

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Edgar W. Dickson, Circuit Court Judge

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ALPHONSO SIMMONS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-0001002

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

CIRCUIT COURT
2008-GS-32-654, 655

STATE OF SOUTH CAROLINA,
-vs-
ALPHONSO SIMMONS, JR.,
Defendant.

TRANSCRIPT OF RECORD

HEARD ON MONDAY, APRIL 14, 2008
AND TUESDAY, APRIL 15, 2008
IN LEXINGTON, SOUTH CAROLINA

BEFORE:

THE HONORABLE THOMAS A. RUSSO

AND A JURY

APPEARANCES:
Counsel on behalf of the State:
Richard Hubbard, Esq.
Angela Garrick, Esq.

Counsel on behalf of the Defendant:
Elizabeth Fullwood, Esq.
Casey Cornwell, Esq.

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SELECTION OF THE JURY

1 ON MONDAY, APRIL 14, 2008 AT 11:06 P.M.:

2 (Defendant enters courtroom.)

3 THE COURT: All right. Ladies and gentlemen,
4 we're going to at this time to ask the State, either
5 Ms. Garrick or Mr. Hubbard, to call the first case for
6 trial.

7 MS. GARRICK: Thank you, Your Honor. May it
8 please the Court. Your Honor, the State calls indictment
9 2008-GS-32-654. Alphonso Simmons is indicted for armed
10 robbery. Indictment 2008-GS-32-655, Alphonso Simmons is
11 indicted for burglary in the second degree.

12 Your Honor, I'm Angela Garrick for the State
13 along with Rick Hubbard. Ms. Fullwood and Mr. Cornwell
14 represent Mr. Simmons.

15 THE COURT: All right. Thank you, ma'am.

16 Ladies and gentlemen, we are about to go through
17 the process of selecting a jury in the case of State of
18 South Carolina versus Alphonso L. Simmons. Now, ladies
19 and gentlemen, let me tell you that in all criminal
20 matters that come before the Court, in this case
21 Mr. Simmons has been charged under what is called an
22 indictment. An indictment is not evidence against
23 Mr. Simmons. All it is is a piece of paper which brings
24 the charges, the charges that he is charged with, into
25 court. It is no evidence of the allegations that it

SELECTION OF THE JURY

1 contains.

2 To this indictment Mr. Simmons has pled not
3 guilty. Therefore, he is presumed innocent of these
4 charges. And it's the State that carries the burden of
5 having to prove his guilt beyond a reasonable doubt.

6 So throughout the course of the trial, as we
7 begin and all the way to the end and into your
8 deliberations, Mr. Simmons is entitled to the presumption
9 of innocence. He has pled not guilty and therefore the
10 State carries the burden of proof.

11 Let me -- Ms. Garrick, if I may let me get you to
12 step up real quick.

13 (Pause. Off-the-record discussion.)

14 THE COURT: What I'm going to do at this time,
15 ladies and gentlemen, is I'm going to read to you the
16 allegations of the charges that have been brought against
17 Mr. Simmons, keeping in mind that he is presumed innocent
18 of these charges at this time.

19 And indictment 2008-GS-32-654 charges Mr. Simmons
20 with robbery while armed with a deadly weapon, or commonly
21 referred to as armed robbery. It alleges that Alphonso L.
22 Simmons did in Lexington County, South Carolina, on or
23 about April 16, 2004, knowingly and willfully while armed
24 with a deadly weapon, to wit, a gun, did feloniously take
25 from the person or presence of the manager of McDonald's

SELECTION OF THE JURY

1 Restaurant, located at 600 Saint Andrews Road, by means of
2 force, threats or intimidation, goods or monies being
3 described as follows: US currency with intent to deprive
4 the owner of the use of such property in violation of
5 Section 16-11-330 A. of the South Carolina Code of Laws
6 1976 as amended.

7 Under indictment 2008-GS-32-655, Mr. Simmons is
8 charged with the offense of burglary second degree. That
9 indictment alleges that Alphonso L. Simmons did in
10 Lexington County on or about April 16th of 2004, knowingly
11 and willfully enter a building at 600 Saint Andrews Road,
12 McDonald's, without consent and with the intent to commit
13 a crime therein, to wit, to commit the crime of larceny,
14 and was armed with a deadly weapon and/or the entering or
15 remaining occurred in the nighttime. This in violation of
16 16-11-312 B. of the South Carolina Code of Laws 1976 as
17 amended.

18 Now, ladies and gentlemen, as I indicated to you,
19 those are the charges that Mr. Simmons faces to which he
20 has pled not guilty which places the burden of proof on
21 the State.

22 Is there any member of the jury panel who, even
23 though I haven't given you much information, based on what
24 I've given you, is there any member of the jury panel who
25 knows anything about this case? If so, please stand.

SELECTION OF THE JURY

1 Thank you. There are none.

2 The State, ladies and gentlemen is represented by
3 the 11th Circuit Solicitor's Office. The attorneys that
4 will be prosecuting this case on behalf of the State are
5 Mr. Rick Hubbard and Angela Garrick. And ask if the two
6 of you will please stand and face the members of the
7 jury. All right. Thank you.

8 Ladies and gentlemen, is there any member of the
9 jury panel related by blood, connected by marriage, or who
10 has any close personal or business relationship with
11 Ms. Garrick or with Mr. Hubbard, or who has been
12 represented by either individuals? If so, please stand.

13 Thank you. There are none.

14 Mr. Simmons in this case is represented by
15 Ms. Beth Fullwood and Mr. Casey Cornwell. If the two of
16 you will please stand.

17 All right. Thank you.

18 Is there any member of the jury panel related by
19 blood, connected by marriage or who has any close personal
20 or business relationship or who has been represented by
21 Ms. Fullwood or Mr. Cornwell? If so, please stand.

22 Thank you. There are none.

23 Ms. Fullwood or Mr. Cornwell, would you introduce
24 Mr. Simmons to the jury, please?

25 MS. FULLWOOD: Ladies and gentlemen, this is

SELECTION OF THE JURY

1 Alphonso Simmons.

2 THE COURT: Mr. Simmons, if you would face the
3 jury.

4 Thank you very much. Please have a seat.

5 Ladies and gentlemen, is there any member of the
6 jury panel related by blood, connected by marriage or who
7 has any close personal or business relationship with
8 Mr. Alphonso Simmons? If so, please stand.

9 All right. Thank you. There are none.

10 Is there any member of the jury panel who's
11 related by blood, connected by marriage or who's close
12 personal friends or any business relationship with any
13 member of the 11th Circuit Solicitor's Office or any
14 member who may be employed by the South Carolina Attorney
15 General's Office? If so, please stand.

16 Thank you. There are none.

17 Is there any member of the jury panel who is
18 related by blood, connected by marriage or is a close
19 personal friend or business associate with any person who
20 is employed by a state, local, federal, or military law
21 enforcement agency or if you are employed by a state,
22 federal, or local, military law enforcement agency? If
23 so, please stand.

24 All right. And Mr. Bray is juror number 24.

25 THE JUROR: 29.

SELECTION OF THE JURY

1 THE CLERK: 29, Your Honor.

2 THE COURT: I'm sorry. Juror number 29.

3 Mr. Bray, I think you said you worked at the federal
4 corrections?

5 THE JUROR: Yes, sir. In Edgefield, South
6 Carolina.

7 THE COURT: All right. Sir, the fact that you're
8 employed in that capacity, would that in any way affect
9 your ability to be fair and impartial, giving both the
10 State of South Carolina and Mr. Simmons a fair and
11 impartial trial?

12 THE JUROR: No, sir.

13 THE COURT: All right, sir. Thank you very
14 much. You may have a seat.

15 Yes, ma'am your name?

16 THE JUROR: Kathy Davis, 52.

17 THE COURT: All right. Juror number 52. All
18 right, Ms. Davis.

19 THE JUROR: I have a sister employed at federal
20 corrections in Edgefield.

21 THE COURT: Oh okay. God's country. I'm an
22 Edgefield boy.

23 THE JUROR: Oh okay.

24 THE COURT: Ms. Davis, your sister's employed
25 there; is that correct?

SELECTION OF THE JURY

1 THE JUROR: Yes.

2 THE COURT: The fact that your sister works at
3 the federal penitentiary in Edgefield, would that in any
4 way affect your ability to give both the State and
5 Mr. Simmons a fair and impartial trial?

6 THE JUROR: No, sir.

7 THE COURT: Thank you, ma'am. You may have a
8 seat.

9 Is there any member of the jury panel a member of
10 or a contributor to any organization that has as its
11 primary purpose the prevention of crime or advocacy of
12 victims' rights such as MADD, SADD, CAVE, any of those
13 type organizations? Is there any person who is a member
14 of or contributes to those organizations? If so, please
15 stand.

16 Thank you. There are none.

17 Is there any member of the jury panel who has any
18 ownership interest in the McDonald's Restaurant located at
19 600 Saint Andrews Road or in any other McDonald's
20 franchise? If so, please stand.

21 Thank you. There are none.

22 Is there any member of the jury panel who has a
23 business relationship with the McDonald's Corporation or
24 any of its restaurants? If so, please stand.

25 Thank you. There are none.

SELECTION OF THE JURY

1 Is there any member of the jury panel who is a
2 customer of McDonald's Restaurant, of this particular
3 McDonald's Restaurant at 600 Saint Andrews Road? If so,
4 please stand.

5 Thank you. There are none.

6 Is there any member of the jury panel or a member
7 of your immediate family who has, or if you have a close
8 friend who has ever been a victim of an armed robbery? If
9 so, please stand.

10 Thank you. There are none.

11 Ladies and gentlemen, I'm going to call out some
12 names. What I'm going to ask you to do, if you recall the
13 question I asked you when I asked you if anyone was
14 related to Mr. Simmons or knew him, I'm going to ask you a
15 similar question with regards to this list of names that
16 I'm going to call out.

17 These names are potential witnesses in the course
18 of this trial. They may or may not testify but the
19 question I'm going to ask you and that's going to apply as
20 I go through these names is, and what I'm looking for: Is
21 any member of the jury a panel who's related by blood,
22 connected by marriage or who has a close personal or
23 business relationship with any of these individuals.

24 So as I go through these names, if that question
25 applies, please stand when you hear a name that it applies

SELECTION OF THE JURY

1 to you.

2 Now when you stand, please continue to listen
3 because there's several names here. It may be that it
4 applies to more than one individual. So any member of the
5 jury panel's related by blood, connected by marriage or
6 has any close personal or business relationship with any
7 of these individuals: Paige Tucker. And if any of these
8 individuals are in court, if you would just stand for the
9 jury please.

10 Paige Tucker. Eric Russell. Mike Phipps. Candy
11 Kyzer. And if I've mispronouncing these, y'all please
12 correct me. Troy Crump. Walter Goss. Duane Peake.
13 George Marthers. Odie Tribble. Eric Barnes. Scott
14 Faust. Amy Mauldin. Herbie Frazier. Steve Caldwell.
15 Ann Walker. Randy McGee. Phillip Gary. Reginald Lee.
16 Hurlisa Lee. Roy Pascal. Monica Glenn. Tina Goff.
17 David Wilson.

18 Any member of the jury panel related by blood,
19 connected by marriage or have a close personal or business
20 relationship with any of those individuals?

21 Thank you. There are none.

22 Ladies and gentlemen, obviously the purpose in
23 selecting a jury on any case is to impanel people who can
24 be fair and impartial, who can hear the evidence and give
25 both the State of South Carolina and the Defendant in this

OF THE JURY

Mr. Simmons, a fair and impartial trial.

Is there any member of the jury panel who knows any reason why if you were selected you would be unable to do so? If so, please stand.

Thank you. There are none. Any further

6 questions from the State?

7 MR. HUBBARD: None from the State, Your Honor.

8 THE COURT: Anything further from the defense?

9 MS. FULLWOOD: No, Your Honor.

10 THE COURT: Ladies and gentlemen, what we're
11 going to do now is go about the method of selecting a jury
12 in this case.

13 And the way we do it -- I love coming to
14 Lexington and places like this that are very progressive
15 and have the resources that you're blessed to have here.
16 I'm not kidding you when I tell you that in Marion or in
17 Florence we have a wooden barrel, we spin it and we pull
18 your names out one by one.

19 Where was I? I think it might have been in
20 Edgefield or maybe -- I can't remember. Anyway, there's
21 another place I go, maybe Barnwell, that they literally
22 have a cigar box and would pull your names out of that.

23 A little more progressive here in Lexington
24 County and really thankful for that.

25 What we've done, ladies and gentlemen, is your

SELECTION OF THE JURY

1 names, all of your names have been placed in an electronic
2 cigar box or in the computer. And there's a program
3 whereby the clerk can hit a button and what it does is it
4 just randomly selects your names in a random order and
5 puts them on a list. That's what's been done here.

6 And Madam Clerk is going to call out those
7 names. Now if you hear your name called, what we're going
8 to ask you to do is to come forward. And if you'll come
9 before this little lectern right here, this officer will
10 show you, if you'll just come forward. When you get right
11 here in the front, just turn and face the back of the
12 courtroom and just stand there quietly.

13 At that point Madam Clerk will ask the State:
14 What say you for the State. And the State can either
15 accept or excuse you. If the State accepts you, you'll
16 remain standing. Obviously if the State excuses you,
17 you'll go have a seat.

18 But if they, if they accept you, then you'll just
19 you'll continue to stand and then the clerk will recognize
20 the defense and say: What say you for the Defendant. And
21 the defense will either excuse, and if you they excuse you
22 you'll have a seat, or they'll ask that you be seated or
23 they'll accept you.

24 And then if that's the case then you'll come
25 around and you'll have a seat in the jury box. And we'll

SELECTION OF THE JURY

1 go through that process until we have all the jurors
2 selected.

3 So, if you hear your name called, please, when
4 you come forward, bring with you anything you might have
5 brought to the courtroom, pocketbook, a book, umbrella or
6 whatever you may have with you, bring it with you because
7 it may be that you get selected and you're going to need
8 to come sit in the jury box and you won't be going back to
9 your seat. So have everything with you if you hear your
10 name called.

11 All right. State ready to proceed?

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

13 THE COURT: Defense ready to proceed?

14 MS. FULLWOOD: Ready, Your Honor.

15 THE COURT: All right. Hope, if you would.

16 THE CLERK: Five and 10?

17 THE COURT: It's five and 10; yes, ma'am.

18 THE CLERK: Number 115, Ronald McCathern (white
19 male). What say you for the State?

20 MS. GARRICK: Please present the juror.

21 THE CLERK: What say for the defense?

22 MS. FULLWOOD: Please seat the juror.

23 THE CLERK: Have a seat to your right in the jury
24 box, sir. Number 45, Bonnie Craft (white female). What
25 say you for the State?

SELECTION OF THE JURY

1 MS. GARRICK: Please present the juror.

2 THE CLERK: What say for the defense?

3 MS. FULLWOOD: Please excuse the juror from this
4 trial.

5 THE CLERK: Return to your seat, please, ma'am.
6 66, Timothy Fanguy (white male). What say you for the
7 State?

8 MS. GARRICK: Please present the juror.

9 THE CLERK: What say you for defense?

10 MS. FULLWOOD: Did you say number 66?

11 THE CLERK: Yes, ma'am.

12 MS. FULLWOOD: Please swear the juror.

13 THE CLERK: Have a seat in the jury box, please,
14 sir. 78, Brent Gregory (white male). What say for the
15 State?

16 MS. GARRICK: Please present the juror.

17 THE CLERK: What say for the defense?

18 MS. FULLWOOD: Please swear the juror.

19 THE CLERK: Have a seat in the jury box, sir.
20 Number 35, Pat Burgess (white female). What say you for
21 the State?

22 MS. GARRICK: Please present the juror.

23 THE CLERK: What say you for the defense?

24 MS. FULLWOOD: Please excuse the juror from the
25 trial of this case.

SELECTION OF THE JURY

1 THE CLERK: Return to your seat, please, ma'am.
2 74, Verna Gentry (white female). What say for the State?

3 MS. GARRICK: Please present the juror.

4 THE CLERK: What say for the defense?

5 MS. FULLWOOD: Please swear the juror.

6 THE CLERK: Have a seat in the jury box, ma'am.

7 57, Kim Eargle (black female). What say for the State?

8 MS. GARRICK: Please present the juror.

9 THE CLERK: What say for the defense?

10 MS. FULLWOOD: Please swear the juror.

11 THE CLERK: Have a seat in the jury box, ma'am.

12 123, Brandalyn Milford (white female). What say for the
13 State?

14 MS. GARRICK: Please present the juror.

15 THE CLERK: What say for the defense?

16 MS. FULLWOOD: Please swear the juror.

17 THE CLERK: Have a seat in jury box, ma'am.

18 Number 60, Clabie Edmond (black male). What say for the
19 State?

20 MS. GARRICK: Please present the juror.

21 THE CLERK: What say for the defense?

22 MS. FULLWOOD: Please swear the juror.

23 THE CLERK: Have a seat in the jury box, please,

24 sir. Number 118, Susan McGowan (white female). What say
25 for the State?

SELECTION OF THE JURY

1 MS. GARRICK: Please present the juror.

2 THE CLERK: What say for the defense?

3 MS. FULLWOOD: Please swear the juror.

4 THE CLERK: Have a seat in the jury box, ma'am.

5 Number 30, Kevin Brennan (white male). What say for the
6 State?

7 MS. GARRICK: Please excuse the juror.

8 THE CLERK: Return to your seat, please, sir.

9 97, John Keels (white male). What say for the State?

10 MS. GARRICK: Please present the juror.

11 THE CLERK: What say for the defense?

12 MS. FULLWOOD: Please swear the juror.

13 THE CLERK: Have a seat in the jury box, sir.

14 173, Alan Wells (white male). What say for the State?

15 MS. GARRICK: Please present the juror.

16 THE CLERK: What say for the defense?

17 MS. FULLWOOD: Please swear the juror.

18 THE CLERK: Have a seat in the jury box, sir.

19 135, Russell Ricard (white male). What say for the
20 State?

21 MS. GARRICK: Please present the juror.

22 THE CLERK: What say for the defense?

23 MS. FULLWOOD: Please swear the juror.

24 THE CLERK: Have a seat in jury box, sir. Number

25 39, April Carter (white female). What say for the State?

SELECTION OF THE JURY

1 MS. GARRICK: Please present the juror.

2 THE CLERK: What say for the defense?

3 MS. FULLWOOD: Please swear the juror.

4 THE CLERK: Have a seat in the jury box.

5 Alternates, Your Honor?

6 THE COURT: One.

7 THE CLERK: Number 33, Amy Brock (white female).

8 What say for the State?

9 MS. GARRICK: Please present the juror.

10 THE CLERK: What say for the defense?

11 MS. FULLWOOD: Please swear the juror.

12 THE CLERK: Have a seat in the jury box, ma'am.

13 That's your alternate, Your Honor.

14 THE COURT: Thank you, ma'am. Any motions with
15 regards to jury selection from the State?

16 MR. HUBBARD: Nothing from the State, Your Honor.

17 THE COURT: Anything from the defense?

18 MS. FULLWOOD: No, Your Honor.

19 THE COURT: Thank you, ladies and gentlemen. Let
20 me get the attorneys to step up here real quick.

21 (Off-the-record discussion. Sidebar.)

22 THE COURT: Ladies and gentlemen, those of you in
23 the jury panel that remain, I'm going to excuse you for
24 the balance of the day and also for tomorrow.

25 What I would ask you to do, if you would please,

SELECTION OF THE JURY

1 is tomorrow evening after six o'clock, if you would call
2 that number that you've got that they gave you. They have
3 numbers; right?

4 THE CLERK: Yes, sir; they do.

5 THE COURT: If you'll call that number after six
6 o'clock tomorrow night, there'll be an instruction on
7 there regarding your service and when you need to return.

8 I don't know at this point when I'm going to need
9 you again or if I'm going to need you again this week. I
10 just don't know at this point, but I'll have a better idea
11 on that tomorrow. So, if you would please call that
12 number after six o'clock tomorrow evening.

13 Now if you call and you get a busy signal,
14 there's several of you calling. And so please just if you
15 get a busy signal just hang up try again in a few minutes
16 later, it will be open.

17 So having said that, thank you for your time this
18 morning. So if everyone else will remain seated the
19 members of the jury, you're excused. Please call that
20 number after six tomorrow.

21 (Jury panel excused at 11:35 a.m.)

22 THE COURT: All right. Now, with regards to this
23 panel, before I give you any further instruction let me
24 ask this: Mr. Edmond, would you be so kind as to serve as
25 the Foreman of the jury?

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 FOREPERSON OF THE JURY: Yes, sir.

2 THE COURT: Let me just explain to everybody.

3 Ladies and gentlemen, anytime you have a group of people
4 and you're going to be deliberating, discussing, there's
5 13 of you right now, there may be an occasion that as a
6 jury or as an individual you need to communicate with the
7 Court.

8 Well, rather than do that on an individual basis
9 or on a group basis, it's much easier if the Court can
10 just deal with one individual. And so the Foreperson is
11 the person or kind of the liaison between the jury panel
12 and the Court. So if there's any communications that need
13 to go back and forth, what I will do is get Mr. Edmond, if
14 there's a question or something like that, to write it on
15 a piece of paper, send it out to me and then I'll address
16 it. I may be able to address it simply with Mr. Edmond or
17 it may be that I need to bring all of you out and address
18 it. It just depends on whatever that question may be.

19 The other thing about the duty of the Foreperson
20 is when you are in the jury room to deliberate, and it
21 comes that time, you need to have somebody say, okay,
22 let's go ahead and start. And I'll tell you later that
23 all of you must be present during deliberations so that if
24 someone has to excuse themselves to use the restroom, say,
25 then deliberations need to stop until that person rejoins

INTRODUCTORY COMMENTS TO THE JURY

JUR And the reason for that is so that everybody has the benefit of the discussions.

What I also will tell you is this. The Foreperson is no more important than any of you. The jury verdict must be a unanimous verdict. All of you must agree on whatever verdict you reach. So, therefore, the Foreman's opinion carries no more weight, their vote carries no more weight than anybody. It's just when you got a group of people, you just need to have one person say, okay, let's go ahead and start or let's stop while that person is out and then when that person comes back to say okay, let's start back.

And let me say this: Mr. Edmond and Ms. Brock, the two seats that y'all occupy now, if you would, please sit in those two seats whenever you're out here in the jury box. For the remaining members of the panel, there's no assigned seating other than those two seats. So please feel free to sit anywhere you want.

We tend to be creatures of habit. My wife and I, when we go to church on Sunday if somebody is sitting in our seats, we look around like we're lost. We don't know what to do. We don't have assigned seats in church, but it's become a habit, you sit in those seats.

And, you know, if you've taken a hankering to the seat you're sitting in now and you got to have it, that's

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 fine. Sit in it. But if not, please feel free to just
2 file in and file out as you happen to come into the court,
3 and don't feel like you have to crawl over each other to
4 get to a particular seat. Like I said, if you've got one
5 and you're married to it you can sit there, but if you're
6 not you can sit wherever you'd like.

7 Now having said that, there's another important
8 thing I'm going to tell you and this is, you're going to
9 hear this a lot during the course of this trial. And that
10 is this: You're not to have any deliberations, you're not
11 to have any discussions about this case until I instruct
12 you it's proper to do so.

13 So, therefore, during the course of the trial as
14 you go back to the jury room or go to lunch or whatever,
15 you're not to discuss anything you've heard in court, any
16 testimony at all. You're not to discuss it even amongst
17 yourselves. There will be a time that you're going to
18 discuss it and you're going to deliberate, but until that
19 time you're not to have any conversation about the case.

20 What's really important is in a moment I'm going
21 to excuse you also for the balance of the day. We're
22 actually going to begin the trial of this case tomorrow.
23 I have matters of law that I have to take up with the
24 attorneys that's going to really take up a lot of our time
25 today. So, I'm going to excuse you as well.

DUCTORY COMMENTS TO THE JURY

JUDGE:

it's very important that you have no conversation
body about this case and do not allow people to
1 conversations with you. If someone tries to talk
you about the case, please let them know that you're
juror and you're not allowed to talk. If they persist
continue, please get their name for me and let me know
who that is and I'll make sure that that doesn't
8 continue.

9 When you go home, there's absolutely no question
10 that a loved one, friend, family, spouse is going to want
11 to know did you get picked on a jury. You can tell them
12 you did, but at that point that's when it needs to stop.

13 Something as innocent as saying, yeah, it's an
14 armed robbery case, that may cause that person to make a
15 comment or to say something that might compromise your
16 ability to be fair and impartial. Right now all of you
17 have indicated your ability to be fair and impartial when
18 you haven't heard anything about the case but the little
19 bit I've shared with you.

20 Something as innocent as saying that, it's the
21 type of case it is, or who's it against and name the
22 Defendant, or who are the lawyers and naming the lawyers;
23 anything as innocent as that could possibly cause somebody
24 to say something that would conflict with your ability to
25 be fair and impartial. So what I'm going to ask you to do

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 is respectfully tell your friends, your family members,
2 yes, I've been selected on a case. The Judge has
3 indicated that I'm not to have any conversation about it.

4 However, when it's over you can tell them
5 everything. You can do like they do in California and
6 write a book about it if you'd like. But until that time
7 please respect that. Please respect that on behalf of the
8 State, as well as on behalf of Mr. Simmons that you have
9 no conversation. And ask your friends and family members
10 just to be patient and you'll certainly share everything
11 that they want to hear when the time is appropriate.

12 What I'm going to do at this point is, I'm going
13 to ask you to follow the bailiff back into your jury
14 room. He's going to take you back and show you where your
15 jury room is. And then you're free to go. And I will ask
16 you, if you would, to be back in that jury room so that
17 when you come back to the courthouse tomorrow, go straight
18 to your jury room. And if you would, please be back in
19 that jury room by 9:15.

20 We'll have some refreshments for you. So I don't
21 know whether they do biscuits or muffins or doughnuts or
22 something, but there will be something for you when you
23 get here, coffee and stuff like that. But if you would,
24 please be back in your jury room at 9:15 and we'll get
25 started shortly thereafter with the trial.

PRETRIAL HEARINGS AND MOTIONS

1 Okay. So, if you would, everyone else please
2 remain seated, members of the jury you're free to go for
3 day.

4 (Jury exits courtroom at 11:44 a.m.).

5 THE COURT: All right. All the jurors are gone
6 here. Let me ask, now, I think you indicated we have a
7 Jackson V. Denno?

8 MR. HUBBARD: Yes, sir, Your Honor.

9 THE COURT: And --

10 MR. HUBBARD: Neil V. Biggers.

11 THE COURT: -- and a Biggers. Anything else?

12 MR. HUBBARD: Other than the issue concerning
13 security in the courtroom. And I do have the attorney
14 here from the sheriff's department, but I'll be happy to
15 handle it, too, Your Honor.

16 THE COURT: All right. That's fine. Let me
17 see. We'll handle that first.

18 MR. HUBBARD: Yes, sir.

19 THE COURT: And then I'll ask y'all, since y'all
20 have a better idea as far as the length of your motions.
21 After handling that issue, would it be an appropriate time
22 to break for lunch and do these after lunch or however you
23 want to do it.

24 MR. HUBBARD: Whatever Your Honor would like to
25 do.

PRETRIAL HEARINGS AND MOTIONS

1 THE COURT: I don't know if you had a witness
2 that you needed to get up here or.

3 MR. HUBBARD: Whatever, Your Honor. We don't
4 have to do that right away, but we're prepared to do it.

5 THE COURT: Okay. How about the defense? Is
6 there any preference regarding first taking up the first
7 issue that Mr. Hubbard brought up, but then before we get
8 into the meat of these other motions, would you prefer to
9 break for lunch or does it --

10 MS. FULLWOOD: Whatever the Court -- is most
11 convenient for the Court.

12 THE COURT: Okay. Well, y'all are just too
13 kind. I'm trying to dump that responsibility on y'all.

14 You know, I think if it doesn't inconvenience any
15 of the witnesses terribly, we may go ahead and break after
16 we hear this first matter just so that once we get started
17 we can go through and take care of everything.

18 So having said that, Mr. Hubbard.

19 MR. HUBBARD: Yes, sir, Your Honor.

20 Your Honor, there is a motion by the State, both
21 the solicitor's office and the sheriff's department, that
22 during the course of this trial the Defendant be placed in
23 what they call a rack belt which is a remote activated
24 custody control belt. I believe he's wearing one now
25 under his clothing. In case there's any type of

PRETRIAL HEARINGS AND MOTIONS

1 misconduct on his part, that can be activated to disable
2 him, thereby securing the security of the courtroom.

3 Your Honor, the reason why this is brought up, is
4 we have a number of prior instances involving this
5 Defendant. While he was incarcerated at the Alvin S.
6 Glenn Detention Center in Richland County, he had a number
7 of instances where, involving bodily fluids and spitting
8 at guards. There was one in July, July 9th of 2004, July
9 16th of 2004, July 17th of 2004, September 11 of 2004,
10 October 5th of 2004, October 27th of 2004, December 11th
11 of 2004, December 24th of 2004, March 25th of 2006.

12 Also, while at the Alvin S. Glenn Detention
13 Center he was charged with striking and assaulting a
14 correctional officer. He struck the officer in the
15 forehead with the handcuffs. That was on May 17th of
16 2005.

17 There is also, in West Columbia, Lexington
18 County, an attempted escape and assault with bodily
19 fluids. In that case, Your Honor, he was being brought
20 from either Richland or Kershaw to West Columbia so that a
21 warrant could be served and a bond hearing could be had.
22 During the transit of the Defendant in that instance, he
23 managed somehow to wiggle free out of handcuffs in the
24 squad car and reach through from the back seat towards an
25 officer and actually place his hand on the officer's

PRETRIAL HEARINGS AND MOTIONS

1 weapon.

2 They were able to restrain him at that time.
3 Once they took him to West Columbia then there was a
4 spitting incident on one of the officers at the West
5 Columbia Police Department. That was in July 9th of 2004.

6 The Columbia Police Department had an incident
7 where he actually escaped from custody. When he was taken
8 to, I believe it's Richland County Courthouse for a
9 hearing on one of these cases he's involved in, he was
10 able to actually break free. They did end up recapturing
11 him. That was November 7th of 2005.

12 There is an attempted escape, South Carolina
13 Department of Corrections, on February 16th, 2007. I
14 believe that was another time, Your Honor, where they had
15 him in court. It may have even been during his trial, but
16 South Carolina Department of Corrections had custody and
17 control over him, found a key, a handcuff key in his
18 genital area under his clothing that could have enabled
19 him to break free at that time.

20 In addition, Your Honor, we have a series of
21 letters from Mr. Simmons while he was being held in
22 Kershaw County, Detention Center at Kershaw County, at
23 least three letters where he has written a friend outside
24 of the institution plotting and planning on how to break
25 out of that institution, asking for their assistance.

PRETRIAL HEARINGS AND MOTIONS

1 These letters go into some detail about the guards that
2 are on duty, their habits, smoking habits, when they go on
3 break, the lighting in that facility.

4 And one letter, Your Honor, he goes on and draws
5 a diagram of the fenced area, shows where a light fixture
6 is turned off. He talks about the fencing. He goes into
7 some detail of the facility he's in, the guards guarding
8 that facility, the surrounding area, and the best way to
9 break out.

10 Your Honor, he seems to have basically in the
11 period of time he was there able to figured out the
12 security shortfalls and how to get out of that facility.

13 For those reasons, Your Honor, since we're in
14 trial here and there are transit issues and obviously
15 members of the public are free to come in here, we're
16 joining the sheriff's department to request that a rack
17 belt be placed on the Defendant at all times during the
18 course of this trial.

19 And, Your Honor, I've prepared with the help of
20 my investigator, Matt Martin, a notebook listing all of
21 these instances, incident reports, and the letters. And
22 I'm prepared to hand that up with a proposed order
23 prepared by John Tate at the sheriff's department. He's
24 the attorney at the sheriff's department. I would hand
25 this up. I would just ask this notebook be made a Court

PRETRIAL HEARINGS AND MOTIONS

1 Exhibit, if Your Honor is willing to sign the order.

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

3 Ms. Fullwood or Mr. Cornwell?

4 MS. FULLWOOD: Your Honor, we realize we can't
5 dictate security procedures, but we would object to any --
6 that, either showing the jury that Mr. Simmons is in some
7 way being contained or confined during the trial such as
8 handcuffs or anything like that.

9 We don't know how the trial is going to develop,
10 but should he decide to take the stand in the presence of
11 the jury we would have to work out some sort of method so
12 that he could get to the stand without the jury being
13 aware either that he had chains on or that his posture or
14 gait was affected by the security belt.

15 Basically -- and relatedly, we would object to
16 security methods that in some way would create the
17 impression in front of the jury that this particular
18 individual -- that the particular Defendant is getting
19 extraordinary security measures as opposed to other
20 defendants.

21 THE COURT: All right. Thank you, ma'am.

22 What I'm going to do is I'm going to allow for
23 the -- I don't know the name of it, but the control belt,
24 the security belt. I'm going to allow that.

25 The desk where Mr. Simmons is sitting and where

PRETRIAL HEARINGS AND MOTIONS

1 everyone is, it's clearly an open space and therefore it
2 would not be appropriate. And I agree with you,
3 Ms. Fullwood, the jury should not be aware of any type of
4 shackles or any type of chains, so I'm not going to
5 require that.

