN THE HOUSE? AND HOW LONG DID SHE SAY THEY STAYED  
11 THERE? SHE SAID THEY STAYED THERE ABOUT AN HOUR OR AN  
12 HOUR AND A HALF, I BELIEVE. SO, -- AND SHE NEVER  
13 MENTIONED REGINALD MONTGOMERY DURING ANYTIME, ANYTHING  
14 WHEN THEY CAME TO THAT HOUSE. ISN'T THERE SOME COMMON  
15 SENSE IN THIS SITUATION THAT IF SOMEBODY COMES TO YOUR  
16 HOUSE AND THEY'RE GOING TO BE THERE FOR AN HOUR OR AN  
17 HOUR AND A HALF, YOU'RE GOING TO REMEMBER THEY DID  
18 SOMETHING. YOU'RE GOING TO SAY THAT THEY WERE DOING  
19 SOMETHING. BUT ALL SHE TALKS ABOUT WAS SHAWON COMING TO  
20 HER BEDROOM. SHE DOESN'T SAY THAT REGGIE WAS DOING  
21 ANYTHING.

22 LET'S MOVE THE SCENARIO ALONG. GO  
23 TO THE STORE. NICHOLAS, WHO HAS NOTHING TO LOSE,  
24 PROBABLY THE PERSON WITH THE MOST CREDIBILITY, BECAUSE  
25 LET ME EXPLAIN, LET ME EXPLAIN SOMETHING, SOMEBODY WHO

1 YOU KNOW WHO ROBS YOU, THAT WOULD GET YOU UPSET. BUT HE  
2 REMEMBERED, HE REMEMBERED JAMES GREEN. NOW, HE TOLD THE  
3 POLICE OFFICERS I BELIEVE THAT, I REMEMBERED HIM BUT I  
4 DIDN'T REMEMBER HIS NAME, AND LATER HE WAS SHOWN A  
5 PHOTOGRAPHIC LINEUP. BUT NOW, LISTEN TO THIS NOW, HE  
6 SAID THAT THE GUY WHO WAS FOLLOWING ME WAS A LITTLE  
7 TALLER THAN ME. NOW, FLASH BACK TO YOUR SHAWON JOHNSON  
8 ON THE STAND. SHAWON JOHNSON IS A LITTLE TALLER THAN  
9 NICHOLAS HERRINGTON. JAMES GREEN IS SHORTER THAN  
10 NICHOLAS HERRINGTON. YES, I ASKED NICHOLAS IF IT WAS  
11 REGINALD. AND THIS IS SOMEBODY THAT HE KNEW, THIS IS  
12 SOMEBODY THAT HE HAD GROWN UP WITH, THIS IS SOMEBODY HE  
13 WOULD HAVE KNOWN. I ASKED HIM, DID YOU, WOULD YOU HAVE  
14 RECOGNIZED HIS VOICE? YEAH. BUT THAT WAS NOT HIS VOICE  
15 WHO WAS TELLING HIM TO GIVE ME THE MONEY. IT RAISES  
16 SOME QUESTIONS ABOUT THE SHORTER GUY AND THE TALLER GUY,  
17 DOESN'T IT, AND WHY THEY WOULD MAKE UP A LIE ABOUT WHERE  
18 SHAWON WAS, THEY MAKE UP ALL THIS STUFF. WOULDN'T IT  
19 SEEM INTERESTING THAT SHAWON WAS THE SECOND MAN IN THE  
20 STORE? HEY, I'M NOT GOING TO LET MY BROTHER GO TO JAIL  
21 FOR ARMED ROBBERY. THEY'VE GOT HIM ON ONE THING BUT I'M  
22 NOT GOING TO TELL THE TRUTH.

23 LET'S MOVE ON. APRIL, APRIL  
24 JOHNSON, INTERESTING. SHE WANTS YOU TO BELIEVE -- AND  
25 SHE GAVE HER STATEMENT TO THE POLICE OFFICER, SHE GAVE

1 A STATEMENT, TOO, AND SHE SAID IN THAT STATEMENT, I DID  
2 NOT KNOW THE GUY. AND I BELIEVE SHE SAID, I NEVER SAW  
3 HIM BEFORE. NOW, SHE GETS HERE, AFTER SEPTEMBER,  
4 OCTOBER, NOVEMBER, DECEMBER, JANUARY, FEBRUARY, MARCH,  
5 APRIL, AND SHE, TOO, HAS HAD THE OPPORTUNITY TO TALK  
6 WITH HER BROTHER, TO TALK WITH SHAWON, TO TALK WITH  
7 EVERYBODY, JAMES, TO GET HER STORY TOGETHER. THEY DON'T  
8 WANT SHAWON GOING TO JAIL FOR ARMED ROBBERY, SO WE'LL  
9 GET OUT STORY TOGETHER HERE. ASK YOURSELF, IF YOU KNOW  
10 SOMEBODY BUT YOU DON'T REMEMBER THEIR NAME, DO YOU TELL  
11 THE POLICE OFFICERS, I'VE NEVER SEEN HIM BEFORE, I DON'T  
12 KNOW WHO HE IS, OR DO YOU TELL THE POLICE OFFICERS WHAT  
13 NICHOLAS TOLD THEM, I REMEMBER THE FACE BUT I CAN'T  
14 REMEMBER THE NAME? ISN'T THAT COMMON SENSE? IF YOU SEE  
15 SOMEBODY AND YOU KNOW THEIR FACE BUT YOU DON'T KNOW  
16 THEIR NAME YOU DON'T SAY, I NEVER SAW THEM BEFORE, I  
17 DIDN'T KNOW WHO HE WAS. YOU SAY, OFFICER, I KNOW THAT  
18 FACE, BUT I CAN'T REMEMBER THE NAME. NO, SHE SAID, I  
19 DIDN'T KNOW HIM, I NEVER SEEN HIM BEFORE.

20 NOW, LET'S MOVE ONE STEP FURTHER, DO  
21 YOU PUT SOMEBODY IN YOUR CAR TO RIDE WITH YOU AND YOU  
22 NEVER LOOK AT THEM, YOU NEVER SEE THEIR FACE? AND BY  
23 THE WAY, WHERE IS THAT OTHER BOY THAT WAS SUPPOSED TO  
24 HAVE BEEN IN THE CAR, HER BOYFRIEND, WHERE IS HE?  
25 BECAUSE REMEMBER, SHE SAID HE KIND OF WAS KIDDING AROUND

1 WITH THEM AND TRYING TO PLAY WITH THEM A LITTLE BIT.  
2 WHERE IS HE? BUT JUST ASK YOURSELF, IS THAT COMMON  
3 SENSE FOR YOU TO PUT SOMEBODY IN YOUR CAR AND YOU NEVER  
4 LOOK AT THEM, YOU NEVER TURN AROUND? YOU DON'T KNOW WHO  
5 GOT IN YOUR CAR? IS THAT CREDIBLE? ESPECIALLY IN THESE  
6 SITUATIONS, SOMEBODY WAKES YOU UP IN THE MIDDLE OF THE  
7 NIGHT TO GO CARRY THEM SOMEWHERE, BUT THEN ALL OF A  
8 SUDDEN, MIRACULOUSLY, I KNOW WHO HE IS NOW, BECAUSE I  
9 WENT -- LISTEN, I WENT TO SCHOOL WITH HIM, I KNOW HIM.  
10 THIS IS THE SAME PERSON THAT ALLEGEDLY YOU SAW THAT  
11 NIGHT, BUT YOU DIDN'T KNOW WHO HE WAS, NEVER SEEN HIM  
12 BEFORE, COULDN'T TELL THE POLICE OFFICERS WHO HE WAS. IT  
13 WAS DARK, YOU SEE, AT MY MOTHER'S HOUSE, HAVE YOU BEEN  
14 TO MY MAMA'S HOUSE? WE DON'T HAVE NO LIGHTS BACK THERE.  
15 WELL, MS. JOHNSON, WHEN YOU GOT TO THE OTHER -- WHEN  
16 THEY OPENED THE DOOR, DON'T YOUR DOME LIGHT WORK? I  
17 STILL DIDN'T SEE HIM. DO YOU EXPECT ME TO LOOK AROUND  
18 AND SEE WHO IS IN MY CAR WHEN I GOT TO THE OTHER HOUSE?  
19 LET'S MOVE ON. LATASHA, OR  
20 LATANGELA, I KEEP GETTING HER NAME WRONG, LATANGELA, SHE  
21 IS PROTECTING HER LOVER. SHE GAVE TWO DIFFERENT  
22 STATEMENTS, AND ON EACH STATEMENT SHE DID NOT KNOW WHO  
23 THE PERSON WAS. BUT LIKE I SAID, HER STATEMENT IS  
24 INTERESTING BECAUSE SHE NEVER, SHE NEVER SAYS ANYTHING  
25 ABOUT REGINALD COMING TO THE HOUSE. NOW, IF YOU BELIEVE

1 THEY ALL LEFT ALLEN MURRAY'S TOGETHER, AND IF YOU  
2 BELIEVE THAT THEY CAME TO THE HOUSE TOGETHER, THEN WHERE  
3 WAS REGINALD MONTGOMERY FOR THAT WHOLE HOUR OR HOUR AND  
4 A HALF WHILE JAMES AND SHAWON WAS IN THE HOUSE? DID HE  
5 GO SOMEWHERE, DID HE DEMATERIALIZE? YOU JUST DON'T DO  
6 THAT. WHEN SOMEBODY COMES TO YOUR HOUSE YOU REMEMBER,  
7 WELL, YOU KNOW, IF SHE -- IF SOMETHING WAS LIKE, WELL,  
8 REGINALD MONTGOMERY SAT OUTSIDE, OR REGINALD MONTGOMERY  
9 SAT ON THE COUCH WHILE WE WERE IN THE BEDROOM, OR  
10 REGINALD MONTGOMERY DID THIS WHILE WE WERE THERE, OR  
11 THAT BOY DID THIS WHILE WE WERE THERE. BUT NOBODY SAYS  
12 ANYTHING ABOUT REGINALD MONTGOMERY PRIOR TO THEM GOING  
13 TO ROB THE STORE, AND I SUBMIT TO YOU, BECAUSE HE WASN'T  
14 THERE. THE TWO PEOPLE WHO LEFT TO GO ROB THE STORE WAS  
15 JAMES GREEN AND SHAWON JOHNSON. AND THE REASON THAT  
16 THEY DON'T WANT TO TELL YOU ALL THE TRUTH, OR WERE  
17 FORCED TO TELL YOU BITS AND PIECES OF THE TRUTH IS  
18 BECAUSE SHAWON'S GOT HIS DEAL IN HIS POCKET, HE'S  
19 ALREADY GOT HIS WRAPPED UP IN HIS POCKET. AND NOW  
20 THEY'RE TRYING TO GET THE BEST THING THEY CAN GET FOR  
21 JAMES GREEN, BECAUSE THEY KNOW HIS TIME IS COMING UP.  
22 THEY HAD TO PUT SOMEBODY ELSE IN THAT STORE, BUT THEY  
23 AIN'T GOING TO PUT SHAWON IN THAT STORE, THAT'S MY  
24 LOVER, OR THAT'S MY BROTHER. I AIN'T GOING TO DO THAT.  
25 AS I TOLD YOU BEFORE WHEN WE FIRST

1 GOT STARTED, YOU JUDGE THE CREDIBILITY OF THE WITNESSES,  
2 AND THE SOLICITOR GAVE YOU A NUMBER OF THINGS ABOUT  
3 CREDIBILITY. BUT ONE THING HE LEFT OUT WAS COMMON  
4 SENSE, COMMON SENSE. AND YOU'VE GOT TO BELIEVE ALL  
5 THESE LIES THAT HAVE BEEN TOLD, YOU'VE GOT TO BELIEVE  
6 ALL OF THESE CHANGES OF STORIES THAT HAVE MIRACULOUSLY  
7 SHOWN UP ON THIS DAY. ASK YOURSELF, IF YOU REMEMBERED  
8 SOMETHING THAT YOU TOLD THE POLICE WRONG, WOULD YOU NOT  
9 CALL THEM UP AND SAY, HEY I TOLD YOU SOMETHING WRONG,  
10 LET ME WRITE ANOTHER STATEMENT, BECAUSE WHAT I TOLD YOU  
11 WAS WRONG?" WE CAN'T GET AROUND NICHOLAS HERRINGTON IN  
12 TERMS OF CREDIBILITY. NICHOLAS WAS THE CASHIER,  
13 NICHOLAS WAS THE MAN WHO JAMES GREEN PUT THE GUN ON.  
14 AND BY THE WAY, WHILE I'M THINKING ABOUT THAT, DO YOU GO  
15 TO A NIGHT CLUB WITH AN UNLOADED GUN? DO YOU PUT AN  
16 UNLOADED GUN IN YOUR POCKET AND GO TO A NIGHT CLUB? DO  
17 YOU PUT AN UNLOADED GUN AND GO ROB A STORE? MR.  
18 JEFFRIES TOLD YOU HOW DANGEROUS ARMED ROBBERY IS, AND  
19 SOMEBODY, WHAT IF THE CLERK IN THE STORE HAD A GUN AND  
20 YOU WALK IN THERE WITH AN UNLOADED GUN AND PULL IT OUT?  
21 YOU DON'T TAKE AN UNLOADED GUN -- CAN YOU BELIEVE THAT?  
22 YOU DON'T TAKE AN UNLOADED GUN TO A NIGHT CLUB, ALL OF  
23 YOU ARE GROWN, YOU'VE BEEN OUT, YOU DON'T TAKE AN  
24 UNLOADED GUN TO ROB SOMEBODY, BECAUSE JUST AS MR.  
25 JEFFRIES SAID, THAT CLERK MIGHT PULL A GUN, AND WHAT ARE



1 YOU GOING TO SAY NOW? OH, I WAS JUST KIDDING, I DIDN'T  
2 MEAN TO ROB YOU, MY GUN AIN'T EVEN LOADED. THAT DOESN'T  
3 HAPPEN IN THE REAL WORLD.

4 LADIES AND GENTLEMEN OF THE JURY,  
5 THIS IS SIMPLY A COMMON SENSE QUESTION, COMMON SENSE.  
6 THIS IS A QUESTION OF CREDIBILITY, AND THE QUESTION IS,  
7 CAN YOU BELIEVE THOSE LIES THAT YOU HEARD FROM THE  
8 STAND? CAN YOU BELIEVE PEOPLE WHO ARE CONSTANTLY  
9 CHANGING THEIR STORY? CAN YOU BELIEVE -- AND WHEN I  
10 POINTED OUT THE INCONSISTENCIES, HOW APRIL GOT UPSET,  
11 GOT ANGRY, CAN YOU BELIEVE THAT SOMEBODY WOULD GO WITH  
12 SOMEONE AND STAY OUTSIDE OF A HOUSE A WHOLE HOUR AND A  
13 HALF WHILE THEY ARE IN THE HOUSE? NOBODY EVER SAID  
14 ANYTHING ABOUT HE WAS IN THE HOUSE PRIOR TO GOING TO ROB  
15 THE STORE, NOBODY. IT JUST AIN'T BEEN MENTIONED, DIDN'T  
16 EVEN COME UP. BUT ALL OF A SUDDEN, WHEN THEY COME BACK,  
17 REGGIE, REGGIE, REGGIE, TODAY IT'S REGGIE. BACK IN  
18 SEPTEMBER IT WASN'T.

19 MADAM FORELADY AND LADIES AND  
20 GENTLEMEN OF THE JURY, I TOLD YOU AT THE BEGINNING OF  
21 THIS TRIAL THAT I WOULD STAND BEFORE YOU AGAIN AND ASK  
22 YOU TO RETURN A VERDICT OF NOT GUILTY, BECAUSE THE  
23 DEFENDANT IS NOT GUILTY. AND THE QUESTION THAT YOU HAVE  
24 TO DECIDE ON THIS IMPORTANT DAY FOR THE STATE OF SOUTH  
25 CAROLINA IS WHETHER ALL THE LIES OF JAMES GREEN, SHAWON

1 JOHNSON, APRIL JOHNSON, AND LATANGELA BELLAMY ARE WORTHY  
2 TO FIND SOMEONE GUILTY OF ARMED ROBBERY.

3 MADAM FORELADY, AND LADIES AND  
4 GENTLEMEN, THANK YOU AGAIN FOR YOUR SERVICE, BECAUSE  
5 TODAY YOU ARE FULFILLING THE HIGHEST DUTY THAT A CITIZEN  
6 IN THE STATE OF SOUTH CAROLINA OR IN THE UNITED STATES  
7 CAN FULFILL, BECAUSE ALL THAT STANDS BETWEEN  
8 INCARCERATION OR WHATEVER FOR REGINALD MONTGOMERY ARE  
9 YOU TWELVE. AND I ASK THAT YOU FIND HIM NOT GUILTY.

10 THANK YOU.

11 CHARGE BY THE COURT

12 ALRIGHT, MADAM FORELADY AND MEMBERS  
13 OF THE JURY, THE STATE OF SOUTH CAROLINA CHARGES THE  
14 DEFENDANT, REGINALD MONTGOMERY, WITH ONE COUNT OF ARMED  
15 ROBBERY. I WILL GIVE YOU A COPY OF THESE INSTRUCTIONS  
16 IN WRITTEN FORM, AND DURING YOUR DELIBERATIONS YOU MAY  
17 REFER TO THE INSTRUCTIONS TO GUIDE YOUR DECISION MAKING.  
18 YOU MUST CONSIDER THE INSTRUCTIONS AS A WHOLE AND NOT  
19 FOLLOW SOME AND IGNORE OTHERS. PLEASE RETURN THE  
20 INSTRUCTIONS TO THE COURT AFTER YOU'VE REACHED A  
21 VERDICT, MADAM FORELADY.

22 NOW, TO THIS INDICTMENT THE  
23 DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY WHICH PLACES  
24 UPON THE STATE THE BURDEN OF PROVING THE DEFENDANT  
25 GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL

1 OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE  
2 HIMSELF INNOCENT. I CHARGE YOU THAT IT IS A VITAL,  
3 IMPORTANT RULE OF LAW OF EVIDENCE THAT A DEFENDANT IN A  
4 CRIMINAL CASE NO MATTER HOW GREAT OR SERIOUS MAY BE THE  
5 OFFENSE WITH WHICH HE IS CHARGED, MUST ALWAYS BE  
6 PRESUMED INNOCENT UNTIL HIS GUILT HAS BEEN PROVEN BEYOND  
7 A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE  
8 REMAINS WITH THE DEFENDANT AT ALL TIMES FROM THE MOMENT  
9 OF HIS APPEARANCE IN THIS COURT, THROUGHOUT THE TRIAL,  
10 AND UNTIL YOU, THE JURY, HAVE UPON THE TESTIMONY AND THE  
11 EVIDENCE PRESENTED, REACHED A VERDICT OF GUILTY BEYOND  
12 A REASONABLE DOUBT, FOR IT IS THE SOLEMN DUTY OF THE  
13 JURY IF NOT CLEARLY CONVINCED OF HIS GUILT BEYOND A  
14 REASONABLE DOUBT TO ACQUIT THE DEFENDANT. SO, THE  
15 BURDEN OF PROOF IS UPON THE STATE TO ESTABLISH BY  
16 EVIDENCE TO YOUR SATISFACTION THE GUILT BEYOND A  
17 REASONABLE DOUBT OF THIS DEFENDANT HERE ON TRIAL FOR THE  
18 CRIME OF ARMED ROBBERY.

19 NOW, WHAT IS A REASONABLE DOUBT? A  
20 REASONABLE DOUBT IS THAT KIND OF DOUBT THAT WOULD CAUSE  
21 A REASONABLE PERSON TO HESITATE TO ACT. IF YOU HAVE SUCH  
22 A DOUBT AS TO THE GUILT OF THE DEFENDANT HE WOULD BE  
23 ENTITLED TO A VERDICT OF NOT GUILTY. REASONABLE DOUBT  
24 MAY ARISE FROM EVIDENCE WHICH IS PRESENTED IN THE CASE  
25 OR FROM THE ABSENCE OF LACK OF EVIDENCE IN THE CASE. YOU

1 ALONE MUST DETERMINE WHETHER OR NOT REASONABLE DOUBT  
2 EXISTS AS TO THE GUILT OF THE DEFENDANT. THE TERM,  
3 REASONABLE DOUBT, SHOULD BE GIVEN ITS EVERYDAY PLAIN AND  
4 ORDINARY MEANING. PROOF BEYOND A REASONABLE DOUBT IS  
5 PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE  
6 DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS  
7 WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN  
8 CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT  
9 OVERCOMES EVERY POSSIBLE DOUBT. IF BASED ON YOUR  
10 CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED  
11 THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED YOU  
12 MUST FIND HIM GUILTY, BUT ON THE OTHER HAND, IF YOU  
13 THINK THERE IS A REASONABLE POSSIBILITY HE IS NOT GUILTY  
14 YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM  
15 NOT GUILTY.