6 Mr. Simmons, let me address you just briefly,
7 sir. Of course, I don't know anything about this trial,
8 and I don't know anything about these other incidences
9 that they've discussed. And so that, as far as I'm
10 concerned, you know, that's not an issue that I need to
11 deal with at this point.

12 What I would like to help you to understand,
13 though, is obviously these incidences, whether they're
14 true or not, has caused there to be some level of
15 concern. I want you present for your trial. I want you
16 to be able to be helpful to your attorneys, to do whatever
17 it is that you can do to help yourself. I want to make
18 sure that your trial is as fair as it could possibly be.

19 And so I don't want, I don't want there to be
20 anything that the jury might would look at that would
21 cause them to think you're under any heightened security
22 or any problem.

23 But what I do -- and I think the belt will do
24 this without causing that, but what I want you to
25 understand is that, and I think you do, I want you to be

PRETRIAL HEARINGS AND MOTIONS

1 here for the whole course of the trial.

2 But if any, if there is any disturbances, if
3 there's anything that occurs, I want you to understand,
4 and I think your lawyers if they haven't already talked to
5 you about it certainly will, that the trial will go
6 forward either with or without you. I'm a firm believer
7 in every defendant being present for their trial if they
8 choose to be, and being able to assist their lawyers and
9 listening to the evidence and talk with their lawyers. So
10 I want to give you every opportunity to do that.

11 However, if there is a disturbance, if there is a
12 concern that arises, I also wouldn't hesitate to have
13 someone removed from the courtroom. You certainly have
14 the right to be present, but that's not an irrevocable
15 right. In other words, that right can be taken away if
16 there's any conduct that would warrant that. And so it
17 could be that if there was any problems, you could be
18 removed from the courtroom and the trial would continue in
19 your absence without you being present.

20 I don't want that. That's the last thing I want
21 to happen because I want you to be here and I want you to
22 have a fair trial. And so I just want to make you aware
23 of that.

24 I am going to agree with the order regarding the
25 custody control belt. I just think that's appropriate and

PRETRIAL HEARINGS AND MOTIONS

1 I think it can be done without prejudicing your presence
2 here in the courtroom and so we will do that. But any
3 other security measures involving either handcuffs or
4 shackles, we won't use in the courtroom.

5 As far as outside the courtroom, whatever
6 security law enforcement feels is appropriate, that's what
7 they're certainly entitled to do and would support them in
8 that.

9 Anything further on this issue?

10 MR. HUBBARD: Nothing from the State, Your Honor.

11 THE COURT: Anything from the defense?

12 MS. FULLWOOD: No, Your Honor.

13 THE COURT: All right. Ms. Fullwood and
14 Mr. Cornwell, if there's any need that you have to see
15 Mr. Simmons when we're not in session or whatever, if
16 you'll just relate that to law enforcement, and I'm sure
17 they'll accommodate you on that. If you need my help with
18 anything, just ask.

19 But we are going to break at this time and we'll
20 start back at 1:30.

21 MR. HUBBARD: Fine.

22 THE COURT: Is that okay with everybody?

23 MS. FULLWOOD: (Nods head affirmatively.)

24 THE COURT: All right. We'll be in recess until
25 1:30. I have signed this order, Mr. Hubbard, and I am

PRETRIAL HEARINGS AND MOTIONS

1 going to make this notebook a Court's Exhibit.

2 MR. HUBBARD: Thank you, Your Honor.

3 (Thereupon Court's Exhibit No. 1, notebook, was
4 marked and received into evidence.)

5 (Luncheon recess taken at 12:04 p.m., until
6 1:43 p.m., when the hearing of this cause continued as
7 follows:)

8 (State's Exhibit No. 1, diagram, State's Exhibit
9 No., 2, photo lineup, State's Exhibit No. 3, Miranda, and
10 State's Exhibit No. 4, letter to detective, marked for
11 identification.)

12 THE COURT: I understand you've got a report from
13 the Grand Jury.

14 (Thereupon, another matter heard by the Court.)

15 THE COURT: Back on the record then with regards
16 to State versus Mr. Simmons. Are y'all ready to proceed
17 with motions?

18 MS. GARRICK: Yes, sir, we are.

19 THE COURT: All right. State ready?

20 MS. GARRICK: Yes, sir, Your Honor.

21 THE COURT: What do y'all want to handle first?

22 MS. FULLWOOD: Since -- what order do you want to
23 go in?

24 MS. GARRICK: Neil versus Biggers first, Your
25 Honor.

ANN WALKER - DIRECT

1 THE COURT: Does that suit y'all?

2 MS. FULLWOOD: Yes, sir.

3 THE COURT: All right. Let's go ahead and
4 proceed with that then.

5 MS. GARRICK: Your Honor, the State would call
6 Ann Walker.

7 ANN WALKER, having been duly sworn, was examined
8 and testified as follows:

9 THE CLERK: Have a seat up there. Once you have
10 a seat, you need to speak up loud and clear, state your
11 full name, the best you can.

12 THE WITNESS: All right.

13 THE CLERK: And spell your last for us. Okay.

14 THE COURT: It will help you, just speak right
15 into that mike.

16 THE WITNESS: Okay.

17 MS. GARRICK: Can you spell your last name for
18 the court reporter?

19 THE WITNESS: W. A. L. K. E. R.

20 DIRECT EXAMINATION

21 BY MS. GARRICK:

22 Q. Ms. Walker, for purposes of today's hearing we're
23 going to jump right to April 16th of 2004. Where were you
24 working at that time?

25 A. I was working at McDonald's on Saint Andrews Road.

ANN WALKER - DIRECT

1 Q. What hours and what shift did you work?

2 A. I was the opening manager.

3 Q. The opening manager would go in to work about what
4 time?

5 A. Between 4:30 and five.

6 Q. And when you would go in, would you be alone?

7 A. Most of the time.

8 Q. And specifically on April 16th when you got there,
9 would you please tell the Judge where you parked and what
10 door you went in?

11 A. I drove around the building like I always do. And I
12 checked in to make sure there's nothing, no cars or
13 anything. And I went in on the front drive-through side.

14 Q. If I may approach, Your Honor? And I shared those
15 with Ms. Fullwood, what's been marked as State's Exhibit
16 One. If you could show the Judge what door you went in?

17 A. Right there.

18 Q. Does that pointer work? When you went into the store,
19 were the lights on or off?

20 A. I was dark.

21 Q. And can you show the Judge where you went once you
22 came in the front door?

23 A. Okay. I always went right down here to the office and
24 turned the lights on.

25 Q. Can you tell us what these two areas are here?

ANN WALKER - DIRECT

- 1 A. That's a window on the drive-through.
- 2 Q. Are there two drive-through windows there?
- 3 A. Uh-huh.
- 4 Q. Can you show us where the office is on the diagram?
- 5 A. Right here.
- 6 Q. And once you went into that office, what did you do
- 7 first?
- 8 A. I turned the lights on and then I came out.
- 9 Q. Stop right there. When you say you turned the lights
- 10 on, how many lights did you turn on?
- 11 A. The whole store.
- 12 Q. So would the entire store have been lit?
- 13 A. Uh-huh.
- 14 Q. After you left the office, which route did you travel?
- 15 A. I went this way and I turned on the ovens here.
- 16 Q. Where -- and these are the ovens?
- 17 A. Uh-huh.
- 18 Q. And then where did you go?
- 19 A. I went back around here to turn on the fryers. And
- 20 when I got here, I noticed the window was open. So I
- 21 turned around immediately and started to go out.
- 22 Q. You noticed that, what window was open?
- 23 A. The back drive-through window.
- 24 Q. And at that point when you headed back to the front
- 25 door, did anything attract your attention?

ANN WALKER - DIRECT

1 A. I heard a noise in the back.

2 Q. Okay. And when you did that, what did you do?

3 A. I just kept going.

4 Q. Okay.

5 A. And I looked back and I saw somebody squatting on the
6 freezer.

7 Q. Okay. And at this point, about how far from the
8 freezer were you at the front door?

9 A. Probably about eight, nine feet.

10 Q. Would it be closer than I am to you now?

11 A. No. A little further.

12 Q. Okay. About here?

13 A. Uh-huh.

14 Q. Okay. And when you first saw this person, what did
15 you notice about his physical characteristics?

16 A. Height and slim.

17 Q. Height and, I'm sorry?

18 A. His height.

19 Q. And then?

20 A. That he was slim.

21 Q. Did you notice, was it a male or female?

22 A. Male.

23 Q. What was his race?

24 A. Black.

25 Q. What was he dressed like?

ANN WALKER - DIRECT

- 1 A. He had a sweatshirt on with mirrored glasses.
- 2 Q. Did the sweatshirt have a hood?
- 3 A. Yes, it did.
- 4 Q. Was the hood up or down?
- 5 A. It was up at first.
- 6 Q. Okay. And after you saw him, where did you go next?
- 7 A. I just froze.
- 8 Q. Did this person say anything to you?
- 9 A. He jumped up on the two things.
- 10 Q. Okay. If I can use the diagram, State's One, one more
- 11 time.
- 12 A. Okay. He was right, he was right here. He leaped up
- 13 over here, and wasn't nothing on this front counter.
- 14 Q. What counter is this?
- 15 A. That's the bin where we keep the food warm.
- 16 Q. It's flat?
- 17 A. Uh-huh.
- 18 Q. And what is this counter?
- 19 A. That's a front counter.
- 20 Q. Is this the front door as you say?
- 21 A. Uh-huh.
- 22 Q. After he jumped both counters, did anything change
- 23 about his appearance?
- 24 A. His hood came off and sunglasses.
- 25 Q. His hood?

ANN WALKER - DIRECT

1 A. Came off his head.

2 Q. And sunglasses?

3 A. (Nods head affirmatively.)

4 Q. When you first saw him, did you believe you knew who
5 it was?

6 A. I thought it was an old employee until he got up close
7 to me, and it wasn't him.

8 Q. Had you seen this person before?

9 A. Never.

10 Q. When he approached you at the door, what, if anything,
11 did this person say to you?

12 A. He put a gun to my head and told me to open the safe.

13 Q. And can you describe the gun for us?

14 A. It was, he had it duct taped to his hand, but it was a
15 little silver gun.

16 Q. And how close was he to you when he held the gun to
17 your head?

18 A. Right here. He was on the left side.

19 Q. And what were you focusing on during that time period?

20 A. His face. Just thinking about, you know, I'm going to
21 die.

22 Q. Did anything else else happen with the gun at that
23 time?

24 A. No. He just had it up to my head. He clicked it, or
25 it went click.

ANN WALKER - DIRECT

1 Q. And he said, go to the safe; is that right?

2 A. Uh-huh.

3 Q. So then where did y'all go?

4 A. We went back to the office and he shut the door.

5 Q. Wait a minute. Was he beside you?

6 A. Yeah.

7 Q. Behind you?

8 A. Beside me the whole way.

9 Q. What, if any, instructions was he giving you at that
10 time?

11 A. He was telling me to put all the money in the box.

12 Q. When you got to the back office, did you say the door
13 was shut?

14 A. He shut the door.

15 Q. Is that the office door?

16 A. Uh-huh.

17 Q. And how small an area is that office?

18 A. It's pretty small.

19 Q. Okay. Can you give us any idea?

20 A. About like this (indicating).

21 Q. All right. And were the lights on in that office
22 area?

23 A. Uh-huh.

24 Q. And when you were in that office area, what was this
25 person saying to you?

ANN WALKER - DIRECT

1 A. He was telling me just to get all the money. He just
2 wanted the bills, to put them in the box. He was trying
3 to get the video camera. He was taking that and trying to
4 get it apart.

5 Q. What were you doing while he was trying to do that?

6 A. I was down on the ground, getting the money out of the
7 safe, putting it in the box for him.

8 Q. Did you feel at that time, was there anything blocking
9 your view of him?

10 A. No.

11 Q. Did you feel like you got a really good look at him?

12 A. Uh-huh.

13 MS. FULLWOOD: Objection to the leading, Your
14 Honor.

15 THE COURT: Sustained.

16 MS. GARRICK: I can rephrase it.

17 Q. When y'all were in office there together, was there
18 anything blocking your view of him?

19 A. No.

20 Q. When you were there in the office, and -- did you in
21 fact pack the money?

22 A. Pardon?

23 Q. Pack the money?

24 A. Put it in the box.

25 Q. Did you receive any other instructions from this

ANN WALKER - DIRECT

1 person?

2 A. When he left he told me to lay on the floor and not
3 get up for 15 minutes.

4 Q. Okay. And how long do you think from the moment you
5 first saw him from the freezer area to the point when he
6 left the office?

7 A. About 15 minutes.

8 Q. Okay. Did you see which way he went when he left the
9 office?

10 A. He went out the door and shut the door is the last I
11 saw of him.

12 Q. And at some point, did you talk to law enforcement
13 about this incident?

14 A. Uh-huh. My employees showed up about five minutes
15 later and they called 9-1-1 right away.

16 Q. Did you talk to a Lexington County deputy about what
17 had happened?

18 A. Yes.

19 Q. Did you give a physical description of the person that
20 robbed you?

21 A. Yes.

22 Q. Did you tell the deputy anything else about this
23 robbery?

24 A. That I would never forget the face.

25 Q. We're going to skip forward some. Did there come a

ANN WALKER - DIRECT

1 time when you met Detective Eric Russell?

2 A. Yes.

3 Q. And do you recall Detective Russell showing you any
4 type of photo lineup?

5 A. He showed me two different photo lineups.

6 Q. Before he showed you any, either of these photo
7 lineups, what did you know? I mean, how did you know what
8 you were going to do? Did you receive instructions from
9 the detective?

10 A. He just told me to look at them and see if I knew
11 anybody, if I recognized anyone.

12 Q. Did he ever tell you who's, who was in the photos?

13 A. No, huh-uh.

14 Q. Did any other officer ever tell you who was in the
15 photos?

16 A. No.

17 Q. And do you remember when you saw the first photo
18 lineup?

19 A. Uh-huh; I didn't recognize anyone.

20 Q. And where was that done?

21 A. At my house.

22 Q. And were you ever shown a lineup where you did
23 recognize someone?

24 A. The second one.

25 Q. And where were you when you were shown this phone

ANN WALKER - DIRECT

1 lineup?

2 A. At my house.

3 Q. And who was there when you did this?

4 A. Me and the detective.

5 Q. Okay. And when you saw this photo lineup, what do you
6 recall about the pictures and things of that nature?

7 A. I just recognized the face.

8 Q. What happened when you looked at the lineup?

9 A. I just looked at it and I noticed the nose and the
10 eyes.

11 Q. And did you recognize the person that robbed you in
12 that lineup?

13 A. Yep.

14 Q. Did you have any idea of this person's name?

15 A. No.

16 Q. Did the detective suggest to you that he was someone
17 that law enforcement --

18 A. No.

19 Q. -- was looking at? Was there another officer there?
20 Do you remember another officer there?

21 A. I don't think so.

22 Q. And did you indicate in writing that you recognized
23 someone?

24 A. Yes, I did.

25 Q. If I can show you what's been marked as State's

ANN WALKER - DIRECT

- 1 Exhibit Two. Do you recognize this document?
- 2 A. Uh-huh.
- 3 Q. What is this?
- 4 A. That's the second lineup.
- 5 Q. Okay. And did you sign this document?
- 6 A. Yes.
- 7 Q. And did you indicate that you recognized someone in
- 8 the lineup?
- 9 A. Yes.
- 10 Q. Who did you recognize, which photo? Are those your
- 11 initials there?
- 12 A. Yes.
- 13 Q. Once you saw the photo lineup, how long was it before
- 14 you made the identification?
- 15 A. Wasn't very long.
- 16 Q. And do you see the man who committed the armed robbery
- 17 in the courtroom today?
- 18 A. Yes.
- 19 Q. On what are you basing this in-court identification?
- 20 A. I remember that face. I never will forget it.
- 21 Q. Do you remember the face from the photo lineup or from
- 22 the armed robbery?
- 23 A. From the robbery.
- 24 Q. Beg the Court's indulgence one moment.
- 25 (Pause.)

ANN WALKER - CROSS

1 Q. When you gave the physical description to law
2 enforcement, do you remember the height of the suspect?

3 A. About five-nine.

4 Q. And the weight as well?

5 A. He was slim built.

6 Q. Slim built. Okay. That's all I have, Your Honor.

7 THE COURT: Any questions, Ms. Fullwood?

8 MS. FULLWOOD: Yes, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. FULLWOOD:

11 Q. Ms. Walker, I hope you're feeling better.

12 A. Thank you.

13 Q. Ms. Walker, what time did you get to work that day?

14 A. About 4:30.

15 Q. About 4:30. And what time did you have to get up to
16 get there?

17 A. Well, I get up at 4:15. I just lived right across the
18 street.

19 Q. So you just throw on your clothes and go?

20 A. Uh-huh.

21 Q. Do you remember what time you had gone to bed the
22 night before?

23 A. Yeah. Probably around nine.

24 Q. About nine. Okay. Early to bed, early to rise?

25 A. Yeah. I got to get up so early.

ANN WALKER - CROSS

1 Q. Okay. Now, as I understand it, you went in there --
2 and let me put the cap on my pen so I don't accidentally
3 make a mark on the exhibit. You went into McDonald's from
4 this door?

5 A. Right.

6 Q. And from there you walked down this corridor to go --

7 A. Right.

8 Q. -- to the circuit box?

9 A. The box.

10 Q. Okay. And that's not a very long corridor; is that
11 correct?

12 A. No.

13 Q. And during that time you did not notice that there was
14 anybody else in the store?

15 A. No. There was a whole back room, too, and a break
16 room in the back.

17 Q. Okay. You mean there's more of the store than on this
18 diagram?

19 A. Yes; there's a stockroom, a freezer.

20 Q. Okay. Okay. And once you turned the lights on you
21 went over here to the ovens?

22 A. Uh-huh.

23 Q. Did you go from here --

24 A. Yeah.

25 Q. -- this way --

ANN WALKER - CROSS

1 A. Yeah.

2 Q. -- to go to the ovens?

3 A. Yes.

4 Q. And you didn't notice anybody in the store then?

5 A. No.

6 Q. And you went to the ovens, from the ovens to the
7 fryers?

8 A. Yeah. Right to the front counter.

9 Q. These are the fryers?

10 A. Uh-huh.

11 Q. Did you go around this way?

12 A. I made a little path there.

13 Q. So you sort of like a circle?

14 A. Uh-huh.

15 Q. At that time you did not notice anybody?

16 A. No. That's when I noticed the drive-through window
17 open.

18 Q. You noticed what?

19 A. The window open.

20 Q. And is that how you folks are trained, that if you see
21 that the building's not secure, you're supposed to leave?

22 A. Uh-huh.

23 Q. Okay. And when you walked from here to go toward the
24 door, you didn't see anybody?

25 A. No. I heard something and I turned around and

ANN WALKER - CROSS

1 looked. And that's when I saw somebody squatting down on
2 the freezer.

3 Q. That was over here?

4 A. Right in there, yeah.

5 Q. And you think that's -- and where were you?

6 A. I was right there by the front counter.

7 Q. Do you want to point and show it?

8 A. Right about here.

9 Q. About there. Were you on the customer side of the
10 counter?

11 A. Right in the middle.

12 Q. Right here?

13 A. Uh-huh.

14 Q. Okay. And you moved on towards the door?

15 A. Right.

16 Q. All right. And --

17 A. That's when they --

18 Q. You turned and saw a person?

19 A. (Nods head affirmatively.)

20 Q. All right. After you saw the person, did you continue
21 to the door?

22 A. I froze.

23 Q. You just froze?

24 A. Uh-huh.

25 Q. And did the person immediately jump over --

ANN WALKER - CROSS

1 A. Yes.

2 Q. -- this table?

3 A. It's a bin and then over the counter.

4 Q. I'm sorry, ma'am. This is a what?

5 A. A bin where they keep the food warm.

6 Q. A bin?

7 A. Uh-huh.

8 Q. The person jumped over the bin and the counter?

9 A. Uh-huh.

10 Q. And did that take place in a matter of seconds, do you
11 think?

12 A. Yeah.

13 Q. During that period of time, the person had on
14 sunglasses?

15 A. He had them on when he was on the freezer, but after
16 he hurdled everything he didn't have nothing on him.

17 Q. Did he still have them with him?

18 A. I don't know where. The sweatshirt was still on but
19 the hood wasn't. He still had the sweatshirt on but he
20 didn't have no hood.

21 Q. Okay. And at any time after the hood came off and the
22 glasses came off, did he put the glasses back on?

23 A. No.

24 Q. But you don't know what happened to them?

25 A. No.

ANN WALKER - CROSS

1 Q. Okay. So, within a matter of seconds the man had
2 gotten to you?

3 A. Right. And he had the gun.

4 Q. Now when you first saw this man, you thought he was
5 somebody who used to work there --

6 A. Right.

7 Q. -- named Eric Hart; is that right?

8 A. Right.

9 Q. And what about that man resembled Eric?

10 A. His height and weight. He had the same built.

11 Q. Okay. And the man didn't just sit there and look at
12 you, he came after you the minute --

13 A. Uh-huh.

14 Q. -- you noticed him? Okay. But as he was running for
15 you, were you, did you turn and try to get out of the door
16 before he could catch you?

17 A. I don't remember.

18 Q. Okay. Okay. But you could have?

19 A. No.

20 Q. You don't think you did --

21 A. No.

22 Q. -- try to run out?

23 A. He was there that quick with the gun.

24 Q. He was just too quick?

25 A. Yeah. He looked like a hurdler.

ANN WALKER - CROSS

- 1 Q. Okay. Now, didn't you tell the police the man put the
2 gun behind your right ear?
- 3 A. No. It went right here (indicating).
- 4 Q. Ma'am?
- 5 A. Right here (indicating.)
- 6 Q. To the side of your head?
- 7 A. Right. I didn't see exactly where, but it was right
8 here (indicating).
- 9 Q. Okay. You couldn't see exactly where --
- 10 A. No.
- 11 Q. -- because it was at your side?
- 12 A. I just heard it go click. See, I saw it when he come
13 over because he had it duct taped to his hand.
- 14 Q. You noticed that part?
- 15 A. Yeah.
- 16 Q. So, did you walk from the counter back to the office
17 the entire time that the man had the gun to your head?
- 18 A. Gun to my head.
- 19 Q. So he was walking --
- 20 A. Besides me.
- 21 Q. -- beside you? And you were looking straight ahead --
- 22 A. Right.
- 23 Q. -- correct? So any opportunity to see that you might
24 have had would have been in your peripheral vision?
- 25 A. Right. But see, when we were in the office, I could

ANN WALKER - CROSS

1 see.

2 Q. Okay. We'll talk about the office in a minute.

3 A. Okay.

4 Q. We'll try to take it step by step. All right?

5 Now, how long do you think it took you to walk from
6 the door back to the office?

7 A. About a minute, two minutes. It wasn't very long.

8 Q. Well, it's only, what, about 12 feet or so?

9 A. Uh-huh.

10 Q. So it would take you even less than a minute; right?

11 A few seconds?

12 A. Right. It seemed like a lifetime.

13 Q. I understand that. I understand that probably time
14 had stopped still for you, but it really doesn't take very
15 long to walk that long?

16 A. No.

17 Q. Okay. And you start -- did he tell you right away,
18 get --

19 A. He told me to open the safe.

20 Q. Get the money, and that would be right here?

21 A. Right. He was standing right next to me.

22 Q. He was standing right next to you, there?

23 A. Right.

24 Q. Were you standing or kneeling --

25 A. Right.

ANN WALKER - CROSS

1 Q. -- while you were getting the money? Well, which one,
2 standing or kneeling?

3 A. Kneeling, because the safe's on the ground.

4 Q. So you were on the floor?

5 A. Uh-huh.

6 Q. And he was --

7 A. Right next to me.

8 Q. -- behind you?

9 A. No.

10 Q. To your side?

11 A. To the side.

12 Q. And what kind of safe is that, is it one --

13 A. Combination.

14 Q. -- like three numbers, you dial them one way?

15 A. Yeah.

16 Q. And did you have to look at the dial of the safe in
17 order to open it?

18 A. Yeah.

19 Q. Okay. And is that a pretty simple safe to open?

20 A. If you know what you're doing.

21 Q. And you know what you're doing --

22 A. Right.

23 Q. -- obviously? Okay. So it didn't take you very
24 long --

25 A. No.

ANN WALKER - CROSS

1 Q. -- to get -- okay. And then you got the money out of
2 the safe?

3 A. Right.

4 Q. He didn't handle the money?

5 A. No. He just told me to put it in the box. We have a
6 petty cash box, and he told me to put all the money in
7 there and that he didn't want no change, he just wanted
8 the bills.

9 Q. Okay. And did he deal with the money at all? Did he
10 get down on your level to go through the safe?

11 A. No. He was just standing there.

12 Q. Just standing there.

13 A. Trying to get the video machine apart.

14 Q. Okay. And then your attention was to get the money
15 and put it in the box?

16 A. Right, but I was facing --

17 Q. You were facing --

18 A. I mean, down there on the floor --

19 Q. Uh-huh.

20 A. -- the safe is open, he's standing right here and I'm
21 right here.

22 Q. Okay. But he's standing and you're kneeling?

23 A. Right.

24 Q. And you're putting money into the box?

25 A. Uh-huh.

ANN WALKER - CROSS

1 Q. And would that -- would just take a minute or two to
2 do that?

3 A. No. It was eight drawers I had to pull out.

4 Q. Eight drawers?

5 A. Right.

6 Q. So you had to look at, what, each of eight drawers,
7 open it and pull that money out, and then put it in the
8 box?

9 A. (Nods head affirmatively.)

10 Q. All right. Now, didn't you tell the police that the
11 man told you not to look at him?

12 A. Right.

13 Q. Okay.

14 A. That was when he was leaving.

15 Q. When he was leaving. Okay. And that was at the point
16 where he told you to lie down on the floor?

17 A. Right. Yes.

18 Q. Okay. And I imagine at that point you were so scared
19 you didn't dare defy him by looking at him; is that right?

20 A. (Nods head affirmatively.)

21 Q. Okay. Okay. Now, you've told us that you gave a
22 description of the man that morning?

23 A. Yes, ma'am.

24 Q. And you say that he was about five-nine?

25 A. Yes, ma'am.

ANN WALKER - CROSS

1 Q. And what style of hair did you tell them that he wore?

2 A. He didn't have any. It was like shaved off.

3 Q. He had no hair. Okay. Was there anything distinctive
4 about this man's eyes?

5 A. His eyes and his nose, the way his nose was shaped.

6 Q. What do you mean the way his nose was shaped?

7 A. It was shaped different.

8 Q. Shaped different. Okay. Was there anything unusual
9 about his mouth?

10 A. I didn't pay --

11 Q. How about his teeth, did you notice anything?

12 A. No, I didn't notice.

13 Q. Was there anything distinctive about his ears?

14 A. No.

15 Q. Okay. Did you notice any piercings that the man might
16 have had?

17 A. No.

18 Q. How about tattoos?

19 A. I didn't notice.

20 Q. Any scars? Scars?

21 A. Stars?

22 Q. Scars?

23 A. Scars (shakes head negatively).

24 Q. Okay. Did you notice anything unusual about his
25 hands?

ANN WALKER - CROSS

1 A. Just the gun in it.

2 Q. Well, okay. Fair enough.

3 A. Because it was taped up.

4 Q. Yes, ma'am. And you say he was wearing a sweatshirt?

5 A. Yes, ma'am.

6 Q. What color was it?

7 A. It was gray.

8 Q. And what kind of pants did he have on?

9 A. I believe they were black.

10 Q. They were black?

11 A. (Nods head affirmatively.)

12 Q. Okay. And what kind of shoes did he have on?

13 A. I didn't see the shoes.

14 Q. You didn't see the shoes. Why not?

15 A. (Shrugs shoulders.)

16 Q. Now, a few days -- Your Honor?

17 THE COURT: Yes, ma'am.

18 MS. FULLWOOD: I am only asking this next line of
19 questioning for the purposes of this hearing.

20 THE COURT: All right.

21 MS. FULLWOOD: All right. I do not intend to
22 delve into this matter --

23 THE COURT: All right.

24 MS. FULLWOOD: -- at any other part of the trial.

25 BY MS. FULLWOOD:

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1 Q. Less than a week after you got robbed, you saw some
2 video footage of the robbery of a Decker Boulevard
3 McDonald's on TV; didn't you?

4 A. No. They showed it to me.

5 Q. The showed it -- the police showed it to you?

6 A. Uh-huh.

7 Q. And at that time you did not notice --

8 A. I couldn't recognize him the way the, the quality of
9 the video was.

10 Q. So did you not notice the man in that videotape as
11 being the same as the man who robbed you?

12 A. No.

13 Q. Okay. I beg the Court's indulgence.

14 (Pause.)

15 THE COURT: Yes, ma'am.

16 MS. FULLWOOD: No further questions, Your Honor.

17 THE COURT: All right. Anything further?

18 MS. GARRICK: One brief question, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. GARRICK:

21 Q. When you gave the description of the person, do you
22 remember what age bracket you put him in?

23 A. In mid twenties, 30s.

24 MS. GARRICK: That's all, Your Honor.

25 THE COURT: All right. Thank you, ma'am. You

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1 may step down.

2 THE WITNESS: All right.

3 MS. GARRICK: Your Honor, we call Detective Eric
4 Russell.

5 ERIC REDMOND RUSSELL, having been duly sworn, was
6 examined and testified as follows:

7 THE CLERK: Have a seat. State your full name,
8 spelling your last.

9 THE WITNESS: Eric Redmond Russell, R. U. S. S.
10 E. L. L.

11 DIRECT EXAMINATION

12 BY MS. GARRICK:

13 Q. Detective Russell, where are you employed?

14 A. Lexington County Sheriff's Office.

15 Q. And how long have you been in law enforcement?

16 A. About 16 years.

17 Q. And how did you get involved in this case, sir?

18 A. I was the person that was called about 4:30, five
19 o'clock that morning when McDonald's got robbed.

20 Q. And did you meet Ms. Walker there at McDonald's?

21 A. Yes, ma'am.

22 Q. Did she indicate to law enforcement a general
23 description of the suspect?

24 A. That's correct; she did.

25 Q. Through the course of your investigation, were you

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1 cannot afford an attorney, I can apply to the Court to
2 have one appointed at no cost to me; and that if I decide
3 to talk to an officer without an attorney present, I may
4 stop at any time and request an attorney be present for
5 further questioning.

6 Mr. Simmons placed his initials besides each one of
7 those rights indicating they had been read to him.

8 Q. Did Mr. Simmons indicate a willingness to discuss the
9 armed robbery with you?

10 A. At no time did he say he didn't want to talk. He
11 talked to me and answered my questions; yes, ma'am.

12 Q. Did he want to give a written statement to you at this
13 time?

14 A. No, ma'am.

15 Q. Did he give a reason why not?

16 A. He said that he wanted to talk with his family before
17 he talked, or before he would give a written statement to
18 me.

19 Q. Did he ever ask for an attorney?

20 A. Never; no, ma'am.

21 Q. When he indicated that he wanted to talk to his
22 family, what did you do at that point?

23 A. He had gone -- after he said he wanted to talk to his
24 family, I -- we served the warrants on him and he went
25 back to our jail to be booked and have a bond hearing. I

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1 made contact with his mother and arranged for her to come
2 up to the Lexington County Sheriff's Office to talk with
3 him.

4 She was the specific family member that he said he
5 wanted to speak with.

6 Q. Did you try to provide access to Mr. Simmons of the
7 benefit of his mother?

8 A. Yes, ma'am; I did.

9 Q. Okay. And did he want to see his mother?

10 A. Once he found out that I had made contact with his
11 mother, he got really mad and said he didn't want to talk
12 at all.

13 Q. Did you interrogate him or interview him any more?

14 A. No, ma'am.

15 Q. During that time period?

16 A. No, ma'am.

17 Q. Did you have an occasion to meet the Defendant again?

18 A. Yes, ma'am. On October the 18th of 2005, I received a
19 letter through the US Mail and the sheriff's office from
20 Mr. Simmons where he requested that I come over to
21 Richland County Jail.

22 In this letter he stated that he had wanted to gave a
23 confession and tell who his accomplice was.

24 Q. If I can show you what's been marked as State's Four.
25 Do you recognize this document?

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1 A. Yes, ma'am. That's the letter that I received in the
2 mail.

3 Q. And what verbatim does it say?

4 A. It's got a date of 10/16/05. It says: Dear Mr. Eric
5 Russell. I am writing you to let you know I am ready to
6 confess and to also give up my accomplice. I would like
7 to talk to you in person, please. Thank you.

8 Mr. Alphonso Simmons.

9 Q. And, after receiving that letter, what action did you
10 take?

11 A. The next day, October 19th, I went over to Richland
12 County Jail to talk to Mr. Simmons.

13 Q. Were you alone?

14 A. I'm sorry?

15 Q. Were you alone?

16 A. Yes, ma'am; I was.

17 Q. And when you got there, did you in fact see

18 Mr. Simmons?

19 A. I did. I located him in what they refer to as 2

20 Dorm. I was escorted by Richland County Correctional

21 Officer up to his cell. Told him who I was. I was Eric

22 Russell. That I had gotten his letter and I was there to
23 talk to him.

24 He was, yeah, I remember. I want to talk to you. I
25 want to tell you about, give you a confession, tell you

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1 who my accomplice was. The reason I want to do this is to
2 get the best deal I can, but I'm not going to talk to you
3 in the jail. I want you to take me out of here so I can
4 talk. I'm afraid people will see me talking to you
5 they'll think I'm a snitch.