16 THERE ARE TWO TYPES OF EVIDENCE  
17 WHICH ARE GENERALLY PRESENTED DURING A TRIAL, DIRECT  
18 EVIDENCE AND CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE  
19 IS THE TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO  
20 HAVE ACTUAL KNOWLEDGE OF A FACT SUCH AS AN EYE WITNESS.  
21 CIRCUMSTANTIAL EVIDENCE IS THE PROOF OF A CHAIN OF FACTS  
22 AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.  
23 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE  
24 WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR  
25 CIRCUMSTANTIAL EVIDENCE, NOR IS THERE A GREATER DEGREE

1 OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF  
2 DIRECT EVIDENCE. IT IS NECESSARY THAT EVERY  
3 CIRCUMSTANCE RELIED UPON BY THE STATE BE PROVED BEYOND  
4 A REASONABLE DOUBT THAT ALL OF THE CIRCUMSTANCES SO  
5 PROVEN BE CONSISTENT WITH EACH OTHER AND TAKEN TOGETHER  
6 POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED TO THE  
7 EXCLUSION OF EVERY OTHER REASONABLE HYPOTHESIS. IT IS  
8 NOT SUFFICIENT THAT THEY CREATE A PROBABILITY, THOUGH A  
9 STRONG ONE, AND ASSUMING THEM TO BE TRUE THEY MAY BE  
10 ACCOUNTED FOR UPON ANY REASONABLE HYPOTHESIS WHICH DOES  
11 NOT INCLUDE THE GUILT OF THE ACCUSED IF PROOF HAS  
12 FAILED. YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE.  
13 VIOLATION OF THE LAW MAY PROVED BY CIRCUMSTANTIAL  
14 EVIDENCE AS WELL AS BY DIRECT TESTIMONY OF EYE WITNESSES  
15 OR ON A FACTUAL ISSUE YOU MAY HAVE SOME DIRECT AND SOME  
16 CIRCUMSTANTIAL.

17 THE EVIDENCE FROM WHICH YOU ARE TO  
18 DECIDE WHAT THE FACTS CONSIST OF ARE THE SWORN TESTIMONY  
19 OF THE WITNESSES BOTH ON DIRECT AND CROSS-EXAMINATION  
20 REGARDLESS OF WHO CALLED THE WITNESS, THE EXHIBITS THAT  
21 HAVE BEEN RECEIVED INTO EVIDENCE, AND ANY FACTS TO WHICH  
22 LAWYERS HAVE AGREED OR STIPULATED.

23 CERTAIN THINGS ARE NOT EVIDENCE, YOU  
24 MAY NOT CONSIDER THEM IN DECIDING WHAT THE FACTS ARE.  
25 I WILL LIST THEM FOR YOU:

1           ARGUMENTS AND STATEMENTS BY LAWYERS ARE NOT  
2 EVIDENCE. THE LAWYERS ARE NOT WITNESSES, WHAT  
3 THEY HAVE SAID IN THEIR OPENING STATEMENTS,  
4 CLOSING ARGUMENTS AND AT OTHER TIMES IS INTENDED  
5 TO HELP YOU INTERPRET THE EVIDENCE, BUT IT IS NOT  
6 EVIDENCE. IF THE FACTS AS YOU REMEMBER THEM  
7 DIFFER FROM THE WAY THE LAWYERS HAVE STATED THEM  
8 YOUR MEMORY CONTROLS.

9           QUESTIONS AND OBJECTIONS BY LAWYERS ARE NOT  
10 EVIDENCE. ATTORNEYS HAVE A DUTY TO THEIR CLIENTS  
11 TO OBJECT WHEN THEY BELIEVE A QUESTION IS IMPROPER  
12 UNDER THE RULES OF EVIDENCE. YOU SHOULD NOT BE  
13 INFLUENCED BY THE OBJECTION OR BY THE COURT'S  
14 RULING ON THE OBJECTION.

15           TESTIMONY THAT'S BEEN EXCLUDED OR STRICKEN OR  
16 THAT YOU'VE BEEN INSTRUCTED TO DISREGARD IS NOT  
17 EVIDENCE AND MUST NOT BE CONSIDERED.

18           ANYTHING YOU MAY HAVE SEEN OR HEARD WHEN THE  
19 COURT WAS NOT IN SESSION IS NOT EVIDENCE, YOU ARE  
20 TO DECIDE THE CASE SOLELY ON THE EVIDENCE RECEIVED  
21 IN THE TRIAL.

22           UNDER OUR CONSTITUTION AND CODE OF  
23 LAWS ONLY YOU, THE JURY, CAN MAKE THE FINDERS OF FACTS  
24 IN THIS CASE. I'M NOT PERMITTED TO INDICATE TO YOU HOW  
25 I MAY FEEL ABOUT THE TESTIMONY AND THE EVIDENCE WHICH

1 HAS BEEN PRESENTED, AND THROUGHOUT THIS TRIAL IT'S BEEN  
2 MY INTENTION TO BE FAIR AND IMPARTIAL TOWARDS EACH OF  
3 THE PARTIES INVOLVED.

4 PLEASE TELL HER TO HAVE A SEAT,  
5 PLEASE. JUST HAVE A SEAT. THANK YOU VERY MUCH.

6 SORRY FOR THE DISRUPTION.

7 TO DETERMINE THE FACTS IN THIS CASE  
8 YOU WILL HAVE TO EVALUATE THE CREDIBILITY, WHICH MEANS  
9 THE BELIEVABILITY OF EACH WITNESS. SOME OF THE THINGS  
10 YOU MAY CONSIDER AS YOU DECIDE WHETHER OR NOT TO BELIEVE  
11 A WITNESS'S TESTIMONY ABOUT A PARTICULAR MATTER INCLUDE:

12 FIRST, WHAT WAS THE MANNER OF APPEARANCE OF  
13 THE WITNESS WHO TESTIFIED? WAS HE OR SHE STRAIGHT  
14 FORWARD OR HESITANT IN ANSWERING?

15 SECOND, WAS THE TESTIMONY OF THE WITNESS  
16 CONSISTENT OR INCONSISTENT?

17 THIRD, HOW DID THE WITNESS COME TO KNOW THE  
18 FACTS THAT HE OR SHE TESTIFIED TO? WAS THE PERSON  
19 PRESENT DURING THE INCIDENT OR DID HE HAPPEN ON  
20 THE SCENE AFTER IT HAD OCCURRED?

21 FOURTH, IS THERE SOME REASON A WITNESS WOULD  
22 WANT TO GIVE TESTIMONY WHICH WOULD HELP OR HURT  
23 ONE SIDE OR THE OTHER? IN OTHER WORDS, WAS THE  
24 WITNESS BIASED OR PREJUDICED?

25 AND FIFTH, WAS THE TESTIMONY OF THE WITNESS

1           STRENGTHENED OR WEAKENED BY OTHER TESTIMONY OR  
2           EVIDENCE?

3                           YOU CAN BELIEVE AS MUCH OR AS LITTLE  
4   OF EACH WITNESS'S TESTIMONY AS YOU THINK PROPER. YOU  
5   MAY BELIEVE THE TESTIMONY OF A SINGLE WITNESS AGAINST  
6   THAT OF MANY, OR JUST THE OPPOSITE. OF COURSE, YOU DO  
7   NOT DETERMINE THE TRUTH BY MERELY COUNTING THE NUMBER OF  
8   WITNESSES PRESENTED BY EACH SIDE. THROUGHOUT THE  
9   PROCESS YOU HAVE BUT ONE OBJECTIVE, TO SEEK THE TRUTH  
10  REGARDLESS OF ITS SOURCE.

11                        I CHARGE YOU, MADAM FORELADY AND  
12  MEMBERS OF THE JURY, THAT THE FACT THAT THE DEFENDANT  
13  ELECTS NOT TO TESTIFY ON HIS BEHALF CANNOT AND MUST NOT  
14  BE CONSIDERED AGAINST HIM UNDER ANY CIRCUMSTANCES OR ANY  
15  MANNER WHATSOEVER. THE DECISION OF THE DEFENDANT NOT TO  
16  TAKE THE WITNESS STAND AND TESTIFY IN HIS OWN BEHALF  
17  DOES NOT CREATE ANY INFERENCE AGAINST HIM, AND I TELL  
18  YOU NOW YOU MUST NOT PERMIT THAT WEIGHT OR THAT FACT IN  
19  EVEN THE SLIGHTEST DEGREE DURING YOUR DISCUSSIONS. YOU  
20  SHOULD NOT PERMIT THIS FACT TO ENTER THE DISCUSSIONS AND  
21  DELIBERATIONS ON THE ISSUES OF THIS CASE.

22                        NOW, THE SAME CONSTITUTION AND LAWS  
23  WHICH DESIGNATE AND MAKE YOU THE FINDERS OF THE FACTS,  
24  AS I'VE JUST EXPLAINED, ALSO MAKE ME THE SOLE INSTRUCTOR  
25  OF THE LAW. YOU SHOULD ACCEPT STATEMENTS OF THE LAW AS



1 I GIVE THEM TO YOU. THE ATTORNEYS ARE NOT THE  
2 INSTRUCTORS OF THE LAW. PLEASE BASE YOUR DECISION  
3 MAKING ON WHAT THE LAW IS AND NOT WHAT YOU THINK THE LAW  
4 SHOULD BE.

5 I'M GOING TO EXPLAIN TO YOU THE  
6 OFFENSE KNOWN AS ARMED ROBBERY. I'M GOING TO READ TO  
7 YOU IN PART SECTION SIXTEEN, DASH, ELEVEN, DASH, THREE  
8 THIRTY OF THE CODE OF LAWS OF THE STATE OF SOUTH  
9 CAROLINA:

10 "ANY PERSON CONVICTED OF THE CRIME OF ROBBERY  
11 WHILE ARMED WITH A PISTOL, DIRK, SLING SHOT, METAL  
12 KNUCKLES, RAZOR OR OTHER DEADLY WEAPON, OR WHILE  
13 ALLEGING EITHER BY ACTIONS OR WORDS HE WAS ARMED  
14 WHILE USING A REPRESENTATION OF A DEADLY WEAPON OR  
15 ANY OBJECT WHICH A PERSON PRESENT DURING THE  
16 COMMISSION OF A ROBBERY REASONABLY BELIEVED TO BE  
17 A DEADLY WEAPON SHALL SUFFER PUNISHMENT FOR ARMED  
18 ROBBERY."

19 I WILL NOW DEFINE FOR YOU THE  
20 OFFENSE OF ROBBERY WHILE ARMED WITH A DEADLY WEAPON, AND  
21 WHICH FOR CONVENIENCE IN THIS INSTRUCTION I WILL CALL  
22 ARMED ROBBERY. IN ORDER THAT YOU MAY UNDERSTAND WHAT IS  
23 MEANT BY ARMED ROBBERY I'M FIRST GOING TO DEFINE FOR YOU  
24 THE CRIME OF ROBBERY, AND THEN WHAT CONSTITUTES ARMED  
25 ROBBERY, BECAUSE ARMED ROBBERY IS THE AGGRAVATION OF THE

1 CRIME OF ROBBERY:

2 ROBBERY IS THE FELONIOUS TAKING AND CARRYING  
3 AWAY OF THE PERSONAL PROPERTY OF ANY VALUE OF  
4 ANOTHER PERSON FROM HIS PERSON OR IN HIS PRESENCE  
5 BY VIOLENCE OR PUTTING HIM OR HER IN FEAR OF  
6 VIOLENCE. THE ELEMENTS OF ROBBERY ARE:

7 FIRST, THE PROPERTY TAKEN MUST BE  
8 PERSONAL PROPERTY. LADIES AND GENTLEMEN OF  
9 THE JURY, I CHARGE YOU THAT COIN AND CURRENCY  
10 IN THE UNITED STATES IS PERSONAL PROPERTY.

11 SECOND, THERE MUST BE A FELONIOUS TAKING  
12 AND CARRYING AWAY OF THE PERSONAL PROPERTY,  
13 THAT IS, THERE MUST BE A TRESPASS TO AND AN  
14 ASPORTATION OF PERSONAL PROPERTY WITH INTENT  
15 TO STEAL. THE COMPLETE POSSESSION OF  
16 PERSONAL PROPERTY BY THE TAKER EVEN FOR AN  
17 INSTANCE IS SUFFICIENT, AND THE CARRYING OR  
18 EVEN THE SLIGHTEST REMOVAL OF PERSONAL  
19 PROPERTY IS SUFFICIENT IN LAW.

20 THIRD, THE TAKING AND CARRYING AWAY OF  
21 THE PERSONAL PROPERTY MUST BE WITH THE  
22 FELONIOUS INTENT, THAT IS, WITH THE INTENT TO  
23 STEAL ON THE PART OF THE TAKER TO PERMANENTLY  
24 DEPRIVE THE OWNER OF THE PERSONAL PROPERTY  
25 AND TO CONVERT THE PERSONAL PROPERTY TO HIS

1 OWN USE.

2 FOURTH, THE AGGRAVATED CIRCUMSTANCES  
3 NECESSARY TO CONSTITUTE ROBBERY ARE THESE:  
4 THE PROPERTY MUST BE TAKEN FROM THE PERSON OF  
5 ANOTHER. IF IT IS TAKEN IN HIS OR HER  
6 PRESENCE IT MUST BE CONSTRUCTIVELY FROM HIS  
7 PERSON OR HER PERSON. THE TAKING MUST NOT  
8 ONLY BE WITHOUT HIS OR HER CONSENT BUT MUST  
9 BE ACCOMPLISHED BY VIOLENCE OR BY PUTTING HIM  
10 OR HER IN FEAR OF VIOLENCE.

11 IN ORDER FOR ONE TO BE GUILTY OF  
12 ROBBERY WHILE ARMED WITH A DEADLY WEAPON THE LAW  
13 REQUIRES THAT ONE MUST HAVE A DEADLY WEAPON TO  
14 ACCOMPLISH THE PURPOSE OF ROBBERY AS I HAVE EXPLAINED TO  
15 YOU.

16 NOW, LADIES AND GENTLEMEN OF THE  
17 JURY, I FURTHER CHARGE YOU THAT THE LAW CONCERNING THE  
18 CRIME COMMITTED BY TWO OR MORE PERSONS WHO ARE ACTING  
19 TOGETHER IN THE COMMISSION OF THE CRIME, THEN THE ACT OF  
20 ONE IS THE ACT OF ALL. THIS IS TRUE EVEN IF THERE ARE  
21 TWO PEOPLE OR MORE THAN TWO PEOPLE INVOLVED IN THE  
22 ACT. IF TWO OR MORE PEOPLE ARE TOGETHER, ARE ACTING  
23 TOGETHER, ASSISTING EACH OTHER IN THE COMMISSION OF AN  
24 OFFENSE THE LAW SAYS THAT UNDER THESE CIRCUMSTANCES THE  
25 ACT OF ONE IS THE ACT OF ALL, AND AS IT IS SOMETIMES

1 SAID, THE HAND OF ONE IS THE HAND OF ALL. IN ADDITION,  
2 PRESENT AT THE SCENE OF THE CRIME BY PREARRANGEMENT TO  
3 AID, ENCOURAGE OR ABET IN THE PREPARATION OF THE CRIME  
4 CONSTITUTES GUILT AS THE PRINCIPLE.

5 NOW, YOU'VE BEEN SELECTED TO BE FAIR  
6 AND IMPARTIAL JURORS SWORN TO IMPARTIALLY TRY AND  
7 DETERMINE THE FACTS OF THIS CASE, AND WHEN YOU COMPLY  
8 WITH YOUR OATH TO DO SO THEN NO ONE WILL HAVE A RIGHT TO  
9 CRITICIZE YOUR VERDICT AND YOU WILL HAVE FULLY  
10 DISCHARGED YOUR DUTY AS JURORS. YOU ARE TO DECIDE THIS  
11 CASE ACCORDING TO THE TESTIMONY YOU'VE HEARD FROM THE  
12 SWORN WITNESSES ALONG WITH OTHER EVIDENCE INTRODUCED.

13 I CHARGE YOU AS JURORS YOU MUST  
14 DECIDE THE ISSUES AND PROCEED WITHOUT BIAS AND WITHOUT  
15 PREJUDICE TO ANY PARTY. YOU CANNOT ALLOW YOURSELF TO BE  
16 GOVERNED BY SYMPATHY, BY PREJUDICE, BY COMPASSION OR BY  
17 PUBLIC OPINION, OR ANY OTHER ARBITRARY FACTOR. BOTH THE  
18 STATE AND THE DEFENDANT HAVE A RIGHT TO EXPECT THAT EACH  
19 OF YOU WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL THE  
20 EVIDENCE IN THE CASE AND THAT YOU WILL FOLLOW THE LAW AS  
21 I HAVE EXPLAINED IT TO YOU.

22 NOTHING I MAY HAVE SAID OR DONE  
23 DURING THE COURSE OF THIS TRIAL HAS BEEN IN ANY WAY  
24 INTENDED TO EXPRESS OR SUGGEST A VIEW OF THE CASE OR AN  
25 OPINION AS TO THE FACTS, OR THE WEIGHT OF THE EVIDENCE

1 OR THE CREDIBILITY OF THE WITNESSES. IF ANY OF MY  
2 ACTIONS OR WORDS HAVE SEEMED TO SO INDICATE YOU WILL  
3 DISREGARD SUCH AND FORM YOUR OWN OPINION AS TO THESE  
4 MATTERS.

5 MADAM FORELADY, AND MEMBERS OF THE  
6 JURY, THERE IS ONE POSSIBLE VERDICT FOR THE CRIME OF  
7 ARMED ROBBERY, GUILTY OR NOT GUILTY. LADIES AND  
8 GENTLEMEN, YOUR VERDICT MUST BE UNANIMOUS.

9 MADAM FORELADY, WHEN THE JURY AGREES  
10 ON THE VERDICT YOU WILL CHECK THE APPROPRIATE LINE ON  
11 THE VERDICT FORM, NOTIFY THE BAILIFF AND I WILL RECEIVE  
12 YOU BACK IN THE COURTROOM.

13 MADAM FORELADY, I HAVE PREPARED A  
14 VERDICT FORM. IT HAS AT THE TOP, THE STATE OF SOUTH  
15 CAROLINA VERSUS REGINALD MONTGOMERY, AND IT HAS THE CASE  
16 NUMBER, AND IT SAYS, "WE, THE JURY, FIND THE DEFENDANT,  
17 REGINALD MONTGOMERY, GUILTY OF ARMED ROBBERY." "WE, THE  
18 JURY, FIND THE DEFENDANT, REGINALD MONTGOMERY, NOT  
19 GUILTY OF ARMED ROBBERY." AS I SAID EARLIER, THE  
20 VERDICT HAS TO BE UNANIMOUS, ALL TWELVE OF YOU HAVE TO  
21 AGREE. AND I'LL TELL YOU IT'S A COLLECTIVE REASONING  
22 PROCESS ON ALL TWELVE OF YOURS PART. I WILL ASK YOU TO  
23 RESPECT EACH OTHER'S OPINIONS, LISTEN TO EACH OTHER'S  
24 OPINIONS, REVIEW THE FACTS, REVIEW THE TESTIMONY AND  
25 DISCUSS THE CASE, MADAM FORELADY, AND ARRIVE AT A

1 UNANIMOUS VERDICT, EITHER GUILTY OR NOT GUILTY. AND  
2 AFTER YOU'VE DONE THAT, FILL OUT THE FORM, DATE IT, AND  
3 SIGN IT AS THE FOREPERSON, LET THE BAILIFF KNOW, AND WE  
4 WILL RECEIVE YOU BACK IN THE COURTROOM AT THAT TIME.

5 NOW, MADAM FORELADY, I'M GOING TO  
6 ASK YOU TO GO TO THE JURY ROOM, BUT I DON'T WANT YOU TO  
7 BEGIN YOUR DELIBERATIONS UNTIL THE BAILIFF BRINGS YOU  
8 THE VERDICT FORM, THE CHARGE AND ANY OTHER EVIDENCE  
9 THAT'S BEEN INTRODUCED, AND TELL YOU TO BEGIN YOUR  
10 DELIBERATIONS. I HAVE TO TAKE MY CHARGE UP WITH THE  
11 ATTORNEYS AND I MAY HAVE TO BRING YOU BACK AND TAKE  
12 SOMETHING AWAY OR ADD SOMETHING THAT I LEFT OUT. SO,  
13 DON'T BEGIN UNTIL THE BAILIFF INSTRUCTS YOU TO START.

14 MADAM FORELADY AND MEMBERS OF THE  
15 JURY, EXCEPT FOR MR. GOODEN, IF YOU WILL KEEP YOUR SEAT,  
16 THE REST OF YOU CAN FOLLOW THE BAILIFF TO THE JURY ROOM.  
17 (Whereupon, the jury retires  
18 to the jury room.)