6 Q. When he put that limitation on giving a statement,
7 what was your response to him?

8 A. I told him that I couldn't take him out of the secure
9 facility, I wasn't going to do that.

10 Q. And once you gave that answer, was Mr. Simmons
11 cooperative? Did he want to give a statement?

12 A. No. He refused to talk to me to inside the jail. I
13 told him that I could not take him outside of the jail.
14 So I quit, quit with the interview and told him if he
15 changed his mind to write me another letter.

16 Q. Had you questioned him or interrogated him about the
17 armed robbery at McDonald's during that --

18 A. During that time; no, ma'am. We didn't even get that
19 far.

20 Q. Okay. And can you identify who you arrested in this
21 armed robbery and who made those admissions to you?

22 A. Alphonso Simmons. Sitting at defense table.

23 MS. GARRICK: Beg the Court's indulgence.

24 (Pause.)

25 Please answer Ms. Fullwood's questions.

ERIC REDMOND RUSSELL - CROSS

1 THE COURT: Ms. Fullwood.

2 MS. FULLWOOD: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. FULLWOOD:

5 Q. How are you, Mr. Russell?

6 A. How are you doing, ma'am?

7 Q. Fine. Are you ready?

8 A. Yes, ma'am.

9 Q. All right. You testified that you put over, put
10 together over a hundred photo lineups during your years as
11 detective?

12 A. I've shown probably hundreds. I don't know that I
13 created all of them, but I've shown them.

14 Q. But you have created them before?

15 A. I have created them in the past; yes, ma'am.

16 Q. Does the Lexington Sheriff's Department have any type
17 of protocol or any kind of manual that explains to you
18 folks how to do that?

19 A. Not that I'm aware of.

20 Q. Did you receive any training in how to do it?

21 A. On-the-job training.

22 Q. On the job?

23 A. Yes, ma'am.

24 Q. They didn't teach that at the law enforcement academy?

25 A. It's been a long time since I went there. Making

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1 lineups, I don't think so. I mean --

2 Q. Okay. Well, this lineup is basically a photocopy of
3 photographs; correct?

4 A. I think that was -- I mean, I think that was created
5 on a computer, if that's what you're asking.

6 Q. Well, what I'm saying is: Haven't you created lineups
7 before that actually contain original copies of
8 photographs, you know, the glossies as opposed to
9 something you just print off of a regular low-resolution
10 printer?

11 A. The lineups that we created at the sheriff's office,
12 the ones that I create, I don't -- they're created off the
13 computers. So whatever I put in there they just print.
14 I'm not sure if that answers your question or not.

15 Q. Okay. You know that different types of technology can
16 give different types of qualities to the images; right?

17 A. Yes, ma'am.

18 Q. And surely you have worked with lineups that have
19 basically photo-finish quality in the pictures that you
20 use in the lineups?

21 A. Yes, ma'am.

22 Q. All right. And since accuracy is so important, would
23 you agree that that's probably a more optimal way to
24 create a lineup than printing off photographs just with a
25 regular computer printer? Don't you think you get more

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1 clarity using that type of photograph? And I know you
2 didn't create this one.

3 A. I think you're better off making a black-and-white
4 photo lineup, if that's what you're asking me. The reason
5 that is because you don't get any -- no one has a bright
6 red shirt would stand out or everybody has got a black
7 shirt on and the one that's got the red shirt stands out.
8 These kind of take that out of the picture.

9 Q. But there is certain technology that gives you better
10 clarity and better resolution than your black and white
11 photograph; isn't there?

12 A. Yes, ma'am.

13 Q. And you have used those better-quality pictures before
14 when you yourself created a lineup; is that right?

15 A. I'm not going to say that our pictures are any better
16 than these. The printers that the sheriff's office has, I
17 don't think, are any better than the Richland County
18 Sheriff's Office printers. I'm not sure if I'm answering
19 your question or not.

20 Q. Okay. You've made lineups that -- in which you use
21 basically almost the same quality of photograph as what
22 you get, a black-and-white photograph, as what you'd get
23 if you took film and got it developed and used those
24 pictures?

25 A. Yes, ma'am. It depends on the quality of the printer

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1 that you're printing it off on.

2 Q. Okay. And you have seen better quality of pictures
3 than this; haven't you?

4 A. Yes; some of them are clearer, yeah.

5 Q. Okay. Let's now go to May the 26th.

6 A. Okay.

7 Q. You and Detective Goss went over to Richland County?

8 A. That's correct.

9 Q. And picked him up. And did I understand you correctly
10 that he said it's been fun, nothing lasts forever on the
11 ride back to Richland County?

12 A. No, ma'am. On the ride from Richland County to
13 Lexington County.

14 Q. Okay. Can you tell us in what context that statement
15 was made?

16 A. We were just having general conversation on the way
17 back. I was driving.

18 Q. On the way back?

19 A. I mean, on the way back to Lexington County from
20 Richland County.

21 Q. Okay.

22 A. I was driving. Mr. Simmons was in the front passenger
23 seat and Detective Goss was in the back. I think I said
24 to him, you gave us a good run for our money or something
25 like that.

ERIC REDMOND RUSSELL - CROSS

1 And he said, it was fun while it lasted. I don't
2 remember the exact conversation, but it was just general
3 talk and he said, nothing lasts forever.

4 Q. Okay. Were you tape recording or videotaping what was
5 occurring in your vehicle while you were on that ride?

6 A. No, ma'am.

7 Q. Does your vehicle have the technology to do that?

8 A. No, ma'am.

9 Q. All right. Now, you told us that you gave Mr. Simmons
10 Miranda warnings at the sheriff's department?

11 A. At Lexington County; yes, ma'am.

12 Q. And after that, did you in fact interrogate him about
13 this McDonald's robbery?

14 A. After the -- after I gave Miranda?

15 Q. Uh-huh.

16 A. Yes, ma'am.

17 Q. And did he make any statements at that time?

18 A. He would not confirm that he did it. He would not
19 deny that he did it; no, ma'am.

20 Q. Okay.

21 A. He did tell me that he would tell me everything I
22 wanted to know after he talked with his family,
23 specifically his mother.

24 Q. Okay. And then you say the next time you talked to
25 him was on October the 18th?

1 A. Yes, ma'am.

2 Q. Okay. You got a letter?

3 A. That's correct.

4 Q. Had you ever gotten a letter from Mr. Simmons before?

5 A. No, ma'am.

6 Q. Have you ever gotten one from him since?

7 A. No, ma'am.

8 Q. So other than what the letter purports to be, you
9 don't know who wrote the letter; right?

10 A. Well, I know that when I went to the jail and started
11 talking to him, he was -- he acknowledged that he knew why
12 I was there.

13 Q. He knew you were there?

14 A. Yeah.

15 Q. Okay. Okay. And did you interrogate him at that
16 point?

17 A. No, ma'am; we didn't make it that far.

18 Q. That's when you'd gotten into a dispute about where
19 that was going to take place and you left?

20 A. That's correct.

21 MS. FULLWOOD: All right. Beg the Court's
22 indulgence.

23 (Pause.)

24 MS. FULLWOOD: No further questions, Your Honor.

25 THE COURT: Thank you. Anything further from the

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1 State?

2 MS. GARRICK: No, Your Honor.

3 THE COURT: Thank you, Detective. You may step
4 down.

5 THE WITNESS: Thank you.

6 MS. GARRICK: Your Honor, that would be all the
7 witnesses we have.

8 THE COURT: All right. Ms. Fullwood, do you have
9 any witnesses?

10 MS. FULLWOOD: Yes, sir. We will call
11 Mr. Simmons.

12 THE COURT: All right. Mr. Simmons, sir, if you
13 would come around to the witness stand to be sworn,
14 please, sir.

15 ALPHONSO L. SIMMONS, having been duly sworn, was
16 examined and testified as follows:

17 THE CLERK: Have a seat up there, please, sir.

18 DIRECT EXAMINATION

19 BY MS. FULLWOOD:

20 Q. Mr. Simmons, I want to direct your attention to May
21 the 24th -- I'm sorry, May the 26th, when you were
22 transported from Richland to Lexington County. Okay?

23 A. Uh-huh.

24 Q. Do you remember that day?

25 A. Yes, ma'am.

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1 Q. And do you remember riding with Mr. Russell and
2 Mr. Goss from Richland to Lexington County?

3 A. Yes, ma'am.

4 Q. All right. Now, can you explain what happened as far
5 as conversation in that vehicle during the course of that
6 ride?

7 A. We were talking about personal things. I remember him
8 mentioning his daughter.

9 Q. Uh-huh.

10 A. I think she was like 14, 15 at the time. And he was
11 talking about issues he had with raising her and stuff
12 like that. Pretty much personal things in general.

13 Q. Okay. Did he make any remarks to you about the case
14 that we're in court on this week or about any robbery?

15 A. No, ma'am.

16 Q. Okay. Let me ask you this: Before he put you in the
17 car, did he give you your Miranda warnings?

18 A. I don't believe so, ma'am; no.

19 Q. Okay. Do you recall getting to the Lexington County
20 Sheriff's Department?

21 A. Yes, ma'am.

22 Q. Do you recall Mr. Russell reading you your rights off
23 of this form?

24 A. I remember him handing me the form and, you know, he
25 wrote, he wrote the statement and asked me to sign it.

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1 Q. Okay. This statement, Mr. Simmons declines to make a
2 statement?

3 A. And told me to put my initials on it.

4 Q. And you would not sign it; is that correct?

5 A. No. I didn't sign it.

6 Q. Okay. Did he ask you to answer questions about the
7 robbery at the McDonald's at 600 Saint Andrews Road?

8 A. Yes, he did ask me questions.

9 Q. Did you tell him you would talk about that robbery or
10 did you exercise your fifth amendment privilege?

11 A. I told him I was told by my counsel not to talk to any
12 investigators and that's what I was going to do, follow my
13 counsel's advice.

14 Q. Did you have counsel at that time?

15 A. No, ma'am.

16 Q. But you planned to get counsel?

17 A. Yes, ma'am.

18 Q. Did you ask him for counsel while you were at the
19 sheriff's department?

20 A. I believe, I believe that was understood when I told
21 him that my counsel told me not to answer any questions
22 unless he was present.

23 Q. And so in your mind you were not only invoking your
24 fifth amendment privilege, but you were requesting counsel
25 or invoking your right to counsel?

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1 A. I believe that was understood by me saying that.

2 Q. That's what you meant by saying that; is that
3 basically correct?

4 A. Yes, ma'am.

5 Q. Okay. And do you remember the ride back from the
6 Lexington Sheriff's Department to Richland County?

7 A. Yes, ma'am.

8 Q. Okay. And what was the conversation on that ride?

9 A. Pretty much personal, personal things in general.

10 Q. Uh-huh.

11 A. I primarily did tell him that I appreciated the good
12 trip and all of that. I was locked down 23 hours a day in
13 the county. He gave me the opportunity to get some fresh
14 air and I did smoke some cigarettes and eat some street
15 food and stuff like that.

16 That's when I stated, nothing lasts forever, you
17 know. The statement that he's saying that I said. I
18 don't remember the exact words, but what he was saying
19 that I said, it wasn't said in that context that he's
20 saying that I said it.

21 Q. Did you say it's been fun?

22 A. I was speaking about the trip.

23 Q. The trip's been fun?

24 A. Yeah. Nothing lasts forever. It was fun. I was
25 talking about the trip, you know, he, he took it out of

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1 context.

2 Q. The change of scenery from the Richland County Jail?

3 A. Yeah, I pretty much told him, you know, that I was
4 locked down 23 hours a day. He gave me the opportunity,
5 you know, to get fresh air, you know, see the scenery and
6 eat the street food and smoke cigarettes and stuff like
7 that. That's what I meant by it was fun.

8 Q. So you don't deny you made those statements but not in
9 relation to robbing the McDonald's on Saint Andrews Road?

10 A. No, ma'am; huh-uh.

11 Q. Now, do you remember meeting again with Mr. Russell on
12 October the 18th at the Richland County Detention Center?

13 A. I don't remember the date, but I remember he came to
14 see me at the jail.

15 Q. Okay. Have you seen this in your discovery material?

16 A. In my discovery?

17 Q. Yeah. Did you write this letter?

18 A. No, ma'am.

19 Q. All right. And on that day, did you tell Detective
20 Russell that you wanted to give him a confession?

21 A. No, ma'am.

22 Q. Did you have any discussion -- what was your
23 discussion with him on that day?

24 A. He pretty much came to talk to me and, you know, I
25 pretty much told him the same thing that I told him the

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1 previous time that we met, my counsel advised me not to
2 speak to any investigators, only to talk with him present.

3 Q. All right.

4 A. So I pretty much repeated what I told him before.

5 Q. And did he pressure you or did he go on, just leave?

6 A. He asked a couple, I guess he was trying to, you know,
7 get me to, you know, press me, did I want to speak. And I
8 wasn't, you know, I wasn't trying to, you know, unless my
9 counsel was there.

10 Q. Okay. All right. That's all I have, Your Honor.

11 Please answer any questions that the prosecution has.

12 THE COURT: Thank you, ma'am.

13 CROSS-EXAMINATION

14 BY MR. HUBBARD:

15 Q. Mr. Simmons, just a few things. May 26th of 2005,
16 you're in the car, you're going to the sheriff's
17 department to talk with Eric Russell; correct?

18 A. From Richland County to Lexington County.

19 Q. Yes. You said at that time there's no questioning at
20 all, just personal chitchat?

21 A. No. Just personal chitchat and stuff like that, about
22 his family.

23 Q. So there's no interrogation going on?

24 A. No, sir.

25 Q. And you agree that during that ride nothing was

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1 discussed about this case?

2 A. No, sir. Nothing was said about the case.

3 Q. And when you got to Lexington County to the detention
4 center or the sheriff's department they questioned you,
5 the officer gave you the Miranda rights. I believe it's
6 on that form right in front of you, State's Number Three.
7 So you admit he gave you those rights; right?

8 A. No. He handed me the paper and asked me to sign it.

9 Q. Okay.

10 A. I told him, I told him that I wasn't speaking without
11 my counsel. And that's when he handed me the form. He
12 wrote that out and handed me the form and asked me to sign
13 it.

14 Q. You initialed those rights?

15 A. No, I didn't initial anything.

16 Q. Okay. A.S. is not your initials?

17 A. I didn't initial anything.

18 Q. And Mr. Simmons declines to make a statement at this
19 time. Mr. Russell wrote that; correct?

20 A. Yes, sir.

21 Q. And you're saying, if I get you correctly here, that
22 you told him your attorney had told you not to speak to
23 investigators without him being present?

24 A. My counsel advised me not to do any speaking to
25 anybody unless he was there, unless he was there with me.

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1 Q. But you also admit you didn't have an attorney.

2 A. When I was at Kershaw County, I recently got locked up
3 in Kershaw County. Glenn Rogers, Glenn Rogers at that
4 time had told me not to do any talking to anybody unless
5 he was there.

6 Even though I was in a different county at the time
7 but I still, you know, remembered, you know, not to do
8 anything unless I had counsel present.

9 Q. So you basically are telling us that you told
10 Detective Russell that you asserted your right to an
11 attorney at that time?

12 A. I thought that was understood by me saying I'm not
13 going to speak unless I have counsel. So I thought that
14 was understood.

15 Q. You just thought it was understood?

16 A. It was clear to me that I'm not going to speak without
17 my counsel present. I didn't know they was going to do
18 that. They wanted to talk.

19 Q. You never said, I'm not going to talk to you without
20 my lawyer being here; fair enough?

21 A. What I said was, my counsel told me not to do any
22 talking without him present. That's what I said.

23 Q. Right. Whatever your counsel may have said or what he
24 didn't say, I'm asking you: Did you say, I do not want to
25 talk to you without my attorney being here?

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1 A. Not in the exact way that you're saying it.

2 Q. Well, it's the direct way. I don't want to talk to
3 you without my lawyer being here. You didn't say that?

4 A. Not in the exact way that you said it, I mean, I --

5 Q. It's a yes or no question.

6 A. I may -- I thought I made that understood, but I
7 didn't say it the exact way that you said it.

8 Q. Well, let's back it up again. And I'm going to ask
9 you a very simple question. Did you say, I do not wish to
10 speak to you without my attorney being here?

11 A. What I said was, my counsel told me not to do any
12 speaking unless he was present. I'm pretty much saying
13 the same thing that you're saying, but not in the exact
14 words that you're saying.

15 Q. No, no, no. I want you to listen to me. It's a yes
16 or no. I've heard what you've explained. We're going to
17 walk through it piece by piece. Okay.

18 Did you tell this officer, I, Alphonso Simmons, I, do
19 not wish to speak to you without an attorney present; did
20 you say that?

21 MS. FULLWOOD: Objection. Asked and answered.

22 MR. HUBBARD: No answer.

23 THE COURT: All right. Overruled. Go ahead.

24 BY MR. HUBBARD:

25 Q. Did you say that; yes or no?

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1 A. Not in the exact words that you said it.

2 Q. Did you say it in any words that you, not your
3 counsel, did you say, I do not wish to speak to you
4 without my lawyer?

5 A. I expressed that, but not in the words that you're
6 saying. I did express that.

7 Q. All right. Since you're not going to answer my
8 question.

9 A. I'm answering your question.

10 Q. Since --

11 A. You want me to agree to the way you're saying it.

12 Q. Let's go back to what you're trying to say. You said,
13 if I'm correct, Mr. Simmons, my counsel told me not to
14 talk to an investigator without me being present. Is that
15 what you're saying?

16 A. Yes, sir.

17 Q. So that's what your counsel, your attorney wants you
18 to do; right?

19 A. Yes, sir.

20 Q. You never told this officer what you wanted to do,
21 correct? You got to agree with me on that.

22 A. That is what I want to do. I'm not going --

23 Q. You didn't say it, Mr. Simmons. You didn't say, I
24 don't want to talk to you. You just said, my lawyer told
25 me not to talk to you. I don't care what you think what

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1 that means. I'm asking you what you said, the words out
2 of your mouth.

3 A. I've said it four or five times.

4 Q. All right. I'm going to move on. It's obvious you're
5 not going to answer any questions.

6 The ride back to Richland County Detention Center.
7 You say that's when you made these statements, it's been
8 fun while it lasted, all because you had this pleasant
9 trip from Richland to Lexington?

10 A. Yes, sir.

11 Q. And that it's taken out of context, nothing lasts
12 forever; is that your position?

13 A. Your exact words, I remember saying something to that
14 effect but it wasn't in the context that Mr. Russell is
15 trying to say that it was in.

16 Q. Well, let me ask you this: When you were in Richland
17 County being questioned by the Richland County Sheriff's
18 Department, do you admit that you said, it was fun while
19 it lasted? And you had not been on a field trip that
20 day.

21 A. No, I did not say that.

22 Q. So that part's just a lie?

23 A. Yes, sir.

24 Q. And then as far as the trip with Detective Russell,
25 well, he's just got it backwards. It was on the trip

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1 back; correct?

2 A. Yes, sir.

3 Q. So, if I bring Investigator Eric Barnes in here to
4 talk about this statement that you made to him, you're
5 just going to say that one didn't happen?

6 A. Mr. Russell probably talked to Richland County
7 Investigators. They probably told him that story. He
8 probably took the idea, you know, to take my words out of
9 context and use it the way the Richland County
10 Investigator did.

11 Q. The day before you even met Detective Russell?

12 A. I talked to Russell, well, Mr. Russell after I, I was
13 with Richland County Investigators.

14 Q. Okay. So --

15 A. Richland County was before him.

16 Q. So, if their report showed that they talked to you the
17 day before you talked to Detective Russell, then they're
18 just wrong on their dates, too?

19 A. I don't understand what you're saying. I spoke to
20 Russell after I talked to the Richland County
21 Investigators.

22 Q. You talked to -- yes, that's right. You talked to the
23 Richland County Detectives and you made a statement, it
24 was fun while it lasted?

25 A. I know I done made that statement.

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1 Q. So that didn't happen. Then the next day you take a
2 field trip with Detective Russell. You say it's now on
3 the way back that you make the statement it's fun while it
4 lasted?

5 A. Not in the context that he's trying to say that it was
6 put in. I, I, I -- he gave me the opportunity to leave
7 the county jail. I'm locked down 23 hours a day. Gave me
8 the opportunity to --

9 Q. I already heard that.

10 A. Well, I'm letting you know the context that it was put
11 in.

12 Q. That's not my question, the context. My question is:
13 You're saying he said it one time, and that was on the way
14 back from your field trip to Lexington County Detention
15 Center; right?

16 A. On the way back to, going to the detention center.

17 Q. And that when you were in Richland County prior to
18 ever getting in the car with Eric Russell you never made
19 that kind of statement before?

20 A. I didn't hear your question.

21 Q. You never made a statement, it was fun while it lasted
22 to a Richland County Detective before you ever got in
23 Detective Russell's car?

24 A. No, I didn't say that.

25 Q. Okay. So that would just be a flat-out outright lie

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1 if anybody said you made it?

2 A. Yes, sir.

3 Q. So we got a lie on the one end, and a misunderstanding
4 on the other as to that statement --

5 A. Yes, sir.

6 Q. -- it's just out of context? All right. Now, once
7 you're back at Richland County, are you now denying you
8 wrote Detective Russell a letter saying, please come talk
9 to me?

10 A. It's not even my handwriting.

11 Q. I didn't ask you if it was your handwriting. I said,
12 do you deny sending a letter to Detective Russell? You
13 can send a letter without writing it.

14 A. Well, if it's not my handwriting of course I didn't --
15 I did not write it.

16 Q. Did you have somebody write you a letter --

17 A. No, sir.

18 Q. -- saying --

19 A. No, sir.

20 Q. -- Eric Russell, please come talk to me?

21 A. No, sir.

22 Q. Okay. So, if there is a letter that just happens to
23 come from the Richland County Detention Center to

24 Detective Russell, saying, I'm Alphonso Simmons, please
25 come talk to me, I'm ready to confess, give up anybody

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1 that was helping me and all of that, it didn't come from
2 you, Alphonso Simmons?

3 A. If that was the case, then why didn't --

4 Q. I'm not asking you if that was the case. I'm asking
5 it wasn't you; is that what you're saying?

6 A. No, sir.

7 Q. And then when he gets there to talk to you, you're
8 denying that you made any statement about, I'm ready to
9 confess, I'm ready to talk to you, if we leave this
10 facility because I don't want to be a snitch? You're
11 denying that?

12 A. Yes, sir.

13 Q. And, of course, you don't deny your escape attempts
14 and all of that that preceded your conversation with
15 Detective Russell; correct?

16 A. I never tried to escape.

17 Q. That never happened either, all those attempts never
18 happened?

19 A. No, those didn't happen.

20 Q. Okay. Richland County, Kershaw County, West Columbia;
21 none of that ever happened?

22 A. It was a physical altercation with the officers and
23 they made it appear that I was trying to escape.

24 Q. Okay. Well, what about the letters, other letters to
25 your friends about escaping?

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1 A. I didn't write any letters about any escape.

2 MS. FULLWOOD: Your Honor, I'm going to object on
3 the grounds of relevancy.

4 MR. HUBBARD: I'm coming back to it. The
5 relevancy is this.

6 Q. You deny a conversation with Eric Russell that says
7 I'm ready to talk to you if I leave this facility?

8 A. I did not say that.

9 Q. Okay. It's not because you wanted to leave that
10 facility to give you another chance to try and escape?

11 A. I never tried to escape. I never said it.

12 Q. So you never made any escape attempts?

13 A. No. Those incidents were physical altercations I got
14 into with officers. And the officers to make it sound
15 good made it sound like I was trying to, I was trying to
16 escape.

17 Q. And any letters that we may have about you trying to
18 escape, those just aren't your letters either?

19 A. No, it's not my letters.

20 Q. That's just somebody else from Kershaw County, using
21 the name Alphonso Simmons, writing to somebody you just
22 happened to know?

23 A. It's not my handwriting.

24 Q. I didn't ask you if it's your handwriting. You didn't
25 send a letter, whether you wrote it or not, to a friend of

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1 yours?

2 A. No, sir.

3 Q. And you deny sending Detective Russell a letter,
4 whether it's in your handwriting or not, saying, I'm ready
5 to confess?

6 A. I did not send any letter.

7 Q. So all of this stuff didn't happen; correct?

8 A. I didn't write those letters.

9 Q. Okay. Somebody else must have?

10 A. They're not my handwriting.

11 Q. And, again, when he shows up, your statement to him
12 is, my lawyer tells me that I shouldn't talk to an
13 investigator or anybody without him being present; is that
14 what you say?

15 A. That was Mr. Glenn's advice and I was going with that.

16 Q. But you agree you never told him, I don't want to talk
17 to you without my lawyer being present?

18 A. Not in the words that you're using.

19 Q. Again, we're back at the words. I don't care about my
20 words, sir. I'm asking you about yours. You, by your own
21 testimony, agree you never said it, I do not want to talk
22 to you without an attorney?

23 A. I mean, we went over this.

24 Q. Yeah, we have. And a yes or no would be so helpful,
25 Mr. Simmons. It really would.

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1 A. I made -- I thought I made that clear, you know,
2 about --

3 Q. Well then, obviously it isn't, if I'm asking you
4 again. Yes or no; I do not wish to speak to you without
5 an attorney present?

6 A. I told Mr. Russell that.

7 MR. HUBBARD: I'm done with him, Your Honor.

8 MS. FULLWOOD: Very briefly.

9 THE COURT: All right.

10 REDIRECT EXAMINATION

11 BY MS. FULLWOOD:

12 Q. Regardless of what words you used at the Lexington
13 Sheriff's Department, after you said those words did you
14 give Detective Russell a statement?

15 A. No, ma'am.

16 MS. FULLWOOD: Nothing further.

17 MR. HUBBARD: Nothing, Your Honor.

18 THE COURT: Thank you, Mr. Simmons. You may
19 return to your seat, sir. Anything further, ma'am?

20 MS. FULLWOOD: Nothing further, Your Honor.

21 THE COURT: All right.

22 MS. GARRICK: Your Honor, I can address the Neil
23 versus Biggers part of this.

24 THE COURT: All right.

25 MS. GARRICK: Your Honor, as far as the photo

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1 lineup procedure conducted in a manner that was unduly
2 suggestive. If I may approach.

3 THE COURT: Yes, ma'am.

4 MS. GARRICK: I hand up State's Two for you to
5 look at. As far as liability, Your Honor, the Defendant's
6 photo stands out in size or in comparison from the
7 others. And I would argue to you that it does not, Your
8 Honor.

9 That all the subjects are similar in appearance
10 as far as age, general physical characteristics, race.
11 Nothing about those photos indicate the identity of the
12 Defendant and none of the photos imply that any of those
13 people in fact have prior records. So they're not mug
14 shot photos, Your Honor. They're all in black and white.
15 So nothing stands out so the witness would be looking at
16 the faces.

17 As far as the procedure itself, Your Honor, the
18 detective says that he always uses the same procedure,
19 that he does not suggest to the witness that there's
20 someone there that they should be able to recognize. He
21 gives them general instructions, always the same
22 instructions. If you see someone, please pick it out.

23 Your Honor, as far as the procedure itself, I
24 don't believe it was unduly suggestive. But even if it
25 is, if we go to the second prong of the test, was the

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1 procedure so suggestive that it was a very substantial
2 likelihood of irreparable misidentification under the
3 totality of the circumstances.

4 And that's when we get to the five factors of
5 Neil versus Biggers, Your Honor.

6 One, was Ms. Walker's opportunity to view the
7 subject at the time of the crime. How long was it? Well,
8 Your Honor, she said it was about 15 minutes. It seemed
9 like it was the longest 15 minutes of her life. As far as
10 the lighting, she said that all the lights in the store
11 were on, that he was right beside her throughout most of
12 this entire armed robbery.

13 As soon as he leaped over both of those counters
14 he is at her. He has the gun directly to her head on the
15 right side of her head. He walks beside her. She's
16 looking at him out of the side of her eyes. When they go
17 to the back room they're in that small office there
18 together. She is looking at his face. She says that the
19 hood and the sunglasses that had initially been on had
20 fallen off when he leaped over those two counters, that
21 nothing was obstructing his face.

22 Her degree of attention to him, Your Honor, she
23 was able to give a height of five-nine. She was able to
24 give a weight of a slim build. She was able to describe
25 the clothes, a red -- excuse me, a gray hooded sweatshirt

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1 with black pants. She was able to describe the gun being
2 a short, silver gun and that it was duct taped to his
3 hand.

4 Your Honor, it's been said that a person in fear
5 of their life has a more acute degree of attention to
6 their surroundings. And that is State versus Brown which
7 is a 1998 Court of Appeals case.

8 She told us on the witness stand that she was
9 focused on his face, mainly his nose and his eyes as well
10 as the gun, Your Honor.

11 Her accuracy of her prior description of the
12 Defendant, Your Honor, Detective Russell has said that
13 Mr. Simmons matched all of those as far as height, weight,
14 race, sex. And you yourself can observe those general
15 characteristics that she gave at the time that do match
16 Mr. Simmons here in the courtroom today.

17 Her level of certainty when she looked at the
18 photo lineup, Your Honor, she said there was no hesitation
19 on her part, just a couple of seconds. I think Detective
20 Russell said it was a second. There was no hesitation on
21 her part at all.

22 I think it's important to note that she had
23 looked at a prior lineup and didn't pick anyone. So that
24 makes this identification, I would argue, more reliable.

25 As far as the length of time between the crime

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1 and the confrontation. This happened April 16th, 2004,
2 and the photo lineup that she did identify Mr. Simmons was
3 May 24 of 2004. Your Honor, so I think that time period
4 there is not something to worry about.

5 She indicated, I believe at the next time she saw
6 him, she saw him at the armed robbery, she saw him at the
7 photo lineup and she saw him in Court here today. She had
8 not seen him anywhere else, Your Honor.

9 We don't think that photo lineup procedure itself
10 was unduly suggestive in any way, but even if it was I
11 believe that the testimony that you heard from her and
12 Detective Russell show that there's not substantial
13 likelihood of misidentification of him.

14 And as far as her in-court identification, Your
15 Honor, she says that she basis that on the robbery from
16 that night. She would never forget it. So it's not
17 because of a photo lineup. It's not because he's on trial
18 here today. She says she recognizes him from the robbery
19 of that night.

20 Your Honor, I believe that's all I have as far as
21 Neil versus Biggers.

22 THE COURT: All right. Ms. Fullwood?

23 MS. FULLWOOD: Your Honor, our position is that
24 the identification procedure used was in fact unreliable.

25 If Your Honor will look at the State's Exhibit, I

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1 point out to the Court that the quality of the picture,
2 that is what Ms. Walker was shown. That's not a photocopy
3 of it. That is what she was shown.

4 The quality of those photographs is very poor.
5 Detective Russell kind of hemmed and hawed around about it
6 a bit but finally he admitted he has used and made up
7 phone lineups that use photographs of higher quality.

8 The description that Ms. Walker was able to give
9 the police was very generic; 20 to 30, black male, about
10 five-nine, average height, average-type build. Very, very
11 generic. She was not able to provide any detail in her
12 description to allow any more refinement to be put into
13 selecting photos for photo lineups.

14 And in fact it looks like whoever in Richland
15 County threw together this lineup just threw together a
16 hodgepodge of Mr. Simmons' picture with those of five
17 other younger African-American males. These men do not in
18 the least bit resemble Mr. Simmons whose image is depicted
19 in number two.

20 In at least that photograph, he has very chiseled
21 features with prominent bone structure. In contrast, the
22 images in number one, number four, number five, and number
23 six, yes, those are photographs of young black males but
24 they are young black males of much stockier build, with
25 much different hairlines than the hairline of Mr. Simmons

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1 in photograph number two. And all of whom have a certain
2 softness or roundness to their features. In contrast,
3 here is Mr. Simmons appearing in that picture as a man
4 with very cut types of features.

5 The male depicted in photograph number three is
6 obviously a person with a very light bone build. His
7 features are very, very small. He's got small eyes, tiny
8 nose. And the quality of the photograph, you can barely
9 see the shape of his mouth.

10 In other words, Your Honor, in this particular
11 photo lineup, Mr. Simmons' features are much different
12 than those of the men contained in the rest of the lineup,
13 and because of that it makes his face and his photograph
14 more prominent and more likely to be selected than the
15 photograph of the other five men in the lineup.

16 Given that the lineup was inherently suggestive,
17 when you look at the factors, I think it's clear that the
18 identification in this case was not reliable -- is not
19 reliable.

20 As far as opportunity to view the assailant in
21 this case, Your Honor, I know Ms. Walker said it took
22 about 15 minutes but then I think later she clarified and
23 was a little more accurate. And she said it just seemed
24 like forever.

25 Because she did tell us it was just a matter of

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1 seconds between the time the man was seen sitting on the
2 freezer and grabbed her by the counter. She didn't even
3 have time to think enough to get away.

4 At that point he, his face was obscured with
5 sunglasses and a hood. And she really wasn't able to get
6 a good view of this man's face. She said he walked her
7 back to the office with the gun to the side of her head.
8 The man was at her side and she could only see him through
9 her peripheral vision.

10 She said it only took a few seconds to walk from
11 the counter back to the office because that's really a
12 very small area. She said that once she was in the office
13 she was on her knees, opening the safe and opening the
14 eight drawers in the safe and placing that money in the
15 box. Her attention had to be at least divided in order
16 for her to perform all these tasks.

17 In the meantime, the man was standing, again to
18 her side, again, in her peripheral vision. So her
19 opportunity to observe this man was limited not only
20 because of the brief period of time which she had to
21 observe him, but by the fact that she does not seem to
22 have ever gotten a full face-on view while his features
23 were obscured by a hood or glasses.

24 As far as the degree of attention goes, I would
25 suggest to Your Honor that Ms. Walker's attention was

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1 split between the man, the gun, and the tasks she was made
2 to perform while she opened the safe, opened the drawers
3 and filled the money box. So, her degree -- her attention
4 was not totally focused on the robber.

5 The accuracy of her prior description, her
6 description of a middle height, middle sized, 20 to 30
7 black man could be accurate for thousands of people in
8 this area. Her description is so general there's nothing
9 for the Court to determine that she was accurate about it.

10 Granted, she did indicate certainty when
11 selecting that picture. But I would point out to the
12 Court, and I asked that question about seeing the video of
13 the Decker robbery. And I do not intend to go into that.
14 And that case is on appeal and, in fact, I am not
15 conceding that Mr. Simmons robbed the Decker Boulevard
16 McDonald's, but if he did, and she saw the video and if
17 the same man robbed her, then she didn't recognize it as
18 the same man.

19 So if you assume all of those facts are true, she
20 didn't still make the identification, I think that calls
21 into question the accuracy of her identification later in
22 this case and whether or not she is basing her in-court
23 identification on what she saw on that date or what she
24 has seen subsequently.

25 Furthermore, I will point out that 39 days

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1 elapsed between the robbery of the Saint Andrews Road
2 McDonald's and showing of a lineup. And that is a
3 significant period of time. It's not like she was shown a
4 lineup hours or even a few days after the robbery when the
5 events of what she might have seen were sharp in her mind.

6 For all those reasons, Your Honor, I move to
7 suppress any testimony as to Ms. Walker's selection of
8 Mr. Simmons' picture in that photographic lineup. And I
9 would also move to suppress any in-court identification of
10 Mr. Simmons as the robber by Ms. Walker.

11 THE COURT: Thank you, ma'am. All right. Well,
12 based on what I've heard and what I've seen, I don't see
13 the procedure you used in this lineup is unduly
14 suggestive. I don't think there's any requirement that
15 the photographs be identical. As a matter of fact, I
16 don't think they're thought to be identical but they do
17 need to be of similar characteristics.

18 And viewing the item marked as State's Exhibit
19 Two which is the actual, as you point out, the actual item
20 that Ms. Walker looked at, it does appear to the Court
21 that the six individuals in that lineup all are of similar
22 skin tone, all of similar age range. They're not, they're
23 not basically booking photos. They're all dressed in
24 street clothes. There's no indication that anyone there
25 is incarcerated. I don't find that the photo lineup

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1 itself is unduly suggestive.

2 With regards to looking at those five areas under
3 Biggers, I mean, I guess the testimony could be taken
4 differently by different people. I did not hear
5 Ms. Walker's testimony even close to what defense counsel
6 indicated the testimony was.

7 I heard her testimony that she actually got a
8 very good look at the individual straight on. I got the
9 testimony from her that the hood and the sunglasses had
10 come off prior to him providing -- and being close enough
11 to put a gun to her head. Her description was very
12 detailed regarding the gun and that it was duct taped to
13 his hand.

14 And that her time with him, as she got numerous
15 opportunities to look at him, not from peripheral vision
16 but directly. At least that's what I recall her testimony
17 being.

18 All in all, I find that the procedure did not,
19 was not unduly suggestive, that based on everything that
20 I've heard, the testimony I've heard, I'm going to deny
21 your motion to suppress the photo lineup and will allow
22 the testimony as well as the in-court identification.

23 Now, with regards to the statements.

24 MR. HUBBARD: Yes, sir. Your Honor, there were
25 several statements that were made. First we would begin

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1 by saying none of these were by way of interrogation. So
2 Miranda doesn't apply to any of them, initially.

3 I'll break them down. There that is one where
4 Miranda was read but -- and I'll get to that, Your Honor.

5 The first one was when he's being transported
6 from Richland County to Lexington County. It's our
7 testimony that en route we have two officers in that car,
8 one is Eric Russell. En route, the Defendant makes
9 statements something to the effect, it was fun while it
10 lasted, nothing lasts forever.

11 Now, the Defendant claims that that was on the
12 ride back. So he's admitting he made the statement. He's
13 saying it was taken out of context. If that's the issue,
14 then it's simply a question for the jury. Context is not
15 for a legal ruling. That is for the fact finders.

16 And, basically, his whole dispute with that
17 conversation was one of fact, when it happened and
18 context. The very thing a jury is impaneled for.

19 So if he wishes to take the stand and argue that
20 that statement was taken out of context, that's fine.
21 But, of course Your Honor, we've given you a preview. We
22 would anticipate a reply witness should he take that route
23 of a confrontation he had in Richland County which may or
24 may not open up a door there. We would try and tailor our
25 conversation to avoid doing that.

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1 Your Honor, that's the first conversation that we
2 would try to get in, the substance of it. It was not on
3 the heels of any interrogation. The Defendant admitted
4 that. They were talking personal stuff, chitchat, as
5 they're riding along. So by his own admission there's no
6 interrogation, it's simply a question of context.

7 When they get to the sheriff's department,
8 Lexington County Sheriff's Department, Miranda rights were
9 given. The form is -- he admits the rights were given.
10 The form is, it's not initialed but at least he
11 acknowledges he saw those rights. He acknowledged he
12 refused to sign it.

13 And then we have the dispute at that point.
14 Detective Russell said he started asking him about the
15 case. And the Defendant made a comment and, Your Honor,
16 it's a paraphrase, I'll tell you what you want to know but
17 I want to talk to my family, more specifically, my mother
18 first.

19 Detective Russell said he complied, made
20 arrangements to have his mother brought to the sheriff's
21 department. And when he was told his mother was there or
22 en route, the Defendant grew angry and said I am not
23 talking.

24 That's the testimony we would present. There is
25 a factual dispute as to how that testimony went down. The

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1 Defendant is saying that he made a comment or a statement,
2 something to the effect of my attorney had advised me not
3 to talk to any investigators without him being present.
4 It's not an assertion of a right to an attorney. It's not
5 a clear unam, un, unambigu -- I cannot speak.

6 THE COURT: Unambiguous?

7 MR. HUBBARD: That is the word I'm looking for.
8 Your Honor, under Jordan V. State, a case that obviously
9 Miranda applies to us all, at 480 Southeastern Second 18.
10 We have a defendant in that case saying, I think I might
11 need to talk to a lawyer. The Court said that is not a
12 request to have a lawyer. This is not an assertion of
13 your right under the fifth amendment or under Miranda to
14 have your lawyer present.

15 Here to say he's got a lawyer is not an assertion
16 of a lawyer. If he simply says, my lawyer says or my
17 lawyer thinks, Miranda doesn't apply to what a lawyer
18 thinks or what a lawyer says. It's not a lawyer's right
19 to assert.

20 The only one who could assert that right is
21 Mr. Simmons. By his own testimony, as ambiguous as that
22 was, he never, ever clearly stated, I told Eric Russell
23 I'm not going to talk to you without a lawyer present.
24 And of course, your Honor, that's if you believe he ever
25 made that assertion.

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1 We have a factual dispute. Detective Russell
2 said nothing of the sort. His only hang up was, I want to
3 talk to my family. I want to talk to mama, not a lawyer.
4 So it's a factual dispute. Again, what juries are here to
5 decide.

6 Your Honor, as Your Honor knows, has to make a
7 decision whether we've shown by the preponderance of the
8 evidence that the statement was made. Well we've put an
9 officer up under oath to say this is what happened.

10 Your Honor, it's -- I know when you hear this
11 type of information, Your Honor doesn't want weigh it on
12 who I believe, but is this reliable, credible information
13 that I can let go to a jury so they can decide. It's up
14 to a jury to determine if Miranda was given or if it was
15 needed. And they have to determine what was said and we
16 have to show it beyond a reasonable doubt.

17 That's our job but that's after it gets to the
18 jury. There's a factual dispute. That's what we got 12
19 people in the box for. That's as to that statement, Your
20 Honor.

21 And, again, what we would seek to elicit from
22 Detective Russell is not the product of interrogation,
23 it's simply the Defendant saying, whoa, I want to talk to
24 my family. I want to talk to my -- it's nothing about
25 what he did in this case. I'll tell you what you want to

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After I talk to my family or my mama.

Then, Your Honor, we elicited testimony from Detective Russell that he received a letter on October the 8th, 2005 purportedly from an Alphonso Simmons Jr., from the Richland County Detention Center saying, I want to talk. I'm ready to confess. I'll tell you what you want to know.

Detective Russell goes there. The Defendant basically acknowledges he sent a letter or had one sent. That's never clear of course we don't really care about that. The letter simply prompts the drive from Lexington to Richland County by Detective Russell.

He gets there and says, I got your letter. The Defendant says, yeah. And the Defendant basically reiterates what's in that letter that he denies he ever wrote saying, I'm ready to confess, I'm going to give up an accomplice, and I want to get the best deal I can.

Well, Detective Russell says fine, let's talk. And Mr. Simmons goes, not here. I do not want to talk in this facility because I do not want to be perceived as a snitch. Detective Russell is very much aware of the escape attempts, the assaults, all the things that apparently the Defendant says that didn't happen. Those were all, he says, altercations, I think, in his words, with the guards. He can't take that man out of the

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1 facility.

2 The conversation ends right there. Detective
3 Russell is not going to do it. Mr. Simmons isn't happy
4 with that. They part ways.

5 We would seek to get in that statement that I'm
6 ready to confess, basically tell you what you want to
7 know, that he's going to give up an accomplice, whoever
8 that might be, if there even was one, and I want to get
9 the best deal that I can.

10 That's what we would seek to elicit. None of
11 that's by way of interrogation. Again, Miranda's not
12 being questioned here. Miranda doesn't enter into the
13 picture without an interrogation.

14 The Defendant's version, which again is just a
15 factual dispute, is that once again he gave this ambiguous
16 statement to law enforcement, to Detective Russell, my
17 attorney says not to talk to any investigator without him
18 being present. Again, it's not that attorney's right to
19 assert.

20 It is Mr. Simmons'. And by his own statement on
21 the stand, he could not come out and admit that he ever
22 said, I do not wish to speak to you without an attorney.
23 I gave him so many opportunities, just say yes you said
24 it. He wouldn't grab at it. He refused. He clung to
25 that ambiguous statement that he's come up with saying, my

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1 attorney says don't speak to any investigator without me
2 being present.

3 That's not an assertion of a right. But, again,
4 we don't believe Miranda is even, even brought forward
5 here -- I struggle for words again, it's after lunch --
6 because it was not an interrogation setting.

7 He simply said -- and also by Detective Russell's
8 testimony is it was initiated by the Defendant by the
9 letter. So even if he did have a lawyer and wanted to
10 assert that right, he waived it when he sent this letter
11 bringing Detective Russell there. And then he confirmed
12 or condoned whenever the letter was sent whether he signed
13 it or not by saying, yeah, and then speaking of the very
14 same things that were in the letter. I'm ready to
15 confess. I'm ready to give up an accomplice. I'm here to
16 get the best deal I can. He's condoning, and accepting
17 and making his the words that were in that letter, whether
18 he sent it or not.

19 He's initiated that conversation. He waived any
20 right to an attorney by our testimony. It's for 12 people
21 to decide, Your Honor, whether that's evidence beyond a
22 reasonable doubt.

23 By preponderance of evidence, Your Honor, we've
24 clearly given you evidence that can go forward to the
25 jury. Those are the statements we're seeking to get into

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1 the jury with.

2 THE COURT: All right. Thank you, sir.

3 Ms. Fullwood?

4 MS. FULLWOOD: Your Honor, just taking them in
5 the same order. The first statement being the ride in the
6 car between Richland and Lexington Counties. The factual
7 dispute aside, Judge, I think everybody agrees that
8 Mr. Simmons was not Mirandized prior to the making of
9 those statements. And --

10 THE COURT: Well, let me ask you this: Is that
11 necessary

12 MS. FULLWOOD: In this case I think so. And I'll
13 tell you why. It's because, based on most of the State's
14 testimony through Mr. Russell, the way it has been related
15 to the Court has been so vague in the context of how the
16 statements were made that the Court cannot actually make a
17 determination of whether or not the officers were engaging
18 in interrogation or its functional equivalent.

19 We just have these statements out of the blue,
20 apropos, nothing at all, but it's fun while it lasted,
21 nothing lasts forever. Just knowledge of human behavior
22 should make the Court think they had to be in response to
23 something or part of some general conversation.

24 And without knowing what the conversation was,
25 the Court and can't make a ruling as to whether they were

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1 interrogating him or not.

2 THE COURT: Let's say I take -- let's say --
3 forget what the officer said. Let's say I take what
4 Mr. Simmons said.

5 MS. FULLWOOD: Yes.

6 THE COURT: He said, we're just chitchatting. We
7 were just chatting. Nobody was questioning me. I
8 wasn't -- nothing was going on, you know. I said it, but
9 they just took it wrong.

10 MS. FULLWOOD: Well, if the Court accepts his
11 version of it and finds his testimony the most credible,
12 then I would state to the Court --

13 THE COURT: I didn't say that now. All I'm
14 saying is, Mr. Simmons' own testimony was that it was not
15 in response to a topic of questioning about this case. It
16 wasn't in response to this case at all. It was just in
17 response to just idle chitchat. That was his testimony.

18 MS. FULLWOOD: At least he has given a context to
19 the statements in his testimony. Here the State has not.
20 It's just plucked them out of the blue. And unless it
21 does give you the context, I don't think that you can find
22 that the statements were completely not the product of
23 interrogation.

24 As far as the alleged statements at the sheriff's
25 department, Judge, you can quibble or we can quibble with

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1 words all we want and what words mean, but in fact here,
2 however he invoked his fifth and sixth amendment rights,
3 he didn't talk. He didn't give any statements.

4 And, in fact, the advice of rights form that's
5 been put into evidence is that Mr. Simmons declines to
6 give a statement at this time. I think what's written on
7 that form clearly shows that he invoked his fifth
8 amendment privilege when he was shown that form. And once
9 a defendant does that, that's supposed to be it. There's
10 not supposed to be any more questioning. There's not
11 supposed to be the --

12 THE COURT: But did I miss something? There
13 wasn't. And if I missed something, please point it out.
14 When Mr. Simmons said, I've been advised -- my lawyer
15 advises me not to speak without him being present, that
16 was the end.

17 MS. FULLWOOD: Well, the State says, no, actually
18 then he told us, I'll tell you what you want to know if I
19 can talk to my mother.

20 THE COURT: That was before this, though; wasn't
21 it?

22 MS. FULLWOOD: I had thought it was after that.

23 THE COURT: Well, but all right. And I'm not
24 sure, Ms. Fullwood. But let me ask you this: But that's
25 a statement not made in response to a question.

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1 MS. FULLWOOD: Well --

2 THE COURT: I agree with you, well, I don't know
3 because I'm a little confused about when it was said,
4 whether it was before this form or after this form. But
5 my opinion up here, I'm trying to make a decision, was
6 that it wasn't in response to a question.

7 MS. FULLWOOD: Well, the -- my notes concerning
8 the testimony is that Detective Russell said he couldn't
9 have confirmed or denied that he participated in this
10 robbery and said he wanted to talk to his mom.

11 And they have to have been asking him whether
12 he's going to confirm or deny and tell them if he did the
13 robbery or didn't in order for him to say it. I don't
14 know if they're trying to say, I will not confirm or deny
15 my involvement in this robbery.

16 THE COURT: And that's the one where the alleged
17 statement was, I want to talk to my family. That was the
18 first time; is that correct?

19 MS. FULLWOOD: Sir?

20 THE COURT: That was the alleged statement where
21 he says, allegedly says, I'll tell you what you want to
22 know but I want to talk to my family first.

23 Is that what you're referring to?

24 MS. FULLWOOD: Yes, sir.

25 THE COURT: That's what this is associated with?

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1 MS. FULLWOOD: Yes, sir.

2 THE COURT: All right.

3 MS. FULLWOOD: That would be the second alleged
4 statement.

5 THE COURT: Yes, ma'am.

6 MS. FULLWOOD: So our position there is that once
7 he was Mirandized, he invoked his fifth amendment rights
8 and his right to counsel. Despite that interrogation or
9 at least questioning, continued with them pressing him to
10 confirm or deny. And for that reason it should be
11 suppressed.

12 And starting the final statement allegedly made
13 at the Richland County Detention Center. Again, a lot of
14 that admittedly is, is a factual question for Your Honor,
15 is a factual question for Your Honor.

16 I think there might be problems with the fact
17 that this letter really isn't well authenticated. And,
18 again, and then we have a rather amorphous type statements
19 being made without context.

20 Your Honor, our position is that the statements
21 should all be suppressed because of fifth and sixth
22 amendment violations, but I do have additional grounds to
23 move to exclude these statements and they are this: As
24 far as the statements supposedly made in the car ride from
25 Richland to Lexington, that statement that they want to

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1 get in is, nothing lasts forever and it was fun while it
2 lasted.

3 I think, Judge, that those statements should be
4 excluded because, first of all, they aren't an admission
5 to the robbery of the McDonald's on Saint Andrews Road.
6 They are just general in nature.

7 Also, those statements imply that more than --
8 they imply that he had done more than just rob, the
9 McDonald's robbery. It implies that perhaps he had
10 committed other crimes.

11 And because of that implication, I think that
12 those statements should be excluded under Rule 608. I
13 also believe that any probative value that those very
14 general statements have would be outweighed by their
15 prejudicial effect of making insinuations about his
16 character vis-a-vis having committed perhaps other crimes,
17 that they should be excluded under 403.

18 And a similar argument of the statement
19 supposedly being made at the Lexington County Sheriff's
20 Department. He would never confirm nor deny -- that's
21 really almost a comment on exercise of fifth amendment
22 right. He would not confirm or deny. Well, a person
23 doesn't have to confirm. They didn't have to deny
24 anything to the police when they're being investigated.

25 So I think that if they're allowed to testify to

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1 that effect that it would be a comment upon his exercise
2 of his fifth amendment privilege. That statement, too, is
3 so vague that any probative effect it has is far
4 outweighed by any -- by the prejudice, not only as a
5 comment on the constitutional rights, but just in general.

6 As far as the statement supposedly made in
7 Richland County -- if I could see the Court's Exhibit.
8 It's over here. It's -- the comments in this letter are
9 simply too vague to be relevant in the trial of this
10 case. They aren't an admission to having committed this
11 robbery. It's just that he wants to confess to
12 something. And since we don't know what the something is,
13 it could be something else. So it could again be --
14 insinuate that he's committed other crimes and I think
15 those statements --

16 THE COURT: Let me look at that, ma'am, please.

17 MS. FULLWOOD: -- those statements should also be
18 excluded from evidence because they just aren't probative
19 on the question of whether or not he robbed the McDonald's
20 on Saint Andrews Road because in fact in none of those
21 statements does he make any admission to that effect.

22 THE COURT: All right. Mr. Hubbard?

23 MR. HUBBARD: Your Honor, several points. Your
24 Honor, as to the car, again, it's no interrogation. And
25 Ms. Fullwood basically, based on her conversation, it's

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1 for a jury to determine when and if those statements were
2 made or when and if.

3 Now the Defendant agrees that they were made.
4 But the question is when were they made, on the ride here
5 or the ride back. That's for a jury. It's clearly no
6 Miranda necessary in that instance.

7 As far as officer was vague. He talked about
8 what led up to it. And so did the Defendant himself. He
9 admitted he wasn't being interrogated, either to or from
10 Richland County. Miranda doesn't apply.

11 Once at Lexington County, Your Honor, as far as
12 the assertion of a right to an attorney, of course we deny
13 that even happened. But by the Defendant's own testimony
14 on direct and cross, if he did assert his right to an
15 attorney, there's no prejudice because he never said it.
16 Conversation was terminated, everybody went home.

17 We just have a totally different set of facts.
18 And ultimately what it is is an argument about whether
19 Miranda was violated. He's basically saying these
20 officers just made something up. What really happened was
21 I didn't say anything. This officer went home but then
22 this officer has concocted a story. It's a factual issue,
23 not a question of Miranda.

24 The officer's testimony that Mr. Simmons would
25 neither confirm nor deny, Your Honor, obviously we would

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1 present it differently in front of a jury. We know that
2 the Defendant doesn't have to say anything. But what we
3 would seek to get out is when he was questioned the
4 Defendant made clear over and over, I don't want to say
5 anything until I've had a chance to basically talk to my
6 family, to my mama. I'll tell you whatever you want to
7 know or what you need to know or whatever his words were
8 only after I talk to my mom and my family.

9 Your Honor, there's no assertion by our
10 testimony. There's just an absolute disagreement as to
11 what actually happened. He's saying, again, my rights
12 weren't violated, I asserted my right to an attorney and I
13 didn't make a statement. There's no prejudice. By his
14 own testimony.

15 He's not saying, I asserted my right to an
16 attorney. This officer then overbore my will and got me
17 to talk again about this incident and then I made a
18 statement.

19 You'd have a Miranda issue at that point, Your
20 Honor. It would still be a factual issue, but Miranda
21 would be implicated at that point. By his own testimony,
22 it's not.

23 We've got a factual dispute about what happened.
24 Miranda's not at play in that second conversation. And
25 the same can be said for the third at the Richland County

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1 Detention Center. Our argument again is that he initiated
2 it with a letter, whether he wrote it or not. As Your
3 Honor knows, there are inmates that write letters all the
4 time on behalf of other inmates, at the direction of other
5 inmates.

6 We don't really care who wrote the letter. What
7 it does though is explain why Detective Russell got in his
8 car and went over to the Alvin S. Glenn Detention Center
9 in Richland County. And then what is critical at that
10 point is that when he confronts the Defendant, the
11 Defendant acknowledges he sent a letter, and then what he
12 says basically corroborates what was in that letter. I
13 want to confess. I want to give up an accomplice. I
14 don't know if the accomplice part's in the letter, and
15 basically I want to tell you what you want to know. I
16 want to confess.

17 And I know it's not in the letter, I want to get
18 the best deal that I can.

19 THE COURT: All right.

20 MR. HUBBARD: Your Honor, again, it's a factual
21 dispute. The Defendant's saying none of that ever took
22 place. He asserted his right to an attorney, which we
23 deny. And even by his own testimony was not an
24 assertion. So it's really a two-fold argument.

25 Both of his assertions were not assertions at

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1 all, but we deny they happened. But by his own testimony
2 as well, even if he did assert a right to an attorney,
3 he's saying I didn't make the statement, I haven't been
4 prejudiced. This detective is now making something up out
5 of thin air that implicates me.

6 Well, that's what a jury is for. It's not a
7 Miranda issue by the Defendant's own statements. Again,
8 if the Defendant had said he came there, he started
9 questioning me and I said, whoa, I want my attorney
10 present right now before I talk to you. And then
11 Detective Russell used his experience as a detective to
12 over bare his will and get him to talk about the crime,
13 then Miranda would be implicated. Then he would be
14 prejudiced. There would be an issue at that point.
15 There's not now. Miranda doesn't come to play.

16 Thank you, Your Honor.

17 THE COURT: All right. Give me one second to
18 look at this.

19 (Pause.)

20 THE COURT: With regards to the statement in the
21 car from the ride from Richland to Lexington or from
22 Lexington back to Richland, whenever that was, that
23 clearly from the testimony of both the officer and the
24 Defendant that it was just comments made during casual
25 conversation. It was no questioning. There was no

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1 conversation about this case. It was no interrogation.
2 And it was just a statement that was made, whether the
3 officer took it out of context or not or how the officer
4 took it. It's just not, it's not a Miranda issue.

5 And, therefore, I'm going to allow that.

6 The other two statements, again, and this is
7 where I'm really trying to understand the defense's
8 position. Neither one of those statements were made
9 during the course of interrogation. Neither one of those
10 statements were made in response to a question.

11 The first one, and depending on when it was
12 given, that I'll tell you what -- I'll talk to you,
13 whatever it was, I want to talk to my mother first, was
14 not in response to any question but even if it was, it
15 doesn't appear that there was any implication of his right
16 to an attorney. I wasn't quite clear where that was going
17 during the testimony because the Defendant was,
18 Mr. Simmons was indicating that that was his request for a
19 lawyer, but his statement was, my lawyer told me not to
20 talk to you without me being present which would clearly
21 indicate to the officer that he had a lawyer.

22 But he never, he never said that I'm refusing to
23 talk to you or I don't want to talk to you. And, again, I
24 go back to, the statement does not appear to have been
25 made even in response to interrogation.

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1 The third statement, this letter's received.
2 It's simply, it's signed Alphonso Simmons. It's to
3 investigator or Detective Russell. And it's just saying,
4 I'm writing to let you know I'm ready to confess and to
5 also give up my accomplice. I would like to talk to you
6 in person, please.

7 And so in response, the officer goes to the
8 detention center. And from what I can gather from the
9 testimony, he references the letter to Mr. Simmons who
10 acknowledges it, but then proceeds to tell the officer
11 that he's not going to talk there, that he'd have to be
12 outside the facility.

13 Again, not in response to any questioning, not in
14 response to any interrogation, simply almost introductory,
15 okay, I'm here, I got your letter. And then, and then
16 according to the officer, Mr. Simmons proceeds to tell him
17 the words to the effect, not in here. The officer
18 indicates, I cannot take you out of here. Therefore this
19 conversation's over. That was the end of it.

20 I don't see that any of these fall under
21 Miranda. I do, I do agree or I do believe that during
22 that first encounter that Mr. Simmons was, if not informed
23 at least shown his Miranda rights and he refused to speak
24 or whatever, and wouldn't sign the form.

25 And that's clear. But it doesn't appear that any

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PRESTATEMENTS were made in response to any
ing or any interrogation. And I don't believe
11 under Miranda, and I'm going to allow the
ents as were testified earlier.

Anything further from the State?

MR. HUBBARD: Nothing, Your Honor.

THE COURT: Anything from the defense?

8 MS. FULLWOOD: Yes, sir. Just a couple of quick
9 discovery matters.

10 THE COURT: Yes, ma'am.

11 MS. FULLWOOD: Your Honor, we were given
12 discovery, an e-mail from a law enforcement officer to
13 another concerning a shoe. And one sends an officer the
14 picture of a shoe and then gets back a response as to what
15 the shoe is.

16 I want to ask to be able to see that shoe that
17 they apparently they want to put in some testimony about.

18 Normally with shoe imprint-type evidence that
19 goes to SLED and they issue a report under their
20 protocol. If there is, in fact, such a report, I would
21 like a copy of it.

22 And I would like for them to produce an image of
23 -- there's a comparison of a shoe that I'd like to see to
24 a footwear impression on one of the counters at
25 McDonald's. And I'd like to see some photographs of that

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1 footwear impression if they intend to put up evidence of
2 that nature.

3 MR. HUBBARD: Your Honor, we're going to make it
4 easy. We're not even getting into the shoe print.

5 Unless Ms. Fullwood brings it up that a shoe
6 print was found, then we'll go down that road but we're
7 just focusing based on evidence taken --

8 THE COURT: Well, let me back up the train for a
9 moment. Do you have that type of evidence?

10 MR. HUBBARD: No. Actually what we have, there
11 is some shoes that Richland County, that they gathered
12 from the Defendant. And I guess it's evidence in all the
13 other crimes that he's committed over there.

14 We had a shoe print in our incident. Your Honor,
15 I think we had photographs. I don't know if those
16 photographs -- I think they were lost. We've decided,
17 look, let's not even go down that road.

18 Although we could have testimony about the shoe
19 print and all of that, nothing was sent to SLED to our
20 knowledge, certainly not by us, comparing it to that shoe
21 print at the scene.

22 THE COURT: Well, let me ask you this. And, you
23 know, I'll leave it up to the lawyers to try the case but
24 if there was a shoe print impression of something on the
25 counter, clearly they would have the right to go into

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Questioning your witnesses regarding that.

MR. HUBBARD: Correct.

THE COURT: I mean, that's what the defense
They create doubt by asserting that there was a
stprint and it did not match his shoe. And so it's
certainly relevant whether you decide to go down that road
7 or not.

8 MR. HUBBARD: Right. That's correct, Your
9 Honor. I'm not trying to say she can't ask that
10 question. There is a thin line that she could easily
11 cross in asking that question about shoes recovered.

12 Well, there is a set of shoes that were very
13 similar, but I don't think we ever got the analysis done.
14 She could hammer away on that, but I'm just saying that
15 that there's a fine line there.

16 THE COURT: What is it? Let's talk about it now
17 so that we don't have to address it with the jury here
18 because, I guess, Mr. Hubbard, what Ms. Fullwood is asking
19 for is if you've done anything regarding the alleged foot
20 imprint on the counter, whether you've done anything with
21 that and if you've matched it to anything that connects
22 him.

23 And you've indicated the possibility that there
24 was nothing done.

25 MR. HUBBARD: Right. I'll tell you what my

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1 understanding is, Your Honor, is that a photograph or
2 photographs were taken, angle shots, and those have been
3 lost. They've been put on a computer hard drive or were
4 downloaded, and we can't retrieve them. They're out there
5 in cyberspace somewhere.

6 THE COURT: All right.

7 MR. HUBBARD: So we decided, all right, let's
8 back off of this. There were shoes that were recovered in
9 Richland County that they still have possession of that,
10 it was our goal to try to match those.

11 THE COURT: Okay.

12 MR. HUBBARD: Or at least see if there is a
13 matching.

14 THE COURT: Right.

15 MR. HUBBARD: We ran into that problem, where did
16 the photographs go. Now if Ms. Fullwood says, was there
17 any attempt to match that shoe or did y'all find any
18 shoes, shoes were found in this man's home in Kershaw
19 County during a search warrant. We were, in fact, seeking
20 to match those up or were talking about it.

21 Unfortunately, the way the photo was taken, too,
22 typically you do an actual-size photo, you know, there's a
23 technique to it. That was not done. The photo was lost
24 but an attempt was in the works and that's when we
25 discovered we can't find the photos. They're out in

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1 cyberspace.

2 So that's where we are. We're not pursuing that.

3 THE COURT: Right.

4 MR. HUBBARD: But just so Your Honor knows, we've
5 got some shoes in Richland County that were picked up in
6 Kershaw County because those shoes, apparently, and I
7 don't know those other cases --

8 THE COURT: Which are admittedly his shoes?

9 MR. HUBBARD: Correct.

10 THE COURT: Okay.

11 MR. HUBBARD: And those shoes are potentially
12 implicated in other crimes.

13 THE COURT: Which aren't relevant to this case.

14 MR. HUBBARD: Correct. But I'm just -- I want
15 both the Court and Ms. Fullwood to just be aware and I
16 know Ms. Fullwood is, she knows her case, that if
17 Something pops up about Richland County or about Kershaw
18 County, we're not seeking to go through those doors and if
19 a door is opened we're not necessarily going through it.

20 THE COURT: I wouldn't think that would open a
21 door though.

22 MR. HUBBARD: It might not, Your Honor, but just
23 in case something is then -- a question about, how did you
24 get those shoes. Well, Richland County got with Kershaw
25 County to do a search warrant on this residence. We might

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1 be able to explain that without a lot of door opening.

2 But, Your Honor, you know, there was talk earlier
3 in the last motion about the implication of other crimes
4 out there. We walk that fine line. We're not seeking to
5 do anything. Ms. Fullwood obviously could try her case.
6 She's been trying cases longer than me.

7 And, Your Honor, obviously you're presented with
8 an issue of does this come in. I'm not trying to argue
9 ahead of the game whether you should keep something out.
10 I'm just trying to say, Your Honor, there's some other
11 stuff out there, and I know Ms. Fullwood --

12 THE COURT: Well, and here's the thing. And this
13 is what -- again, y'all are the lawyers and y'all can try
14 the case however you see fit.

15 But, you sell yourself short. You're a good
16 lawyer. You're a very experienced lawyer. You know what
17 the defense will do with this type of situation.

18 MR. HUBBARD: Yes, sir.

19 THE COURT: And they will use it, rightfully so,
20 in an effort to create reasonable doubt.

21 MR. HUBBARD: Correct.

22 THE COURT: And I'm certainly not going to
23 handcuff them from going down that road. And I guess, so
24 we can address it at this point, if we can address it at
25 this point. Maybe something that we have to deal with

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1 when we get to that bridge.

2 And so, I guess, maybe we can just see how it
3 fleshes out as we go down that road. If you do,
4 Ms. Fullwood or Mr. Cornwell, feel that we're getting into
5 an area, it may be that you can give me the heads up,
6 we'll send the jury out and maybe explore it.

7 MS. FULLWOOD: All right. I'm bringing this up
8 for a couple of reasons. But, first of all, the
9 information we got from the prosecution last week was that
10 they intended to put up evidence that the shoe print on
11 the counter was of the same make, model of shoe as the one
12 that was associated with Mr. Simmons.

13 And the confusion in my mind arises is that
14 there's more than one shoe associated with Mr. Simmons.
15 And I was trying to narrow down exactly what shoe we were
16 talking about. Is it Kershaw County shoe seized during
17 the arrest or is it a shoe that was seized during the
18 search of his home in Richland County?