19 THE COURT: ALRIGHT, ANY EXCEPTIONS  
20 FROM THE STATE?

21 SOLICITOR JEFFRIES: NONE FROM THE  
22 STATE, YOUR HONOR.

23 THE COURT: ANY FROM THE DEFENDANT?

24 MR. SIMS: YOUR HONOR, I'D JUST LIKE  
25 TO -- I NOTICED IN YOUR CHARGE EACH TIME YOU MENTIONED

1 THE VERDICT YOU MENTIONED GUILTY FIRST AND NOT GUILTY  
2 SECOND. I WOULD JUST LIKE A CHARGE TO THE JURY THAT THE  
3 MANNER IN WHICH YOU GAVE HAS NO MEANING, DOES NOT MEAN  
4 ANYTHING.

5 THE COURT: I THINK I COVERED THAT,  
6 AND I DON'T THINK I MENTIONED GUILTY -- IN FACT, THERE'S  
7 NUMEROUS TIMES IN HERE I MENTIONED NOT GUILTY AND DIDN'T  
8 EVEN MENTION THE GUILTY PORTION. OKAY?

9 MR. SIMS: YES, SIR.

10 THE COURT: NO, I'M NOT GOING TO  
11 CHANGE, I APPRECIATE YOUR MOTION, BUT NO, I'M NOT GOING  
12 TO DO THAT.

13 ANY OTHER EXCEPTIONS?

14 MR. SIMS: NO, I'VE DECIDED NOT TO  
15 DO THE OTHER ONE.

16 THE COURT: PARDON?

17 MR. SIMS: I DECIDED -- NONE.

18 THE COURT: OKAY. ALRIGHT. SINCE  
19 THERE'S NO EXHIBITS I'M GOING TO ASK THE BAILIFF TO TAKE  
20 THE VERDICT FORM AND THE CHARGE TO THE JURY AND ASK THEM  
21 TO BEGIN THEIR DELIBERATIONS.

22 YES, MA'AM, THE LADY IN THE WHITE,  
23 WOULD YOU COME FORWARD, PLEASE, MA'AM? WHERE DO YOU  
24 WORK?

25 LADY IN THE AUDIENCE: ALLIED AND

1 SECURITY.

2 THE COURT: PARDON?

3 LADY IN THE AUDIENCE: ALLIED AND  
4 SECURITY.

5 THE COURT: OKAY. BECAUSE EARLIER,  
6 WHEN MR. SIMS WAS MAKING HIS ARGUMENT APPARENTLY YOU  
7 WERE LAUGHING OR GIGGLING, AND THEN WHEN I START THE  
8 CHARGE YOU START PRANCING ACROSS THE COURTROOM. WHAT'S  
9 YOUR PROBLEM?

10 LADY IN THE AUDIENCE: I NEEDED TO  
11 GO TO WORK.

12 THE COURT: ALRIGHT. EVERY JUROR ON  
13 THE JURY WAS WATCHING AND YOU WERE DISTURBING THE WHOLE  
14 COURTROOM.

15 LADY IN THE AUDIENCE: WELL, I  
16 DIDN'T MEAN TO GET UP IN THE MIDDLE OF YOU TALKING, BUT  
17 I THOUGHT I COULD GO OUT THE DOOR, BECAUSE I NEEDED TO  
18 BE AT WORK AT THREE O'CLOCK.

19 THE COURT: OKAY. I SUGGEST YOU  
20 LEAVE. OKAY?

21 LADY IN THE AUDIENCE: OKAY.

22 THE COURT: HAVE A GOOD DAY.

23 LADY IN THE AUDIENCE: YOU, TOO.

24 THE COURT: ALRIGHT, WE'LL STAND AT  
25 EASE AWAITING A JURY VERDICT. ARE Y'ALL GOING TO BE IN



1 THE COURTROOM OR -

2 MR. SIMS: I'LL BE AROUND HERE, I'M  
3 NOT GOING ANYWHERE.

4 SOLICITOR JEFFRIES: I'LL BE IN THE  
5 COURTROOM.

6 (Whereupon, the jury begins  
7 deliberations at 2:45 p.m.)

8 THE COURT: MR. GOODEN, DO YOU WANT  
9 TO COME AROUND? YOU'RE WELCOME TO STAY IF YOU WANT TO  
10 STAY. I WANT TO THANK YOU FOR YOUR SERVICE HERE, SIR.  
11 YOU'RE WELCOME TO STAY, OR YOU'RE FREE TO GO.

12 (Recess)

13 THE COURT: MR. SIMS, I UNDERSTAND  
14 YOU HAVE A MOTION THAT WE DID NOT PUT ON THE RECORD, IS  
15 THAT CORRECT?

16 MR. SIMS: YES, SIR, WE NEED TO BRING  
17 MY CLIENT IN.

18 (Whereupon, the defendant  
19 enters the courtroom.)

20 THE COURT: YES, SIR, GO AHEAD.

21 MR. SIMS: I RENEW MY MOTION FOR A  
22 DIRECTED VERDICT, AND TAKING THE EVIDENCE IN THE LIGHT  
23 MOST FAVORABLE TO THE STATE I WOULD AGAIN ASK THE COURT  
24 FOR A DIRECTED VERDICT OF NOT GUILTY.

25 THE COURT: ALRIGHT. MOTION DENIED.

1 IS THE STATE READY FOR THE JURY,  
2 ANYTHING BEFORE WE BRING THE JURY OUT?

3 SOLICITOR JEFFRIES: THE STATE'S  
4 READY, YOUR HONOR.

5 THE COURT: ANYTHING FROM THE  
6 DEFENDANT?

7 MR. SIMS: NO, SIR.

8 THE COURT: ALRIGHT, BRING US THE  
9 JURY, PLEASE.

10 (Whereupon, the jury returns  
11 with a verdict at 3:15 p.m.)

12 THE COURT: MADAM FORELADY, I  
13 UNDERSTAND YOU'VE REACHED A VERDICT, IS THAT CORRECT?

14 FORELADY: YES, SIR.

15 THE COURT: WOULD YOU HAND THE  
16 VERDICT FORM TO THE BAILIFF, PLEASE, MA'AM. THANK YOU  
17 VERY MUCH.

18 (Whereupon, the Court examines  
19 the verdict.)

20 THE COURT: PUBLISH THE VERDICT.

21 VERDICT OF THE JURY

22 CLERK: I CALL THE COURT'S ATTENTION  
23 TO INDICTMENT NUMBER 2006-GS-38-2052, THE STATE OF SOUTH  
24 CAROLINA VERSUS REGINALD MONTGOMERY. WE, THE JURY, FIND  
25 THE DEFENDANT, REGINALD MONTGOMERY, GUILTY OF ARMED

1 ROBBERY.

2 THE COURT: MADAM FORELADY, I'VE  
3 FILLED OUT ON THE BACK OF THE INDICTMENT FORM, GUILTY,  
4 I'VE DATED IT APRIL THE FOURTH, TWO THOUSAND AND SEVEN,  
5 AND THE CLERK IS GOING TO BRING IT AROUND AND I'M GOING  
6 TO ASK YOU TO SIGN IT IF YOU WOULD, PLEASE, MA'AM.

7 LADIES AND GENTLEMEN, I WANT TO  
8 THANK YOU, I'VE ENJOYED WORKING WITH YOU THIS WEEK, AND  
9 -- BUT BEFORE WE GET TO THAT IS THERE ANYTHING FOR THE  
10 JURY FROM THE DEFENDANT?

11 MR. SIMS: YOUR HONOR, I'D LIKE TO  
12 POLL THE JURY.

13 THE COURT: ANYTHING FROM THE STATE?

14 SOLICITOR JEFFRIES: NOTHING FROM  
15 THE STATE, YOUR HONOR.

16 THE COURT: MADAM CLERK, WOULD YOU  
17 POLL THE JURY, PLEASE, MA'AM.

18 CLERK: YES, SIR.

19 I'M GOING TO ASK YOU TWO QUESTIONS,  
20 MY FIRST QUESTION IS GOING TO BE MA'AM, OR SIR, WAS THIS  
21 YOUR VERDICT? AND MY SECOND QUESTION IS GOING TO BE, IS  
22 THIS STILL YOUR VERDICT?

23 MADAM FORELADY, WAS THIS YOUR  
24 VERDICT?

25 FORELADY: YES.

1 CLERK: IS IT STILL YOUR VERDICT?

2 FORELADY: YES.

3 CLERK: THANK YOU.

4 SIR, WAS THIS YOUR VERDICT?

5 JUROR: YES.

6 CLERK: IS IT STILL YOUR VERDICT?

7 JUROR: YES.

8 CLERK: SIR, WAS THIS YOUR VERDICT?

9 JUROR: YES.

10 CLERK: IS IT STILL YOUR VERDICT?

11 JUROR: YES.

12 CLERK: SIR, WAS THIS YOUR VERDICT?

13 JUROR: YES.

14 CLERK: IS IT STILL YOUR VERDICT?

15 JUROR: YES.

16 CLERK: MA'AM, WAS THIS YOUR

17 VERDICT?

18 JUROR: YES.

19 CLERK: IS IT STILL YOUR VERDICT?

20 JUROR: YES.

21 CLERK: MA'AM, WAS THIS YOUR

22 VERDICT?

23 JUROR: YES.

24 CLERK: IS IT STILL YOUR VERDICT?

25 JUROR: YES.

1 CLERK: LET ME START BACK HERE.

2 SIR, WAS THIS YOUR VERDICT?

3 JUROR: YES.

4 CLERK: IS IT STILL YOUR VERDICT?

5 JUROR: YES.

6 CLERK: MA'AM, WAS THIS YOUR  
7 VERDICT?

8 JUROR: YES.

9 CLERK: IS IT STILL YOUR VERDICT?

10 JUROR: YES.

11 CLERK: MA'AM, WAS THIS YOUR  
12 VERDICT?

13 JUROR: YES.

14 CLERK: IS IT STILL YOUR VERDICT?

15 JUROR: YES.

16 CLERK: SIR, WAS THIS YOUR VERDICT?

17 JUROR: YES.

18 CLERK: IS IT STILL YOUR VERDICT?

19 JUROR: YES.

20 CLERK: SIR, WAS THIS YOUR VERDICT?

21 JUROR: YES.

22 CLERK: IS IT STILL YOUR VERDICT?

23 JUROR: YES.

24 CLERK: SIR, WAS THIS YOUR VERDICT?

25 JUROR: YES.

1 CLERK: IS IT STILL YOUR VERDICT?

2 JUROR: YES.

3 CLERK: THANK YOU.

4 THE COURT: ALRIGHT, THANK YOU. LET  
5 THE RECORD REFLECT THAT THE CLERK HAS POLLED ALL TWELVE  
6 JURORS AND THEY HAVE AFFIRMED THEIR VERDICT, IT'S  
7 UNANIMOUS FOR GUILT.

8 AS I WAS TELLING YOU EARLIER, MADAM  
9 FORELADY, YOU'RE WELCOME TO STAY OR YOU'RE FREE TO GO,  
10 IT'S YOUR CHOICE, WHATEVER YOU WANT TO DO, AND OTHER  
11 MEMBERS OF THE JURY.

12 MR. SIMS, DO YOU HAVE ANY MOTIONS  
13 YOU WOULD LIKE TO MAKE?

14 MR. SIMS: YES, SIR, YOUR HONOR, WE  
15 WOULD ASK FOR A NEW TRIAL, OR IN THE ABSENCE OF A NEW  
16 TRIAL, YOUR HONOR, WE'D ASK FOR JUDGEMENT N.O.V., BUT WE  
17 WOULD ASK FOR A NEW TRIAL. THE EVIDENCE TAKEN IN THE  
18 LIGHT MOST FAVORABLE TO THE STATE, IN LIGHT OF ALL THE  
19 EVIDENCE TAKEN, THE VERDICT COULD NOT HAVE BEEN REACHED  
20 AS IT WAS. WE WOULD TAKE EXCEPTION TO THE VERDICT.

21 THE COURT: MOTION DENIED.

22 WHERE IS THE SENTENCE SHEET? HAVE  
23 YOU GOT A SENTENCE SHEET?

24 SOLICITOR JEFFRIES: IT'S COMING  
25 RIGHT NOW, YOUR HONOR.

1                   THE COURT: OKAY, THANK YOU, SIR.

2                   MR. SIMS, I'LL BE GLAD TO HEAR FROM  
3 YOU ON SENTENCING.

4                   MR. MONTGOMERY, YOU CAN COME  
5 FORWARD.

6                   MR. SIMS: YOUR HONOR, THIS IS  
7 REGINALD MONTGOMERY, HE'S A LIFELONG RESIDENT OF THIS  
8 AREA. HE HAS GROWN UP IN THE BOWMAN COMMUNITY. HIS  
9 MOTHER IS BACK THERE.

10                  THE COURT: MR. SIMS, I'LL BE GLAD  
11 TO HEAR FROM ANYBODY YOU WOULD LIKE FOR ME TO HEAR FROM,  
12 IF YOU WANT TO BRING THEM FORWARD I'LL BE GLAD TO HEAR  
13 FROM THEM.

14                  MR. SIMS: AND HIS FATHER.

15                  THE COURT: BEFORE WE GET TO THAT  
16 LET ME ASK THE SOLICITOR -- SOLICITOR, WHAT KIND OF  
17 PRIOR CRIMINAL HISTORY DOES HE HAVE?

18                  SOLICITOR JEFFRIES: YOUR HONOR, HIS  
19 CRIMINAL HISTORY, AND THIS IS, IN THIS CASE, PROBABLY  
20 MORE RELEVANT THAN MOST, HE WAS CONVICTED IN NINETEEN  
21 NINETY-NINE OF COMMON LAW ROBBERY, THREE COUNTS,  
22 KIDNAPING, TWO COUNTS, ATTEMPTED ARMED ROBBERY, ONE  
23 COUNT, ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED  
24 NATURE, AND POSSESSION OF A STOLEN VEHICLE. HE RECEIVED  
25 AN EIGHT YEAR SENTENCE. IN THIS CASE HE WAS EXPOSED TO

1 LIFE WITHOUT PAROLE, THE STATE DID NOT FILE NOTICE WITH  
2 THE INTENT TO -

3 THE COURT: HE WAS SENTENCED TO  
4 EIGHT YEARS ON THAT WHEN?

5 SOLICITOR JEFFRIES: CONCURRENT, IN  
6 NINETEEN NINETY-NINE.

7 THE COURT: NINETEEN NINETY-NINE.  
8 OKAY. HOW MUCH TIME DID HE SERVE ON THAT?

9 SOLICITOR JEFFRIES: IT APPEARS THAT  
10 HE -

11 THE COURT: OR WAS IT SUSPENDED AND  
12 PLACED ON PROBATION?

13 MR. SIMS: NO, HE SERVED ACTIVE -

14 THE COURT: HOW MUCH TIME DID YOU  
15 SERVE, MR. MONTGOMERY?

16 DEFENDANT MONTGOMERY: SEVEN YEARS.

17 THE COURT: SEVEN YEARS. OKAY.

18 ALRIGHT, ANYTHING ELSE FROM THE  
19 STATE?

20 SOLICITOR JEFFRIES: YOUR HONOR, ---

21 THE COURT: --- THAT YOU WOULD LIKE  
22 TO TELL ME ABOUT SENTENCING, AND THEN I'LL HEAR FROM THE  
23 DEFENDANT.

24 SOLICITOR JEFFRIES: YOUR HONOR,  
25 YOU'VE HEARD THE FACTS OF THIS CASE BUT I WOULD LIKE TO



1 ADDRESS A COUPLE OF THINGS. FIRST OF ALL, THE THREE  
2 INDIVIDUALS THAT WERE INVOLVED IN THIS CASE, THIS  
3 DEFENDANT WAS THE OLDEST. I THINK THAT'S IMPORTANT. I  
4 THINK IT'S IMPORTANT THAT OF THE THREE HE'S THE ONLY ONE  
5 THAT WOULD NOT COOPERATE WITH LAW ENFORCEMENT, DID NOT  
6 TAKE RESPONSIBILITY. THE OTHER TWO, ONE PLED GUILTY AND  
7 JAMES GREEN WHO TESTIFIED IS WILLING TO PLEAD GUILTY AND  
8 TAKE RESPONSIBILITY, AND I THINK THAT'S IMPORTANT IN  
9 SENTENCING THIS DEFENDANT, AND THE FACT THAT HE -- HAD  
10 THE STATE GONE FORWARD WITH LIFE WITHOUT PAROLE HE WOULD  
11 HAVE BEEN EXPOSED TO LIFE WITHOUT PAROLE. SO, I'D ASK  
12 FOR THE MAXIMUM SENTENCE IN THIS CASE, YOUR HONOR.

13 THE COURT: OKAY. HOW OLD ARE YOU,  
14 MR. MONTGOMERY?

15 DEFENDANT MONTGOMERY: TWENTY-SIX.

16 THE COURT: TWENTY-TWO?

17 DEFENDANT MONTGOMERY: TWENTY-SIX.

18 THE COURT: TWENTY-SIX. ALRIGHT,  
19 AND WHAT'S YOUR SOCIAL SECURITY NUMBER?

20 DEFENDANT MONTGOMERY: [REDACTED]

21 [REDACTED]

22 THE COURT: WHAT'S YOUR DATE OF  
23 BIRTH?

24 DEFENDANT MONTGOMERY: [REDACTED]

25 [REDACTED]

1 THE COURT: T [REDACTED]

2 DEFENDANT MONTGOMERY: YES, SIR.

3 THE COURT: OKAY, MR. SIMS, I'LL BE  
4 GLAD TO HEAR FROM YOU, YOUR CLIENT, OR ANYONE ELSE THAT  
5 YOU WOULD LIKE FOR ME TO HEAR FROM ON SENTENCING.

6 MR. SIMS: FIRST, I'D LIKE YOU TO  
7 HEAR HIS MOM, HIS MOTHER.

8 THE COURT: AND I THINK HE  
9 UNDERSTANDS IT'S A MANDATORY MINIMUM OF TEN YEARS AND A  
10 MAXIMUM OF THIRTY.

11 MR. SIMS: YES, SIR.

12 GO AHEAD.

13 THE COURT: YES, MA'AM.

14 MOTHER OF DEFENDANT: WELL, I DON'T  
15 KNOW WHAT ELSE TO SAY BUT I -

16 THE COURT: MRS. MONTGOMERY, IS THAT  
17 YOUR NAME?

18 MOTHER OF DEFENDANT: YES.

19 THE COURT: OKAY. I'LL BE GLAD TO  
20 HEAR ANYTHING YOU WOULD LIKE TO TELL ME ABOUT YOUR SON.

21 MOTHER OF DEFENDANT: I REALLY DON'T  
22 THINK, I KNOW HE DIDN'T DO IT, THAT'S ALL I CAN SAY.

23 THE COURT: OKAY. WELL, IS THERE  
24 ANYTHING YOU WOULD LIKE TO TELL ME ABOUT HIM? HE'S  
25 ALREADY SERVED TIME ON RIGHT SERIOUS OFFENSES AND NOW A

1 MOST SERIOUS OFFENSE, AND NOW HE'S BACK BEFORE THE COURT  
2 ON THE SECOND GO AROUND.

3 MOTHER OF DEFENDANT: WELL, I FEEL  
4 HE MIGHT COULD -- IF HE'S ALREADY GUILTY I FEEL MAYBE HE  
5 MIGHT COULD DO SOME KIND OF COMMUNITY SERVICE. I DON'T  
6 FEEL THAT PUTTING HIM BACK IN JAIL IS GOING TO MAKE HIM  
7 CHANGE OR ANYTHING.

8 THE COURT: WELL, I DON'T HAVE ANY  
9 CHOICE LEFT, MRS. MONTGOMERY, THE LAW SAYS IT'S A  
10 MANDATORY MINIMUM OF TEN YEARS FOR ARMED ROBBERY. I  
11 CANNOT GIVE HIM ANYTHING LESS THAN TEN YEARS. AND I'M  
12 NOT GOING TO DEBATE ON WHETHER HE'S INNOCENT OR GUILTY,  
13 HE'S BEEN FOUND GUILTY AND MY JOB AT THIS POINT IS  
14 SENTENCING. I'LL BE GLAD TO HEAR FROM YOU ANYTHING YOU  
15 WANT TO TELL ME ABOUT SENTENCING YOUR SON.

16 MOTHER OF THE DEFENDANT: I DON'T  
17 KNOW WHAT ELSE TO SAY.

18 THE COURT: OKAY.

19 MOTHER OF THE DEFENDANT: HE SAID HE  
20 DIDN'T DO IT, AND I SORT OF BELIEVE HIM THAT HE DIDN'T  
21 DO IT.

22 THE COURT: OKAY. WELL, THANK YOU  
23 VERY MUCH.

24 MR. MONTGOMERY, I'LL BE GLAD TO HEAR  
25 ANYTHING YOU WOULD LIKE TO TELL ME.

1                   FATHER OF THE DEFENDANT: WELL, ON  
2 THE NIGHT THAT IT HAPPENED I WASN'T STAYING AT MY HOUSE,  
3 I LET HIM AND HIS GIRL FRIEND LIVE THERE, AND ANOTHER  
4 FRIEND OF MINE. OKAY. THAT PARTICULAR NIGHT I WENT UP  
5 THERE ABOUT THREE O'CLOCK, REGGIE WAS HOME. NOW, I  
6 LEAVE AND COME BACK ABOUT SIX O'CLOCK OR SIX:THIRTY, I  
7 SAW THE POLICE PASS. I WAKED HIM UP, I SAID, THE POLICE  
8 PASSED --

9                   THE COURT: MR. MONTGOMERY, I'M NOT  
10 CONCERNED ABOUT THE FACTS OF WHAT HAPPENED, I'M NOT --

11                   FATHER OF THE DEFENDANT: WELL, I'M  
12 JUST -- OKAY.

13                   THE COURT: --- GOING TO DEBATE THAT  
14 WITH YOU. THE JURY HAS FOUND HIM GUILTY, HE'S GUILTY  
15 UNDER THE LAW, AND MY JOB AT THIS POINT IN TIME IS  
16 SENTENCING. I'M SITTING HERE TRYING TO DECIDE WHETHER  
17 I'M GOING TO GIVE HIM TEN YEARS, TWENTY YEARS, OR  
18 THIRTY YEARS. NOW, I'D LIKE TO HEAR SOMETHING ABOUT  
19 YOUR SON. IN OTHER WORDS, HE'S ALREADY SERVED EIGHT OR  
20 NINE YEARS ON A MOST SERIOUS OFFENSE.

21                   FATHER OF THE DEFENDANT: HE SERVED  
22 SEVEN YEARS.

23                   THE COURT: THIS IS HIS SECOND MOST  
24 SERIOUS OFFENSE. IF HE GETS A THIRD ONE HE COULD GO TO  
25 JAIL FOR LIFE WITHOUT PAROLE.

1 FATHER OF THE DEFENDANT: RIGHT.

2 THE COURT: I'D LIKE TO HEAR  
3 SOMETHING ABOUT HIM PERSONALLY.

4 FATHER OF THE DEFENDANT: WELL, HE  
5 WAS DOING GOOD WHEN HE WAS HOME, AND MY BELIEF WAS HE  
6 WASN'T THERE WHEN THAT ROBBERY OCCURRED.

7 THE COURT: OKAY. ALRIGHT, MR. SIMS,  
8 I'LL BE GLAD TO HEAR FROM YOU -- ANYTHING ELSE YOU WOULD  
9 LIKE TO TELL ME?

10 FATHER OF THE DEFENDANT: WELL,  
11 THAT'S ALL, YOU KNOW, I HOPE -- THAT'S ALL I'VE GOT TO  
12 SAY.

13 THE COURT: ALRIGHT, THANK YOU VERY  
14 MUCH.

15 MR. SIMS: YOUR HONOR, ACTUALLY,  
16 I'VE KNOWN THIS YOUNG MAN FOR A LONG TIME. WE HAD AT  
17 OUR CHURCH A CHURCH BASKETBALL TEAM WHEN HE WAS YOUNGER,  
18 HE PLAYED ON OUR BASKETBALL TEAM, AND HE WAS ONE OF  
19 THOSE PEOPLE WHO WAS ALWAYS THERE, VERY AMENABLE, HE  
20 NEVER RAISED HIS VOICE, HE ALWAYS WORKED IN AND AROUND  
21 US. I WAS ONE OF THE COACHES, MY BROTHER-IN-LAW WAS ONE  
22 OF THE COACHES, AND WE NEVER HAD ANY PROBLEMS WITH HIM  
23 IN THE COMMUNITY UNTIL THIS TIME. NOW, I DO SAY THAT  
24 REQUIRING THE STATE TO GO THROUGH A TRIAL, IT SEEMS LIKE  
25 THE SOLICITOR WANTS TO PUNISH HIM FOR EXERCISING HIS

1 CONSTITUTIONAL RIGHT.

2 THE COURT: I'M NOT GOING TO PUNISH  
3 HIM FOR EXERCISING HIS CONSTITUTIONAL RIGHT, OKAY?

4 MR. SIMS: YES, SIR.

5 THE COURT: MY CONCERN IS TWO-FOLD:  
6 NUMBER ONE, HE'S ALREADY BEEN TO JAIL ON SOME VERY, VERY  
7 SERIOUS OFFENSES. HERE HE IS, WHEN HE GETS OUT OF JAIL,  
8 AND HE'S BACK AGAIN. SO, MY CONCERN IS HOW MUCH OF A  
9 DANGER TO THE COMMUNITY HE IS, AND HOW LONG I SHOULD PUT  
10 HIM AWAY.

11 MR. SIMS: YES, SIR, I UNDERSTAND  
12 THAT, BUT I JUST WANTED TO POINT IT OUT. YOUR HONOR, AS  
13 I SAID, I DO -- I HAVE KNOWN THIS YOUNG MAN, I'VE KNOWN  
14 HIM SINCE HE WAS A YOUNG KID. AND HE'S NOT THAT OLD NOW  
15 IN REGARDS TO THIS. AND HE IS, HE WORKS, ONE OF HIS  
16 EMPLOYERS WAS ACTUALLY ON THE JURY PANEL WHO INDICATED  
17 WHEN HE CAME UP THAT HE WAS A GOOD WORKER, THAT HE NEVER  
18 HAD ANY PROBLEMS WITH HIM. HIS NAME IS MR. INFINGER, WHO  
19 WAS ON THE JURY PANEL, REMEMBER, HE CAME UP.

20 THE COURT: I REMEMBER HE CAME UP.

21 MR. SIMS: AND HE TOLD THE COURT IN  
22 TERMS OF WHAT KIND OF PERSON HE WAS, WHAT KIND OF WORKER  
23 HE WAS, AND ALL THE THINGS THAT HE DID.

24 THE COURT: BUT IT WASN'T BUT FOR  
25 TWO WEEKS.

1                   MR. SIMS:   WELL, NO, HE WORKED, I  
2   THOUGHT IT WAS A COUPLE OF -

3                   THE COURT:   NO, I THINK HE SAID HE  
4   WORKED FOR HIM FOR TWO WEEKS.

5                   MR. SIMS:   I THOUGHT IT WAS A LITTLE  
6   LONGER THAN THAT, JUDGE.

7                   FATHER OF THE DEFENDANT:   IT WAS  
8   LONGER THAN THAT, BECAUSE I GOT HIM THE JOB THERE WITH  
9   THE GUY. HE WORKED LONGER, UNTIL THE WORK GOT SLACK,  
10   THEY WAS WORKING AT THE PEANUT PLANT THE LAST TIME WHEN  
11   HE GOT THE JOB, AND IT WAS ABOUT OVER WITH.   AND HE WAS  
12   WORKING WITH ME ALSO.

13                  THE COURT:   AND HE'S ALSO APPARENTLY  
14   ON COMMUNITY SUPERVISION, HE'S SERVING TWO YEARS NOW ON  
15   THAT VIOLATION.

16                  MR. SIMS:   I'M SORRY?

17                  THE COURT:   HE'S ON COMMUNITY  
18   SUPERVISION, HE'S CURRENTLY SERVING A TWO YEAR COMMUNITY  
19   SUPERVISION REVOCATION, RECEIVED BACK ON OCTOBER  
20   NINETEENTH, O-SIX.

21                  MR. SIMS:   YES, SIR.

22                  THE COURT:   I MEAN, WHAT'S HE DONE  
23   OTHER THAN GET IN TROUBLE?

24                  MR. SIMS:   YOUR HONOR, HE WAS, I  
25   REPRESENTED HIM, THAT'S HOW I GOT INVOLVED IN THIS, I

1 REPRESENTED HIM IN THAT, BECAUSE INITIALLY WHEN HE WAS  
2 ARRESTED THERE HAD BEEN A MISTAKE, HE HAD COME HERE,  
3 THEY HAD CLOSED DOWN, HE HAD GONE OVER TO PROBATION AND  
4 PAROLE, AND THERE WAS SOME QUESTION ABOUT THAT. NOW, HE  
5 DID ADMIT, AND HE STOOD IN FRONT OF THE JUDGE AND  
6 ADMITTED THAT HE HAD HAD SOME DRUGS. THAT WAS THE  
7 PROBLEM I BELIEVE THAT THEY FOUND, THAT HE HAD DRUGS IN  
8 HIS SYSTEM, IF I'M NOT SPEAKING CORRECTLY, I BELIEVE HE  
9 DID HAVE -- AND THEY SENT HIM TO JAIL BECAUSE OF THAT.  
10 THE JUDGE REVOKED IT BECAUSE OF, HE HAD HAD, I BELIEVE  
11 IT WAS SOME DRUGS IN HIS SYSTEM. HE TESTED POSITIVE.  
12 AND IF I'M NOT MISTAKEN, MICHELLE PROBABLY CAN VERIFY  
13 WHAT I'M SAYING. BUT YOUR HONOR, I DON'T THINK THAT  
14 THIS YOUNG MAN IS ONE OF THOSE PERSONS WHO IS DESERVING  
15 OF A MAXIMUM SENTENCE IN THIS. THE JURY HAS FOUND HIM  
16 GUILTY, AND MY PRACTICE HAS NEVER BEEN TO, TO QUESTION  
17 OR DISPUTE WHAT A JURY HAS SAID ONCE THEY HAVE DONE  
18 THEIR WORK. THEY WORK HARD AND THEY DO THEIR WORK. BUT  
19 I WOULD ASK THE COURT TO TAKE INTO CONSIDERATION THAT  
20 THIS IS NOT A SITUATION WHERE THE MAXIMUM SENTENCE IS  
21 WARRANTED. AND I DO KNOW THAT THERE IS A MANDATORY  
22 SENTENCE IN THIS, AND I WOULD ASK THE COURT TO AT LEAST  
23 GIVE HIM THE OPPORTUNITY THAT WHEN HE GETS OUT OF THIS  
24 THAT HE CAN BECOME A PRODUCTIVE CITIZEN, THAT HE CAN DO  
25 THOSE THINGS AND GET HIMSELF TOGETHER AND STILL HAVE



1 SOME FORM OF LIFE ONCE HE GETS OUT, YOUR HONOR, TO BE  
2 ABLE TO BECOME A -- TO BE ABLE TO BECOME A MORE THAN  
3 PRODUCTIVE CITIZEN IN THIS STATE. BUT I WOULD ASK THE  
4 COURT TO TAKE THAT INTO CONSIDERATION.

5 THE COURT: MR. MONTGOMERY, ANYTHING  
6 YOU WOULD LIKE TO SAY?

7 DEFENDANT MONTGOMERY: I WOULD LIKE  
8 TO STATE THAT I DO HAVE A LIFE AHEAD OF ME AND I SOMEHOW  
9 PLACED MY LIFE IN THOSE PEOPLE'S HANDS TODAY, AND I  
10 GUESS THEY WENT OFF ON WHAT THEY FELT WAS RIGHT, AND  
11 THERE'S NOTHING I CAN DO. I FELT THAT I HAD A GOOD CASE  
12 AND GOOD TRIAL BECAUSE IN MY LAST PREVIOUS CHARGES I  
13 PLED GUILTY TO EACH AND EVERY ONE OF THOSE CHARGES THE  
14 INSTANT THAT I WAS LOCKED UP BECAUSE I WAS GUILTY. AND  
15 THERE WAS NO ONE ELSE FOR ME TO INVOLVE IN THAT BECAUSE  
16 I PLED GUILTY TO EVEN THE CHARGES THAT I DIDN'T DO, I  
17 PLED GUILTY TO THOSE CHARGES. AND THE REASON I ENDED UP  
18 ON COMMUNITY SUPERVISION WAS BECAUSE OF THE LAW CHANGING  
19 PRIOR TO ME MAXING OUT MY SENTENCE, AS FAR AS HAVING  
20 KIDNAPING CHARGES.

21 THE COURT: HOW MUCH TIME DID YOU  
22 GET ON THE KIDNAPING?

23 DEFENDANT MONTGOMERY: ALL OF IT  
24 WAS, ALL THE CHARGES RAN CONCURRENT. ONE OF THE  
25 CHARGES I HAD, IT WAS FIVE YEARS ON IT, AND I THINK THAT

1 WAS THE POSSESSION OF A STOLEN VEHICLE, BUT ALL THE  
2 OTHER CHARGES WERE EIGHT YEARS.

3 THE COURT: EIGHT YEARS, OKAY.

4 DEFENDANT MONTGOMERY: EIGHT YEARS  
5 ON DOWN.

6 THE COURT: SO, YOU MAXED OUT IN  
7 FOUR?

8 DEFENDANT MONTGOMERY: TWO THOUSAND  
9 AND FIVE -- JULY FIRST, TWO THOUSAND AND FIVE. AND WHEN  
10 I WAS MAXED OUT I WAS TO BE PUT ON COMMUNITY SUPERVISION  
11 FOR TWO YEARS, AND I WONDERED WHY, I SAID, WELL, I MAXED  
12 MY SENTENCE OUT. THEY SAID, WELL, MR. MONTGOMERY, WE  
13 CHANGED THE LAW, AND BEING THAT YOU -

14 THE COURT: WHEN DID YOU GET OUT IN  
15 TWO THOUSAND AND FIVE?

16 DEFENDANT MONTGOMERY: JULY FIRST.

17 THE COURT: TWO THOUSAND AND FIVE,  
18 SO YOU'VE BEEN OUT FOR -

19 DEFENDANT MONTGOMERY: I STAYED OUT  
20 FOR FOURTEEN MONTHS.

21 THE COURT: ABOUT FOURTEEN OR  
22 FIFTEEN MONTHS.

23 DEFENDANT MONTGOMERY: YEAH.

24 THE COURT: OKAY.

25 DEFENDANT MONTGOMERY: AND THEY SAID

1 DUE TO THE LAW CHANGING AND ME HAVING TWO COUNTS OF  
2 KIDNAPING I MUST GO ON TWO YEARS COMMUNITY SUPERVISION.  
3 I DIDN'T UNDERSTAND IT AND I DIDN'T ALSO KNOW AT THAT  
4 TIME THAT IT WAS A VOLUNTARY PROGRAM PRIOR TO ME SIGNING  
5 THAT.

6 THE COURT: NO, IT'S NOT VOLUNTARY,  
7 BUT I WON'T - IT'S NOT VOLUNTARY.

8 DEFENDANT MONTGOMERY: BUT I WOULD  
9 JUST LIKE TO ADD UP IN SUMMARY THAT I DO HAVE A LIFE  
10 AHEAD OF ME, AND COMING HERE I WOULDN'T EVEN TAKE IT  
11 THIS FAR IF I HAD ANYTHING TO DO WITH THAT. BUT I DO  
12 KNOW THOSE INDIVIDUALS, I KNOW ONE OF THE INDIVIDUALS  
13 THAT TESTIFIED AGAINST ME, AND ME AND HIM HAD SOME  
14 TROUBLES IN THE PAST, AND MAYBE THIS WAS HIS WAY OF  
15 GETTING BACK AT ME, BUT I DO HAVE A LIFE AHEAD OF ME. I  
16 HAVE PEOPLE WHO LOVE ME, AND I DO -- AND I WAS TRYING TO  
17 MAKE SOMETHING OUT OF MYSELF, BUT OBVIOUSLY, I'M BEING  
18 WITHHELD FROM THAT RIGHT NOW. AND I JUST WISH THAT I  
19 COULD JUST AT LEAST HAVE THE MANDATORY SENTENCE INSTEAD  
20 OF THE MAXIMUM, SO I CAN HAVE A CHANCE TO GET OUT OF  
21 HERE WITHIN A REASONABLE AGE AND DO SOMETHING WITH  
22 MYSELF.

23 THE COURT: OKAY. THANK YOU VERY  
24 MUCH, MR. MONTGOMERY.

25 ANYTHING ELSE, MR. SIMS?

1                   MR. SIMS:   NOTHING, YOUR HONOR.

2                   THE COURT: ANYTHING ELSE FROM THE  
3 STATE?

4                   SOLICITOR JEFFRIES:   NOTHING FROM  
5 THE STATE, YOUR HONOR.

6                   SENTENCE OF THE COURT

7                   ALRIGHT, ON REGINALD MONTGOMERY,  
8 INDICTMENT NUMBER 2006-38-2052, ARMED ROBBERY, SENTENCE  
9 TO THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF  
10 TWENTY-TWO YEARS.   AND THAT'S CONSECUTIVE WITH YOUR  
11 COMMUNITY SERVICE TIME YOU'RE PRESENTLY SERVING.

12                   THANK YOU VERY MUCH.

CERTIFICATE

1  
2 I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF  
3 ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR  
4 THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH  
5 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A  
6 TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL  
7 THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE  
8 CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF  
9 GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA,  
10 ON THE THIRD AND FOURTH DAYS OF APRIL, 2007.

11 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
12 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

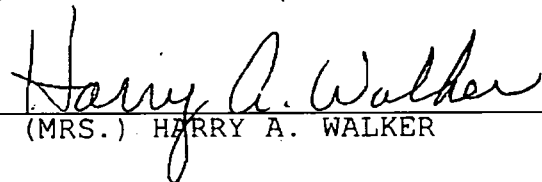
13

14 DATE: JUNE 29, 2007

15

16

17

  
(MRS.) HARRY A. WALKER

WITNESSES

DOCKET NO. 2006-038-2052

The State of South Carolina

County of

ORANGEBURG

DET. ROMAN RODRIGUEZ

Arresting Agency:  
Orangeburg Co. Sheriff Dept.

ARREST WARRANT NUMBER

H941784

Arrested: Oct 04, 2006

ACTION OF GRAND JURY

*Grand Jury*

Foreperson of Grand Jury NOV 08 2006  
Date: December 6, 2006

VERDICT

*Guilty*

*Donna L. Williams*  
Foreperson of Petit Jury  
Date: April 4, 2007

COURT OF GENERAL SESSIONS

December 04, 2006 TERM

THE STATE

vs.

Reginald Montgomery

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330  
CDR Code: 0139  
Class: FEL-A(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY

*D. Williams*  
CLERK OF COURT  
ORANGEBURG COUNTY SOUTH CAROLINA

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

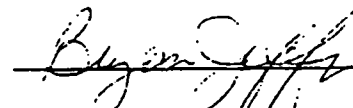
INDICTMENT  
2006GS38-2052

At a Court of General Sessions, convened on December 04, 2006 the Grand Jurors of Orangeburg County present upon their oath:

**ARMED ROBBERY**

That Reginald Montgomery, did in Orangeburg County, on or about September 17, 2006, commit robbery by feloniously taking from the person or presence of the victim(s), employees of Shell Store, by means of force or intimidation goods or monies of Shell Store, such goods or monies being described as US Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of Section §16-11-330 of the South Carolina Code of laws, (1976 as amended).

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

  
Bryan S. Jeffries SOLICITOR

322  
STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG  
STATE VS.

AKA: Reginald Montgomery  
Race: Sex: Age: 26  
DOB: SS#  
Address:  
City, State, Zip  
DL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2006-GS-38-2052

AW#: H-941784  
Date of Offense: Sept 17, 2006  
S.C. Code §: 16-11-330  
CDR Code #: 0111319

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Armed Robbery

In violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1<sup>st</sup> or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Winnif B. Clark  
CLERK OF COURT

ORANGEBURG COUNTY, SC

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 11 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment of \$ ; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: w/ COMMUNITY SUPERVISION TIME SERVING  
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered  
Total: \$ plus 20% fee: \$  
Payment Terms:  
☐ set by SCDPPPS

PTUP

days/hours Public Service Employment

Recipient:  
\*Fine:  
\$14-1-206 (Assessments 107.5%)  
\$14-1-211(A)(1) (Conv. Surcharge) \$100  
\$14-1-211(A)(2) (DUI Surcharge) \$100  
\$56-5-2995 (DUI Assessment) \$12  
\$35.13 (Public Def/Prob) \$500  
\$73.3, 1B TP (Law Enforce. Funding) \$25  
\$33.7, 1B TP (Drug Court Surcharge) \$100  
\$50-21-114(BUI Breath Test Fee) \$50  
\$56-5-2942(J) (Vehicle Assessment) \$40/ea  
3% to County (if paid in installments)  
TOTAL \$128.75

Obtain GED  
Attend Voc. Rehab. or Job Corp.  
May serve W/E beginning  
Substance Abuse Counseling  
Random Drug/Alcohol Testing  
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ beginning  
\$ paid to Public Defender Fund  
Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP  
Requires \$500 be paid to Clerk during probation.

Court Reporter:

SCCA/217 (9/2006)

PRESIDING JUDGE  
Judge Code:

ATTEST: TRUE COPY 4/2007

Winnif B. Clark  
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA



## FORM 5

2010-CP-38-00292

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG )

Reginald Montgomery, 257290 )

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 Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence Orangeburg County Court of General Sessions, 190 Gibson Street, Orangeburg, SC 29115
3. Name(s) of co-defendant(s) (if any) Shawon Johnson and James Green
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2006-GS-38-2052: Armed Robbery
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence.