19 Because another thing that I want to make sure
20 that I'm able to do for Mr. Simmons here is make sure that
21 if there's Brady material out there that I haven't seen,
22 that I see it.

23 THE COURT: Right. Right. Mr. Hubbard, is
24 there? I don't know.

25 MR. HUBBARD: Your Honor, she has everything we

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1 have, including information about what happened, --

2 THE COURT: Let me ask you this: He was picked
3 up by Richland County authorities. And of course I'm
4 assuming he had shoes on when he was picked up, but then
5 there was a subsequent search or there was a search
6 pursuant to another case in Kershaw County?

7 MR. HUBBARD: Actually here's what happened. He
8 was -- actually when he become a suspect, he was already
9 in Kershaw County Detention Center.

10 THE COURT: All right.

11 MR. HUBBARD: On a home invasion, burglary, ABWIK
12 in that county. His name popped up and surfaced from
13 another cell mate. When we started looking and put his
14 name in the pot, that's when we did photo lineups. That's
15 what started us really getting focused on him.

16 That's when Richland County, and I believe they
17 got together with Kershaw County. They served
18 Mr. Simmons' home. He lived with his mom and his stepdad
19 at the time. Some items were taken, items that from our
20 standpoint really didn't have anything to do with our
21 case.

22 I believe shoes were taken at that point. And
23 maybe from a car. I can't remember. I don't know what
24 all was taken, but once we focused on there was, I
25 believe, some Timberland, Strata, various mile, shoe boots

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1 and our ID techs were in conversation with Richland
2 County's ID techs.

3 We have a photo image of, I don't know if it's
4 the one in evidence or if it's just a like kind but --

5 THE COURT: Over in Richland, you mean?

6 MR. HUBBARD: Excuse me?

7 THE COURT: The one over in Richland?

8 MR. HUBBARD: Yes, sir. That's my understanding
9 where it is. And we have an e-mail from our ID tech
10 saying, actually it's from their ID tech to us saying,
11 this is the image we've got. And then our guy sends
12 back -- actually I got it reversed. I'm trying to read
13 e-mail backwards.

14 We send over and say, this is the image we're
15 looking for. And basically I think we sent over whatever
16 photo we might have had or whatever. I don't know, Your
17 Honor. This was several years ago, back close to the time
18 of the crime.

19 THE COURT: Yeah.

20 MR. HUBBARD: They send back an image of shoe. I
21 don't know if this is the one they just downloaded from a
22 shoe site or if it is a picture of the evidence saying
23 this is kind of what we have. So Mike Phipps, Lexington
24 ID tech, you might want to look at this shoe print,
25 compare it to your photographs to see if this is even in

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1 play.

2 Unfortunately by the time we get ready for trial,
3 we know by our reports that photos were taken. They find
4 a shoe print. We start gearing up and that's when, well,
5 when nothing's happened.

6 As Your Honor knows, trying cases both for the
7 defense and for the State, stuff doesn't get done until
8 you start getting ready for trial. Nothing's been done
9 Well, hey Mike Phipps, can you find that photo. Oh my
10 gosh, I can't find it. So, nothing's done.

11 And I understand Ms. Fullwood can hammer us on
12 that. We lost photos. Something that could have helped
13 her man out or hurt her man or it might have just been a
14 shoe print that could have been a customer or something.
15 I don't know.

16 THE COURT: Right. But she has everything you
17 have?

18 MR. HUBBARD: Correct, Your Honor.

19 THE COURT: There's no report?

20 MR. HUBBARD: Correct.

21 THE COURT: There's no testimony that those make,
22 model and shoe match the make, model or any of that?

23 MR. HUBBARD: Correct. Nor is there a report out
24 there that says this isn't the shoe.

25 THE COURT: Right.

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1 MR. HUBBARD: There's nothing out there to the
2 negative that would inure to his benefit. There's no
3 Brady material. We've just given everything, all our
4 material over including our mistakes.

5 THE COURT: Okay.

6 MS. FULLWOOD: I guess the bottom line is that
7 there were shoe impressions that were never matched to
8 anyone one way or the --

9 THE COURT: Apparently they were never matched to
10 anything.

11 MS. FULLWOOD: Okay. All right. One more
12 brief --

13 THE COURT: Sure.

14 MS. FULLWOOD: -- matter, Your Honor.

15 The State has given us a great deal of
16 discovery. It's been very forthcoming.

17 I see though in this witness list, is a witness
18 Monica Glenn. And we do not have a rap sheet on
19 Ms. Glenn. If in fact she does have a criminal record, we
20 would like a copy of her rap sheet.

21 MS. GARRICK: Your Honor, if she does testify
22 we'll provide that.

23 MS. FULLWOOD: Can we get a social security
24 number and date of birth so we could run it ourselves?

25 MR. HUBBARD: Your Honor, she's not here today.

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1 We can try to reach her but, Your Honor, we don't even
2 know if we're putting her up right now. If we do, we
3 obviously know what our duty is. We have to give over any
4 rap sheet or anything that they could cross-examine her
5 on. And we will definitely do that.

6 THE COURT: Okay. All right. Anything else?

7 MS. FULLWOOD: No, Your Honor.

8 THE COURT: Anything further from the State?

9 MR. HUBBARD: No, sir, Your Honor.

10 THE COURT: All right. Well, I told the jury
11 9:15. I anticipated starting at 9:30 which I why I told
12 them that because I feel like if I tell them to be here at
13 9:30 they'll be here at 9:40.

14 But, is there anything else other than when we
15 get here in the morning we'll place them under oath and
16 we'll get started?

17 MR. HUBBARD: Your Honor, one thing does come to
18 my mind. Our victim has some charges from a long while
19 back. And I don't know if Ms. Fullwood anticipates making
20 an argument that any of those are impeachable defenses.

21 MS. GARRICK: Your Honor, she has one conviction
22 from 1994 for child endangerment. We would argue that
23 it's too remote in time.

24 THE COURT: Okay. Anything else?

25 MS. GARRICK: No, Your Honor.

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1 MS. FULLWOOD: Judge, the way I have interpreted
2 that rap sheet, it was all outside of the scope of the
3 rule.

4 THE COURT: I think that is remote.

5 MS. FULLWOOD: It's not even clear as to whether
6 or not that conviction carried more than a year.

7 THE COURT: Right. Right. Okay. So that
8 doesn't seem to be an issue.

9 MR. HUBBARD: Right

10 THE COURT: Well, if y'all would be ready to go
11 at 9:15, but understanding we're more than likely going to
12 start a little bit later because I don't know if the
13 jurors are going to be on time.

14 Then we're done for the day, and we'll see you in
15 the morning.

16 MR. HUBBARD: Thank you, Your Honor.

17 MS. FULLWOOD: Thank you, Your Honor.

18 END OF DAY AT 4:00 p.m.

19 ** * **

20 ON TUESDAY, APRIL 15TH, 2008 AT 10:12 A.M.:

21 THE COURT: I apologize. I had a status
22 conference this morning that I didn't think would take
23 very long and it took longer. I shouldn't say that. Be
24 honest with you, it went longer than it needed to. It
25 didn't need to go that long, but I apologize.

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1 Is there anything that we need to take up before
2 we bring the jury out and get started?

3 MR. HUBBARD: Not from the State, Your Honor.

4 MS. FULLWOOD: Ms. Garrick and I spoke prior to
5 the Court coming in. I believe that a couple of the items
6 of evidence Your Honor ruled admissible yesterday after
7 the brief in camera hearings, they wish to redact, to take
8 out information that would be possibly prejudicial.

9 Those are on that advice of rights form. They
10 have agreed to redact the writing, Mr. Simmons declines to
11 give a statement at this time.

12 THE COURT: Okay.

13 MS. FULLWOOD: I have no objection to that.
14 However, I would like the original form that was marked as
15 a Court's Exhibit yesterday to remain a court exhibit
16 unredacted --

17 THE COURT: Right.

18 MS. FULLWOOD: -- for appellate purposes.

19 THE COURT: Okay.

20 MS. FULLWOOD: I believe also concerning the
21 letter that Mr. Russell received supposedly from
22 Mr. Simmons, they are going to redact the envelope so that
23 there's no return address of a detention center.

24 THE COURT: Okay.

25 MS. GARRICK: Your Honor, that's correct. We're

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 going to plan to redact these and work on these before
2 Detective Russell takes the stand.

3 (Pause.)

4 THE COURT REPORTER: Just so I'm clear, Your
5 Honor, I only had one Court's Exhibit yesterday and that
6 was the notebook.

7 THE COURT: The notebook. And that's the only
8 Court Exhibit we had yesterday, but there was an exhibit
9 that was just marked for identification purposes which was
10 the rights form and they're going to redact that but we're
11 going to maintain the original as a Court Exhibit, is that
12 correct? So after they, after you make that copy and
13 redact that and let's go ahead and mark the original one
14 as a Court's Exhibit.

15 MS. FULLWOOD: Thank you, Your Honor.
16 (Thereupon Court's Exhibit No. 2, unredacted State's No.
17 3, Miranda, and Court's Exhibit No. 3, unredacted State's
18 4, letter to Detective Russell, were marked and received
19 into evidence.)

20 THE COURT: All right. We'll bring the jury out
21 and we'll get Started.

22 (Jury enters courtroom at 10:16 a.m.).

23 THE COURT: All right. Ladies and gentlemen,
24 thank you. Please have a seat. I apologize for you being
25 back there. I had some matters that I had to take up that

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 didn't involve this case and actually involved the State
2 Grand Jury case that is from another county. And I had to
3 deal with those this morning, so I apologize for the delay
4 in us getting started here.

5 If you would, ladies and gentlemen, for your
6 purposes of this trial, I would ask if you would give
7 Madam Clerk your attention. She's going to place you
8 under oath for your job as jurors in this case.

9 (Jury impaneled.)

10 THE COURT: All right. Ladies and gentlemen,
11 again, welcome this morning.

12 We're about to begin the trial of this case, the
13 State of South Carolina versus Alphonso Simmons. Before
14 we begin this trial, I want to tell you that this trial
15 will more than likely be probably different from what you
16 may expect. Most people do not have an opportunity to sit
17 in on an actual court case such as you're doing here and
18 their only exposure to trials has been either through
19 television, movies, or what they've read in books.

20 Now, of course, those trials are always filed
21 with high drama, riveting circumstances and intense
22 action. Now, during the trial of this case, ladies and
23 gentlemen, while those things may be true, may or may not
24 be true during the trial of this case. This case, I want
25 to stress to you, is not for your entertainment. This

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 case is a real trial. This case is a fundamental part of
2 our democracy. It is a search for the truth in an effort
3 to make sure that justice is done between the parties, the
4 State and the Defendant.

5 Oftentimes searching for the truth, that process
6 is more deliberate, more repetitive, very different from
7 what you may have seen on television or read in books or
8 seen in the movies.

9 This courtroom, ladies and gentlemen, is a place
10 of honor that is dedicated to the protection and the
11 preservation of citizens' rights through what many people
12 have described as the greatest system of justice ever
13 created.

14 The attorneys who are here before you during the
15 course of this trial are advocates for the parties that
16 they represent, but, first and foremost, they are officers
17 of this Court, sworn to uphold the integrity and the
18 fairness of our judicial system and to help you in your
19 search for the truth. You should expect them to be
20 professional and competent in the representation of their
21 client's interests.

22 You have just taken an oath to try this case and
23 you'll reach a verdict that speaks the truth. And so you
24 are also expected to be professional and reasonable and
25 ethical in your performance of your duty which I have no

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 doubt you will do. And I want to thank you for your
2 contribution to our system of justice by your
3 participation in this trial.

4 What I'm going to tell you now is intended to be
5 an introduction to the trial of the case. These remarks
6 are not going to be a charge on the law. I will charge
7 you on the law at the end of the trial before you go to
8 deliberate. This is going to be merely an explanation of
9 the procedures that we're going to follow so that you may
10 better -- you're better able to follow along with what's
11 going on.

12 The Defendant in this case, Mr. Simmons, is
13 charged by an indictment that has been filed with this
14 Court. And he is charged with two offenses, that of armed
15 robbery and of burglary in the second degree. The
16 elements of those charges I will explain to you later when
17 I charge you on the law.

18 The indictments in this case, however, are simply
19 the charge by which the case is brought to court and is
20 not in any sense evidence of any of the allegations that
21 it contains.

22 The Defendant has pled not guilty to these
23 indictments. The State, therefore, has the burden of
24 proving each of the elements of the indictments beyond a
25 reasonable doubt.

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 It will be your duty, ladies and gentlemen, to
2 decide whether or not the State has met that burden. Your
3 purpose as jurors is to find and determine what the facts
4 are in this case. You are the sole judges of the facts.

5 If at any time during the course of this trial I
6 make any comment regarding the facts, you are to disregard
7 those comments. You are to determine the facts from the
8 testimony that you hear and any other evidence that may be
9 introduced during the course of the trial.

10 It is up to you to determine the inferences which
11 you feel may be properly drawn from the evidence. It is
12 especially important that you perform your duty in
13 determining the facts diligently and conscientiously
14 because ordinarily there's no way to correct an erroneous
15 determination of facts by a jury.

16 On the other hand and with equal emphasis, the
17 same law that makes you the judges of the facts makes me
18 the judge of the law. The law as given to you by the
19 Court is the only law that you may consider. You must
20 accept it and follow it, even though you may disagree with
21 it. I cannot tell you what the facts are in this case.
22 And you are not allowed to disagree with me about what the
23 law is or what you think it should be.

24 Your job is to take the law as I give it to you,
25 apply it to the facts as you find the facts to be from the

STATE'S OPENING TO THE JURY

1 THE COURT: Anything from the defense?

2 MS. FULLWOOD: No, Your Honor.

3 THE COURT: Thank you. All right. Ladies and
4 gentlemen, please, if you would give close attention to
5 the attorneys as they address you with their opening
6 statements.

7 MS. GARRICK: Thank you, Your Honor. May it
8 please the Court.

9 THE COURT: Yes, ma'am.

10 MS. GARRICK: Ms. Fullwood, Mr. Cornwell. April
11 16th, 2004, it started as any other day for Ms. Walker.
12 Ms. Walker will tell you that she worked down at the
13 McDonald's on Saint Andrews Road in Lexington County. She
14 was the opening day manager. And that meant she would go
15 to work around 4:30 every morning, she'd go in alone,
16 she'd turn the lights on in the business, start the
17 grills, turn the ovens on until the other employees got
18 there around five and then they'd be ready to get ready
19 for the big breakfast crowd.

20 Ann Walker will tell you on that day she did as
21 she always did. She drove there. She rode around the
22 parking lot to make sure there were no stray cars there,
23 and there weren't. So she parked and she went in. She
24 used her keys. She went alone into the building. It was
25 pretty dark in there. This was obviously before that

STATE'S OPENING TO THE JURY

1 McDonald's went to the 24 hour that it is now.

2 So she goes in. She walks down the little
3 hallway there, she passes by the drive-through window and
4 she goes into the back office. There's a breaker box
5 there. She opens it. She turns on all the lights in the
6 building. She comes out of that office, she walks around
7 turning on the grills and turning on the ovens. She's
8 back to where she started. And then she looks. And at
9 the second drive-through window, she sees something. It's
10 open.

11 And she thinks to herself, this isn't good, I
12 need to get out of here. She has her keys to the front
13 door still in her hand, she turns to go out. And as she
14 goes to that front door to make her escape, she hears
15 something. She turns around and she looks and there she
16 sees him. It's a black man with a hooded gray sweatshirt
17 on with mirrored silver sunglasses crouched on the
18 freezer.

19 She'll tell you she froze. And in that split
20 second when she looked at this person she thought for just
21 a brief moment, that's Eric who used to work here. But
22 then she'll tell you that the man got up, jumps over the
23 food preparation counter, jumps over the front counter and
24 within a matter of seconds he's standing right beside her
25 and she knows it's not Eric.

STATE'S OPENING TO THE JURY

1 This is bad. This man has a silver short
2 barreled gun to her head, the right side of her head. And
3 this gun is duct taped in his hand.

4 Ms. Walker is terrified. She thinks, this is
5 it. I'm in trouble. She's thinking about her son. She's
6 thinking about her daughter. This man tells her, let's go
7 to the safe. I want the money.

8 And at this point, ladies and gentlemen, his hood
9 has fallen off. His sunglasses have fallen off when he
10 leaped over the two counters. He's standing there beside
11 her and they walk from the front door to the back office
12 and he's right beside her and she's looking at him. She's
13 looking at him in the face. She's looking at his eyes, at
14 his nose. And she's looking at that gun.

15 They get to the back office. They go in. The
16 man shuts the door behind them. Ms. Walker thinks, okay,
17 this is really it. What's going to happen now. He tells
18 her to open the safe. It's a small area in that back
19 office about the size of this area here.

20 There's a safe on the floor. The gunman says,
21 open the safe. Ms. Walker is so upset, so distraught
22 she's thinking, oh goodness, am I going to be able to
23 remember the combination. What if I can't get it open.
24 But thankfully, luckily, she was able to open it on the
25 first try. She's bending down at that safe and this

STATE'S OPENING TO THE JURY

1 gunman is telling her, I want the bills. I don't want the
2 change. I just want the bills.

3 So she's pulling out the bills. And this takes a
4 little while. There are eight cash drawers that had been
5 set up to be put out for that morning for each of the
6 registers. So she goes through eight of the cash drawers,
7 pulling out the bills, throwing the change on the ground,
8 wandering what's going to happen to her.

9 She puts this money in a petty cash box that was
10 also in the safe. It was a couple hundred dollars in the
11 petty cash box along with some receipts. And that's the
12 box that she had used for three years there in the
13 business. So she's loading up all the money. The gunman
14 that she still can see, she's still looking at him. He's
15 standing right beside her. There's some video equipment,
16 and he believes there's a security tape. So he's
17 unplugging it and he crashes it and throws it to the
18 ground, destroys that. Video equipment wasn't working,
19 but he didn't know that.

20 Once the money is in the cash box and he's got
21 what he wants, Ms. Walker's thinking, what now. What
22 next. She'll tell you that he told her to get down on the
23 floor. And she did.

24 He told her, don't look back at me. Don't come
25 after me. Stay there on the floor for 15 minutes. And

STATE'S OPENING TO THE JURY

1 this person left, shut the door behind him. Ms. Walker
2 stayed on the floor there for a few more minutes until she
3 heard some bamming and some knocking. Ann, Ann, let us
4 in. We're ready to work. Her co-workers are finally
5 there.

6 So she lets them in. Tells them what happened.
7 They call for Lexington County Sheriff's Department who
8 gets there within minutes. Ms. Walker told law
9 enforcement, the first deputy there, a general description
10 of the man. It's a gray hooded sweatshirt, dark pants,
11 had mirrored sunglasses at some point. He's about
12 five-nine, slim build, 170 pounds, between the ages of 20
13 and 30.

14 But, deputy, if you find him, I'm going to know
15 him. If you find him, I'm going to recognize him because
16 I'm not going to ever forget that face. Detective
17 Russell, who was assigned the case, comes out there that
18 night and he meets Ms. Walker. She tells him the same
19 thing; if you find him, I'll know him. I'm never going to
20 forget that face.

21 So Detective Russell Starts working the case
22 developing leads. And he puts together a photo lineup
23 which has six pictures in it. And he takes it to
24 Ms. Walker's house a couple weeks later and says, I'm
25 going to show you something. He doesn't tell her who's in

STATE'S OPENING TO THE JURY

1 it. He doesn't tell her anything else about it. He shows
2 her six pictures. Please look at it and tell me if you
3 recognize anyone.

4 Ms. Walker looks at it and she says no, sir, I
5 don't see the man there. Detective Russell says okay. He
6 leaves. He continues to work the case. He gets
7 information from a confidential informant that allows him
8 to develop Alphonso Simmons as a suspect. Mr. Simmons
9 matches the general physical description given by
10 Ms. Walker. He's in the right age group. He's the right
11 size. He's the right height. He's the right frame.

12 So Detective Russell puts Mr. Simmons' picture in
13 another photo lineup, six photographs. And he goes back
14 to Ms. Walker and he asks her again, gives her the same
15 instructions. Don't know if you're going to recognize
16 anyone or not, but I want you to look at this and tell me
17 what you see.

18 She looks at it and within seconds she says,
19 that's him. That's the man who robbed me. That's the man
20 who held a gun to my head. That is him. I'm a hundred
21 percent sure. And that photo is a photo of Alphonso
22 Simmons.

23 Detective Russell will tell you that also during
24 the course of the investigation law enforcement got in
25 possession of a cash box which was gray and had a dent in

STATE'S OPENING TO THE JURY

1 it, had a McDonald's sticker on it. And there were some
2 receipts inside. Some of these receipts had writing.

3 They showed it to Ms. Walker. Ms. Walker said,
4 oh, yeah, that's my cash box. I used it for three years..
5 It had that dent in it. That's our logo. Those receipts,
6 oh, yeah. This was for a can opener. This was for a box
7 cutter. That's Monica's writing. Monica is our store
8 manager. I know her writing. She hired me. I worked for
9 her the whole three years I was there. Those are the
10 receipts that were in the cash box and that's the cash box
11 that was taken from her on that night in April.

12 Ladies and gentlemen, that cash box was found
13 where Mr. Simmons was living in April of 2004, in Hopkins,
14 at his stepfather's house. His stepfather and his mother,
15 ladies and gentlemen, found this cash box with the
16 receipts. And they did the right thing. They called law
17 enforcement and said, take it. We don't want this here.
18 So law enforcement collected it and then Ms. Walker
19 identified it.

20 Detective Russell will tell you that the first
21 time he met the Defendant he had gone over to Richland
22 County to pick him up and to bring him to Lexington County
23 to serve warrants on him in the armed robbery. During
24 this ride there was another deputy there. He was just
25 riding along with the detective. Mr. Simmons said, it was

STATE'S OPENING TO THE JURY

1 fun, it was fun while it lasted but nothing lasts
2 forever.

3 Ladies and gentlemen, I don't think Ms. Walker,
4 when she testifies, is going to say anything was fun.

5 When Detective Russell took Mr. Simmons into his
6 office he read him his rights, his Miranda warnings.
7 You've all heard of those from television. And Detective
8 Russell is going to tell you specifically what rights he
9 gave Mr. Simmons.

10 And Mr. Simmons told Detective Russell, I'll talk
11 to you. I'll tell you what you want to know, but first I
12 want to talk to my family. I'd like to talk to my mama.
13 So Detective Russell tried to work that out. Tried to get
14 his mom with Mr. Simmons, but that didn't pan out.

15 A couple of months later, October 2004, Detective
16 Russell receives a letter through the mail and the return
17 address says Alphonso Simmons from the detention center.
18 Detective Russell says, I only know one Alphonso Simmons.
19 So he goes to the detention center and he meets with
20 Mr. Alphonso Simmons. And he tells him hey, I got your
21 letter, you know, what's up.

22 And the Defendant says, yeah, I'm ready to talk.
23 I'm ready to confess. I'm ready to tell you who my
24 accomplice was. I want to get the best deal I can get,
25 but I don't want to talk here. I don't want the other

ENDING TO THE JURY

So know I'm a snitch. Take me somewhere else and give you a statement. And Detective Russell says, I do that. I can't take you out of this secure environment. So Detective Russell terminates that conversation.

Ladies and gentlemen, as Judge Russo has told you, the Defendant is presumed innocent. That means it's the State's burden to convince each of you beyond a reasonable doubt that Mr. Simmons is guilty of both offenses. And Judge Russo is going to explain to you what reasonable doubt is because sometimes it's hard to grasp what that really means.

But Judge Russo is going to explain it and tell you what the law is but, ladies and gentlemen, please keep in mind the State does not have to convince each of you beyond any shadow of a doubt. You do not have to be 100 percent proof positive that Mr. Simmons is guilty. That would be an impossible thing for the State to do.

Use your common sense. Use your common sense. You get to judge the believability and the credibility of the witnesses. If you are firmly convinced that Mr. Simmons is guilty, based on your jurors' oath, you're going to find him guilty of both offenses. He's charged with two offenses. Armed robbery. Very straight forward, very simple. We have to show that Mr. Simmons while armed

DEFENSE'S OPENING TO THE JURY

1 with a deadly weapon took from another property with the
2 intent to permanently deprive the person of that property.

3 Burglary second. We have to show that
4 Mr. Simmons entered a building with the intent to commit a
5 crime, and while in the building he became armed with a
6 deadly weapon or that while the entering and the remaining
7 was at nighttime. So that's burglary second. Those are
8 the two offenses, ladies and gentlemen.

9 And at the close of the case during closing
10 arguments, Mr. Hubbard also from our office, is going to
11 have a chance to come before you and go through what we
12 believe the evidence showed, what we believe the testimony
13 was and how we believe that we have been able to show
14 y'all beyond any reasonable doubt that Mr. Simmons is
15 guilty of both of these offenses.

16 Obviously what happens here today and as the
17 Judge said it's a pretty short case, we'll probably finish
18 today, maybe in the morning. But obviously what happens
19 here today is important to Mr. Simmons. But I'm asking
20 you to remember what happens here today is important to
21 Ms. Walker. It's important to law enforcement. And it's
22 important to the citizens of Lexington County.

23 Even though it's not a long case, it's certainly
24 extremely important what happens right here. I'd like to
25 thank you for your attention.

DEFENSE'S OPENING TO THE JURY

1 THE COURT: Thank you. Mr. Cornwell?

2 MR. CORNWELL: Ladies and gentlemen of the jury.
3 Good morning. I'm so glad to see everybody came today and
4 we're happy that you have committed to perform one of the
5 highest duties, one of the most important civic duties in
6 our country and that is to serve on a criminal jury.

7 You're here mainly for one purpose. That's
8 because Alphonso Simmons is not guilty.

9 The State, as the attorney for the State has
10 spoken, has the burden of proving our client not guilty.
11 Now our constitutions, our state constitution, the
12 Constitution of the United States, has certain protections
13 built into it to ensure that every person accused of a
14 crime gets a fair trial. One of those is the presumption
15 of innocence.

16 It is not easy to find somebody guilty. And the
17 framers of the constitution purposely made it a difficult
18 thing to do. That's why the burden of proof is one of
19 reasonable doubt which is not something to be taken
20 lightly. Reasonable doubt though, as the prosecutor has
21 stated, does not mean you have to prove 100 percent a
22 person is guilty. It's not a light burden.

23 As an analogy, just imagine, if you would, an
24 empty glass. When you pour water into that glass
25 reasonable doubt is not halfway. Reasonable doubt isn't

DEFENSE'S OPENING TO THE JURY

1 even a little more than half. Reasonable doubt is almost
2 full.

3 Now, if anything I say is different from what the
4 Judge tells you later in how he describes what reasonable
5 doubt is, you always follow what the Judge says. But as
6 one of the State's most premiere justices has stated,
7 reasonable doubt is any doubt that gives you pause before
8 you act. And that's what you need to remember when you go
9 back in the courtroom (sic). You need to remember and not
10 lose focus of the fact that he's here an innocent man.
11 This man has not been proven guilty yet.

12 And everything you do back there, every decision
13 you make, every thought you have in regards to the facts
14 while you're deliberating, should be with the thought in
15 mind that, have they proven this innocent man guilty.

16 When do we reach the point that an innocent man
17 is now guilty. And I submit to you that that point is
18 when the glass is almost full. Right now it's empty. And
19 he's not guilty.

20 Thank you.

21 THE COURT: Thank you, Mr. Cornwell. The State
22 may call the first witness.

23 MS. GARRICK: Your Honor, briefly a housekeeping
24 matter. The State and the Defendant have agreed that
25 items 6 through 15 are in evidence without objection.

ANN WALKER - DIRECT

1 MS. FULLWOOD: That's correct, Your Honor.

2 THE COURT: State's 6 through 15 are without
3 objection in evidence.

4 (Thereupon, State's Exhibits 6 through 15, photographs,
5 were admitted into evidence.)

6 MS. GARRICK: Also Your Honor, State's Exhibit 1,
7 16 and 17 are in evidence.

8 THE COURT: Is that correct?

9 MS. FULLWOOD: Yes, Your Honor.

10 THE COURT: Without objection, 1, 16 and 17.
11 (Thereupon State's Exhibit 1, diagram, State's Exhibit 16,
12 aerial photograph, and State's Exhibit 17, five photos of
13 crime scene, were received into evidence.)

14 MS. GARRICK: Your Honor, the State would call
15 Ann Walker.

16 ANN WALKER, having been duly sworn, was examined
17 and testified as follows:

18 THE CLERK: Have a seat, please, ma'am and state
19 your name on the record.

20 THE WITNESS: Ann Walker, W. A. L. K. E. R.

21 DIRECT EXAMINATION

22 BY MS. GARRICK:

23 Q. Ms. Walker, how's your health this morning?

24 A. Not very good.

25 Q. Have you been sick all week?

ANN WALKER - DIRECT

1 A. Yes, ma'am.

2 Q. Ms. Walker, where are you from?

3 A. Originally Massachusetts, but from Texas.

4 Q. Did you go to high school around here?

5 A. No.

6 Q. And do you live around here now?

7 A. Yes.

8 Q. Where do you live?

9 A. Lexington County.

10 Q. And do you have any children?

11 A. I have two; 18 and 15.

12 Q. What kind of work do you do?

13 A. I'm a waitress.

14 Q. And where are you working now?

15 A. Waffle House.

16 Q. And where were you working in 2004?

17 A. McDonald's.

18 Q. And which McDonald's were you working at?

19 A. Saint Andrews Road.

20 Q. Is that in Lexington County?

21 A. Yes, ma'am.

22 Q. And how long did you work at that McDonald's there?

23 A. Six years.

24 Q. And what were your duties there?

25 A. I was the opening manager.

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1 Q. And what does that mean when you say opening manager?

2 A. You go in and you set up the store for the day. You
3 do everything.

4 Q. If I can you show you State's 16. Your Honor, could
5 the witness step down for just a moment?

6 THE COURT: Sure.

7 BY MS. GARRICK:

8 Q. Have you seen this diagram before?

9 A. Uh-huh.

10 Q. Do you recognize McDonald's on here?

11 A. Here.

12 Q. Would you put a circle?

13 THE COURT: I apologize, ma'am. Madam Court
14 Reporter has to take down everything that's being said so
15 I need you to speak verbally and I realize your voice --
16 why don't y'all switch sides so that she can face the
17 court reporter and just please speak up if you can.

18 THE WITNESS: (Drawing circle.)

19 BY MS. GARRICK:

20 Q. I can show you State's 17. Do you recognize these
21 photos?

22 A. Yes, ma'am.

23 Q. Can you please go through them from top to bottom and
24 tell us what they show? Step to the side, please.

25 A. This is Ashland and this is Saint Andrews. And this

ANN WALKER - DIRECT

1 is the way I was going. And this is the drive-through
2 side.

3 Q. What does this photograph marked 'left' show?

4 A. That's an extension.

5 Q. Where is the drive-through on this photograph?

6 A. Right here.

7 Q. The photograph marked 'top', can you orient us to that
8 picture?

9 A. The drive-through is over here.

10 Q. And the photograph marked 'right', what does it show?

11 A. This is that side from Ashland Road. The
12 drive-through is over here.

13 Q. And where is Saint Andrews Road?

14 A. Right here.

15 Q. The photograph marked 'rear'?

16 A. This is Saint Andrews Road right here. This is the
17 drive-through and this is Seven Oaks Elementary.

18 Q. Thank you. Take your seat.

19 A. Okay (complying).

20 Q. When you opened like that, are you by yourself or is
21 someone with you?

22 A. Most mornings I went in alone.

23 Q. Okay. And I want to direct your attention to April 16
24 of 2004. What time would you have gotten up to go to
25 work?

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1 A. About 4:15.

2 Q. What time did you need to be there?

3 A. 4:30.

4 Q. And about what time were the other employees expected?

5 A. Five.

6 Q. And what did you do on that morning? Tell us your
7 routine.

8 A. I go in and I always drive around the whole building
9 to make sure there's no cars or, you know, nothing
10 strange. And I didn't see anything so I proceeded to go
11 in.

12 Q. Was it still -- was it light or dark outside when you
13 went in?

14 A. It was dark.

15 Q. When you went in, the door you went in, is it on the
16 same side or a different side as the drive-through?

17 A. It's on the same side.

18 Q. And when you came in, what did you do next?

19 A. I walked to the back. I turned on all the lights and
20 I had like a travel path I did.

21 Q. I'm sorry. You had a what?

22 A. They call it a travel path. And I went over and I
23 turned on the ovens and I came back through by the front
24 counter and I turned on the fryers. And the fryers are
25 right before the drive-through window. Right when I got

ANN WALKER - DIRECT

1 past the fryers I noticed the window was open.

2 Q. You noticed what window was open?

3 A. The back drive-through window.

4 Q. And what was your reaction when you saw that?

5 A. I turned around and started going out of the building.

6 Q. And why were you going to go out of the building?

7 A. Because it's not supposed to be open.

8 Q. When you went towards the front door, what happened
9 next?

10 A. I heard a noise, and I turned around and I looked
11 back.

12 Q. And what did you see?

13 A. I saw a man on the freezer.

14 Q. And did you know this man when you first saw him?

15 A. I thought it was one of the ex-employees for a minute.

16 Q. Okay. And how was he dressed?

17 A. He had a gray hooded sweatshirt and mirrored
18 sunglasses.

19 Q. Was the hood up or down at the time?

20 A. It was up at the time.

21 Q. And, what happened next?

22 A. I froze and he proceeded to leap over -- we have a bin
23 area where we heat food and the front counter and the
24 glasses and the hood came down and that's when he put the
25 gun to my head and it went click.