ATTEST: TRUE COPY  
*Wingina B. Clark*  
 CLERK OF COURT  
 ORANGEBURG COUNTY, SC

- (a) April 4, 2007: 22 years
- (b) June 11, 2009: 5 years consecutive
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Dismissed.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. March 9, 2009
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No.: 2009-UP-134
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in

custody unlawfully:

(a) Ineffective Assistance of Counsel.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Failure to conduct an independent investigation and prepare for trial.

(b) Failure to speak to or utilize defense witness present at trial.

(c) Failure to properly advise the Applicant regarding his right to testify.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

No.

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

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

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) Post Conviction Relief is appropriate forum for relief

(b) \_\_\_\_\_

(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? \_\_\_\_\_

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. Thomas Sims, PO Box 2016, Orangeburg, SC 29116
  - ii. Wanda H. Carter, PO Box 11589, Columbia, SC 29211
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Trial.
  - ii. Direct Appeal.
  - iii. \_\_\_\_\_

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

A new trial.

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

No.

STATE OF SOUTH CAROLINA )

County of Richland )

## VERIFICATION

I, Reginald Montgomery, 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.

Reginald Montgomery

SWORN to and subscribed before me this 18  
day of Feb, 2010.

Eugene Bett (L.S.)  
Notary Public

My Commission Expires: My Commission Expires April 4, 2018

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

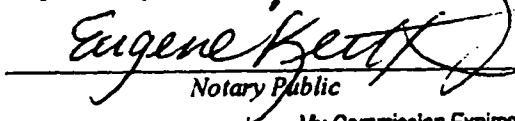
I, Reginald Montgomery, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.

  
Applicant

SWORN or affirmed to and subscribed before me this

18 day of Feb, 2010

  
Notary Public

My Commission Expires April 4, 2018

My Commission Expires: \_\_\_\_\_

|                               |   |                                    |
|-------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA       | ) |                                    |
|                               | ) | IN THE COURT OF COMMON PLEAS       |
| COUNTY OF ORANGEBURG          | ) |                                    |
|                               | ) |                                    |
|                               | ) | 2010-CP-38-00292                   |
|                               | ) |                                    |
| Reginald Montgomery, #257290, | ) |                                    |
|                               | ) |                                    |
| Applicant,                    | ) |                                    |
|                               | ) |                                    |
| v.                            | ) | <b>RETURN</b>                      |
|                               | ) | (Appointment of Counsel Requested) |
| State of South Carolina,      | ) |                                    |
|                               | ) |                                    |
| Respondent.                   | ) |                                    |
|                               | ) |                                    |

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 23, 2010, 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 Orangeburg County Clerk of Court. The Applicant was indicted by the Orangeburg County Grand Jury for Armed Robbery (2006-GS-38-2052). Thomas R. Sims, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable J.C. Nicholson. Applicant was found guilty, and he was sentenced to twenty-two (22) years imprisonment.

A notice of appeal was filed and an appeal perfected. Following the submission of an Anders brief, the appeal was dismissed. State v. Montgomery, 2009-UP-134 (S.C. Ct. App. filed March 9, 2009). The remittitur was sent on March 25, 2009.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina



Department of Corrections, the appellate records, and the trial transcript.<sup>1</sup> 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 assistance of counsel.
  - a. "Failure to conduct and independent investigation and prepare for trial."
  - b. "Failure to speak to or utilize defense witness present at trial."
  - c. "Failure to properly advise the Applicant regarding his right to testify."

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

## III.

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, 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

---

<sup>1</sup> The SCDC records and Clerk's records have been ordered but not yet received. The same will be forwarded upon receipt.

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

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

#### V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

*[Signatures on next page.]*

Respectfully submitted,

HENRY D. McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MARY S. WILLIAMS  
Assistant Attorney General

By: Mary S. Williams  
ATTORNEYS FOR RESPONDENT

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

May 5, 2010.

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT  
2010-CP-38-00292

2 COUNTY OF ORANGEBURG

3  
4 REGINALD MONTGOMERY,  
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,  
8 Respondent.

9  
10 Post Conviction Relief Hearing  
11 Heard on Thursday, December 1, 2011

12 &  
13 Friday, December 2, 2011  
14 Saint George, South Carolina

15 BEFORE:

16 THE HONORABLE DIANE S. GOODSTEIN

17 APPEARANCES:

18 Counsel on Behalf of the Applicant:  
19 Belinda Davis-Branch, Esq.

20 Counsel on Behalf of the Respondent, State of SC:  
21 Mary S. Williams, Esq.

22 Cheri L. Young, RPR  
23 Circuit Court Reporter  
24 P O Box 5232  
25 Aiken, SC 29803-5232

## EXAMINATION INDEX

## REGINALD MONTGOMERY

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## THOMAS RAY SIMS

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## EXHIBIT INDEX

MAR ADM

Applicant's:

1 Letter

28 28

1 ON THURSDAY, DECEMBER 1, 2011 AT 5:08 P.M.:

2 THE COURT: Yes, ma'am. Are you ready?

3 MS. WILLIAMS: Yes, ma'am.

4 THE COURT: Do you want to give me the procedural  
5 history, please, ma'am?

6 MS. WILLIAMS: I do.

7 Your Honor, Mr. Montgomery's application was filed in  
8 February of 2010. He was represented by Mr. Sims. He was  
9 charged with armed robbery. And following a jury trial he  
10 was convicted of that offense. He was sentenced to 22  
11 years in prison.

12 There was an Anders brief submitted on appeal and that  
13 appeal was dismissed. And that ended on March 25th of  
14 2009. So his application was timely.

15 He's alleged that Mr. Sims was ineffective, and he's  
16 represented today by Ms. Davis-Branch.

17 THE COURT: All right. Very well. Call your first  
18 witness.

19 MS. DAVIS-BRANCH: Yes. Mr. Reginald Montgomery.

20 THE COURT: Yes, sir. Come around and be sworn.

21 REGINALD MONTGOMERY, having been duly sworn, was  
22 examined and testified as follows:

23 THE COURT: Please be seated. And then when you are  
24 seated, if you will please state your full name for the  
25 record. Spell your last name.

## REGINALD MONTGOMERY - DIRECT

1 THE APPLICANT: Reginald Montgomery,  
2 M-O-N-T-G-O-M-E-R-Y.

3 THE COURT: Thank you. Your witness.

4 DIRECT EXAMINATION

5 BY MS. DAVIS-BRANCH:

6 Q. Good afternoon, Mr. Montgomery. Mr. Montgomery, you  
7 were charged with the crime and convicted; correct?

8 A. Yes, ma'am; I was.

9 Q. And what was that?

10 A. Armed robbery.

11 Q. Armed robbery. And did you have a private counsel or  
12 did the Court appoint a counsel for you?

13 A. I had private counsel.

14 Q. And what was that person's name?

15 A. Mr. Thomas Sims.

16 Q. Mr. Thomas Sims. Okay. And did you and your family  
17 hire him or was it a joint effort?

18 A. My family hired him.

19 Q. And was his representation, was he initially hired to  
20 represent you on another matter?

21 A. Yes. He was initially representing me in a bench  
22 warrant issue in which he did have the bench warrant  
23 lifted, but it was a miscommunication as far as why they  
24 put the bench warrant on me saying I didn't appear when I  
25 left the courthouse.



## REGINALD MONTGOMERY - DIRECT

1 But the bench warrant, when the bench warrant was  
2 lifted and when I was released, that's when the other  
3 charges came about when they held me. And he continued to  
4 represent me for those charges, too.

5 Q. Okay. And so, were you already incarcerated by the  
6 time Mr. Sims --

7 A. Yeah.

8 Q. Because he was already your counsel; correct?

9 A. Yes, ma'am, I was. I was already incarcerated.

10 Q. Did Mr. Sims come and visit you?

11 A. In regards to the additional charges?

12 Q. Yes, sir.

13 A. Mr. Sims came to me, like, a day or two before they  
14 actually shipped me out to R&E. And he informed me that  
15 he was going to continue to represent me in the additional  
16 charges of, that I was charged with, armed robbery and the  
17 gun charge that I had. And he told me I would, he would  
18 be seeing me.

19 Q. Okay. And how long were you in jail before your  
20 trial?

21 A. I stayed in the county jail, was locked up from  
22 September the 22nd until November the 6th, 2006. That's  
23 when they shipped me out to R&E. Went to Kirkland, so ...

24 Q. September of one year to November of the following  
25 year?

REGINALD MONTGOMERY - DIRECT

1 A. No, no. The same year.

2 Q. Okay. So you were incarcerated two months. Is that  
3 what you're telling the Court?

4 A. Yeah. A little over two months.

5 Q. Before you went to trial?

6 A. Before I went to trial.

7 Q. Okay.

8 A. No, no, no, no. Before I went to trial, I was -- only  
9 stayed in the county jail for, like, two months, a little  
10 over two months. I left at the beginning of November.

11 From -- all the way up from November to April was seven, I  
12 was like seven months.

13 Q. So you were incarcerated or in jail rather for seven  
14 months --

15 A. Seven months.

16 Q. -- before you went to trial?

17 A. Yes, ma'am; I was.

18 Q. And during that seven-month period, how many times did  
19 you see Mr. Sims?

20 A. I didn't see Mr. Sims at all up until the month prior  
21 to the scheduling of my trial which was in March, the  
22 March term of court.

23 But when I went back, and it was -- that's when I seen  
24 him. They brought me back to the courthouse and that's  
25 when I seen him. And we spoke in regards to whether or

REGINALD MONTGOMERY - DIRECT

1 not I was going, still go to trial or accept the plea  
2 offer that they offered.

3 Q. Okay. So was it one time? Two times? Or three  
4 times?

5 A. In regards to the issues dealing with the armed  
6 robbery?

7 Q. Yes, sir.

8 A. Twice.

9 Q. Twice. And for how long did you see him on those two  
10 occasions?

11 A. Maybe 10 or 15 minutes each time.

12 Q. Each time?

13 A. (Nods head.)

14 Q. So your testimony is that you saw Mr. Sims for 30  
15 minutes while you had been incarcerated for seven months?

16 A. Yes.

17 Q. Is that what you're testifying to?

18 A. Yes.

19 Q. Okay. You had a trial; correct?

20 A. Yes, ma'am; I did.

21 Q. And obviously the jury found you guilty?

22 A. Yes, ma'am.

23 Q. And during the course of the trial -- or prior to the  
24 trial, what preparation did you and your counsel,  
25 Mr. Sims, do?

REGINALD MONTGOMERY - DIRECT

1 A. Well, like I said, prior to trial I never spoke or  
2 heard from Mr. Sims up until they brought me back in  
3 regards to whether I was going to accept the plea which  
4 was prior to the scheduling of the hearing when they  
5 realized that I wasn't going to accept the plea offer that  
6 was offered to me.

7 And the next month which was April when the trial was  
8 scheduled. So the day before the actual starting of the  
9 trial is when, you know, I sat down with Mr. Sims in the  
10 courthouse. And he asked me in regards to, well, we go to  
11 trial. The trial starts tomorrow. And, you know, are  
12 there any alibi witnesses or anything, any defense or  
13 anything that you want to inform me or let me know about.

14 And I told him, I said, yeah, I do have an alibi  
15 witness, which was my girlfriend at the time. And so he  
16 called right then and there because I had the number. She  
17 was in Greenville, South Carolina at the time with her  
18 mother. And he called and we asked her in regards to,  
19 okay, do you know Mr. Montgomery, yeah. Are you his  
20 girlfriend, so on and so forth.

21 And whether or not -- what was her testimony going to  
22 be as far as the alibi. They spoke over the phone. He  
23 was, like, are you willing to come back and testify to  
24 that tomorrow. She said yeah. That was the conclusion of  
25 that.

REGINALD MONTGOMERY - DIRECT

1 Q. Okay. And so you had one witness that was intending  
2 to appear on your behalf?

3 A. Yes, ma'am; I did.

4 Q. And what was her name again?

5 A. Ms. Eva Wright.

6 Q. Okay. Ms. Eva Wright?

7 A. Yeah.

8 Q. And what was your relationship with Ms. Wright?

9 A. She was my at-the-time girlfriend.

10 Q. Okay. And were there any other witnesses that you had  
11 that were going to testify on your behalf?

12 A. Yes. And the other witness that was brought over was  
13 that night when Mr. Sims came to the jailhouse in regards  
14 to speaking to me about the witnesses and who he was able  
15 to get in contact with. I told him about Mr. Kevin  
16 Pringle. And he learned that Mr. Kevin Pringle was  
17 already incarcerated and he was like, he don't know  
18 whether or not he was going to be able to get him but we  
19 can't ask for a continuance.

20 And which a continuance was requested but it was not  
21 granted. But the Court did help assist Mr. Sims and me  
22 in, as far as getting Mr. Pringle brought back to the  
23 courthouse to testify on our behalf.

24 Q. So, just to recap. You had two witnesses; correct?

25 A. Yes, ma'am; I did.

## REGINALD MONTGOMERY - DIRECT

1 Q. One was Ms. --

2 A. Eva Wright.

3 Q. And the second one was?

4 A. Alibi witness.

5 Q. Right.

6 A. And Kevin Pringle was basically an impeachment  
7 witness, a key witness to say the same thing.

8 Q. So you expected those people to testify on your behalf  
9 at trial?

10 A. Yes, ma'am; I did.

11 Q. And so what date did you go to trial?

12 A. The trial started on the 3rd --

13 Q. Okay.

14 A. -- of April, 2007.

15 Q. And do you recall the trial, trial judge's name?

16 A. Yes. Mr., I remember his last name was

17 Mr. Nicholson. Judge Nicholson.

18 Q. Judge Nicholson. Do you recall the solicitor, or  
19 prosecutor?

20 A. Yeah. I had two of them. I had Mr. Jeffries, and I  
21 had Mrs. Burgess.

22 Q. Okay.

23 A. Because, you know, the solicitor's for the State.

24 Q. So when you got to the trial that day, were your  
25 witnesses present at that day, on that day?

REGINALD MONTGOMERY - DIRECT

1 A. Yes. One of my witnesses was. Ms. Eva Wright, she  
2 was present because my family -- she was never subpoenaed  
3 because she, you know, just my client -- I mean, my  
4 attorney just had learned of her the day before. And my  
5 family had to go and get her themselves to bring her to  
6 the courtroom.

7 Q. But she was present in the court?

8 A. She was present; yes, ma'am.

9 Q. Okay. And at the actual trial, Mr. Montgomery --

10 A. Uh-huh.

11 Q. -- did you have the opportunity to testify on your  
12 behalf?

13 A. Yes, ma'am; I did have the opportunity to testify.

14 But me and --

15 Q. Did you choose not to testify to?

16 A. I chose not to testify.

17 Q. Why did you choose not to testify?

18 A. Based on the information that me and my attorney  
19 discussed in a brief recess that, according to the  
20 transcript, I realized that, you know, it was not in my  
21 best interests to testify myself, seeing that I was  
22 already a once-convicted felon. I already had prior  
23 charges of armed robberies and stuff from my prior  
24 conviction.

25 Q. Okay. So you, you made a conscious decision not to

REGINALD MONTGOMERY - DIRECT

1 testify?

2 A. Yeah, I did. I did make a conscious decision of not  
3 testifying and putting, you know what I'm saying, putting  
4 up testimony on my behalf, myself.

5 Q. Right. And was that a recommendation made to you by  
6 your trial counsel, Mr. Sims?

7 A. Yes.

8 Q. Okay. So after you made that decision, what was your  
9 understanding as a result of your conversation with  
10 Mr. Sims relative to testimony?

11 A. At that point I was under the impression that as long  
12 as I was not testifying, you know, that, you know, there  
13 was basically going to not be any testimony on my behalf  
14 as far as me myself. But as far as, you know, witnesses  
15 and so on and so forth, I still thought those witnesses  
16 was going to be called. And I thought also that evidence  
17 was still going to be presented on my behalf.

18 Q. Okay. In your application you allege three things in  
19 regards to ineffective assistance of counsel?

20 A. Yes, ma'am.

21 Q. Correct?

22 A. Yes, ma'am; I did.

23 Q. Do you recall what they --

24 A. Yes.

25 Q. -- are?



## REGINALD MONTGOMERY - DIRECT

1 A. The application I submitted; a failure to conduct an  
2 independent investigation and prepare for trial, and  
3 failure to properly advise client of his right to testify  
4 at trial, and failure to utilize defense witness presence  
5 at trial.

6 Q. And we've had most of your direct testimony thus far.  
7 Are we talking about -- are you testifying as to failure  
8 of Mr. Sims to adequately investigate your case?

9 A. Yes. Yes, ma'am; I am.

10 Q. Okay. And so what Pacifically (sic) can you tell Your  
11 Honor that you are dissatisfied with in regards to  
12 Mr. Sims's representation of you?

13 A. Okay. Well for one, as far as the, him not conducting  
14 an independent investigation is concerned, I would like to  
15 point out and begin with the defense witness that was  
16 helped brought back by the Court himself.

17 Q. What was his name?

18 A. Kevin Pringle.

19 Q. Yes, sir.

20 A. Kevin Pringle. And, you know, Mr. Sims, he made a  
21 comment in the transcript, and it's on page 58 lines 11  
22 through 17, where he basically expressed to the Court the  
23 importance of Mr. Pringle's testimony. And in that, in  
24 that Pacific (sic) portion of the transcript that is where  
25 he stated at, that Mr., the continuance was on the basis

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1 of his testimony being an integral part of the defense in  
2 this case.

3 Q. Okay.

4 A. And the testimony itself as far as Mr. Sims was  
5 concerned, you know, although he was aware of the  
6 importance of Mr. Pringle's testimony to the Defendant he  
7 made the decision to not call the witness when that one  
8 witness's testimony would have refuted and impeached the  
9 full credibility or anything the State's main witness  
10 testified to, James Green.

11 Q. So, are you testifying that Mr. Pringle would have  
12 offered something relative to your defense?

13 A. Yes. Mr. Pringle's testimony was going to be based on  
14 him having personal conversations with Mr., my  
15 co-defendant, James Green, as far as him and me and  
16 telling him why he called my name, involved in the case.

17 MS. WILLIAMS: Your Honor, I would object to anything  
18 that's hearsay.

19 THE COURT: Yes. Sustained.

20 BY MS. DAVIS-BRANCH:

21 Q. When you answer the question, the Court will not allow  
22 you to say -- you're not allowed to say what he was going  
23 to say.

24 A. Okay.

25 Q. Okay?

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1 A. Yes, ma'am.

2 Q. Can you answer the question without --

3 A. Can you repeat the question for me again?

4 Q. Okay. What was your understanding of the testimony --  
5 how was Mr. Pringle going to be able to assist you?

6 A. Basically because he was going to be basically an  
7 impeachment witness as far as James Green's testimony was  
8 concerned.

9 Q. Okay. And who was or is James Green?

10 A. James Green was the, at the time my co-defendant.

11 Q. Okay. And so, Mr. Pringle did not testify?

12 A. No, he did not.

13 Q. And whose decision was it for him not to testify?

14 A. Well, I'm not going to lie. And I already know who  
15 got -- both of us has a transcript. And the transcript,  
16 as far as the transcript shows, and I just want to state  
17 on the record that I did in the transcript as far as  
18 reading it, it seems as if I did make a waiver but I did  
19 not because I did not make a knowing and intelligent  
20 voluntary waiver of my right to not allow any of my  
21 witnesses not to get up there and testify.

22 Because I was under the impression of me talking to  
23 Mr. Sims as far as me not testifying, that was in regards  
24 to what I was understanding I was going to -- when the  
25 judge started speaking about whether or not I was going to

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1 put up any evidence on my behalf. I didn't know and  
2 understand I was waiving my right to not allowing any of  
3 the defense witnesses that was there at the court to be,  
4 to put up any defense on my behalf.

5 Q. So Mr. Pringle did not testify though your trial  
6 counsel indicated that he was a very significant part of  
7 your defense?

8 A. No, ma'am; he did not.

9 Q. Okay. And the second person that was there to --

10 A. Testify.

11 Q. -- testify on your behalf --

12 A. Yes.

13 Q. -- what was that person's name again?

14 A. Ms. Eva Wright, my at-the-time girlfriend.

15 Q. And did she testify?

16 A. No, ma'am; she didn't.

17 Q. And why didn't she testify?

18 A. She didn't testify obviously because when I got in  
19 front of the Court and, you know, the Court made, they was  
20 doing the hearing on me not testifying myself, the  
21 statements and comments that I made from the understanding  
22 that I was given from my attorney was that, you know, I  
23 basically indirectly waived or made an unknowing and  
24 un-intelligently waiver of my right to them not  
25 testifying. And I didn't know that. I didn't know that I

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1 was waiving that right in front of the Court.

2 Q. Okay. Again you stated that -- who was James Green?

3 A. James Green was my at-the-time co-defendant and main  
4 key witness for the State.

5 Q. Did you have, did you -- when you were in the county  
6 detention center, Mr. Montgomery, did you ever receive any  
7 kind of communication from Mr. Green?

8 A. Not verbally, I did not. But through an officer that  
9 I became pretty much all right with at the time. You  
10 know, I didn't actually know the actual name James Green  
11 because I was confused. You know, I only knew him by  
12 Coot. As far as his real government name, I didn't know  
13 him.

14 So when I found out that, you know, he was the one  
15 that was saying that I did this and I did that, you know,  
16 and I learned that he was another in another pod, you  
17 know, I asked the officer that was in the group. I says  
18 is there a James Green on the other pod. He was like  
19 yes.

20 So the officer that worked with Wayne, I told him. I  
21 talked to him. I said, look man, I got some real serious  
22 issues going on. I said, man, this is a life and death  
23 situation. I said, if it's not too much of a problem,  
24 could you please transport this letter to him on the other  
25 wing. And the officer was like, yeah, I will but you have

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1 to wait until after lockdown.

2 So the letter that I wrote to James Green was in  
3 regards to asking him, man look, what's going on, why you  
4 calling my name. And when he responded, he responded to  
5 that letter and gave it back to the same officer that gave  
6 it to me.

7 So we responded like two or three times with each  
8 other through letters.

9 Q. Okay. And that letter that you're speaking about now,  
10 did you give it to anyone?

11 A. Yeah. One of the letters in which, that I did keep  
12 because I realized that maybe in the future this may come  
13 to some assistance to me. So I did kept the letter, but  
14 at the time I didn't think too much of it until Mr. Sims  
15 brought it to my attention about evidence and defense as  
16 far as what kind of evidence I was going to put it up on  
17 my behalf. I brought it to his attention.

18 And the letter itself, it was a letter that was  
19 written by James Green where he basically admitted to me  
20 why he used and called my name involved with the case. So  
21 on and so forth. And the simple fact that he lied about  
22 the gun and all of this and that, and so on and so forth.

23 But the letter is pretty specific as far as him  
24 basically clearing my innocence as far as being involved  
25 in the case. And I kept the letter up to the point to

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1 where, you know -- I got to the point to where Mr. Sims  
2 finally asked me in regards to, okay, what evidence or,  
3 you know, you was going to plan on bringing it up on your  
4 behalf or do you want to present on your behalf.

5 And I told him about this, I got a letter, as a matter  
6 of fact, that was written from my co-defendant James  
7 Green. He was like, well, do you have it. I said, no, I  
8 do not have it with me at the time. I said, because they  
9 snatched me up. I didn't know where I was going. I said,  
10 well, it's in my property.

11 At the time I wasn't actually in the population of  
12 Broad River as far as, you know, regular general  
13 population. I was in the stock program during the year.  
14 I was already sentenced on the year community supervision.  
15 Q. Okay.

16 A. So all my property was like in the stock program. So  
17 he was like, well, when you come back the next time for  
18 court, please make sure you bring it.

19 THE COURT: All right. Let me see y'all.

20 (Off-the-record discussion.)

21 THE COURT: We're going to break at this point.  
22 Mr. Montgomery, you're telling me things that are  
23 important for me to hear and I'm listening to you.

24 THE APPLICANT: Yes, ma'am.

25 THE COURT: And I'm hearing you. I just know that my

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1 brain went click (gesturing), and I don't think that's  
2 fair to you. I'm with you to the letter. I've got it.  
3 I'm listening, but this is too important for me to be too  
4 tired to continue to listen. I've got you up to this  
5 point.

6 I know when I reach this point and I'm really  
7 beginning to get tired, I don't do you justice. And I'm  
8 not going to do that.

9 THE APPLICANT: Yes, Your Honor.

10 THE COURT: Do you understand?

11 THE APPLICANT: Yes, Your Honor.

12 THE COURT: This is your one bite at the apple. And  
13 you're entitled to have me alert and listening. And I  
14 have been up to this point but I can feel myself wilt.  
15 All right.

16 So we're going to begin in the morning at 10.

17 THE APPLICANT: At 10?

18 THE COURT: All right. Okay?

19 Thank you. I hate to do that to you. I know you've  
20 been waiting all day but it's not just otherwise. You're  
21 entitled to that.

22 THE APPLICANT: I understand.

23 THE COURT: Okay. I know y'all have been waiting all  
24 day. But this is too important to him, this is too  
25 important to our system. I'm not going to do this. I've



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1 heard him up to this point.

2 And I just noticed, I'm like that flower up here and I  
3 am like wilted. It's too important. I've heard him up to  
4 this point, but I'm not going to do anymore today. It's  
5 not fair.

6 We will begin anew again in the morning.

7 UNIDENTIFIED SPEAKER: What time in the morning?

8 THE COURT: Ten o'clock.

9 END OF DAY: 5:37 P.M.

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1 ON FRIDAY, DECEMBER 2, 2011 AT 10:31 A.M.:

2 MS. DAVIS-BRANCH: Your Honor, might I have 30  
3 seconds?

4 MS. WILLIAMS: I'm sure whatever she's got to say is  
5 proper. It's in the middle of his testimony.

6 THE COURT: Sure.

7 (Applicant conferring with Ms. Davis-Branch.)

8 THE COURT: Mr. Montgomery, I am refreshed and ready  
9 to listen. And thank you so much for your understanding  
10 yesterday afternoon.

11 I really know you've waited all day yesterday. And  
12 your folks have waited all day yesterday, but I just,  
13 again, appreciate your understanding. And I just feel so  
14 much more refreshed. And, you know, when my thoughts are  
15 where I'm not focused 100 percent on you, I'm not doing  
16 right by you. So thank you for your understanding.

17 Here's what I think we ought to do. Here's what I  
18 want to do. I would like to back up a little bit.

19 MS. DAVIS-BRANCH: Yes, ma'am.

20 THE COURT: And just sort of recap.

21 MS. DAVIS-BRANCH: Yes, ma'am.

22 THE COURT: And feel very free to do that. If you  
23 want to lead him through that a little bit, that's fine.

24 MS. DAVIS-BRANCH: Yes, ma'am. Thank you so much,  
25 ma'am.

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1 THE COURT: Thank you so much.

2 DIRECT EXAMINATION (CONTINUED)

3 BY MS. DAVIS-BRANCH:

4 Q. Mr. Montgomery, you filed your application for PCR?

5 A. Yes, ma'am; I did.

6 Q. And how many grounds did you have for the filing?

7 A. Three.

8 Q. Three. And the first one was?

9 A. Failure to conduct an independent investigation in  
10 preparing for trial, and failure to properly advise client  
11 of the right to testify, and failure to utilize the  
12 prejudice of defense witness presence at trial.

13 Q. Thank you. Now, let's go back to the first one which  
14 is failure to conduct an investigation, be prepared at  
15 trial. Yesterday when we adjourned we were talking about  
16 a letter that you had received.

17 A. Uh-huh.

18 Q. And again tell me, how did you receive this letter?

19 A. The letter -- I received the letter through an officer  
20 that worked at the county jail at the time who kind of had  
21 a little understanding when I explained the situation to  
22 him about me and the guy that was in the other wing that  
23 was supposed to be my co-defendant where I had the  
24 warrants, the warrants of the armed robbery charge that I  
25 wanted to contact --

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1 THE COURT: And was Mr. Green; wasn't it?

2 THE APPLICANT: Yeah. Mr. Green.

3 BY MS. DAVIS-BRANCH:

4 Q. And Mr. Green was your, what?

5 A. He was my co-defendant.

6 THE COURT: Uh-huh.

7 THE APPLICANT: And I asked the officer would he, you  
8 know, relate the message. Would he pass a note over there  
9 to him because I didn't know, you know, off the top who --  
10 by James Green, his government name. I only knew him by  
11 his nickname, Cootie.

12 What the detective had told me, he was like, well this  
13 is the guy that said you --

14 BY MS. DAVIS-BRANCH:

15 Q. Don't say anything about what someone said.

16 A. Okay.

17 Q. Keep it as to what you know.

18 A. Yeah. Okay. I understand.

19 Q. Okay.

20 A. Well, yes. He -- I asked him. He was, like, okay, I  
21 don't have any problem with that but I have to wait until  
22 lockdown time and I'll come back and get the note from  
23 you.

24 So he took the note over there to him. And the next  
25 morning he brought a note back and I responded to his note

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1 and he responded back again. It was several transactions  
2 throughout that night and that morning. And I kept the  
3 last note where he basically asked, a note -- basically  
4 got to the point that the letter that we're here  
5 discussing today.

6 Q. Okay.

7 THE COURT: Say that one more time. Where you were?

8 THE APPLICANT: I said, finally I kept the last note  
9 in which that note is the letter in which I'm about to  
10 discuss today.

11 THE COURT: I got it. Okay.

12 MS. DAVIS-BRANCH: Thank you, Your Honor.

13 Q. I want to show you, is this the note or what you're  
14 referring to as a note? I'm referring to it as a letter.  
15 Is this it?

16 A. Yes, ma'am.

17 Q. And this is a copy of it?

18 A. That's a copy of it.

19 Q. What do you recognize it to be?

20 A. As far as, it's the letter in which James Green  
21 actually --

22 Q. It's a letter that the --

23 A. The officer gave to me that came from James Green. Of  
24 course it was folded up and everything, regular, little  
25 white piece of paper. That's a copy. That's a copy of

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1 it.

2 MS. DAVIS-BRANCH: Your Honor, we'd like to submit as  
3 Appellate's Exhibit One which is going to be marked as  
4 Plaintiff's Exhibit One --

5 THE COURT: Applicant's Exhibit Number One. Any  
6 objection?

7 MS. WILLIAMS: Your Honor, we just have a limiting  
8 objection that this is, it's hearsay to the extent that --

9 THE COURT: Sure.

10 MS. WILLIAMS: -- Mr. Green's not here to testify. It  
11 would go to the reasonableness of his attorney, kind of a  
12 demonstrative exhibit at this time.

13 THE COURT: I understand.

14 MS. WILLIAMS: And just what we did was, we can make a  
15 copy of this and enlarge it just a little bit so we  
16 could --

17 THE COURT: Read it.

18 MS. WILLIAMS: -- read it a little bit better.

19 THE COURT: I understand. Thank you so much. I will  
20 take that as a limiting instruction or agreement, if you  
21 will, between y'all and consider it in that fashion.

22 MS. DAVIS-BRANCH: Right. Right. We understand it's  
23 not for the truth, but merely that he received it.

24 THE COURT: Yes, ma'am. Got it. Got it.

25 MS. DAVIS-BRANCH: Okay.

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1 (Applicant's Exhibit No. 1, letter, was marked and  
2 received into evidence.)

3 BY MS. DAVIS-BRANCH:

4 Q. Mr. Montgomery?

5 A. Uh-huh.

6 Q. I don't think you need to read it, but can you  
7 summarize what that correspondence says?

8 A. The letter is basically -- summarized as far as James  
9 Green, basically after the last letter that I wrote to  
10 him, I asked him why, why did he call my name involved  
11 with something he knew I didn't have anything to do with.

12 And this was the response that I was given. And  
13 basically he broke down and he told me, basically said,  
14 you know, call my name involved in the case. He knew I  
15 just got out of prison and of course they had already  
16 offered him a deal. And the guy who allegedly did the  
17 incident with him, he didn't know his name and know where  
18 he stay. He was aware of me and I just got out of prison  
19 and he wanted somebody.

20 And they already told him that they had to have  
21 somebody to go -- that there was another accomplice  
22 involved in the incident. And he called my name because  
23 he knew with that, that would automatically get the  
24 attention off of him and focus on me considering that I  
25 was a prior convicted felon.

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1 And he didn't really think that they would give me  
2 that much time considering that probably I wouldn't  
3 really -- I would understand, considering that he never  
4 went to prison before.

5 Q. Okay. Thank you, Mr. Montgomery.

6 Mr. Montgomery, and once you received this  
7 correspondence from James Green also known as Cootney  
8 (verbatim), what did you do with it?

9 A. At first I discussed it and I showed it with my  
10 at-the-time cell mate and I asked my cell mate at the  
11 time, I said, man, can you believe this. And he was like,  
12 no, man.

13 And I even tried to have my cell mate at the time, but  
14 I couldn't remember his name. So that's why I couldn't  
15 remember, you know, have him brought up in regards to, you  
16 know, testifying on my behalf in regards to the letter.

17 The only person I could get to testify in regards to  
18 that letter was Kevin Pringle. And he --

19 Q. What did you do with the letter?

20 A. What did I do with the letter?

21 Q. Did you give it to anybody?

22 A. No, I did not give it to anybody other than Mr. Sims  
23 at the time.

24 Q. Well, he's someone.

25 A. Yeah, I mean, when he first asked me about the



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1 evidence and defense and witnesses and things of that  
2 nature.

3 Q. When you gave -- when did you give it to Mr. Sims?

4 A. The letter was given to Mr. Sims when I was brought  
5 back to court for trial, the day before the actual trial  
6 started which was April 3rd.

7 Because when I told him about it, when I been back in  
8 March for, to determine whether or not I was still going  
9 to take a trial or plea, that was when the letter was  
10 mentioned. And I told him I didn't have the letter at the  
11 time because, you know, I didn't know where I was going.  
12 They just snatched me up out of, you know. And he was  
13 like, well, when you come back make sure you bring  
14 everything that you need.

15 Q. Okay.

16 A. Because you got that letter, you definitely need to  
17 bring it.

18 Q. When you get to trial or you went to trial, was the  
19 letter produced as part of your defense of the case by  
20 anyone?

21 A. As far as the letter being actually spoken on, as far  
22 as in regards to a defense it was not. But the letter was  
23 mentioned in the transcript as far as my attorney was  
24 concerned because he wanted to basically establish the  
25 reason for Kevin Pringle's testimony. He would be able to

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1 testify in regards to conversations he's had in regards to  
2 James Green, the State key witness in regards to letters  
3 being written and so on and so forth.

4 Q. Do you know why the letter was not introduced?

5 A. Well, from my understanding, I understand that the  
6 letter was not introduced simply because of the in camera  
7 hearing that was held.

8 And during that time, you know, I was under the  
9 impression that we was only having an in camera hearing in  
10 regards to me not testifying. That was the discussion  
11 during the recess as far as, you know, why Mr. Sims, what  
12 he discussed with me as far as me not testifying, why it  
13 wouldn't be a good reason for me to testify.

14 Q. Was it part of the strategy of Mr. Sims?

15 A. I, I really couldn't tell you --

16 Q. Okay.

17 A. -- whether or not that was a part. I just figured  
18 that -- all I know is when I got, finally got an  
19 opportunity to go back and do research, I realized that,  
20 you know, I did un-voluntarily, un-intelligently waive my  
21 right to basically presenting any defense on my behalf  
22 without me really knowing, having a full understanding of  
23 what was going on --

24 Q. Okay.

25 A. -- in the record, you know. And I did not

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1 specifically tell Mr. Sims in that brief recess that I  
2 don't want him to put up any witnesses. We was discussing  
3 me.

4 Q. Okay.

5 A. And when the judge questioned me in regards to, do you  
6 not want to put up any evidence on your behalf, I was  
7 still with the full understanding that that was referring  
8 to me testifying on my behalf, presenting evidence on my  
9 behalf, not the additional witnesses that I had to try to  
10 testify on my behalf.

11 Q. Okay. Mr. Montgomery, did you want this letter to be  
12 introduced on your behalf to the Court?

13 A. Yes, ma'am; I did.

14 Q. Okay. And why did you want this letter to be  
15 introduced?

16 A. Because, for one, the letter basically shows and  
17 proves in the court on my innocence as well as it showed  
18 the proof that my co-defendant, James Green, that he  
19 basically got up there and, he basically got up there and  
20 told and spoke upon things in which the State wanted him  
21 to speak of that was basically being in their best  
22 interests in regards against me to benefit him.

23 Q. And Kevin Pringle was also someone present in the  
24 courtroom to testify on your behalf?

25 A. Yes. On the second day --

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1 Q. Okay.

2 A. On the second day he managed to be able to be present  
3 and when he finally did come, you know, the judge told him  
4 to go wait on so and so, you know, he's not going to be  
5 called.

6 Q. And Mr. Pringle would have been able to discuss, what,  
7 had he been -- he hadn't been able to testify. What if he  
8 had been called to testify?

9 A. In regards to conversations that he literally verbally  
10 had with Mr. James Green because he was on the side with  
11 him. He was on the same side.

12 Q. Okay. That's fine. So Mr. Pringle --

13 A. And as far as actually identifying his handwriting  
14 and, you know, as far as what was said in the letter,  
15 he'll be able to confirm everything I said. And basically  
16 impeach the credibility and, you know, liability of James  
17 Green testimony.

18 Q. So Kevin Pringle did not testify; correct?

19 A. No, ma'am; he did not.

20 Q. And James Green was there to testify?

21 A. Yes, he did.

22 Q. Okay. Mr. James Green, again, that was your  
23 co-defendant?

24 A. Uh-huh, yeah. Mr. Green, yeah, he was -- he was asked  
25 by my trial counsel at the time to be brought back for, in

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1 regards to testifying again in regards to that letter. So  
2 he was there also on that date after he had allegedly --  
3 already had testified already. So he was brought back  
4 also in regards to being questioned by my attorney in  
5 regards to that letter, too.

6 Q. I understand. Do you feel that your trial would have  
7 resulted differently had that letter been introduced?

8 A. Of course. Yes, I do, Ms. Branch.

9 Q. Okay. In addition to the letter, there was some other  
10 things that happened during the trial. Who is, and I may  
11 be mispronouncing her name, Ms. Bellamy?

12 A. Mrs. Bellamy is Mr. James Green, my co-defendant,  
13 State key witness sister.

14 Q. Okay. And was she also a witness for the State?

15 A. Yes, ma'am; she was.

16 Q. And did she testify at the trial?

17 A. Yes, ma'am; she did.

18 Q. Okay. And prior to the trial do you know what her  
19 testimony was -- I'm sorry. Let me rephrase that.

20 Prior to the trial, did she identify you as being a  
21 person involved in the robbery?

22 A. No, ma'am; she did not. And in fact --

23 Q. Okay.

24 A. -- she made two written statements that was taken by  
25 Detective Rodriguez and another detective. And, you know,

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1 they was statements that was subsequently made and she  
2 additionally made subsequently third statements.

3 Q. Let's just talk about the two first. Okay? The two  
4 statements that she initially made, did she identify you  
5 or did she not identify you?

6 A. No, she did not identify me.

7 Q. She did not identify you. Okay.

8 So at the time you went to trial no one identified you  
9 except who?

10 A. James Green.

11 Q. But you went to trial and when you went to trial there  
12 was Ms. Bellamy; correct?

13 A. Yes, ma'am.

14 Q. And what did Ms. Bellamy testify to -- or was her  
15 testimony different from the statements that she had  
16 given?

17 A. Yes, it was.

18 Q. Okay. And how were they different?

19 A. Because she basically got on the stand and gave  
20 identification evidence. And she was not able to identify  
21 me, period, in her two written statements that was given  
22 seven months, six months prior to the trial.

23 Q. Okay. So now you're at trial and you've got a second  
24 person other than James Green?

25 A. Yes, ma'am.

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1 Q. Okay. And you did not know this?

2 A. No, I did not have any knowledge or was aware of --

3 Q. Okay.

4 A. -- her --

5 Q. Did your trial counsel know, Mr. Sims, did Mr. Sims  
6 know that this third, or this new identification was going  
7 to be presented to the jury?

8 A. From my understanding, Mr. Sims was just as in the  
9 blind as I was because he -- I objected. He actually did  
10 objected to the client's, I mean, the witness, State  
11 witness testimony. After the testimony was heard by the  
12 jury, he objected to it, the information not being known  
13 to him.

14 And that testimony was basically, the testimony that  
15 she gave as far as the information that was brought out,  
16 was basically symbolic to another State witness in another  
17 sister of another co-defendant of mine that testified and  
18 got on the stand and identified me as well.

19 Q. When this information was presented to the Court and  
20 to the jury -- or because the information was presented to  
21 the jury, did it significantly change the strategy of your  
22 trial counsel in your opinion?

23 A. Yes, it did --

24 Q. Okay.

25 A. -- because --

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1 Q. It did. Were you prejudiced because of that?

2 A. I feel like, yes, I was.

3 Q. Why do you feel that way?

4 A. Because of the testimonies that were allowed to come  
5 out on the stand surprised, and was not fully disclosed as  
6 they, as requested by my counsel.

7 You know, that information had it been known and  
8 disclosed to me or my counsel prior to trial, you know,  
9 there could have easily -- you know, me and my trial  
10 counsel we could have easily basically challenged, you  
11 know what I'm saying, their testimony, their in court,  
12 in-court testimony as far as, you know, in comparison with  
13 their original statements of what they made as far as  
14 pretrial motion to suppress the entire testimony that they  
15 got up there and testified to in regards to identifying  
16 me.