ANN WALKER - DIRECT

1 Q. At that point, exactly how close were you to him?

2 A. Right here (indicating). He was right --

3 Q. Right beside you?

4 A. Right.

5 Q. And at that point when you looked at him, did you know
6 him?

7 A. No, ma'am.

8 Q. And what were you looking at then?

9 A. His face.

10 Q. And what did you say about the hood and the
11 sunglasses?

12 A. The hood and sunglasses had come off when he leaped
13 over the counter.

14 Q. What did -- did he say anything to you?

15 A. He told me to go open the safe.

16 Q. What did you notice about his physical characteristics
17 when he standing there beside you?

18 A. Just his eyes and his nose.

19 Q. What about, did you notice anything about his height?

20 A. He was about five-nine.

21 Q. And how tall are you?

22 A. Five-two.

23 Q. What about his weight?

24 A. He was slender built.

25 Q. What about his age?

ANN WALKER - DIRECT

1 A. In the mid 20s.

2 Q. Did you notice anything distinctive about his skin
3 such as scars or tattoos?

4 A. No. He had long pants on and he had a shirt, the
5 sweatshirt.

6 Q. Was there anything blocking your view of his face at
7 that time?

8 A. No, ma'am.

9 Q. After he said to go to the safe, what did y'all do
10 next?

11 A. We proceeded to go back to the office where the safe
12 was.

13 Q. And where was this person standing as y'all walked
14 that path?

15 A. Right beside me.

16 Q. And where was the gun at that point?

17 A. Right upside my head.

18 Q. Can you describe the gun for us?

19 A. It was a silver gun and he had it duct taped to his
20 hands.

21 Q. And as you walked down the path there, what were you
22 focusing on?

23 A. I was thinking I was dying.

24 Q. Did you have any trouble with your eyesight back then?

25 A. No, ma'am.

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1 Q. And did you make it to the office?

2 A. Yes, ma'am.

3 Q. And what happened when y'all went into the office?

4 A. I got the safe open and he told me to take all the
5 money out. He only wanted the bills. He didn't want the
6 change. And he was standing beside me, okay, destroying
7 the video machine.

8 Q. How long or small is that back office?

9 A. It's about the size of this (indicating).

10 Q. Okay. And is the safe -- where is the safe located?

11 A. It's on the floor.

12 Q. Did you have to get down on your knees?

13 A. Squat down; yes, ma'am.

14 Q. And when you opened the safe, what did you do?

15 A. I started taking all the money out and putting it in
16 the box.

17 Q. What kind of -- well, first tell me about the money.

18 How was the money in the safe?

19 A. Set up in eight registers and then we have petty cash.

20 Q. About how much money was in the petty cash?

21 A. Probably about 500.

22 Q. And do you remember -- what kind of box did you say
23 the petty cash box was?

24 A. It was a gray box.

25 Q. Is it a box you used often?

ANN WALKER - DIRECT

1 A. Use it everyday.

2 Q. Was there anything distinctive about it?

3 A. It had a dent on the right side and had a yellow
4 McDonald's -- I mean, a red McDonald's sticker on the top.

5 Q. What else was in the cash box, if anything?

6 A. The receipts for things we purchased.

7 Q. And as you were packing the box with money, what was
8 the gunman doing?

9 A. He was still trying to take care of the video
10 machine. He was standing right there.

11 Q. And were you looking at him at this time?

12 A. Yes, ma'am.

13 Q. Could you -- were the lights on in that back office?

14 A. Yes, ma'am.

15 Q. After you pulled all the bills out and put it in the
16 cash box, what did you do next?

17 A. I gave it to him and he told me to lay on the floor
18 for 15 minutes.

19 Q. Did he say anything else to you?

20 A. No, ma'am.

21 Q. Did he give you any other instructions before he left?

22 A. Just not to look at which way he went out.

23 Q. And did he leave?

24 A. Yes, ma'am.

25 Q. And when he left, was the office door open or closed?

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1 A. He shut it.

2 Q. And what happened after he left, what did you do next?

3 A. I laid on the floor.

4 Q. And at some point did you get up?

5 A. Yeah, when one of my employees was knocking on the
6 window.

7 Q. When that person was knocking on the door, what did
8 you do?

9 A. I told them to go call 9-1-1.

10 Q. When you went to the door where the employee was, was
11 that door locked or unlocked?

12 A. He came through the drive-through window and the
13 window was shut at the time.

14 Q. Was the front door locked or open?

15 A. It's locked.

16 Q. Your Honor, I'd ask that she come down one more time.

17 THE COURT: All right.

18 BY MS. GARRICK:

19 Q. That's not true. There'll be one more time after
20 that.

21 Your Honor, this is State's One. Is this the diagram
22 we prepared for court?

23 A. Yes, ma'am.

24 Q. Do you recognize it?

25 A. Uh-huh. Inside of McDonald's.

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1 Q. And can you show us where the front door is?

2 A. It's right here (indicating).

3 Q. All right. I need you to write front door.

4 A. (Complying.)

5 Q. And can you please show us where the drive-through
6 window is that you saw that was open?

7 A. (Complying.)

8 Q. Can you show us where the office is?

9 A. (Complying.)

10 Q. Okay. What is this?

11 A. Safe.

12 Q. What is this?

13 A. (Writing.)

14 Q. Can you tell us what you wrote there?

15 A. Video equipment.

16 Q. All right. Can you show us where the front counter
17 is?

18 A. Right here.

19 Q. And can you show us where the food preparation counter
20 is?

21 A. (Complying.)

22 Q. Okay. Using that pen, can you just draw us the route
23 you went in and around in the store that morning?

24 A. (Complying.)

25 Q. Okay. Where were you when you first saw the person on

ANN WALKER - DIRECT

1 the freezer?

2 A. About here.

3 Q. And where is the freezer?

4 A. To the right here (indicating).

5 Q. Can you write 'freezer' right here?

6 A. Uh-huh (complying).

7 Q. Thank you.

8 MS. GARRICK: Your Honor, may she come down for
9 the last time.

10 THE WITNESS: (Complying.)

11 BY MS. GARRICK:

12 Q. You can stand over here for me. I'm going to show you
13 State's Exhibit Five. Can you tell us what this shows?

14 A. That's the back, the back drive-through window.

15 Q. Is that the one that was open?

16 A. Yes, ma'am.

17 Q. State's Six?

18 A. This is the front door where I entered.

19 Q. Wait one second until I get the picture up. What does
20 it show?

21 A. That's the front door where you came in.

22 Q. And which way did you go to the office?

23 A. Back this way.

24 Q. And what is --

25 A. This is the front counter.

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1 Q. -- State's Seven, what does this show?

2 A. This shows the fryers and the back office. And that's
3 where the drive-through window is.

4 Q. Where would the drive-through window be? I'm sorry.

5 A. Right here.

6 Q. State's Eight, what does this show?

7 A. This shows the breaker box where I turned on all the
8 lights.

9 Q. Where would the safe be?

10 A. Right there.

11 Q. And where would the video equipment be?

12 A. It would be --

13 Q. Off the picture?

14 A. Off; yeah.

15 Q. State's Nine, what does that show?

16 A. It shows all the ovens that I turned on.

17 Q. Where's the freezer? Is it in that photo?

18 A. It would be right over here on the other side of that
19 cart.

20 Q. State's 10, what does this show?

21 A. It shows the shake machine. In the morning time it's
22 normally pulled back though, and that's where I would walk
23 through.

24 Q. When you would walk through to go where?

25 A. To the front counter area.

ANN WALKER - DIRECT

1 Q. And State's 11?

2 A. That's a freezer. This wasn't there at the time.

3 Q. That shelf?

4 A. No.

5 Q. Was that freezer there?

6 A. Yes.

7 Q. And what's the significance, if any, of that freezer?

8 A. That's where the man was sitting.

9 Q. State's 12, what does that show?

10 A. This shows the front area. This is where he came up,
11 right between here, and then right over here.

12 Q. Are the two things he jumped in that photograph?

13 A. Right here. This one. Right here, and this. Because
14 this wasn't there.

15 Q. State's 13, what does that show?

16 A. This shows the front counter area and this is where he
17 got me, right there.

18 Q. Is the front door in that picture?

19 A. Right here, ma'am.

20 Q. State's 14?

21 A. This is the safe. And the video equipment is right
22 over here.

23 Q. State's 15?

24 A. That's the back drive-through window.

25 Q. And which part of the window was open?

DIRECT

ANN W. [unclear] ide, right here, opens.

[unclear] s all the photographs. Ask that you have a seat.
1 [unclear] (replying.)

After y'all called the sheriff's department, how long
it before the deputy arrived?

It wasn't very long at all.

When the deputy got there, what did you do?

A. I told her that I got robbed.

9 Q. Did you give her a physical description of the person?

10 A. Yes, ma'am.

11 Q. Okay. And did you give her any other information?

12 A. Just had a gray sweatshirt and the glasses and what he
13 had taken.

14 Q. And did you meet a detective that evening?

15 A. Yes, ma'am.

16 Q. Do you remember who it was?

17 A. Eric Russell.

18 Q. Okay. and did you talk with him about the armed
19 robbery?

20 A. Yes, ma'am.

21 Q. And what did you tell him about the armed robbery?

22 A. I gave him a description of the man. And told him,
23 you know, what happened.

24 Q. Did you tell him that it was a stranger to you or
25 someone you knew?

ANN WALKER - DIRECT

1 A. Yes. I didn't recognize him at all.

2 Q. Did Detective Russell ever show you a photo lineup?

3 A. He showed me two lineups.

4 Q. And where did he show you the lineups at?

5 A. He showed them to me at my house.

6 Q. And when he came to show you a lineup, was he alone or
7 was there another officer with him?

8 A. I don't remember him being with anybody.

9 Q. Did Detective Russell tell you the names of the people
10 in the lineup?

11 A. No, ma'am. He just showed me the pictures and asked
12 me if I had recognized anyone.

13 Q. Were you shown a lineup where you did not recognize
14 anyone?

15 A. The first lineup.

16 Q. Were you ever shown a lineup where you did recognize a
17 person?

18 A. The second lineup.

19 Q. The person who robbed you?

20 A. Yes, ma'am.

21 Q. And who showed you that lineup?

22 A. Eric Russell.

23 Q. And where was this done?

24 A. It was done at my house.

25 Q. Do you remember when it was done?

ANN WALKER - DIRECT

1 A. In May sometime.

2 Q. Of that year?

3 A. Yes, ma'am.

4 Q. And what happened when you looked at this photo
5 lineup?

6 A. I just knew who it was instantly.

7 Q. Did you have any hesitation?

8 A. No, ma'am. You don't ever forget something like that.

9 Q. And did you tell the detective you recognized the
10 person?

11 A. Yes, ma'am.

12 Q. Did you indicate that in writing?

13 A. Yes, ma'am.

14 MS. GARRICK: May I approach, Your Honor?

15 THE COURT: Yes, ma'am.

16 BY MS. GARRICK:

17 Q. If I can show you what's been marked as State's Two;
18 do you recognize this lineup?

19 A. Yes, ma'am.

20 Q. What is that lineup?

21 A. That's a lineup that Eric Russell showed me.

22 MS. FULLWOOD: Your Honor, this entire line of
23 testimony would be subject to my previous motion and
24 objection.

25 THE COURT: All right. Yes, ma'am. That's noted

ANN WALKER - DIRECT

1 for the record. Thank you.

2 BY MS. GARRICK:

3 Q. Did you sign that document at any place?

4 A. Yes, ma'am.

5 Q. Are your initials on there?

6 A. Yes, ma'am.

7 Q. And did you circle anyone on there?

8 A. Yes, ma'am; the person that I recognized as robbing
9 me.

10 MS. GARRICK: Your Honor, we'd move State's Two
11 into evidence at this time.

12 THE COURT: Subject to objection.

13 (Thereupon, State's Exhibit No. 2, photo lineup, was
14 admitted into evidence.)

15 MS. GARRICK: Your Honor, may I publish it to the
16 jury.

17 THE COURT: Yes, ma'am.

18 (Handed to the jury panel. Pause.)

19 BY MS. GARRICK:

20 Q. Ms. Walker, how certain are you that the man you
21 circled is the man who robbed you?

22 A. 100 percent.

23 Q. Had you told Detective Russell that if He found him
24 you could ID him?

25 A. You never forget the man who puts a gun to your head.

ANN WALKER - DIRECT

1 Q. Can I show you what's been marked State's 18. Can you
2 take a moment and look at this?

3 A. (Complying). Yep, that's Monica's.

4 Q. Do you recognize that box?

5 A. Yes, ma'am.

6 Q. And where do you recognize it from?

7 A. From McDonald's.

8 Q. How do you recognize it?

9 A. Because it's a petty cash box, and it's the box I put
10 the money in.

11 Q. Do you recognize any of the receipts inside?

12 A. Yes, ma'am.

13 Q. Do you recognize any of the writing on the receipts?

14 A. This is the manager's handwriting here.

15 Q. And who was the manager?

16 A. Monica Glenn.

17 Q. And how long did you work with her?

18 A. Three years at the time.

19 Q. And how long did you observe her writing?

20 A. Three years.

21 MS. GARRICK: Your Honor, I'd move State's 18 into
22 evidence at this time.

23 MS. FULLWOOD: Your Honor, at this point they
24 haven't presented any chain of custody that would warrant
25 the evidence at this point.

ANN WALKER - CROSS

1 THE COURT: Overruled. It's in evidence.

2 (Thereupon, State's Exhibit 18, cash box with receipts,
3 was admitted into evidence.)

4 BY MS. GARRICK:

5 Q. Ms. Walker, do you see the man who committed the armed
6 robbery and the burglary in the courtroom today?

7 A. Yes, ma'am.

8 MS. FULLWOOD: Again, subject to my prior
9 objection.

10 THE COURT: Yes, ma'am. It's noted. Thank you.

11 BY MS. GARRICK:

12 Q. Do you recognize the man who held a gun to your head
13 and threatened to kill you from April 16th of 2004 in the
14 courtroom today?

15 A. Yes, ma'am.

16 Q. Can you please point him out for us?

17 A. (Complying.)

18 Q. What is he wearing?

19 A. He's wearing a blue, a light blue shirt and a blue
20 jacket.

21 MS. GARRICK: Your Honor, let the record reflect
22 that's the Defendant, Mr. Simmons.

23 Beg the Court's indulgence one moment.

24 THE COURT: Yes, ma'am.

25 (Pause.)

ANN WALKER - CROSS

1 MS. GARRICK: Ms. Walker, please answer
2 Ms. Fullwood's questions.

3 CROSS-EXAMINATION

4 THE COURT: Yes, ma'am.

5 BY MS. FULLWOOD:

6 Q. Ms. Walker, do you need a break right now?

7 A. No. I'll be all right.

8 Q. Are you going to be okay?

9 THE COURT: Do you need some water, ma'am?

10 THE WITNESS: I got some right here. Thank you
11 though.

12 BY MS. FULLWOOD:

13 Q. Now when you got to work that morning, you immediately
14 went to the office; is that right?

15 A. Yes, ma'am; turned the lights on.

16 Q. So you walked down to the office in the dark?

17 A. Yes, ma'am.

18 Q. And you didn't notice that anybody else was in the
19 building at that point?

20 A. No, ma'am.

21 Q. And once the light was on, did you make sort of a C.
22 shape circuit through the restaurant to turn on, first,
23 your burners?

24 A. I turned the ovens on first.

25 Q. Turned the what?

ANN WALKER - CROSS

1 A. I come out of the office and I walk to the left, and I
2 walk all the way around.

3 Q. And so you cut, what, the ovens on first?

4 A. Uh-huh; yes, ma'am.

5 Q. And then you walked around past the, behind the front
6 counter?

7 A. Yes, ma'am.

8 Q. And then went over to the fryers?

9 A. Yes, ma'am.

10 Q. And while you did those things, you didn't notice
11 anyone else in restaurant?

12 A. No, ma'am.

13 Q. All right. At the fryers you noticed that that
14 drive-through window was open?

15 A. When I got right past the fryers.

16 Q. And you went to leave the restaurant?

17 A. Yes, ma'am.

18 Q. And that's when you noticed the man; right?

19 A. When I got to the front counter.

20 Q. Okay. And did you notice him because you saw him out
21 of the corner of your eye or you heard something?

22 A. I heard something first.

23 Q. Okay. And when you looked, at first you thought it
24 was a man named Eric Hart; is that right?

25 A. Yes, ma'am; he used to work there.

ANN WALKER - CROSS

1 Q. And did this man look like Eric Hart?

2 A. He was the same built.

3 Q. Same build?

4 A. Uh-huh.

5 Q. And once you noticed the man, he jumped off the
6 freezer and came to you?

7 A. He huddled over the bin and hurdled over the front
8 counter and he put the gun to my head and it went click.

9 Q. And that just took a matter of seconds; right?

10 A. Yes.

11 Q. All right. And you say that the man you saw had on
12 sunglasses?

13 A. He had sunglasses on when he was on the freezer, but
14 by the time he had the gun to my head the hood was off and
15 the glasses were gone.

16 Q. And what happened to the glasses?

17 A. I have no idea.

18 Q. And what did these glasses look like?

19 A. They were mirrored glasses.

20 Q. Mirrored?

21 A. Mirrored.

22 Q. What color were they?

23 A. They were just that glass, the mirrored ones.

24 Q. Okay. How about the size?

25 A. I don't know.

ANN WALKER - CROSS

1 Q. All right.

2 A. He had the hood on.

3 Q. Okay. Now, you testified that once your employees got
4 there you talked to the officer who first responded to the
5 scene; right?

6 A. Yes, ma'am.

7 Q. Do you remember telling her that that man put on the
8 sunglasses when he put the gun to your head?

9 A. No, ma'am.

10 Q. Could you have told her that?

11 A. I don't remember telling her that because he didn't
12 have no glasses on.

13 Q. So you might have told her that but you don't
14 remember?

15 A. No. I know he had no glasses on.

16 Q. I'm not talking about what -- I'm not talking about
17 what you say happened. Could you have said that to
18 Officer Tucker on the day it happened?

19 A. I don't remember.

20 Q. You don't remember. Okay. Now, when the gun was at
21 your head, this man was standing to your side; wasn't he?

22 A. Yes, ma'am.

23 Q. And naturally you were very afraid?

24 A. I was petrified.

25 Q. Yes. And your ability to look at the man was through

ANN WALKER - CROSS

1 your peripheral vision; correct?

2 A. At that time; yes.

3 Q. And during that time, you walked back to the office?

4 A. Yes, ma'am.

5 Q. And that is not a very long distance at all; is it?

6 A. No, ma'am.

7 Q. It would just take a few seconds to get to the office;
8 correct?

9 A. Yes, ma'am.

10 Q. And let me ask you this: As far as that walk to the
11 office, do you remember telling Deputy Tucker that at that
12 time the man told you to keep your head down?

13 A. No. He told me to keep my head down later on, not at
14 that time.

15 Q. But my question is: Do you remember telling Deputy
16 Tucker on the day that this happened that the man told you
17 to keep your head down --

18 A. He told me --

19 Q. -- right at the counter as he was talking you --

20 A. No, it wasn't at that time. It was later on.

21 Q. Okay. Do you remember what you said to her on that
22 day, Deputy Tucker?

23 A. No.

24 Q. You don't?

25 A. I remember what happened that day.

ANN WALKER - CROSS

1 Q. I'm asking you what you told Deputy Tucker.

2 A. I told her that it was later on. It wasn't at that
3 time.

4 Q. Okay. So, you -- do you remember what you told Deputy
5 Tucker?

6 A. No, ma'am.

7 Q. All right. So you could have told her something
8 different; correct?

9 A. I don't remember what I told her.

10 Q. All right. That's fine. The safe in that office is
11 on the floor; correct?

12 A. Yes, ma'am.

13 Q. And to open the safe, you would have to kneel down and
14 be on the floor; right?

15 A. Yes, ma'am.

16 Q. And so once you were in the office and instructed to
17 open the safe, you were on the floor of the office the
18 entire time; right?

19 A. Yes, ma'am.

20 Q. The man was standing up fooling with the video
21 equipment?

22 A. He was standing right beside me.

23 Q. Yes, ma'am. But you were on the floor and he was at
24 your side standing up; is that right?

25 A. Yes, ma'am.

ANN WALKER - CROSS

1 Q. All right. All right. And you've opened that safe
2 many times; right?

3 A. Yes, ma'am.

4 Q. And you knew the combination, and you were able to get
5 it on the first try; correct?

6 A. Yes, ma'am.

7 Q. You had to look at the safe in order to operate the
8 opening mechanism; right?

9 A. Yes, ma'am.

10 Q. All right. And it only took a few seconds?

11 A. Yes.

12 Q. All right. Once you opened the safe, there are eight
13 drawers you had to pull out?

14 A. Yes.

15 Q. And those were all -- are those the kind of cash
16 drawers that you slide into a cash register?

17 A. Yes, ma'am.

18 Q. So that safe is large enough to hold eight of those?

19 A. Yes, ma'am.

20 Q. And you stuck all the money from those drawers into
21 that gray cash box?

22 A. Yes, ma'am.

23 Q. And to do that, you had to look at the drawers to take
24 them out; didn't you?

25 A. Not really.

ANN WALKER - CROSS

1 Q. You didn't? You had to look at the drawers and the
2 money in order to take the money out?

3 A. I was pulling the money out. I was watching what he
4 was doing.

5 Q. So, are you saying that even though you were scared
6 you had turned and stared this man in the face?

7 A. I was watching where that gun was.

8 Q. Okay. Were you watching it out of the side of your
9 eye?

10 A. No, ma'am.

11 Q. Are you saying that you were kneeling and handling
12 this money, at the same time turning and looking at the
13 man standing beside you?

14 A. Yes, ma'am.

15 Q. Even though you were afraid because he had a gun?

16 A. Yes.

17 Q. Okay. Did it just take you a few minutes to get the
18 money in the cash box?

19 A. Probably about five minutes.

20 Q. Five minutes. Why would it take that long?

21 A. Because you have to pull them all out and they were
22 stacked up.

23 Q. Well, I thought it was something fairly easy to do, if
24 you didn't have to look at it to --

25 A. It was, but I was watching him at the same time.

ANN WALKER - CROSS

1 Q. Okay.

2 A. And he was over there tearing up the video equipment.

3 Q. Okay. Now, how tall did you tell the police this man
4 was?

5 A. About five-nine.

6 Q. And what weight did you estimate him to be?

7 A. Slender built.

8 Q. And did you tell them any particular style of hair he
9 wore?

10 A. He didn't have no hair.

11 Q. He didn't have no hair. Was there anything
12 distinctive about his eyes?

13 A. His eyes and his nose.

14 Q. What was distinctive about his eyes?

15 A. Just the way they looked.

16 Q. The way they looked. Okay. Did you tell the police
17 anything about those eyes?

18 A. Just the way they looked. They looked crazed.

19 Q. Was there anything distinctive about his teeth?

20 A. I didn't see his teeth.

21 Q. Did he have any piercings?

22 A. He had the sweatshirt on and long pants.

23 Q. And what color was that sweatshirt?

24 A. It was gray.

25 Q. What color were the pants?

ANN WALKER - CROSS

1 A. Black.

2 Q. And what kind of shoes did he have on?

3 A. I didn't recognize the shoes.

4 Q. You didn't recognize the shoes. You didn't look at
5 the shoes?

6 A. No; no, ma'am.

7 Q. What hand was he using to hold the gun?

8 A. I believe it was the right hand.

9 Q. Right hand. All right. And you said it was a silver
10 gun?

11 A. It was a short, silver gun.

12 Q. About how long was the barrel?

13 A. About like that (indicating).

14 Q. About like that. And was the finish on the gun, was
15 it a shiny silver finish?

16 A. No. It was a dull silver.

17 Q. Okay. A dull silver. Do you know the difference
18 between a revolver and semiautomatic?

19 A. No.

20 Q. Have you ever seen or seen in the movies those guns
21 that have the little cylinder on the end?

22 A. Yes, ma'am.

23 Q. Was it that kind of gun or --

24 A. I think it was that kind.

25 Q. That's what you call a revolver.

ANN WALKER - CROSS

1 A. Okay.

2 Q. Was it a revolver then?

3 A. Yes, ma'am.

4 Q. In what way -- how did the man have this gun duct
5 taped to his hand? I'm confused about that.

6 A. He had the handle right here (indicating) and he had
7 it wrapped with duct tape so it wouldn't come --

8 Q. Wouldn't come loose. Okay. So you're saying that he
9 had the duct tape around the barrel of the gun and his
10 hand?

11 A. Uh-huh; yes, ma'am.

12 Q. About how thick was that duct tape?

13 A. It was around his hand.

14 Q. I mean was it --

15 A. It was regular size duct tape.

16 Q. Black duct tape?

17 A. No; silver.

18 Q. Silver duct tape. Okay. And when you finally had
19 your other employees come, the doors were locked?

20 A. Yes, ma'am. I was the only one with the key.

21 Q. Right. Okay. And so the only thing that hadn't been
22 locked in that store was that drive-through window that
23 you saw open?

24 A. Yes, ma'am.

25 Q. And is -- I believe you showed us on those diagrams

ANN WALKER - CROSS

1 that that's the side of the store that's next to Ashland
2 Plaza with the Sandy's and all of that?

3 A. Yes, ma'am.

4 Q. And that's the side of the store that's towards I-26?

5 A. Yes.

6 Q. All right. And then on the other side of the store is
7 Ashland Boulevard?

8 A. Ashland Road.

9 Q. Ashland Road. Okay. And it's about three lanes wide
10 at that point?

11 A. Two.

12 Q. Doesn't the turn onto Saint Andrews have two lanes,
13 one to turn right and one to turn left?

14 A. Ashland Road, they got the turning lane but it's only
15 two lanes but right when you get to the light they have
16 the left turning.

17 Q. Okay. At the light it's three?

18 A. Yes, but the rest of the road is two lanes.

19 Q. Okay. That's right. That's right. And directly
20 across Ashland Road is a Shell Station?

21 A. Yes, ma'am.

22 Q. And was that there at that time?

23 A. Yes.

24 Q. And then between the Shell Station and -- well, next
25 to the Shell Station, there's a little strip where cars

REGINALD LEE - DIRECT

1 park?

2 A. Empty lot. They park trucks there.

3 Q. Who parks them there?

4 A. The people who drive the semis. The man rents the
5 property out for the trailer -- truck drivers and they
6 park their trucks there and their cars when they go out.

7 Q. For storage?

8 A. It's like a truck stop.

9 Q. Okay. Okay. And then next to that?

10 A. Next to that is Ryan's.

11 Q. Used to be a Ryan's over there?

12 A. Right.

13 MS. FULLWOOD: Beg the Court's indulgence.

14 (Pause.)

15 MS. FULLWOOD: No further questions, Your Honor.

16 THE COURT: Anything further?

17 MS. GARRICK: Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. GARRICK:

20 Q. From the time you first saw the man crouched on the
21 freezer to the time he left and shut that office door,
22 about how long do you think that whole process took?

23 A. About 15 minutes.

24 Q. And, Ms. Walker, how sure are you that this man right
25 here is the armed gunman who burglarized the McDonald's --

REGINALD LEE - DIRECT

1 A. I'm positive.

2 Q. -- on April 16th of 2004?

3 A. I'm positive.

4 MS. GARRICK: Nothing else, Your Honor.

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

6 Call your next witness.

7 MR. HUBBARD: State calls Reginald Lee.

8 REGINALD LEE, having been duly sworn, was

9 examined and testified as follows:

10 THE CLERK: Have a seat, please, sir. I need you

11 to speak up loud and clear. Once you have a seat, state

12 your full name on the record, spelling your last, please.

13 THE WITNESS: Reginald Wendell Lee. L. E. E.

14 DIRECT EXAMINATION

15 BY MR. HUBBARD:

16 Q. Mr. Lee, where do you live?

17 A. Hopkins, Richland County.

18 Q. Do you know Alphonso Simmons?

19 A. I do.

20 Q. How do you know him?

21 A. I'm married to his mother, Hurlisa Lee.

22 Q. Hurlisa?

23 A. Hurlisa Lee.

24 Q. Is that H. U. R. L. I. S. A.?

25 A. Yes, sir.

REGINALD LEE - DIRECT

- 1 Q. So Mr. Simmons is your stepson?
- 2 A. Yes, sir.
- 3 Q. Now before we talk about Mr. Alphonso Simmons, I want
- 4 to talk about you a little bit, if that's all right. Do
- 5 you work?
- 6 A. Yes, sir.
- 7 Q. Where do you work?
- 8 A. Fed-Ex and I own my own landscaping business.
- 9 Q. Fed-Ex. Is that out near the airport?
- 10 A. Yes, sir.
- 11 Q. How long have you worked for Fed-Ex?
- 12 A. 20-plus years.
- 13 Q. And you mentioned a landscaping business?
- 14 A. Yes, sir.
- 15 Q. Who are you in business with?
- 16 A. My brother.
- 17 Q. So it's you two that own the business?
- 18 A. Yes, sir.
- 19 Q. How long have y'all been doing that?
- 20 A. 2000.
- 21 Q. So you work pretty much all the time?
- 22 A. Yes, sir.
- 23 Q. Now, this house in Hopkins -- it's a house?
- 24 A. Yes, sir.
- 25 Q. How long have you lived in that house?

REGINALD LEE - DIRECT

1 A. 1992.

2 Q. And you mentioned Hurlisa. How long have you been
3 married to Hurlisa?

4 A. Six years next month.

5 Q. You can't forget that date.

6 A. No, better not forget that.

7 Q. So y'all were living -- you were living in that
8 house. When you married Hurlisa, she moved into the house
9 you already had?

10 A. Yes, sir.

11 Q. How many children did you have or did you have any
12 children before you married Hurlisa?

13 A. One daughter.

14 Q. One daughter?

15 A. Yes, sir.

16 Q. Where is she now?

17 A. She's at Coastal Carolina.

18 Q. The college?

19 A. Yes, sir.

20 Q. Does that go a long ways to explain why you work two
21 jobs?

22 A. Yeah,, it has lot to do with it.

23 Q. Now have you and Hurlisa had any children?

24 A. No, we have not.

25 Q. Hurlisa, how many children did she have besides

REGINALD LEE - DIRECT

- 1 Alphonso Simmons?
- 2 A. Two. Two boys.
- 3 Q. Two other boys?
- 4 A. Yes, sir.
- 5 Q. Besides Alphonso Simmons, what -- who are the others?
- 6 A. Marcus and Chas.
- 7 Q. Now, Alphonso, Marcus and Chas. Who was the oldest?
- 8 A. Alphonso's the oldest.
- 9 Q. Have you ever been on the stand before?
- 10 A. No, sir.
- 11 Q. Okay. Well, I appreciate you helping me. Marcus, is
- 12 he the middle son or youngest?
- 13 A. He's the middle.
- 14 Q. And Chas?
- 15 A. The youngest.
- 16 Q. The youngest. Back in April of 2004, where did
- 17 Alphonso Simmons call home?
- 18 A. My address. Richland County, Hopkins. At my address.
- 19 Q. At the house you lived in since '92?
- 20 A. Yes, sir. Yes, sir.
- 21 Q. When he lived with you, did you give him a room of his
- 22 own?
- 23 A. Yes, sir.
- 24 Q. Mr. Lee, I want to shift and talk about this case
- 25 now. Do you recall back in May of 2004 law enforcement

REGINALD LEE - DIRECT

1 coming to your house?

2 A. Yes, sir.

3 Q. Do you recall them having a search warrant?

4 A. Yes, sir.

5 Q. Did you have any problem or any objection to them
6 searching your house?

7 A. Not at all.

8 Q. Did you have anything to hide?

9 A. No, sir.

10 Q. To your knowledge -- and were you there when they
11 executed that search warrant?

12 A. I was.

13 Q. To your knowledge, did law enforcement find anything
14 pertaining to a robbery at McDonald's at your house?

15 A. Not at that time. Found nothing.

16 Q. In June, just a few days or a week later, do you
17 remember you and your wife finding something in your
18 house?

19 A. I do.

20 Q. And about how long after the search warrant was it?

21 A. It was days, a couple weeks. It was real close.

22 Q. Okay. Do you recall what you found?

23 A. I do.

24 Q. What did you find?

25 A. A bag with a box in it.

REGINALD LEE - DIRECT

1 Q. Okay. Well, this bag and there was a box in it. This
2 bag, where did y'all locate that bag?

3 A. Behind the washing machine and dryer.

4 Q. And this bag had a box in it?

5 A. Yes, sir.

6 Q. And when you say a box, is this a wooden box, metal
7 box or?

8 A. Metal box.

9 Q. Metal box. What color?

10 A. Was gray.

11 Q. Did you see anything on there that might have
12 indicated it was from a McDonald's?

13 A. I did. It had that golden arch emblem on it.

14 Q. I want to show you what's already been placed into
15 evidence, State's Exhibit Number 18.

16 Please tell me if this is the metal box you saw in
17 that bag.

18 A. Yes, sir. It looks just like it.

19 Q. Just like it?

20 A. Just like it with that arch on it.

21 Q. That arch being a sticker that says McDonald's?

22 A. McDonald's.

23 Q. Red background with yellow golden arches?

24 A. Yes, sir.

25 Q. This looks like the very thing you found in your

REGINALD LEE - DIRECT

1 house?