17 Q. Do you -- do you think -- did Mr. Sims have the  
18 opportunity to speak to Ms. Bellamy?

19 A. Other than on --

20 Q. Would he have been able to know that information, the  
21 information?

22 A. Yes.

23 Q. Okay.

24 A. The information would have been available to him had  
25 he had the opportunity to, you know, basically conduct an



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1 independent investigation as far as speaking with her, you  
2 know, after the allegedly two statements that she written.

3 MS. WILLIAMS: I believe that calls for speculation as  
4 to what he would have been able to get had he talked to  
5 her.

6 THE COURT: Sustained. Ms. Williams, we need to give  
7 you cards. (Ms. Williams' voice extremely hoarse.)

8 BY MS. DAVIS-BRANCH:

9 Q. And, Mr. Montgomery, I think we've discussed pretty  
10 much the first allegation and the second one which was,  
11 the first one was failure to conduct an independent  
12 investigation. And your second one was failure to utilize  
13 your defense witnesses.

14 A. Right.

15 Q. And your third one was, what?

16 A. Failure to properly advise client of the right to  
17 testify at trial.

18 Q. What is that all about? What are you --

19 A. That, well that is just basically simply in regards  
20 to, it goes back to when, in -- just hold on a second  
21 here. (Looking through records.)

22 Well, it goes back to the brief recess that was held.

23 --

24 Q. It was a recess held?

25 A. -- at the conclusion of the State's testimony. And it

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1 was about time for me to get up there, start presenting my  
2 defense. My attorney asked for a brief recess in regards  
3 to a strategic matter. And I got back there in the  
4 office, you know, we discussed specifically about me  
5 testifying myself.

6 And that was the extent of the discussion as far as,  
7 you know, what was discussed back there. And, you know,  
8 he told me that if I got up there and testified, you know,  
9 that would not look good on me considering that, you know,  
10 my prior record and what I had already been in prison for  
11 and things of that nature.

12 Which he made plenty of sense, and he did not force me  
13 to not testify but, you know, he gave me enough  
14 information to allow me to come, we agreed, I agreed with  
15 him, okay, well that's in my best to not to testify.

16 So that was when, you know, the issue as far as now --  
17 Q. So once that agreement -- once you decided not to  
18 testify --

19 A. Uh-huh.

20 Q. -- what was your understanding as it relates to the  
21 additional witnesses, the ones that you talked about  
22 earlier?

23 A. Still under the impression that those witnesses were  
24 still going to be utilized on my behalf as well as the  
25 letter itself.

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1 Q. Okay. But they were not?

2 A. No, they were not.

3 Q. Okay.

4 A. And --

5 Q. Do you feel that you were harmed because there were no  
6 witnesses that talked on your -- or testified on your  
7 behalf?

8 A. Yeah, because basically, you know, that just made it  
9 look like to the jury that the witnesses that I did have  
10 their testimony was lacking relevance to our defense. I  
11 mean, they was already called for, to testify on my  
12 behalf.

13 Q. Okay. You've also had some issues with your  
14 indictment; correct?

15 A. Yes, ma'am.

16 Q. Okay. And what was -- as it relates to the  
17 ineffectiveness of Mr. Sims; correct?

18 A. Yes, ma'am.

19 Q. Okay. And what are those issues?

20 A. Well, the issue of my indictment is simply this.  
21 It's -- it is a, in regards to the indictment having a  
22 defect that I feel which was basically a constitutional  
23 violation of my right because Mr. Sims being my attorney,  
24 I feel like he should have been aware of the defect in  
25 that indictment in regards to the true billing and the

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1 convening, you know, not coordinating with each other.

2 And, you know, it should have been brought to the  
3 Court's attention way before the swearing of the jury, but  
4 I did not see any of my indictment or know anything about  
5 it or have a visual of it until after the trial when it  
6 was sent to me, and I began my research on what was in the  
7 indictment.

8 But the indictment alleges -- simply my thing with the  
9 indictment is this. That, you know, the grand jury, simply  
10 as far as the indictment stipulates, as far as my research  
11 what I did, it specifically shows that I was true billed a  
12 whole month prior to the grand jury even being presented  
13 with the indictment to even convene.

14 And my understanding is that, you know, it's  
15 impossible for a grand jury to true bill me a whole month  
16 which is a whole different term of court prior to the  
17 grand jury even convening on the indictment.

18 And the indictment has me true billed on November the  
19 8th, 2006, and -- but it has the grand jury convening on  
20 December 4th, 2006, which is a whole different term of  
21 court.

22 And I, and also the indictment stipulates as well  
23 where Ms. Lisa Mozell filed into the Court's record on the  
24 same exact date, November 8th which is the true bill date  
25 in the Court's records to show, I mean -- that's when it

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1 was filed in the Court, it was filed in the Court's record  
2 on November 8th at approximately, what, 11:17 a.m. on the  
3 same day that it was stamped true billed which is a whole  
4 month prior to the grand jury being presented or convened  
5 on the armed robbery indictment.

6 So therefore the -- where it was added into the  
7 Court's record, you know, that basically shows it ain't no  
8 typographical or scrivener's error. Something was going  
9 on with the indictment that was not right because I was  
10 supposed to have been true billed after the grand jury was  
11 convened, not a whole month which is a whole different  
12 term of court before.

13 Q. Did you bring this matter to the attention of  
14 Mr. Sims, Mr. Montgomery?

15 A. The matter was not brought to Mr. Sims because, like I  
16 said before, I did not, I did not have a copy of my  
17 indictment. The only thing I heard as far as the  
18 indictment was it being read out from the prosecutor and  
19 the Court. And they did not go into details as far as the  
20 dates on the convening.

21 Q. Okay.

22 A. All they did was said that I was indicted on such-and-  
23 such a charge. And I never received an actual copy to  
24 actually, you know, review and look at it myself until  
25 after I was sentenced and sent back to the Department of

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1 Corrections.

2 Q. Even though you did not bring that matter to the  
3 attention of Mr. Sims, are you saying that this is  
4 something that should have been in his purview as your  
5 attorney?

6 A. Yes. I feel like as far as, you know, Mr. Sims being  
7 my attorney and him being my counsel, as far as what the  
8 Sixth Amendment specifies, you know, that information  
9 right there should have been, he should have been fully  
10 aware of that.

11 And, you know, the awareness of it at least, you know,  
12 could have been brought to the Court's attention before  
13 the swearing of the jury. And, you know, with that defect  
14 I'm quite sure the Judge would probably, the Judge would  
15 most likely force somebody to produce some type of  
16 information to refute what was shown in black and white as  
17 far as why is that, you know, how is the defendant been  
18 true billed a whole month before the grand jury even  
19 convened on this indictment.

20 Q. Okay.

21 A. It doesn't make sense. That's a whole different term  
22 of court.

23 Q. Mr. Montgomery, I don't have any further questions.  
24 But Ms. Williams or the Court may have some. So, please  
25 answer those questions for them. Okay?

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1 A. (Nods head.)

2 THE COURT: Cross-examination.

3 MS. WILLIAMS: I'm going to try to speak up.

4 THE COURT: I tell you what. Do you see the  
5 microphone right there on the table?

6 MS. WILLIAMS: I'm going to sit down right in front of  
7 it.

8 THE COURT: I think so. And I'll try to control the  
9 volume. That way you won't have to stress your voice so  
10 much.

11 CROSS-EXAMINATION

12 BY MS. WILLIAMS:

13 Q. Mr. Montgomery, did Shawan (phonetically) Johnson ever  
14 write to you and explain why he had called your name in  
15 any of this?

16 A. No, he didn't. Shawan Johnson was never in the county  
17 jail while I was there. In fact, Shawan Johnson was  
18 sentenced and everything before I went to trial. So he  
19 was nowhere around me to write.

20 Q. April Johnson never gave you any explanation as to why  
21 she identified you either?

22 A. I never seen or spoke to April Johnson until -- I  
23 never seen, I never spoke to her, period. I never seen  
24 her until she got up on the stand and testified and  
25 pointed me out as, identifying me as the person that she

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1 now identified as being in her car along with James Green  
2 seven, eight months prior to, you know, that trial.

3 Q. And with regard to Ms. Bellamy, Mr. Sims cross-  
4 examined her pretty extensively on those two statements;  
5 didn't he?

6 A. He was given the opportunity to, you know, cross-  
7 examine her as far as, you know, the State was also given  
8 an opportunity to do redirect. But my attorney, he did  
9 try, the time that he did try to do recross, you know, the  
10 judge automatically told him that that was not going to  
11 happen. He wasn't allowing my defense to get up and redo  
12 any type of recross or recross-examination on any of the  
13 witness.

14 Q. And Ms. Bellamy never gave you any explanation as to  
15 why she had identified you, either; did she?

16 A. Well, the only information that I learned of why she  
17 identified me was simply because of the fact that she  
18 admitted on the stand that her identification came about a  
19 week prior to trial when she obviously was, came to the  
20 solicitor's office.

21 The solicitor asked her to the office a week prior to  
22 trial to identify me in which, you know, at first the  
23 solicitor said it was a booking photo. But throughout the  
24 motion of mistrial, you know, it ended up and turned  
25 around and it was an actual photographic lineup that she



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1 was shown which was a photographic lineup that was shown  
2 to her brother where he had already circled my picture and  
3 initialed his name and signature up under it.

4 It was a photograph I know was entered into a Court's  
5 Exhibit but, you know, it was never presented to the jury  
6 as far as them being able to see exactly what it was that  
7 she was shown.

8 Q. In the lineup she was shown those markings had been  
9 removed, isn't that correct, according to the transcript?

10 A. From my understanding, what was produced into the  
11 Court's Exhibit is what she was shown.

12 MS. WILLIAMS: All right. I don't have any more  
13 questions. Thank you.

14 THE COURT: Redirect?

15 MS. DAVIS-BRANCH: No redirect, Your Honor.

16 THE COURT: Thank you, Mr. Montgomery. You can come  
17 on back down to your table.

18 MS. DAVIS-BRANCH: I'd like to call Mr. Thomas Sims.

19 THE COURT: Mr. Sims, if you'd come around and be  
20 sworn.

21 THOMAS RAY SIMS, having been duly sworn, was examined  
22 and testified as follows:

23 THE COURT: When you are situated, state your name for  
24 the record.

25 THE WITNESS: My full name is Thomas Ray Sims.

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1 THE COURT: Thank you so much. Your witness.

2 MS. DAVIS-BRANCH: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MS. DAVIS-BRANCH:

5 Q. Good morning, Mr. Sims.

6 A. Good morning.

7 Q. You represented my client?

8 A. Yes, I did.

9 Q. Mr. Reginald Montgomery?

10 A. Uh-huh.

11 Q. And when were you hired and who hired you?

12 A. Actually I initially began my representation of  
13 Mr. Montgomery as a result of a probation violation. And  
14 his father had talked to me about representing him on  
15 that, and then when these charges came up his father  
16 talked to me about representing him on that also.

17 Q. Okay. And so you were retained by the family?

18 A. Yeah.

19 Q. Okay. And you have been in private practice for how  
20 long?

21 A. Actually if you target it in terms of being licensed,  
22 I was licensed in the State of Mississippi prior to coming  
23 to South Carolina. I was licensed in the State of South  
24 Carolina for about, total of maybe 12 to 13 years. I was  
25 a prosecutor from that point. In '92 I went into full

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1 private practice. So I've been around about 30 years now.

2 Q. So you would consider yourself a well-seasoned lawyer?

3 A. I think I am.

4 Q. Okay. Mr. Montgomery -- Attorney Sims, you obviously  
5 know what Mr. Montgomery was charged with?

6 A. Yes.

7 Q. Okay. And in your practice, once you found out what  
8 he was charged with, did you develop a strategy, or how  
9 did you proceed about representing Mr. Montgomery?

10 A. After getting the information in regards to Brady, I  
11 did begin to do my research in regards to the case law and  
12 what we could probably do.

13 I did go over those statements of each one of the  
14 individuals who were going to testify and develop a -- you  
15 know, in terms of that, because initially, as  
16 Mr. Montgomery said, they did not identify him. So that  
17 was a, a, a plus in his favor that they had not identified  
18 him. The only person who had identified him was oddly  
19 Mr. Green and maybe one other. I can't remember the name  
20 of the other person. But he was right in regards to  
21 that. They had not identified him. They had not given  
22 him.

23 So the basis of the defense would be that the only  
24 person who would be able to testify that Mr. Montgomery  
25 was there would be a co-defendant. These other persons,

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1 the sister, the girl who rode with them in the car,  
2 neither of them could identify him. The statements was  
3 that it was a slender black male, dark skin black male.  
4 Black male, not blackmail but black male.

5 THE COURT: I understand. M-A-L-E not M-A-I-L.

6 THE WITNESS: Yes, ma'am. So that's, you know, what  
7 he said. And that's what we were prepared for and we were  
8 going to court on those issues.

9 BY MS. DAVIS-BRANCH:

10 Q. Okay. So when you got to trial, would that have been  
11 a surprise that this new identification came up?

12 A. Yes, it was. And I believe I did make motions for  
13 mistrial. I think I made about three motions for  
14 mistrial, if not more, during the course of the trial  
15 because some of the things that I felt that the solicitor  
16 had not properly done or things that were said which were  
17 not done, and I think I made some motions for a mistrial  
18 on that.

19 Q. In regard to that new identification, do you think the  
20 behavior of the solicitor, who I believe was Mr. Jeffries,  
21 would you consider that to be prosecutorial misconduct?

22 A. Let me put it this way. I was a prosecutor for over  
23 13, 14 years probably. I would not have done it that way  
24 in regards to, at the last moment springing that up  
25 because I think that under Rule Five we are required to

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1 disclose those things that we are going to use at trial as  
2 a prosecutor.

3 And if a person has made a statement which is contrary  
4 to what is on the record, that I should have been apprised  
5 of it prior to going to trial.

6 Q. So your answer is yes, you do think it was  
7 prosecutorial misconduct?

8 A. I think it was wrong in terms of the way it was done.  
9 Now prosecutorial misconduct, under our statutes and under  
10 our case law may be a little strong.

11 Q. Okay. Did you object?

12 A. Yes.

13 Q. Okay. You did. There were two other witnesses,  
14 correct, that were present at the trial?

15 A. Uh-huh; yes, ma'am.

16 Q. And do you recall their names?

17 A. Ms. Bellamy.

18 Q. Okay.

19 A. And I can't remember the young lady whose house they  
20 went to to get a ride with. I can't remember her name.

21 Q. Two witnesses for Mr. Montgomery?

22 A. Oh, you're talking about --

23 Q. Yes, sir.

24 A. Yes. Mr. Pringle and, at that time Mr. Montgomery  
25 told me that the lady was his wife. That's how he

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1 identified her to me.

2 Q. Okay. And you indicated to the Court that Mr. Pringle  
3 was very important to your case; correct?

4 A. That's correct.

5 Q. Okay. But then later when you had the opportunity to  
6 bring forth Mr. Pringle, the decision was made not to?

7 A. Correct.

8 Q. And why would that be? Why was that decision made?

9 A. Actually as you know so well in trial, the trial  
10 begins to take a life of its own and move in a direction  
11 that you may have to change your strategies.

12 Now I did discuss with -- that's the only thing I'm  
13 contesting now. I did discuss with Mr. Montgomery those  
14 issues about his wife or his girlfriend and Mr. Pringle  
15 testifying. When we took the break after the State  
16 presented its case, not only did I talk with him about his  
17 not testifying but about them, too.

18 One of the things that we discussed in that was how I  
19 had shown or impeached them during the course -- the  
20 State's witnesses, rather, and -- during the course of the  
21 cross-examination. And in terms of, to put it in, I  
22 believe, one of words, we had made them look like lies,  
23 liars in regards to that.

24 And we talked about that in terms of how they had been  
25 shown -- especially like Ms. Bellamy. She had given those

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1 statements and then all of a sudden on the day of trial  
2 she shows up and gives another statement. I believe the  
3 record reflects that there was extensive cross-examination  
4 of her on that issue.

5 Also the young lady who supposedly drove them to that  
6 place, again, I questioned her extensively. And I vividly  
7 remember a very acrimonious cross-examination of  
8 Ms. Bellamy because there was a question about the  
9 lighting on the outside of the house. There was some  
10 questions about other issues in terms of how she could  
11 have seen Mr. Montgomery.

12 So we went around and around and around on those  
13 issues with both of those two witnesses. And after we  
14 discussed this and talked about it for a little while, the  
15 decision was made collectively that we were not going to  
16 use those witnesses but rather in terms of, by not putting  
17 up evidence I would also get the last argument to the jury  
18 which would have given me the opportunity to, again,  
19 highlight the lies or the misconceptions or the statements  
20 that they had made and bring that out to the jury.

21 Q. Are you sure it was a joint decision between you and  
22 Mr. Montgomery or was it a unilateral decision by you?

23 A. In trials my practice has always been, even when my  
24 client decides they want to do something that's contrary  
25 to what I believe is correct under the circumstances, my

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1 decisions are always based, okay, if this is what you want  
2 to do, but understand here are the consequences of it.

3 Q. Okay. We've had a lot of direct testimony or direct  
4 testimony in regard to this letter --

5 A. Uh-huh.

6 Q. -- which has been marked as Plaintiff's Exhibit --

7 A. I know, I know the letter.

8 Q. As a matter of fact, you gave it to me; did you not?

9 A. I did.

10 Q. Yeah. You gave it to me.

11 And Mr. Montgomery testified as to his opinion that  
12 had this letter been introduced to the Court, he believes  
13 that his case would have had a different outcome because  
14 it would have, you know, created doubt.

15 What was your feeling about not introducing this  
16 letter?

17 A. I freely admit that I did not introduce that letter.  
18 There's no question about that. I did not introduce that  
19 letter.

20 Q. Uh-huh.

21 A. In the course of my cross-examining of Mr. Green and  
22 going back and forth with him, regarding the conversations  
23 with him and bringing out and trying to portray him as a  
24 liar, that letter was not introduced.

25 But I also would look at that letter and there was



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1 some questions in terms of how, of how we were going to  
2 get it in. The fact that it wasn't signed, it would have  
3 been authentication problems, too.

4 But I intended and I'm not going to sit up here and  
5 lie and say that I did not, I did not intend to use that  
6 letter but I simply did not do it on that day.

7 Q. The fact that it wasn't introduced, Mr. Sims, do you  
8 think that that affected the outcome of the trial?

9 A. In my opinion in looking at, in looking at that, that  
10 simply was one element. But when you have the other two  
11 people or the other people, Mr. Green, the sister, the  
12 young lady that was riding in the car, the other people  
13 who had identified him as the other individual, I cannot  
14 sit here and say today that the lack of introduction of  
15 that letter would have changed the whole outcome of the  
16 trial.

17 Q. The fact that you did not introduce it, would you say  
18 that you were ineffective as to the representation of  
19 Mr. Montgomery?

20 A. No, but I will say this, though. Had, had I to do it  
21 again, I would definitely make that effort to introduce  
22 that letter.

23 Q. Okay.

24 A. I'm just being frank.

25 Q. I'm sure the Court appreciates it. I appreciate it

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1 too. Thank you so much.

2 I don't have any additional questions. Mr. -- answer  
3 any questions your lawyer may have.

4 A. I got a lawyer?

5 THE COURT: All right. Yes, ma'am?

6 MS. WILLIAMS: Thank you. Again, I'll just sit here.

7 THE COURT: Absolutely.

8 CROSS-EXAMINATION

9 BY MS. WILLIAMS:

10 Q. Mr. Sims, in addition to your cross-examination, you  
11 were also able to use Deputy Rodriguez and got him to  
12 admit that Green and Johnson had kind of given different  
13 stories as well. Is that your recollection?

14 A. That's correct.

15 I remember that Deputy Rodriguez did testify and I got  
16 him to admit on the stand that those people who were now  
17 testifying and so allegedly sure of who this person was,  
18 had made contrary statements and had not, had not made  
19 these admissions prior to.

20 I believe if I recall, it's been a while since I  
21 looked at the transcript, but I did make -- I did object  
22 to the photograph or to the ID lineup. I objected to the  
23 in court identification based upon the lineup.

24 And then when Ms. Bellamy took the stand, I did object  
25 to her testimony, the chain testimony, the fact that she

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1 was going to say that she picked him up out of a lineup.

2 I think I remember that in reading it in the transcript.

3 Q. And just to touch briefly on the issue of the

4 indictment, do you believe that that issue would have any

5 merit had you brought that forward to the Court?

6 A. The scrivener's error in regards to the date is not a

7 fatal flaw. When I look at an indictment to determine

8 whether or not there's a fatal flaw, it's whether or not

9 the elements of the crime have been stated sufficiently to

10 put the defendant on notice that the, that this is what he

11 or she is going to have to defend against.

12 A scrivener's error as to the date is simply a, where

13 if you raise that the judge says 'correct the date,' and

14 that's it.

15 MS. WILLIAMS: Beg the Court's indulgence for just one

16 moment.

17 (Pause.)

18 THE COURT: Yes,

19 MS. WILLIAMS: Your Honor, I think that's all I have

20 for Mr. Sims. Thank you.