2 A. Exactly like the very thing that I found.

3 Q. Mr. Lee, when you found it, did you open it up?

4 A. I did not.

5 Q. Your daddy was in law enforcement; wasn't he?

6 A. Yes, sir.

7 Q. You knew better than to open it?

8 A. I knew better than to touch anything.

9 Q. When you found it, what did you do?

10 A. Called law enforcement.

11 Q. And did you hand it over to them?

12 A. I did.

13 Q. Now let me ask you, it's going to sound like a silly
14 question. Did you or your wife bring this box into your
15 house?

16 A. Not at all.

17 Q. Not at all. Now, you mentioned two other sons that
18 Hurlisa had, Marcus?

19 A. And Chas.

20 Q. How old was Marcus at the time; do you remember?

21 A. I want to say 19. 18, 19.

22 Q. Does Marcus, did he then or does he now look anything
23 like his brother Alphonso?

24 A. No, he do not.

25 Q. How tall is Marcus?

REGINALD LEE - CROSS

- 1 A. About six-four, six-five.
- 2 Q. So I'm 6-3. He is taller than me?
- 3 A. Yeah, he might be an inch or two taller than you.
- 4 Q. Let's talk about that other brother, Chas. How old
- 5 was he at the time?
- 6 A. 11, 12; something like that.
- 7 Q. He was just a kid?
- 8 A. Right.
- 9 Q. Does he look anything like Alphonso?
- 10 A. No. He's quite shorter.
- 11 Q. Now you mentioned Alphonso was living in the house,
- 12 your house, at that time?
- 13 A. Yes, sir.
- 14 Q. You mentioned Chas and Marcus and you and your wife.
- 15 Anybody else living in your house at that time?
- 16 A. No one.
- 17 Q. And, again, when you found this metal box, you didn't
- 18 open it?
- 19 A. No, sir.
- 20 Q. And you turned it over to law enforcement?
- 21 A. I did.
- 22 Q. You called law enforcement?
- 23 A. I did.
- 24 Q. Thank you, Mr. Lee. Thank you.
- 25 THE COURT: Yes, ma'am.

REGINALD LEE - CROSS

CROSS-EXAMINATION

1
2 BY MS. FULLWOOD:

3 Q. Thank you, Your Honor. Good morning, Mr. Lee.

4 A. How are you?

5 Q. Good. How are you?

6 Did it sound about right that the police came to your
7 house with a search warrant on May the 24th of 2004?

8 A. Yeah. It was somewhere in that neighborhood.

9 Q. All right. And on that day, they didn't find that
10 cash box; did they?

11 A. They did not.

12 Q. It was just you and your wife?

13 A. Uh-huh.

14 Q. And that was about May 31st or June the 1st; does that
15 sound about right?

16 A. It was some days or weeks. I don't remember the exact
17 time.

18 Q. Okay. But some period of time?

19 A. Somewhere in that time; uh-huh.

20 Q. Some period of time.

21 A. Uh-huh.

22 Q. All right. Mr. Hubbard asked you about the people
23 living in your house?

24 A. Uh-huh.

25 Q. One of them is your stepson, Chas?

1 A. Uh-huh.

2 Q. Now, Chas was born in '91; wasn't he?

3 A. Somewhere like that. I don't know.

4 Q. So he would have been 13 back in 2004; is that right?

5 A. Uh-huh.

6 Q. Is that right?

7 A. Yeah. Somewhere in that neighborhood.

8 Q. Okay. And you say that you work all the time?

9 A. Not all the time. Not all the time.

10 Q. Well, it sounds like you're pretty busy.

11 A. Yes, ma'am.

12 Q. And when you're not in your house you don't know who's
13 there; do you?

14 A. No, I wouldn't know if I'm not there.

15 Q. Exactly. Thank you very much.

16 A. Okay.

17 MR. HUBBARD: Your Honor, I have no further
18 questions for Mr. Lee and I'd ask he be excused because I
19 know he's missing work.

20 THE COURT: All right. Any objection to Mr. Lee
21 being excused?

22 MS. FULLWOOD: No objection.

23 THE COURT: All right. Mr. Lee, you're free to
24 leave. Thank you, sir. Call your next witness.

25 MS. GARRICK: Your Honor, before our next witness

1 A. Uh-huh.

2 Q. Now, Chas was born in '91; wasn't he?

3 A. Somewhere like that. I don't know.

4 Q. So he would have been 13 back in 2004; is that right?

5 A. Uh-huh.

6 Q. Is that right?

7 A. Yeah. Somewhere in that neighborhood.

8 Q. Okay. And you say that you work all the time?

9 A. Not all the time. Not all the time.

10 Q. Well, it sounds like you're pretty busy.

11 A. Yes, ma'am.

12 Q. And when you're not in your house you don't know who's
13 there; do you?

14 A. No. I wouldn't know if I'm not there.

1 we need to get our exhibits.

2 THE COURT: Ladies and gentlemen, if you would
3 retire to your jury room. Please have no conversation
4 about this case at all. Talk about anything else you
5 want. If you need anything, let us know and we'll see to
6 it that you have it.

7 FOREPERSON OF THE JURY: Can we take notes or
8 anything?

9 THE COURT: I'll talk to the lawyers about that,
10 give that you answer.

11 (Jury exits courtroom at 11:39 a.m.)

12 MS. GARRICK: Your Honor, I apologize. We need a
13 few moments to redact those documents we talked about this
14 morning.

15 THE COURT: Is there any objection if a member of
16 the jury wants to take notes?

17 MR. HUBBARD: Your Honor, my -- usually I'd say
18 Court's discretion but my only problem now is we're kind
19 of midstream, two critical witnesses, an eyewitness, the
20 victim, and then the stepfather who found the evidence.

21 At this point I would object because there's
22 critical evidence that's been presented by the State. We
23 bear the burden of proof. It won't be on any notes.

24 And I'd hate for at this point whoever comes up
25 next for those notes to have more emphasis or more weight

1 on that witness.

2 MS. FULLWOOD: I was going to ask, has the Court
3 noticed some of them already taking notes?

4 THE COURT: I haven't, but they may have.

5 MS. FULLWOOD: I thought that's might be why you
6 asked us.

7 THE COURT: No. When I excused them to go to the
8 jury room, the Foreman asked could we take notes. I told
9 him I would get back with him.

10 MS. FULLWOOD: I tend to kind of agree with
11 Mr. Hubbard then.

12 THE COURT: All right. You know, again, and I'm
13 not restricting y'all in any way. If this case goes the
14 rest of the week, that's fine, but I don't think it will.
15 I think it's going to be relatively short.

16 So I'll just tell them that the case is already
17 underway, it's going to be a short case and therefore
18 they're just to pay close attention.

19 MR. HUBBARD: Thank you, Your Honor.

20 THE COURT: All right. We'll be at ease then for
21 a few minutes.

22 (Thereupon a break was taken from 11:40 a.m., until
23 11:46 a.m., when the trial resumed as follows:)

24 MS. GARRICK: Your Honor, what was formerly
25 marked State's Exhibit Three, which was the Miranda form

1 that Mr. Russell went over with Mr. Simmons, that full and
2 complete original document has now been marked Court's
3 Exhibit Two.

4 THE COURT: All right.

5 MS. GARRICK: And we have taken a redacted
6 Miranda form that is now State's Exhibit Three.

7 THE COURT: Okay.

8 MS. FULLWOOD: That's right.

9 THE COURT: Any objection?

10 MS. FULLWOOD: No, sir. Well, other than my
11 previous objection.

12 THE COURT: Right.

13 MS. FULLWOOD: But --

14 THE COURT: Right.

15 MS. GARRICK: Your Honor, we've taken what was
16 formerly State's Exhibit Four which is purported to be a
17 letter written to Eric Russell from Alphonso Simmons.
18 That was State's Four. That is now, the original document
19 is now State -- excuse me, Court's Three and it's going to
20 become State's Four. So it is a photocopy redacted, that
21 is now State's Four.

22 (Thereupon original, unredacted, State's Exhibit 4 is now
23 Court's Exhibit 3, redacted version is now State's Exhibit
24 4.)

25 THE COURT: All right.

ERIC REDMOND RUSSELL - DIRECT

1 (Jury enters courtroom at 12:01.)

2 THE COURT: Y'all can have a seat. Thank you
3 very much. All right. You may call your next witness.

4 MS. GARRICK: Your Honor, we would call Detective
5 Eric Russell to the stand.

6 ERIC REDMOND RUSSELL, having been duly sworn, was
7 examined and testified as follows:

8 THE CLERK: Have a seat state your full name
9 spelling your last please.

10 THE WITNESS: Eric Redmond Russell. R. U. S. S.
11 E. L. L.

12 DIRECT EXAMINATION

13 BY MS. GARRICK:

14 Q. Detective Russell, where are you employed?

15 A. Lexington County Sheriff's Office.

16 Q. And how long have you been in law enforcement?

17 A. About 16 years.

18 Q. Is that all with Lexington County?

19 A. Yes, ma'am.

20 Q. And what is your rank?

21 A. I'm a major crimes detective.

22 Q. And how long have you been in major crimes?

23 A. About six years.

24 Q. If I can direct your attention to April 16th of 2004.

25 How did you become involved in this armed robbery case?

ERIC REDMOND RUSSELL - DIRECT

1 A. I was on call and received a call at my house at about
2 4:30, five o'clock in the morning stating that the Saint
3 Andrews Road McDonald's had been robbed and I was asked to
4 respond.

5 Q. Did you meet Ann Walker there that night or early
6 morning?

7 A. Yes, ma'am; I did.

8 Q. And did she indicate a general description of the
9 suspect?

10 A. She gave me a general description as a black male,
11 roughly five-seven, 170 pounds, slender build, said she
12 could recognize him.

13 Q. And did you hear anything about Eric Hart being
14 possibly identified?

15 A. Yes, ma'am. She said when she first saw this
16 individual she had thought that it might have been an
17 ex-employee, Eric Hart when she first saw him sitting on
18 the freezer. We later found Eric Hart and talked with him
19 and his family and determined that he had been home during
20 the time that this robbery had occurred.

21 Q. Through the course of your investigation, did you
22 develop a suspect?

23 A. Yes, ma'am; I did.

24 Q. And how did you develop a suspect?

25 A. Through a confidential informant.

ERIC REDMOND RUSSELL - DIRECT

1 Q. And who was the suspect you became focused on?

2 A. Alphonso Simmons.

3 Q. Did Alphonso Simmons' physical characteristics match
4 what Ms. Walker had given from that night?

5 A. Yes, ma'am; it did.

6 Q. Is he in that same age range?

7 A. Same age range, same height, weight.

8 Q. Based on that, what did you do next?

9 A. I took a photo lineup and showed it to Ms. Walker that
10 contained a picture of Mr. Simmons in it.

11 Q. Let's backtrack a little bit. Tell me -- about how
12 many photo lineups have you done in your career.

13 A. I'm going to guess, about a hundred or so.

14 Q. And prior to -- how many photo lineups did you show
15 Ms. Walker?

16 A. I showed her two.

17 Q. What happened when you showed Ms. Walker the first
18 photo lineup?

19 A. She was unable to pick anybody out of that lineup.

20 Q. And when you showed Ms. Walker a second photo lineup,
21 where were y'all?

22 A. We were at her residence.

23 Q. Were you alone or did you have another officer with
24 you?

25 A. I had another detective with me, Detective Goss.

ERIC REDMOND RUSSELL - DIRECT

1 Q. And is Detective Goss still with the sheriff's
2 department?

3 A. No, ma'am; he is with Batesburg Police Department
4 right now.

5 Q. And when y'all went to Ms. Walker's there, do you
6 remember the date of that photo lineup?

7 A. The date I showed her the lineup?

8 Q. Correct.

9 A. May the 24th of 2004.

10 Q. When you showed her that lineup, can you tell us the
11 procedure you used to do this?

12 A. Yes, ma'am. I went to her house with the photo lineup
13 which is just a piece of paper that has six individuals'
14 pictures on it. I talked to Ms. Walker and said, I have a
15 lineup that I want to show you. And you look at it and
16 tell me if there's anybody that you recognize.

17 I presented the lineup to her. She looked at the
18 pictures and immediately recognized Alphonso Simmons as
19 the person that had robbed her.

20 Q. Did you suggest to her any picture to pick out?

21 A. No, ma'am; I didn't.

22 Q. Did Deputy Goss in your presence say anything to her
23 about this photo lineup procedure?

24 A. No, ma'am. I don't think Deputy Goss spoke with her
25 at all.

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1 Q. Was she told before the showing the names of any of
2 the people involved?

3 A. No, ma'am; she was not.

4 Q. And how were the photos displayed to her? How were
5 they laid out?

6 A. There were six photos on a piece of paper that
7 contained all the people that had similar characteristics,
8 all black males, roughly the same age, same general
9 appearance.

10 Q. Were these photos in black and white or in color?

11 A. They were in black and white.

12 Q. Is there any particular protocol that you should use
13 black and white or color or color versus black and white?

14 A. I prefer to use black and white because if you use
15 color pictures, different colors stand out more than other
16 colors. If you have two people with a gray shirt on and
17 one person with a red shirt on, the red shirt will stand
18 out more. The black and white kind of takes it out of the
19 equation.

20 Q. And you said that she immediately picked out someone?

21 A. Yes, ma'am; she did.

22 Q. Did you have her indicate this in writing?

23 A. Yes, ma'am; I did.

24 Q. Did you observe any hesitation on her part before she
25 picked out someone?

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1 A. No, ma'am; I did not.

2 Q. If I can show you what has been marked State's Two.

3 Is this the photo lineup you showed Ms. Walker?

4 A. Yes, ma'am; this is it.

5 Q. And photograph two is a picture of whom?

6 A. Alphonso Simmons.

7 Q. And did you and Ms. Walker both sign that document?

8 A. Yes, ma'am.

9 Q. Are you aware of any other physical evidence that was
10 collected in this case?

11 A. Yes, ma'am.

12 Q. What are you aware of?

13 A. The cash box.

14 Q. State's 18. Do you recognize this?

15 A. Yes, ma'am; that's the cash box.

16 Q. And do you -- are you aware of where the cash box came
17 from?

18 A. It came out of the --

19 MS. FULLWOOD: Objection. That would be based on
20 hearsay, I think.

21 BY MS. GARRICK:

22 Q. Based on your investigation, are you aware of where
23 this cash box came from?

24 A. Out of the residence where Mr. Simmons had been
25 living.

ERIC REDMOND RUSSELL - DIRECT

1 Q. Do you recall the first time you ever met the
2 Defendant, Alphonso Simmons?

3 A. Yes, ma'am; I do.

4 Q. And what's the date? Do you remember the date?

5 A. The date that I met him?

6 Q. Yes, sir.

7 A. May the 26th of 2004.

8 Q. And where did you meet him?

9 A. Went over to Richland County and met him.

10 Q. And were you alone or did you have another officer
11 with you?

12 A. I had Detective Goss with me, also, then.

13 Q. And what was your purpose in meeting Mr. Simmons?

14 A. To bring him back to Lexington County, to interview
15 him, and to serve warrants on him and have him booked into
16 our jail.

17 Q. On the ride from Richland County to Lexington County,
18 did you have any conversation with Mr. Simmons?

19 A. Yes, ma'am. We were just general chitchat on the way
20 from Richland over to Lexington County.

21 Q. And did Defendant Simmons make any statements to you
22 during the ride?

23 A. Yes, ma'am; he did. He made two statements to me. He
24 said that this had been fun, and that nothing had lasted
25 forever.

ERIC REDMOND RUSSELL - DIRECT

1 Q. Once you got to the Lexington County Sheriff's
2 Department, did you in fact serve warrants on the
3 Defendant?

4 A. Yes, ma'am; we did.

5 Q. And did you advise the Defendant of any particular
6 rights he has under the law?

7 A. Yes, ma'am; I advised him of his Miranda rights.

8 Q. And did you do this in writing or just orally?

9 A. In writing.

10 Q. If I could show you what's been marked as State's
11 Three; do you recognize that document?

12 A. Yes, ma'am; that's a photocopy of the actual document
13 that I used to read him his Miranda rights off of.

14 Q. Does it contain your writing?

15 A. Yes, ma'am; it does.

16 Q. Does it contain Mr. Simmons' writing?

17 A. It contains his initials; yes, ma'am.

18 MS. GARRICK: Your Honor, I'd move State's Three
19 into evidence at this time.

20 MS. FULLWOOD: Subject to my previous objection.

21 THE COURT: Subject to that objection.

22 (Thereupon State's Exhibit No. 3., Miranda rights, was
23 received into evidence.)

24 BY MS. GARRICK:

25 Q. Detective Russell, using that document could you

ERIC REDMOND RUSSELL - DIRECT

1 please tell the jurors what particular rights you gave
2 Mr. Simmons on that day?

3 A. I read straight from the five Miranda rights listed on
4 this document. I read each of them.

5 It says that I have the right to remain silent and not
6 make any statement at all; that any statement I do make
7 can be used against me in court; that I have the right to
8 have an attorney present at any time during questioning;
9 that if I cannot afford an attorney I can apply to the
10 Court to have one appointed to at no cost to me; and that
11 if I decide to talk to an officer without an attorney
12 present, I may stop at any time and request an attorney be
13 present for further questioning.

14 And I asked Mr. Simmons to place his initials beside
15 each right as I read it to him indicating that these
16 rights had been read to him, which he did.

17 Q. Did the Defendant give you his home address?

18 A. Yes, ma'am. The top portion of this form contains
19 general information, name, date of birth, where you're
20 born, that kind of thing. And the information that I got
21 from Mr. Simmons was his present address was [REDACTED] Motley
22 Road in Hopkins, South Carolina.

23 Q. And to your knowledge, is that the same address as
24 Reginald Lee?

25 A. That's correct.

ERIC REDMOND RUSSELL - DIRECT

1 Q. After you gave the Defendant his Miranda warnings, did
2 the Defendant make any statements to you?

3 A. He told me that he would tell me everything that I
4 wanted to know but that he wanted to speak with his family
5 first, mainly his mother.

6 Q. And what did you do at that point?

7 A. I attempted to get that set up but was unable to get
8 Mr. Simmons and his mother together.

9 Q. Did you ever have an occasion later to meet
10 Mr. Simmons again?

11 A. Yes, ma'am.

12 Q. And when was that?

13 A. That was in October of 2005.

14 Q. And what were the circumstances that led you to meet
15 with Mr. Simmons?

16 A. I received a letter with a return address of Alphonso
17 Simmons at the detention center requesting that I come
18 speak with him.

19 Q. And based on the contents of that letter, what did you
20 do?

21 A. I went to the detention center to speak with
22 Mr. Simmons.

23 Q. Let me stop you right there. To your knowledge, were
24 there any other Alphonso Simmonses in the detention
25 center?

ERIC REDMOND RUSSELL - DIRECT

1 A. They're was no other Alphonso Simmons that I was aware
2 of and none that should have known me anyway. I didn't
3 know any other Alphonso Simmons.

4 Q. When you got to the detention center, did you see
5 Alphonso Simmons there?

6 A. Yes, ma'am. I went to the cell where he was, told him
7 that I received your letter and I'm here to talk to you.
8 He said, yeah, okay, that he wanted to talk to me.

9 Q. If I can show you what's been marked State's Exhibit
10 Four; do you recognize that document?

11 A. Yes, ma'am. That's the photocopy of the letter and
12 the envelope that it was in that I received.

13 Q. Did the Defendant, when you told him why you were
14 there, express to you any knowledge of this letter?

15 A. Yes, ma'am. I said, I had gotten your letter. I'm
16 here to talk to you. He said, yeah, okay. I want to talk
17 to you.

18 MS. GARRICK: Your Honor, we offer State's Four
19 into evidence at this time.

20 MS. FULLWOOD: Subject to my previous objection.

21 THE COURT: Subject to your objection.

22 (Thereupon, State's Exhibit No. 4, Letter to detective,
23 was received into evidence.)

24 BY MS. GARRICK:

25 Q. Would you please read us the letter that prompted you

ERIC REDMOND RUSSELL - DIRECT

1 to go see Mr. Simmons?

2 A. It's dated October 16th of 2005. Says: Dear Mr. Eric
3 Russell. I'm writing you to let you know I'm ready to
4 confess and to also give up my accomplice. I would like
5 to talk to you in person, please. Thank you.

6 Mr. Alphonso Simmons.

7 Q. After you told Mr. Simmons why you were there and that
8 you had gotten the letter, what, if anything, did the
9 Defendant say to you?

10 A. At that time he told me again that he wanted to talk
11 to me, he wanted to confess to the crime, that he wanted
12 to give up his accomplice so he could get the best deal
13 possible.

14 But he also told me that he would not talk to me
15 inside the jail facility. He asked me if I would take him
16 outside the jail and talk to him.

17 Q. Let me ask you this: During the course of this
18 investigation, did you ever find any evidence that led you
19 to believe Mr. Simmons had an accomplice?

20 A. No, ma'am; I did not.

21 Q. When Mr. Simmons asked you to take him out of the
22 detention center, what was your response to this request?

23 A. I informed him that I could not remove him from the
24 secure facility, that I did want to talk to him and hear
25 what he had to say but that it would have to happen

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1 there.

2 He said, no, that he would be thought of as a snitch
3 and didn't want that reputation to follow him to prison.
4 I told him again, I can't talk to you here. And he
5 refused to talk to me at that point and said, we don't
6 need any more conversation.

7 Q. Can you identify the man you arrested for these crimes
8 and the man who made these admissions to you?

9 A. Yes, ma'am. It's Alphonso Simmons, sitting at the
10 defense table.

11 MS. GARRICK: Please answer Ms. Fullwood's
12 questions.

13 CROSS-EXAMINATION

14 BY MS. FULLWOOD:

15 Q. Hello, Detective Russell.

16 A. How are you doing, ma'am?

17 Q. Good. How are you?

18 A. Doing well.

19 Q. Good. You told Ms. Garrick that you're familiar with
20 the physical evidence collected in this case?

21 A. Yes, ma'am.

22 Q. And are you the chief investigating officer on the
23 case?

24 A. Yes, ma'am.

25 Q. Okay. Now, that day, that morning, one or more ID

ERIC REDMOND RUSSELL - CROSS

1 technicians from the sheriff's department came out to that
2 scene; correct?

3 A. That's correct.

4 Q. And several fingerprints or palm prints were
5 collected; weren't they?

6 A. Yes, ma'am; there were some fingerprints collected.

7 Q. Okay. One of the fingerprints was on the outside of
8 the drive-through window that Ms. Walker found open when
9 she got to work that morning; is that right?

10 A. That's correct.

11 Q. Okay. And it turned out that that fingerprint
12 belonged to an employee of the McDonald's; is that right?

13 A. That's correct also; yes, ma'am.

14 Q. Okay. In processing that scene, the technicians also
15 found the impression of an out sole of a shoe and a palm
16 print on one of those counters; is that correct?

17 A. I know they found the shoe impression. And I know
18 there were several prints they got. I couldn't swear to
19 the palm print was taken off of a counter but, yes, ma'am.

20 Q. Okay. But you do, you do remember that there was a
21 footwear impression?

22 A. That's correct.

23 Q. And at some location fingerprints and palm prints?

24 A. Correct.

25 Q. All right. And none of those fingerprints or palm

ERIC REDMOND RUSSELL - CROSS

1 prints have been matched to Mr. Simmons' fingerprints or
2 palm prints; correct?

3 A. That is correct; yes, ma'am.

4 Q. Okay. Now, as far as the footwear impression goes,
5 the technicians took a photograph of that impression;
6 right?

7 A. That is correct; yes, ma'am.

8 Q. But at this time that photograph is lost?

9 A. It's lying around in cyberspace somewhere; yes, ma'am.

10 Q. Okay. So, we can't use that one way or another?

11 A. That's correct.

12 Q. All right. Did you find any mirrored sunglasses at
13 the McDonald's that day?

14 A. No, ma'am.

15 Q. In your report about this robbery, you never say that
16 Ms. Walker told you anything about the man having
17 sunglasses; is that correct? Would you like a copy of it
18 if you don't have it up there with you?

19 A. I have it with me. I don't understand your question
20 though.

21 Q. Okay. Your report doesn't say anything about the man
22 having sunglasses?

23 A. That's correct.

24 Q. All right. All right. And your report says that the
25 duct tape was around the barrel of the gun as opposed to

1 duct taped to the man's hand; is that right?

2 A. That's correct.

3 Q. Okay. Now, if I could find State's Exhibit Two up
4 here. It's under everything, wouldn't you know it. All
5 right.

6 Referring to State's Exhibit 2, this is the
7 photographic lineup?

8 A. Yes, ma'am.

9 Q. And this is the original lineup that you showed to
10 Ms. Walker?

11 A. That's correct.

12 Q. This is not a copy?

13 A. That's correct.

14 Q. This is the exact thing you showed her?

15 A. That's the piece of paper that I had in my hand; yes,
16 ma'am.

17 MS. FULLWOOD: Okay. Beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 (Pause.)

20 MS. FULLWOOD: No further questions, Your Honor.

21 MS. GARRICK: Nothing else, Your Honor.

22 THE COURT: All right. Thank you, sir. You may
23 step down.

24 MS. GARRICK: Your Honor, other than checking
25 with the court reporter as far as our exhibits, the State

1 is resting at this time.

2 THE COURT: All right. Ladies and gentlemen, the
3 State has rested their case. And I have matters of law to
4 take up with the attorneys. So this will probably be a
5 good time to break for lunch.

6 And if there's no objection I'm going to, on
7 behalf of Lexington County, treat you to lunch today.
8 We're going -- Hope, do you think we're all right
9 time wise?

10 THE CLERK: Yes, sir.

11 THE COURT: We're going to, I'm going to send you
12 over to Cribbs. I don't know, I've never eaten there but
13 y'all live here, maybe y'all have. I understand it's very
14 good.

15 Please order anything you want. Doesn't matter.
16 I want you to have a good lunch. And I am serious when I
17 tell you to please feel free to order anything you want
18 for lunch.

19 They don't serve alcohol over there; do they?
20 You can't have alcohol, but anything else. You're
21 certainly welcome to order whatever you'd like to have for
22 lunch and the County will pay for it. When you get over
23 there -- they do just a general bill and send that back
24 over?

25 THE CLERK: Yes, sir. I'm having a check brought

MOTIONS

1 upstairs right now. And I'm going to give it to one of
2 the bailiffs to take, so he'll bring my bill back.

3 THE COURT: All right. Enjoy your lunch. Take
4 your time. It's about 12:20 now. We'll probably start
5 back about quarter to two. So that gives you a little
6 less than an hour and a half or right at hour and a half.

7 So what I'm going to get you to do first though,
8 you want them to assemble in the jury room and go from
9 there or do we need to wait. Let me get you to go back
10 into your jury room and assemble there and whenever they
11 get the check and are ready, they'll take you over.

12 Please keep in mind you're not to have any
13 conversation with anyone about the case or allow anyone to
14 talk with you. Enjoy your lunch and we'll start back at
15 quarter of two.

16 (Jury exits courtroom at 12:22 p.m.)

17 THE COURT: All right. I'll take up any motions
18 at this time at the close of the State's case.

19 MS. FULLWOOD: Your Honor, at this time I would
20 move for a directed verdict on both indictments on the
21 grounds that the evidence in this case, taking it as a
22 whole in the light most favorable to the State, is
23 insufficient to convince a rational trier of fact beyond a
24 reasonable doubt that the State's proved every element of
25 each offense charged beyond a reasonable doubt.

MOTIONS

1 This case is based almost completely on
2 circumstantial evidence. And I think that none of it
3 rises to the degree that would be sufficient to submit
4 either case to the trier of fact.

5 THE COURT: All right. Thank you, Ms. Fullwood.
6 I'm going to respectfully deny your motion. I don't know
7 what the jury will do with the evidence, but I think there
8 is, of course, at this stage or at any stage, the Court is
9 not concerned with the weight of evidence but simply the
10 existence of it. And the jury is to give it whatever
11 weight they feel is appropriate.

12 And I think there is evidence in existence
13 whereby they, depending on the weight they give it, that
14 they could reach a verdict. So I'm going to respectfully
15 deny your request.

16 Anything else?

17 MS. FULLWOOD: That is all, Your Honor.

18 Did Your Honor want to ask Mr. Simmons about
19 whether or not he wants to testify?

20 THE COURT: Well, I was going to ask. Y'all
21 discussed that with Mr. Simmons?

22 MS. FULLWOOD: We have.

23 THE COURT: All right. Mr. Simmons, as you know,
24 the State has rested their case and now it is your
25 opportunity to present your side. However, you

MOTIONS

1 understand, sir, that you're not required to testify.
2 You're not required to put up any type of defense at all,
3 that the burden of proof always rests with the State and
4 you don't have to prove anything.

5 Do you understand that, sir?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: I need you to speak out loud.

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Because the court reporter needs to
10 take down everything.

11 All right. Now, have you talked with your
12 lawyers about whether or not you are going to testify?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. And have you -- do you
15 intend to testify or not?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. Do you understand that if
18 you do not testify that I will instruct the jury that they
19 cannot hold that against you in any way. That you have no
20 burden to prove anything, that the State carries the
21 burden of proof, and that you have every constitutional
22 right to remain silent, and that by exercising your right
23 to remain silent that they cannot even discuss it in the
24 jury room.

25 Do you understand I will instruct them that?

CHARGE REQUESTS.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right, sir. Do you have -- do
3 you have any witnesses?

4 MS. FULLWOOD: No, sir.

5 THE COURT: All right. Do you understand,
6 Mr. Simmons, that I would instruct the jury that your
7 right to remain silent is, as I indicated earlier, is not
8 to be held against you in any way. And that right to
9 remain silent extends even to putting up any witnesses.

10 In other words, you don't have to prove anything
11 and that's what I will instruct them. That the State has
12 to prove their case, they either prove it or they don't
13 prove it. You don't have to do a thing.

14 Now, this decision that you've made to not
15 testify, has that been your decision?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right, sir. Has anyone in any
18 way coerced you or threatened you or forced you to make
19 this decision or has it be made of your on free will, sir?

20 THE DEFENDANT: My own free will, sir.

21 THE COURT: All right, sir. Anything else?

22 MS. FULLWOOD: No, Your Honor.

23 THE COURT: Ms. Fullwood?

24 MS. FULLWOOD: No, Your Honor.

25 THE COURT: Thank you, sir. You can have a seat.

CHARGE REQUESTS

1 Now let me -- do y'all have anything?

2 MR. HUBBARD: No, sir, Your Honor.

3 THE COURT: Let me discuss, we've got the two,
4 the two counts. I've been working on a charge. And let
5 me just kind of -- you mentioned, Ms. Fullwood, and would
6 I be correct in assuming that you are going to request a
7 charge on direct versus circumstantial evidence?

8 MS. FULLWOOD: That's correct, Your Honor.

9 THE COURT: Okay. Let me kind of go over with
10 you, and what I -- I've got, of course, I've got the
11 jury's general charge in discussing the indictment and
12 that it is not to be considered as evidence against
13 Mr. Simmons. I talk about the presumption of innocence.

14 I talk about reasonable doubt and I charge both
15 the reasonable doubt and the kind that would cause a
16 reasonable person to hesitate to act as well as firmly
17 convinced language, that the jury is the judge of the
18 credibility, the believability of witnesses. Direct and
19 circumstantial evidence, the difference between those two,
20 and how the jury is to view those.

21 I have a charge on eyewitness reliability,
22 generally. I have a charge regarding police testimony and
23 that testimony of a police officer is to be given no more
24 credence because they are an officer, that they're to be
25 treated as any other witness. I tell them what is not

CHARGE REQUESTS

1 evidence which is basically the lawyers' arguments,
2 objections by attorneys, things of that nature.

3 Then I talk about armed robbery and Section
4 16-11-330. Give them the charge on what armed robbery is,
5 the elements of that. And I'll give you a copy of this so
6 you'll be able to look over it and see it. Then I have a
7 charge on burglary second degree and what that involves.

8 And then I have, you know, just my closing
9 paragraph.

10 If there's -- what I'm going to do during the
11 break is I'm going to get this in a final form. I'm going
12 to give both of you a copy to look at so you can look at
13 the details to it. And then if there's anything you want
14 to add, subtract, whatever, we'll talk about that.

15 So why don't we get back together at 1:30. That
16 gives y'all an hour to go eat. And I'll have copies for
17 you, give you an opportunity to look over those and then
18 let you get back with me as far as any changes that we
19 want to make. Okay?

20 Does anyone have anything specifically they want
21 in here that I didn't go through? If you have specific
22 requests, let me know.

23 MS. FULLWOOD: I don't have a written specific
24 request, Your Honor, but I will be asking for a charge
25 that the State has the burden of proving the identity of

CHARGE REQUESTS

1 the Defendant as the culprit beyond a reasonable doubt,
2 and the jury must be satisfied beyond a reasonable doubt
3 of the accuracy of an identification of the Defendant.

4 THE COURT: Let me read to you what I have here
5 on eyewitness reliability, generally. And this may do it,
6 maybe not.

7 What I've got here is: You have heard testimony
8 of eyewitness identification. Such eyewitness testimony
9 is a statement of an impression by the witness. As of any
10 other witness, you must first decide whether the
11 eyewitness is telling the truth as he or she understands
12 it.