21 THE COURT: Very well. Redirect? When you're ready.

22 MS. DAVIS-BRANCH: I am so sorry.

23 Can I have one minute, Your Honor? I promise you it

24 will not be long.

25 THE COURT: Of course. Of course. (Pause.)

1 MS. DAVIS-BRANCH: Just a couple questions, Your  
2 Honor.

3 THE COURT: Indeed.

4 REDIRECT EXAMINATION

5 BY MS. DAVIS-BRANCH:

6 Q. Mr. Sims?

7 A. Uh-huh.

8 Q. At the trial, I do recall you objecting to or  
9 asserting a mistrial and that was denied; correct?

10 A. Yes.

11 Q. But you did not raise the issue of prosecutorial  
12 misconduct on Mr. Jeffries' behalf; correct?

13 A. No, I did not.

14 Q. You did not. And the fact that you didn't, that could  
15 not have been an issue on appeal?

16 A. No, that's true.

17 Q. Am I correct?

18 A. Yes, that's true.

19 MS. DAVIS-BRANCH: Thank you, Your Honor.

20 THE COURT: Yes.

21 MS. WILLIAMS: Nothing further.

22 THE COURT: Very well. Is this witness free to  
23 leave?

24 MS. DAVIS-BRANCH: Yes, ma'am, he is.

25 THE COURT: Thank you.

1 THE WITNESS: Yes, ma'am.

2 THE COURT: You're free to go. All right. Do you  
3 have any additional witnesses?

4 MS. DAVIS-BRANCH: No, ma'am. We do not have any  
5 additional witnesses.

6 THE COURT: Very well. And no, nothing from the  
7 State?

8 MS. WILLIAMS: Ma'am?

9 THE COURT: Nothing from the State?

10 MS. WILLIAMS: Did you want to talk about --

11 MS. DAVIS-BRANCH: Yes, I do.

12 Your Honor, my client has at least two issues that he  
13 has raised in regards to the direct appeal that was done  
14 by Ms. Wanda Clark (sic) from the Office of Appellate  
15 Defense and she could not be here today. She's kind of  
16 sick.

17 THE COURT: She sure is.

18 MS. DAVIS-BRANCH: So Ms. Williams --

19 THE COURT: She testified Monday and the poor thing  
20 was sick on Monday. That's probably why everybody is now  
21 coughing and hacking and everything.

22 MS. DAVIS-BRANCH: But given that he would, my client  
23 would like to have that a part of his effective (sic)  
24 assistance of counsel.

25 THE COURT: I understand.

1 MS. DAVIS-BRANCH: Of her. Not necessarily Mr. Sims.  
2 And of course Mr. Sims cannot testify as to why certain  
3 things were not appealed or why they weren't. So if the  
4 Court would allow us to at least keep the record open  
5 until I can get in contact with Ms. Clark (sic), and maybe  
6 we can do it by affidavit. I can ask her the questions  
7 and of course with the approval of Ms. Williams.

8 MS. WILLIAMS: If she'll let me see the affidavit  
9 first, just to make sure I don't have anything to add in  
10 response to it. I'm totally fine with that.

11 MS. DAVIS-BRANCH: Is that okay?

12 MS. WILLIAMS: Sure.

13 THE COURT: Do you think you can do that in 60 days?

14 MS. DAVIS-BRANCH: I think.

15 THE COURT: If not, y'all just get together and just  
16 let Anna know, my law clerk, when you will be able to do  
17 that. That will be fine.

18 MS. DAVIS-BRANCH: Okay.

19 THE COURT: And then once that's concluded then if  
20 y'all will just get together with your schedules and let  
21 Anna know when I can expect proposed orders. That will be  
22 awesome.

23 MS. DAVIS-BRANCH: Thank you. Thank you so much.

24 THE COURT: So what I'm going to do is I'm just going  
25 to note here that you all are going to communicate with

1 Anna really about what the schedule is going to be going  
2 forward.

3 MS. DAVIS-BRANCH: Right. Yes, ma'am. Thank you.

4 THE COURT: And again, I want to thank everyone's  
5 understanding from last night. We went to 5:30 and I  
6 think we were all exhausted. And I just appreciate so  
7 very, very much everyone returning today.

8 MS. DAVIS-BRANCH: Thank you so much.

9 MS. WILLIAMS: Extra thanks to the folks in  
10 Orangeburg. I don't know who at the jail I talked to last  
11 night, but I called them and they kept him and transported  
12 Mr. Montgomery and I appreciate all y'all did.

13 THE COURT: Evander works with me on a regular basis.  
14 He's amazing.

15 I think that will conclude our work for the week.

16 MS. WILLIAMS: Yes, ma'am.

17 END OF PROCEEDINGS: 11:22 A.M.

18 \*\*\*

19 CERTIFICATE OF REPORTER

20 STATE OF SOUTH CAROLINA )

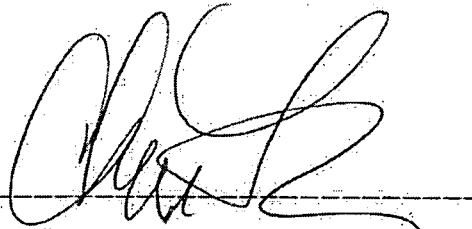
21 COUNTY OF AIKEN )

22 I, Cheri L. Young, Registered Professional Reporter  
23 and Official Court Reporter for the State of South  
24 Carolina, Second Circuit-At Large, do hereby certify that  
25 the foregoing proceedings were written stenographically by

1 me using computer-aided translation; further, that the  
2 foregoing is a true, accurate and complete record, to the  
3 best of my skill and ability, of all the proceedings had  
4 and evidence introduced in the hearing of the captioned  
5 case, relative to appeal, in the Court of Common Pleas for  
6 Dorchester County, on the 1st and 2nd days of December,  
7 2011.

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

10 I have hereunder set my hand this Veteran's Day, the  
11 11th day of November, 2013.

12  
13  
14  


15 Cheri L. Young, RPR  
16 Official Court Reporter  
17  
18  
19  
20  
21  
22  
23  
24  
25



James Green aka Courtney

I know you wondering what's going  
on nigger so let me begin my friend

I know  
Kevin told you that I use your name  
I had to because that was the only way  
for me to get a deal by using your  
name knowing you already got those charges  
on your record. I didn't hesitate to serve  
a warrant. I ~~didn't~~ know did name so I  
had to have some one come to go down with me  
and I remembered you telling me that you just got  
out for arm robbery now they pretty much force me  
to say you had the gun when the store was  
robbed cause you already sign some type of gun  
paper. you feel bad about the shit now especially  
since I found out you had a year already for violation of  
probation. That gun wasn't even the gun we use.  
I think my man had his people to turn in some old  
hit to get him off for something. The real shit he still has  
use I made sure I gave it to him and he told me his  
coter has it. My court date was on the 13<sup>th</sup> of Nov. I  
have to testify on you if you go to trial but I'm not cause  
it will help you and they can't do nothing to me cause they  
already gave me my time. I know you wanna kill me, but

at least I was men enough to tell you some of  
what's going on. When I get out I promise to make it.

Tear up when finish

one

love

STATE OF SOUTH CAROLINA )

COUNTY OF ORANGEBURG )

Reginald Montgomery, #257290, )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS

2010-CP-38-0292

**ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 23, 2010. An evidentiary hearing into the matter began on December 1, 2011, and was completed on December 2, 2011, at the Dorchester County Courthouse. The Applicant was present at the hearing and was represented by Belinda Davis-Branch, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Thomas Sims, Esquire ("Counsel"). This Court had before it the records of the Dorchester County Clerk of Court, the trial transcript, the appellate records, the Applicant's records from the South Carolina Department of Corrections, an exhibit introduced at hearing, and the affidavit of Wanda Carter, Esquire ("Appellate Counsel").

**PROCEDURAL HISTORY**

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted by the Orangeburg County Grand Jury for Armed

Robbery (2006-GS-38-2052). Thomas R. Sims, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable J.C. Nicholson. Applicant was found guilty, and he was sentenced to twenty-two (22) years imprisonment.

A notice of appeal was filed and an appeal perfected. Following the submission of a brief pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct 1396 (1967), the appeal was dismissed. State v. Montgomery, 2009-UP-134 (S.C. Ct. App. filed March 9, 2009). The Remittitur was sent on March 25, 2009.

In his application for post-conviction relief (PCR), Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
  - a. "Failure to conduct and independent investigation and prepare for trial."
  - b. "Failure to speak to or utilize defense witness present at trial."
  - c. "Failure to properly advise the Applicant regarding his right to testify."

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

##### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

#### *Summary of Facts Adduced at Trial*

In the early morning hours of September 17, 2006, two men, their faces somewhat masked with stockings, entered a 24-hour Shell station in Bowman. One was shorter and armed with a pistol

equipped with a laser sight, and he remained near the door. The other man approached the clerk, Nicholas Herrington ("Herrington"), and retrieved money from the register. Herrington recognized the shorter man with the gun as a former schoolmate who had been in the store just a few nights before to cash in change. Herrington did not get a good look at the other man because he was focused on the man with the gun. In addition to Herrington, a cook and a customer were also in the dining area of the store during the robbery. After retrieving the money, both robbers fled from the store on foot. Herrington asked the cook to help him close the door and called 911. Herrington reported that approximately \$600.00 was taken.

The man Herrington recognized was James Green ("Green"). Testifying at trial, Green admitted that he was the man holding the gun during the robbery. According to Green, Applicant was the taller man who retrieved money from the register. Green testified that he, Applicant, and Shawon Johnson ("Shawon") had met at a club in Bowman on the evening in question. They walked from the club to Green's house. According to Green, Applicant and Shawon discussed committing a robbery along the way, and Shawon testified that Green and Applicant discussed the robbery. However, Shawon did not want to participate because he was still "on papers," meaning on probation. Shawon also stated that he was intoxicated and went to sleep at Green's house. Shawon gave Green the pistol he had been carrying, and Green and Applicant left Shawon at Green's house.

After the robbery, Green went to the home of April Johnson ("April"), Shawon's sister. He knocked on her window and asked for a ride, claiming his girlfriend had left him at the store after an argument. April agreed to give Green a ride home. April, her friend Terrance, Green, and Applicant got into April's white Mustang. When they arrived at Green's house, Shawon was still there asleep.

Green's sister, Letangela Bellamy ("Bellamy"), stated that she saw April's white Mustang, and Shawon, Green, and Applicant were all outside when Green knocked on her window. April returned home with Shawon.

As officers roved the area looking for potential suspects, one officer noticed the white Mustang leaving. He then saw the Mustang return a very short time later and decided to knock and ask if anyone had seen the suspects. April reported that Green and another man had come by for a ride. Green stated he gave Shawon \$20 for giving them the gun used in the robbery and \$5 to give April for gas. The total take was approximately \$300.00 according to Green.

#### *Failure to Investigate*

Applicant asserts that counsel failed to adequately investigate. Applicant testified that he retained Counsel for other charges, and Counsel agreed to represent him in this matter. Applicant stated that he spoke to Counsel before he went to the Department of Corrections on other charges and did not speak to Counsel again until about a month before trial when Counsel conveyed a plea offer. Applicant specifically takes issue with Counsel's failure to interview Letangela Bellamy. Applicant asserts that had Counsel interviewed Bellamy, he may have learned that she would identify him in court. Applicant stated that he was prejudiced by this because Counsel could have challenged the in-court testimony as compared to the original statements and could have moved to suppress the entire testimony.

Counsel did renew his motion for mistrial at the close of Bellamy's testimony based on the solicitor's failure to disclose that Bellamy had, since her written statements, named Applicant as the dark-skinned male referred to in her statements. While Counsel was unaware that Bellamy would

name Applicant prior to her testimony, he nonetheless cross-examined her on the fact that she had not named him in her written statements. (Tr. p. 209, line 3 – p.211, line 6.) Even if Counsel had found out before trial that Bellamy would name Applicant, there is no evidence that he would have been able to have the testimony excluded. He would have only been able to cross-examine her and argue that her identification was made later because she was trying to help her brother, just as he did at trial. Therefore, even if Counsel had interviewed Bellamy and learned that she would name Applicant at trial, the outcome of trial would have been no different, and Applicant has made no assertion that he would have chosen not to proceed to trial had he known of the identification.

*Failure to Adequately Cross-Examine James Green*

Applicant states that he first informed Counsel of a letter from co-defendant Green when they met some time prior to trial, but he did not have the letter with him at the time. According to Applicant, Counsel told him to bring the letter with him next time, and he did ultimately provide Counsel with the letter purportedly written by Green. Applicant claimed the letter was the result of several notes exchanged between himself and Green through a prison guard.<sup>1</sup> Applicant testified that he did provide the letter to Counsel prior to trial.

Even though he felt there would be evidentiary problems if he attempted to introduce the letter, Counsel stated that he had intended to use the letter on cross-examination of Green. Based on the lack of authentication and Counsel's cross-examination on other points calling credibility into question, this Court does not find Counsel's performance patently unreasonable. Nonetheless, even assuming that Counsel's failure to use the letter constitutes deficient performance, Applicant has failed to show what the result of cross-examination regarding the letter would have been. Glover v.



State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995) ("The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice."); Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Therefore, I find that Applicant has failed to show prejudice in this regard.

*Failure to Call Witnesses*

Applicant also testified that Counsel was ineffective in failing to call defense witnesses Kevin Pringle and Eva Wright. Applicant believes that Pringle could have impeached the testimony of James Green and that Wright could have provided an alibi. According to Applicant, during the recess prior to the colloquy with the court on his right to testify, he and Counsel discussed whether he would testify. Applicant agreed with Counsel's advice that he not testify. Applicant believed, however, that Counsel would still present evidence from other witnesses and the letter purportedly written by Green.

In contrast, Counsel testified he did discuss whether they would present testimony from additional witnesses during the recess. Counsel recalled that they discussed how Counsel had been able to present issues with credibility through cross-examination. Counsel stated that after this discussion the decision was made collectively that, given the success of cross-examination, the defense would forego presenting witnesses in favor of making the last closing argument to the jury. Counsel also recalled that Applicant had informed him initially that Wright was his wife.

I find Counsel's testimony to be credible. Counsel articulated a valid strategy in deciding not to call defense witnesses in favor of closing argument, particularly where Counsel had success through cross-examination (for example, Herrington's admission on cross-examination that he knew

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<sup>1</sup> This court accepted the letter only as to the reasonableness of Counsel's performance and does not consider the letter for  
7 of 13

Applicant but could not say that Applicant was the other participant in the robbery and cross-examination of other witnesses regarding prior statements).

Further, Applicant has failed to present the testimony of these witnesses. Therefore, he has failed to demonstrate prejudice in this regard. Glover v. State, supra; Bannister v. State, supra; Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771 (2008) (defendant failed to present evidence that would show a reasonable probability that, but for counsel's failure to call expert witnesses, the result of his trial would have been different, and counsel vigorously cross-examined the State's witnesses and attacked the accuracy of the evidence).

#### *Indictment*

Applicant further argues that Counsel erred in failing to move to quash his indictments. The faces of the indictments state "December 04, 2006 Term." The true bill stamp lists a date of "NOV 08 2006." The date printed below the stamp reads "December 6, 2006." Counsel opined that the scrivener's error with regard to the date was not a "fatal flaw" and that the elements of the crime were sufficiently set forth in the indictment. Therefore, he did not object.

I find Counsel's performance not unreasonable. Further, I find no resulting prejudice. Additionally, even if the trial court granted counsel's motion to quash the indictments, Applicant still could have been charged through re-indictment or direct indictment, then prosecuted and sentenced for the crimes at a later date. Under S.C. Code Ann. § 17-19-90 (2003), "every objection to any indictment for any defect apparent on the fact thereof shall be taken...on motion to quash such indictment before the jury shall be sworn and not afterwards." Since the Double Jeopardy Clause of the Fifth Amendment attaches in a jury trial only once the jury is sworn, a successful motion to

quash, by its very definition, will not work to bar subsequent prosecution on the same allegation on that grounds. See State v. Prince, 279 S.C. 30, 301 S.E.2d 471 (1983). Accordingly, this Court finds Applicant has failed to prove resulting prejudice from counsel's failure to move to quash the indictments.

#### **Ineffective Assistance of Appellate Counsel**

A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

*Failure to Brief on Brady v. Maryland as to Statements of Letangela Bellamy*

Counsel renewed his motion for mistrial following Bellamy's testimony based on the fact that Bellamy identified Applicant in court, and the defense was not aware that Bellamy had named Applicant in a verbal statement to law enforcement after her two written statements in which she only described a dark-skinned male. Had Appellate Counsel briefed the issue as objected to by Counsel, the issue would be without merit. State v. Jones, 325 S.C. 310, 479 S.E.2d 517 (1996) (failure to disclose victim's statement made week before trial which was inconsistent with earlier statement did not result in prejudice, and thus was no Brady violation where defense counsel was able to impeach victim about new statement by introducing her prior statement and asking about the discrepancy). Therefore, I find Appellate Counsel was not ineffective in failing to raise this issue.

*Presence During In-Chambers Conference*

Applicant further attributes error to Appellate Counsel's failure to brief an issue of alleged error because Applicant was not present during an in chambers meeting including the trial judge, solicitor, and Counsel. As noted by Appellate Counsel in her affidavit, there is nothing in the transcript to give rise to this issue on appeal. This Court agrees with Counsel that the record does not reveal an objection regarding any in-chambers meeting nor does it support an argument that Applicant was absent from any critical stage of trial. Legge v. State, 349 S.C. 222, 562 S.E.2d 618 (2002)(appellate counsel not ineffective for failing to raise an issue that was not preserved for appellate review).

*Identification by April Johnson*

Applicant has set forth this issue as one of ineffective assistance of appellate counsel in failing to brief the issue of an illegal show-up identification made by April Johnson. At trial, April identified Applicant as the person in her car with Green. On cross-examination, Counsel asked about her written statement in which April stated she had never seen the other individual before. (Tr. p. 178, line 3 – p. 179, line 25.) April insisted that she had seen the man before but had never seen him with Green and did not know his name. Counsel eventually asked whether April had been shown a photographic lineup. To his surprise, she responded that she had been a lineup by the solicitor. (Tr. p. 182, lines 2-20.) Following examination of the witness, Counsel moved for a mistrial based on the prosecution's failure to disclose the lineup. (Tr. p. 191, line 21 – p. 192, line 17.) Counsel argued that because the lineup had not been disclosed, he had lost the opportunity to move for suppression of the identification prior to trial. (Tr. p. 195, lines 6-17; p. 198, lines 3-10.) Counsel also stated that he had prepared for trial based on April's statement which indicated she did not know who the man with Green was. (Tr. p. 197, line 14 – p. 198, line 3.)

The solicitor initially stated that he had not shown April a photo lineup, only a booking photo which had been provided in discovery, during an interview in his office shortly before trial. (Tr. p. 193, line 2 – p. 195, line 5.) The solicitor then corrected himself, stating that he had shown April a six-photograph lineup, the same lineup shown to Green by law enforcement. (Tr. p. 200, lines 2 – 15.) The trial court denied the motion for mistrial but permitted Counsel to talk further with April and recall her as a witness for additional cross examination if he felt necessary. (Tr. p. 201, lines 10-20.) April was not recalled at trial.

At trial, Counsel argued that he had been unable to request a pre-trial hearing on the lineup as a basis for his mistrial motion and did not pose an objection to the lineup. Appellate Counsel did brief the issue in an Anders brief. However, even if Counsel had objected to the in-court identification based on the photo lineup shown to April, Applicant has failed to show that the outcome would have been different.

"An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification." State v. Traylor, 360 S.C. 74, 81, 600 S.E.2d 523, 526 (2004). The only evidence in the record as to the identification process shows that the solicitor provided April with a lineup with no markings and containing six pictures. There is no evidence that she was encouraged to select any particular photo or that the photos themselves were suggestive. Further, April stated that she had seen Applicant before but did not know his name. April also reported that she got a good view of Applicant twice – when he got out of the car and when he came back out to tell her that Shawon would be out in a few minutes. Finally, April was not the only witness to identify Applicant as the man who arrived at her home with Green and rode with her to Green's house. Green named Applicant as the man accompanying him. Shawon identified Applicant as the man with Green when Green returned to the home. Green's sister, Bellamy, also identified Applicant as the man who returned to the home with Green in the white Mustang. Based on all the foregoing, even if Counsel had moved for suppression on basis of the photo lineup, it is unlikely the result of trial would have been different.

**Other Allegations**

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

**CONCLUSION**

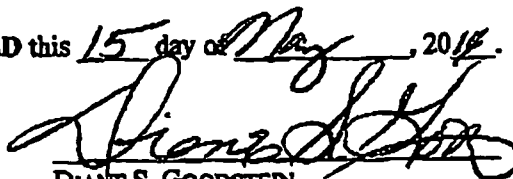
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

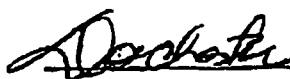
**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15 day of May, 2016.



DIANE S. GOODSTEIN  
Presiding Judge  
First Judicial Circuit

 South Carolina.