13 You must also decide how accurate the
14 identification was, whether the witness in fact saw what
15 she thought she saw, given the extent of how much of an
16 opportunity this witness had to observe the offender at
17 the time of the robbery, and given the circumstances under
18 which the witness later made the identification.

19 A witness may be mistaken even though she is
20 truthful in the sense that she honestly believes what she
21 says is the truth. Consequently, it is up to you to
22 determine not only truthfulness but also accuracy and
23 reliability as you assess the testimony of a witness.

24 In evaluating the eyewitness testimony, you
25 should remember that the State must prove the identity of

1 the Defendant as the person who committed the crime beyond
2 a reasonable doubt.

3 MS. FULLWOOD: I think that covers everything I'd
4 like in that kind of charge.

5 THE COURT: Okay. Well, let me make a copy for
6 you so you can kind of eyeball it and dissect it and look
7 at it. Okay?

8 MS. FULLWOOD: (Nods head affirmatively.)

9 THE COURT: So if there's nothing else we'll go
10 ahead and break at this time and I'll have these for you
11 when you get back.

12 MS. FULLWOOD: Thank you, Your Honor.

13 MR. HUBBARD: Thank you.

14 (Thereupon the luncheon recess was taken from 12:34 until
15 1:56 p.m., when the trial resumed as follows:)

16 THE COURT: If guess it's boiled down to get our
17 little portable printer, so we can print out the charge.

18 On the verdict form, it's just a standard verdict
19 form as to armed robbery, two forms of verdict. As to
20 burglary second, two forms of verdict. So I was going to
21 let you look at that before I used it, but that's what it
22 is.

23 Is the State ready to proceed with closing?

24 MR. HUBBARD: Yes, sir, Your Honor.

25 THE COURT: Defense?

1 MS. FULLWOOD: Yes, sir, Your Honor.

2 THE COURT: All right. Well, they've put up no
3 testimony. I'm assuming they're going to last arguments.

4 MR. HUBBARD: Yes, sir.

5 THE COURT: So I'll recognize you and then
6 Ms. Fullwood.

7 MS. FULLWOOD: And I imagine you want us to rest
8 in front of the jury?

9 THE COURT: Yeah. Here's what we're going to
10 do. Well, I tell you what. Let me go ahead and let me,
11 outside of the jury's presence, go ahead and note for the
12 record that the defense has rested. They've chosen not to
13 put up a case and they've rested.

14 So at this time let me go ahead and hear from you
15 with regards to motions at the conclusion of the defense
16 case.

17 MS. FULLWOOD: At this point I would renew the
18 motions I made for a directed verdict at the close of the
19 State's case on the same grounds.

20 THE COURT: All right. Thank you, Ms. Fullwood.
21 I respectfully deny that motion.

22 Okay. I appreciate you mentioning that. So
23 here's what we'll do. When the jury comes out, I'll
24 recognize you, Ms. Fullwood, for your case. You can then
25 announce the defense is resting and then I will, I'll note

1 for the record that motions have been heard and we're
2 ready to proceed into closing arguments and then we'll do
3 that. Okay?

4 MR. HUBBARD: Okay.

5 THE COURT: Would you ask the jury to join us,
6 please?

7 (Jury enters courtroom at 1:58 p.m.)

8 THE COURT: Thank you, ladies and gentlemen.
9 Please have a seat.

10 All right, at this time I recognize Ms. Fullwood.

11 MS. FULLWOOD: Your Honor, the defense rests.

12 THE COURT: Thank you, ma'am.

13 All right. Note for the record that motions have
14 been heard regarding -- at the end of the case. And we're
15 now ready to proceed to closing arguments.

16 Ladies and gentlemen, you are about to hear from
17 the attorneys with what will be called closing arguments.
18 And this is the lawyers' opportunity to address you with
19 what they believe the evidence has shown in this case.

20 Just as I indicated to you with regards to the
21 their opening statements, the statements, the arguments of
22 counsel are not evidence. You have heard all the
23 evidence. ~~The evidence is in that you're going to have to~~
24 use to consider in your deliberations.

25 But it is important that you give both sides your

STATE'S CLOSING STATEMENTS

1 close and undivided attention as they make their efforts
2 to persuade you of what they believe the evidence has
3 shown in this case. And then at the conclusion of their
4 arguments, I will then charge you on the law that you are
5 to apply.

6 So having said that, we'll recognize Mr. Hubbard
7 for your closing.

8 MR. HUBBARD: Thank you, Your Honor.

9 What are the chances, what are the chances that
10 someone other than Alphonso Simmons committed this armed
11 robbery and burglary at McDonald's on Saint Andrews Road
12 April 16th, 2004?

13 What are the chances?

14 It's been a short trial but with three witnesses,
15 ladies and gentlemen, we gave you everything you need to
16 answer the verdict form that's going to be before you all
17 in that jury room.

18 Armed robbery, burglary second. What are the
19 chances that someone else did this other than Alphonso
20 Simmons? Look at the evidence. You have an eyewitness,
21 Ann Walker. And as far as eyewitnesses go, she's not just
22 witnessing a mugging taking place across the street to
23 someone else.

24 There's eyewitnesses like that, but that's not
25 what you have. You have the victim. She and the man with

STATE'S CLOSING STATEMENTS

1 the gun are alone. She is scared to death. Her senses
2 are heightened. At one point she's in a tiny room with
3 him. She is focusing on this man, she said the face, the
4 eyes, the nose, the gun. Eyewitness testimony, ladies and
5 gentlemen.

6 She makes her rounds. She walks in, turns the
7 lights on, sees a window open at the drive-through, starts
8 heading out the front door, turns around and a face is
9 coming at her, initially has a hood on, glasses. But as
10 he hurdles that counter that hood falls, his glasses go
11 off. And she thinks initially when she sees that man it's
12 this Eric Hart who we've determined could not have been
13 the man, and who she herself tells you was not him as he
14 got closer.

15 She said she had never seen this man before. But
16 the face comes to her. A face that gets right closer than
17 y'all are to one another. And then, ladies and gentlemen,
18 she went through hell.

19 Tomorrow will be four years that this case took
20 place, this burglary, this armed robbery. Four years
21 tomorrow. But did you see Ann Walker on that stand? It
22 was happening while she was sitting there. It's a fear
23 you never get over. And as she said, that face I will
24 remember for the rest of my life.

25 And you look out in this courtroom, there will be

STATE'S CLOSING STATEMENTS

1 faces you won't ever see again. If you do you might
2 recognize them. You might say that face looks familiar.
3 But will Ann Walker ever remember the face of the man that
4 confronted her at McDonald's the early morning hours, 4:30
5 somewhere in there, when it's dark outside, confronts
6 her. She will always remember that face.

7 You know how when you get scared how things
8 either slow down or sometimes you take snapshots with your
9 memory. You don't even mean to but you can just remember
10 things. When you're in a wreck, you know, you can just
11 remember certain things, where a car was at a certain
12 time. It happens like that, but you remember. That's the
13 brain, ladies and gentlemen.

14 Go to your common sense to the fact that you're
15 human just like Ann Walker and you've had experiences.
16 The snapshots you take. That one, ladies and gentlemen,
17 is forever seared in her memory.

18 And she laid down on that floor, following his
19 commands. She didn't know if she was getting up again or
20 not. She didn't know if is he was going to see her son
21 and her daughter again. Four years ago and the fear is
22 still there.

23 ~~Ladies and gentlemen, we could have stopped right~~
24 there. But we gave you more. She said there was a cash
25 box. All the money, all the cash was dumped into that

STATE'S CLOSING STATEMENTS

1 cash box and turned over to a man in McDonald's that
2 she'll never forget.

3 Where's that cash box end up, ladies and
4 gentlemen? Of all the places in the world, it ends up in
5 Hopkins at Alphonso Simmons' house. A man she picked out
6 of a lineup? No doubt. She saw his face. If she was
7 just hungry to pick out a face, she could have done it
8 with the first one. She sees the second lineup and there
9 he is. It's the man I gave that cash box to.

10 No one disputes that person in that photo lineup
11 is Alphonso Simmons. No one disputes it. You heard from
12 all the people. What incredible evidence. You got an
13 eyewitness now and you've got a stepdad telling you what
14 they found, he and his wife, his mother, Alphonso Simmons'
15 mother, found in their own home.

16 So that's just amazing testimony that a
17 stepfather is willing to come in here. He's got to go
18 home to mama tonight. Comes in here and testifies about
19 what he did and what did he do. Cops come in there and
20 search. Well, this man has his own room. Don't you know
21 that room was searched.

22 But who in the world looks behind a washer and a
23 dryer. I mean, you almost never do it unless you're doing
24 laundry and something falls behind there, or if something
25 falls and you're picking it up or you happen to be

STATE'S CLOSING STATEMENTS

1 stooping down and you see it. What's that, about a week
2 and a half later. That's what happened, ladies and
3 gentlemen.

4 A bag is found by this nice couple, Alphonso
5 Simmons' mom, Hurlisa Lee, and his stepdad, Mr. Lee. At
6 that point they could have just said, you know what, we
7 don't turn this in, this man gets to walk. Don't you know
8 that had to be a conversation or a thought in the back of
9 their mind but Mr. Lee, what did you hear him say, he
10 called the police. His father was a police officer. He
11 knew right from wrong. He works his tail off. He told
12 you I work two jobs, raised a daughter. I bring these
13 people into my home. I love my wife, but I'm here to do
14 the right thing. He calls the police. He identifies that
15 evidence, that box, as being what was in his house.

16 Now who brought that into his house?

17 The little 11, 12, 13 year old son? His son
18 that's taller than me? His wife? Alphonso Simmons,
19 ladies and gentlemen.

20 We could have stopped there but we didn't. We
21 put up an officer, Detective Russell and what did he say.
22 Well, you know, it wasn't so much what he said, it's what
23 Alphonso said. I'm bringing him to Lexington County from
24 Richland to book in him. And what's he say? It was fun
25 while it lasted. Nothing lasts forever.

STATE'S CLOSING STATEMENTS

1 Does it sound like the words of a man not
2 involved in this thing? When you're looking at armed
3 robbery and burg second, it was fun while it lasted? To
4 Ms. Walker, was it fun?

5 Then he gets a letter in the mail from the
6 detention center from somebody who purports to be Alphonso
7 Simmons. Now, ladies and gentlemen, who wrote it? I
8 don't know, but we know this, there was only one Alphonso
9 Simmons in the jail. And whether he wrote it with his
10 hand or not, who cares, because it's written to the
11 detective of this case.

12 And what does it say? I'm ready to confess, give
13 up my accomplice, the guy that helped me. I want to talk
14 to you in person. Well, what's important about that is
15 what happens next. He goes, Detective Russell goes and
16 talks to Alphonso Simmons. Says, I got your letter.
17 Alphonso Simmons says, yeah, I want to talk to you.
18 Acknowledges. Yeah.

19 But then what he says, I'm ready to confess, just
20 like the letter said I'm ready to give up my accomplice
21 just like the letter said and then he looks at the officer
22 and says, I want to get the best deal possible.

23 Does that sound like an innocent man?

24 Three witnesses, ladies and gentlemen. You've
25 got a mountain of evidence. Now, the defense gets to come

STATE'S CLOSING STATEMENTS

1 up and talk to you in just a minute and based on some of
2 the questions that were asked, I can only speculate what
3 they might say to you. But you heard about fingerprints.
4 Law enforcement took fingerprints. They could only match
5 it to one person, an employee.

6 That's life. It's not CSI. CSI is to entertain
7 you. Have you ever noticed on their shows, you never go
8 with the obvious person. It's always got to be somebody
9 different. And if you want to make this into a movie,
10 this one wouldn't sell in Hollywood. This one would just
11 be too cheesy, too easy, five minutes into the show you're
12 like, I see where this is going. Hollywood can't do
13 that. They got to twist it and spin it, give you
14 somebody, I don't know, somebody from out of the blue.
15 That's TV.

16 We're in the real world.

17 What else? You heard about a boot print or shoe
18 print. Well, folks, we made our mistakes. That's lost.
19 Detective Russell said it's in cyberspace. The age of
20 digital photography, download something and who knows
21 where it goes. If we could produce it, if it's relevant,
22 I don't know.

23 There's no testimony about that. No one knows
24 whose boot print it was or if it was a boot print. Who
25 knows. But if that's important, consider that along with

STATE'S CLOSING STATEMENTS

1 all the other evidence.

2 What are the chances it wasn't Alphonso Simmons?
3 If it wasn't Alphonso Simmons then by gosh it was a dead
4 ringer. Somebody that looked just like that man, same
5 eyes, nose, somebody whose face is imprinted in the mind
6 and memory of our nice victim so much so that he looks
7 just like him, she's able to pick him out. A dead ringer.

8 But it doesn't stop there, ladies and gentlemen.
9 If it wasn't Alphonso Simmons, it's a dead ringer who
10 steals this cash box over here and then after taking all
11 the money out, he breaks into Alphonso Simmons' home to
12 hide it. But he's not real bright about it because if he
13 wants to set up Alphonso Simmons, you look like Alphonso
14 Simmons, you got find him, must know him. Go all the way
15 to Hopkins. That's a heck of a lot of detective work,
16 finds him in Hopkins, locates his house, but he makes a
17 mistake. If you're trying to frame a man put it in his
18 bedroom. Instead he puts it in a plastic bag, stuffs it
19 behind a washer and dryer and says maybe someday somebody
20 will look back there. That's what you got to believe if
21 it's not this man.

22 But then it gets even better, folks. If it's not
23 Alphonso Simmons then whoever it was is a magician and
24 worked voodoo magic because they got this man right here
25 to say stuff no innocent man would ever say. It was fun

DEFENSE'S CLOSING STATEMENTS

1 while it lasted. What do you mean by that? We're hauling
2 you to jail, it was fun while it lasted.

3 Voodoo magic, folks. I'm ready to confess. To
4 what? You're innocent. Voodoo magic. Or maybe that
5 magic worked or Detective Russell, got him to imagine
6 these things. Or maybe he's just a bald faced liar.
7 That's what you have to believe, one of those things.

8 But something you can't escape is that the dead
9 ringer broke into this man's house and even convinced his
10 stepdaddy to come forward and testify against him.

11 Ladies and gentlemen, what are the chances? What
12 are the chances that man is absolutely innocent. You'll
13 answer that in your verdict.

14 Considering all of the evidence, is this man
15 innocent? Not a chance.

16 THE COURT: All right. Mr. Cornwell?

17 MR. CORNWELL: Good afternoon, ladies and
18 gentlemen of the jury. You've just heard the State's
19 closing arguments. Mr. Hubbard did a great job of
20 pointing out the State's position.

21 But obviously our position is diametrically
22 opposed to what they have to say.

23 ~~Mr. Hubbard raised the question to you, what are~~
24 the chances. Unfortunately that is not the question that
25 you have to answer when you go back in that courtroom --

DEFENSE'S CLOSING STATEMENTS

1 in that jury room. That is not the question that the
2 Constitution of the United States and our State requires
3 you to answer when you go back in the jury room.

4 The question you have to answer is: Has the
5 State proved beyond a reasonable doubt that our client
6 committed the offenses he's charged with. I submit to you
7 that the mountain of evidence that Mr. Hubbard is
8 referring to is a mole hill.

9 Now, let's talk about the evidence presented, the
10 testimony presented. You heard Ms. Walker get on the
11 stand. The main purpose of her testimony was to point out
12 that it's beyond a reasonable doubt that our client was
13 the guy who robbed her. Did she accomplish that? I
14 submit to you she did not.

15 Listen to the bulk of her testimony. If you pay
16 attention to what she was saying, if you pay attention to
17 the details that she gave, the best information we got
18 from her, the most-detailed description of anything we got
19 to her -- got from her was of a gun.

20 We know where her attention was focused because
21 she said it on the stand. She said, I was busy looking to
22 see where that gun was, which any reasonable person in
23 that situation would be doing because that's what's going
24 to possibly hurt you.

25 You heard in cross-examination how she was able

DEFENSE'S CLOSING STATEMENTS

1 to describe in detail down to the fact that it was a matte
2 finish and not a chrome finish. It was not shiny. It was
3 dull, that it was a revolver, that the gun was duct taped
4 to his hand. She was paying an awful lot of attention to
5 that gun.

6 But when it came to the part where she had to
7 describe the guy who had broken into the McDonald's and
8 robbed her, all she offers is a generic description. She
9 says it was a slim black guy in his mid 20s about
10 five-eight or five-nine.

11 Now, I don't know about you guys, but that
12 possibly describes half of the black male population of
13 South Carolina. I mean, I don't know who their suspect
14 is. They can't go round up everybody. They have to
15 arrest somebody. So I guess they just go for the easy win
16 and go pick up our guy.

17 Let's talk about what my client's stepfather had
18 to say. And this, I submit to you, is probably the
19 State's most powerful piece of evidence. This money box,
20 the money box found in our client's house with a
21 McDonald's sticker. Is there some substitute? Maybe it
22 is or is not the money box. You guys haven't decided if
23 beyond a reasonable doubt that's been proven yet. Okay.

24 But, what we did hear is Mr. Lee get on the stand
25 and admit, though it was very respectful -- I respect his

DEFENSE'S CLOSING STATEMENTS

1 work ethic, but he's not at home a lot. He works a lot.
2 There are large portions, chunks of time during the day
3 when he's not at home. And he has a teenage son at the
4 house.

5 Am I saying that this teenage son did it? I
6 don't know. But what I do know is that teenage boys,
7 being a teenage boy myself one time, we often have large
8 groups of friends. A lot of times we bring those friends
9 over to the house. A lot of times those friends aren't
10 the best people to be hanging around, which is why you
11 bring them to your house when your parents aren't there.
12 I would submit to you that anyone of those people indeed
13 could have been the one that brought that box over. We
14 just don't know.

15 New let's talk about Detective Russell. Let's
16 talk about what he talked about on the stand. I think
17 some of the most glaring things about Detective Russell's
18 testimony is what we did not hear.

19 If you refer back to Ms. Walker's testimony, you
20 heard her mention that the person who robbed her wore a
21 hooded sweater, sunglasses, was armed with a weapon. What
22 Detective Russell did not say on that stand is that we
23 recovered a weapon. We recovered a hooded sweater, we
24 recovered sunglasses.

25 None of that is in evidence. The detective did

DEFENSE'S CLOSING STATEMENTS

1 not testify that they found any of these things anywhere
2 much less in the possession of my client. They didn't
3 find it at his house when they searched his house. They
4 didn't find it behind the washing machine. Let's talk
5 about that.

6 Mr. Hubbard says what kind of detective looks
7 behind a washing machine when they search a house? I
8 submit to you, a good one. They're looking for evidence.
9 You should look everywhere, not just where you think it's
10 going to be in a specific place. You got a search warrant
11 for the house; you search the house.

12 Now, back to Detective Russell's testimony. He
13 also testified to the fact that there were fingerprints
14 found, there were palm prints found. There was a sole
15 impression of a shoe found. Well what happened to these
16 things?

17 All right. They tested the palm print. They
18 couldn't identify who's palm print it was. The
19 fingerprint, well, turns out that fingerprint came from an
20 employee.

21 Now, that taken alone would not be anything
22 suspicious because of course people work there and there's
23 going to be fingerprints from employees who work there.

24 However, that fingerprint came from the outside of a
25 window to the McDonald's, the same window that was open

DEFENSE'S CLOSING STATEMENTS

1 when Ms. Walker came in that morning.

2 Think about that. Where is that guy?

3 MR. HUBBARD: Your Honor, I got object to that.

4 There's nothing in evidence to that effect.

5 MR. CORNWELL: I think Ms. Walker testified to
6 the fact --

7 MR. HUBBARD: Ms. Walker, didn't take any
8 fingerprints.

9 MR. CORNWELL: That door was opened about the
10 fingerprints, talking about the fingerprints.

11 MR. HUBBARD: I'll leave that the jury. There's
12 nothing in evidence.

13 THE COURT: Hold on. Come over here real quick.
14 (Off-the-record discussion. Sidebar.)

15 THE COURT: You may proceed, sir.

16 MR. CORNWELL: Thank you, Your Honor.

17 As I was saying, the evidence presented does not
18 point to my client.

19 Let's talk about the impression of the shoe that
20 they found in the McDonald's that day. Let me talk about
21 the nature of the evidence that's been gathered so far.

22 All right. One thing that we've noticed and what the

23 Judge will talk to you about and that, you know, you've

24 probably heard of before is called circumstantial

25 evidence. All right. A great deal of the evidence

DEFENSE'S CLOSING STATEMENTS

1 gathered in this case has been circumstantial evidence.

2 I mean, it doesn't directly implicate our
3 client. It means that they didn't find him literally
4 standing there in the McDonald's with the gun.

5 The best analogy I can think of when it comes to
6 circumstantial evidence is, I know in this modern day and
7 age mostly everybody has been on the Internet. All
8 right. And everybody knows that the Internet is a place
9 where there are a lot of pictures and photographs. Well,
10 one thing about those pictures on the Internet is that all
11 pictures are made up of tiny dots that we call pixels.

12 And basically what happens when your computer downloads an
13 image from the Internet, it has to get enough information
14 to know what order to arrange those pixels in to make a
15 picture. All right.

16 That's kind of like what circumstantial evidence
17 is. You have to be able to make a picture with the dots
18 and the dots being the evidence that's presented. All
19 right.

20 Now, what I would submit to you is that the
21 prosecution had a lot of dots up here but they haven't
22 been able to make a picture with the dots they've given
23 you.

24 Now I don't know why certain things weren't
25 done. I don't know why those prints of the sole

JUDGE'S CHARGE TO THE JURY

1 impression weren't submitted into evidence except that
2 Mr. Hubbard and Detective Russell say, rather glibly, I
3 might add, that they're lost in cyberspace. Well, I
4 submit to you that they're evidence is lost in
5 cyberspace. Their whole case is just lost in cyberspace.

6 That's why you have to find my client not
7 guilty. Thank you.

8 THE COURT: Thank you, sir. All right.

9 JUDGE'S CHARGE TO THE JURY

10 THE COURT: Ladies and gentlemen, I'm going to
11 come around here to give you my charge. I do this for a
12 couple of reasons. As I told you when we started this
13 case, that you are the triers of the facts. You are the
14 sole judges of the facts of this case. And so it's
15 appropriate that I be out of the way.

16 The lawyers are here and they're presenting the
17 evidence to you. And you're here because you're the ones
18 who decide what the facts are, but I don't have a role in
19 that. So it's appropriate for me to be out of the way.

20 But we now have reached the part of this trial
21 where we're in this together. You, as the jury, are the
22 triers of the fact, and me as the judge of the law. And
23 so, since I'm going to be giving you the law it's
24 appropriate, I think, for me to come down and be with you
25 to do that.

JUDGE'S CHARGE TO THE JURY

1 The other reason is just it's simply a lot more
2 friendly. Sitting up there far away is not an effective
3 way, I don't think, to talk to people. But standing here
4 and talking with you from here is probably more effective.
5 I'm going to charge you on the law that you are
6 to apply to the facts as you find them to be. Now,
7 Mr. Foreman, this charge that I'm going to read to you, I
8 will send back to the jury room with you. So you will
9 have this back in your jury room. But having said that,
10 I'm going to charge you on the law that applies to this
11 case.

12 Mr. Foreman and members of the jury, the State of
13 South Carolina charges the Defendant, Alphonso L. Simmons,
14 with the offenses of armed robbery and second degree
15 burglary.

16 You should distinctly understand that the
17 indictments just contain allegations by the State and
18 confess jurisdiction in this matter to this Court, and are
19 no way to be considered as evidence. The only evidence in
20 this case is the testimony from the witness stand and any
21 exhibits that have been introduced.

22 Now to these indictments, the Defendant has pled
23 not guilty which places upon the State the burden of
24 proving the Defendant guilty beyond a reasonable doubt. A
25 person charged with committing a criminal offense in South

JUDGE'S CHARGE TO THE JURY

1 Carolina is never required to prove himself innocent.

2 I charge you that it is a vital important rule of
3 law that a defendant in a criminal trial, no matter how
4 great or serious the offense with which he or she is
5 charged may be, must always be presumed innocent until his
6 or her guilt has been proved beyond a reasonable doubt.

7 This presumption of innocence remains with the
8 Defendant at all times throughout the trial and is only
9 removed when, when and if the State has proved guilt
10 beyond a reasonable doubt.

11 So the burden of proof is upon the State of South
12 Carolina to establish by evidence to your satisfaction the
13 guilt beyond a reasonable doubt of the Defendant here on
14 trial, and to establish that guilt beyond a reasonable
15 doubt as to each and every element of the crimes charged.

16 Now, what is a reasonable doubt in the law. A
17 reasonable doubt is the kind of doubt that would cause a
18 reasonable person to hesitate to act. The State has the
19 burden of proving the Defendant guilty beyond a reasonable
20 doubt. Proof beyond a reasonable doubt is proof that
21 leaves you firmly convinced of the Defendant's guilt.

22 There are very few things in this world that we
23 know with absolute certainty. In criminal cases the law
24 does not require proof that overcomes every possible
25 doubt. If based on your consideration of the evidence you

JUDGE'S CHARGE TO THE JURY

1 think there's a real possibility that the Defendant is not
2 guilty, you must give the Defendant the benefit of the
3 doubt and find him not guilty.

4 If, on the other hand, you are firmly convinced
5 that the Defendant is guilty of the crime charged, then
6 you must find the Defendant guilty.

7 There are two types of evidence which are
8 generally presented in a trial. There's direct evidence
9 and there's circumstantial evidence. Direct evidence is
10 the testimony of a person who claims to have actual
11 knowledge of a fact, such an eyewitness. It is evidence
12 which immediately establishes the main fact to be proved.

13 Circumstantial evidence is proof of a chain of
14 facts and circumstances indicating the existence of a
15 fact. It is evidence which immediately establishes
16 collateral facts from which the main fact may be inferred.
17 Circumstantial evidence is based on inference and not on
18 personal knowledge or observation.

19 Now the law makes absolutely no distinction
20 between the weight or the value to be given to either
21 direct or circumstantial evidence, nor is there a greater
22 degree of certainty required of circumstantial evidence
23 than of direct evidence.

24 You should weigh all of the evidence in this
25 case. After weighing all of the evidence if you are not

JUDGE'S CHARGE TO THE JURY

1 convinced of the guilt of the Defendant beyond a
2 reasonable doubt, you must find the Defendant not guilty.

3 When the State relies on circumstantial evidence
4 you may not convict a defendant unless every circumstance
5 relied on by the State is proved beyond a reasonable
6 doubt, and all of the circumstances so proven are
7 consistent with each other, and taken together point
8 conclusively to the guilt of the accused to the exclusion
9 of every other reasonable hypothesis.

10 It is not sufficient that the circumstances
11 create a probability, even if it is a strong one. If,
12 assuming the circumstances are true, there is a reasonable
13 hypothesis which does not include the guilt of the
14 accused, the proof has failed.

15 Mr. Foreperson and members of the jury, under the
16 Constitution of South Carolina you are the finders of
17 facts in this case. I do not have the right to comment on
18 the facts or even to express any opinion I might have as
19 to the facts, nor may I suggest in any way what I may
20 think about the guilt or the innocence of the Defendant.

21 You should form no opinion in that regard from
22 anything I may have said or any ruling that I may have
23 made. You are also the judges and the sole judges of the
24 credibility and the believability of the witnesses who
25 have testified in this case.

JUDGE'S CHARGE TO THE JURY

1 In passing upon their credibility you may
2 consider many things such as the demeanor or the manner of
3 testifying, was the witness forthright or hesitant,
4 whether the witness had a reason to be biased or
5 prejudiced, whether a witness's testimony was contradicted
6 on the one hand or corroborated and supported on the
7 other.

8 What was the witness's opportunity for
9 observation and knowledge of the matters about which they
10 testified. You do not decide this credibility or
11 believability by simply counting the number of witnesses.
12 You may believe a small portion of a witness's testimony
13 and disregard the larger or vice versa. You may believe
14 one witness against many or many against one.

15 All of these things you'll consider, bearing in
16 mind that you should give the Defendant the benefit of any
17 reasonable doubt, if such doubt exists, after you have
18 considered all of the evidence in the case.

19 Now I further instruct you and I emphasize that
20 the fact that the Defendant did not testify is not a
21 factor to be considered by you in any way in your
22 deliberation and in your consideration on the question of
23 guilt or innocence of the Defendant. It must not be
24 considered by you in any manner whatsoever.

25 A defendant has a constitutional right to remain

JUDGE'S CHARGE TO THE JURY

1 silent, and the assertion of this right must not be
2 considered by you in your deliberations. I repeat, under
3 your oath you are not to draw any conclusions whatsoever
4 from the fact that the Defendant in this case did not
5 testify. The fact that the Defendant did not testify
6 should not even be discussed in the jury room.

7 The burden of proof, as I've stated to you, is on
8 the State. The Defendant is not required to prove his
9 innocence. The burden of proof remains on the State to
10 prove guilt beyond a reasonable doubt.

11 Now, you have heard testimony of eyewitness
12 identification. Such eyewitness testimony is a statement
13 of an impression by the witness. As with any other
14 witness, you must first decide whether the eyewitness is
15 telling the truth as he or she understands it.

16 You must also decide how accurate the
17 identification was, whether the witness in fact saw what
18 she thought she saw, given the extent of how much of an
19 opportunity the witness had to observe the offender at the
20 time of the robbery, and given the circumstances under
21 which the witness later made the identification.

22 A witness may be mistaken even though she is
23 truthful in the sense that she honestly believes what she
24 says is the truth. Consequently, it is up to you to
25 determine not only truthfulness but also accuracy and

JUDGE'S CHARGE TO THE JURY

1 reliability as you assess the testimony of a witness.

2 In evaluating the eyewitness testimony you should
3 remember that the State must prove the identity of the
4 Defendant as the person who committed the crime beyond a
5 reasonable doubt.

6 Now the testimony of a police officer is not
7 entitled to more weight than that of any other witness.
8 You are the sole judges of the credibility of a witness.
9 And you are not to give more credence to a police
10 officer's testimony solely because he or she is a police
11 officer. Rather, you should judge an officer's testimony
12 by the same standards that you apply to any other
13 witness.

14 During the trial items were received into
15 evidence as exhibits. These exhibits will be sent to the
16 jury room to help you in your deliberations. Examine
17 these exhibits if you feel that they will help you in your
18 deliberations.

19 In reaching your verdict you may consider only
20 the testimony and the exhibits that were received into
21 evidence. Certain things are not evidence. And you must
22 not consider them in determining what the facts of this
23 case are. And I will list some of them for you.

24 As I told you earlier, the arguments and the
25 statements by the lawyers are not evidence. What they

JUDGE'S CHARGE TO THE JURY

1 have said in their opening statements and closing
2 arguments and at other times is intended to help you
3 interpret the evidence but it is not evidence in and of
4 itself.

5 Questions and objections by the lawyers are not
6 evidence. Attorneys have a duty to object when they
7 believe a question or an exhibit is improper under the
8 rules of evidence. You should not be influenced by either
9 the objection or my ruling upon it. If the objection was
10 sustained, you should disregard the attorney's question.
11 If the objection was overruled, then treat the answer as
12 any other.

13 Anything you may have seen or heard when the
14 court was not in session is not evidence. You are to
15 decide this case solely on the evidence that you received
16 here during the course of this trial.

17 Now, by the same constitution that makes you the
18 triers of the facts, I am the sole and only instructor on
19 the law. You must accept as correct the law that I charge
20 and apply to the law the evidence as you find it in
21 reaching your verdict. Put aside any conceptions you may
22 have had as to the law before coming here today and accept
23 the law as I instruct it to be. You, for your purposes
24 and your duty as jurors today, should not be concerned
25 about what the law ought to be but what I charge you the

JUDGE'S CHARGE TO THE JURY

1 law now is in this state.

2 As I instructed you at the beginning of this
3 trial, the evidence from which you are to decide the facts
4 consists of the sworn testimony of witnesses, both on
5 direct and cross-examination, regardless of who called the
6 witness, the exhibits that have been received into
7 evidence, and any stipulations, in other words, facts
8 which all of the parties have agreed to be true and
9 correct.

10 Now, the Defendant is charged under Section
11 16-11-330 of our Code of laws with the charge of armed
12 robbery. In order to prove this offense, the State must
13 prove, must first prove beyond a reasonable doubt that the
14 Defendant took personal property from the person or
15 presence of another person.

16 Property is in the presence of a person if it is
17 within the person's reach, inspection, observation or
18 control so that the person could, if not overcome with
19 violence or prevented by fear, keep the possession of the
20 property.

21 The State must prove beyond a reasonable doubt
22 that the Defendant carried the property away, intending to
23 permanently deprive the owner of the property and to keep
24 the property for the Defendant's own use.

25 The slightest removal of property or the complete

JUDGE'S CHARGE TO THE JURY

1 possession of the property even in an instant by the
2 Defendant is sufficient to show a taking and a carrying
3 away of property. The taking and carrying away of the
4 property must have been done with violence or by putting
5 the owner of the property in fear of violence.

6 Finally, the State must prove beyond a reasonable
7 doubt that the Defendant committed the robbery while armed
8 with a pistol, dirk, slingshot, metal knuckles, razor or
9 other deadly weapon or while alleging, either by action or
10 words, that he was armed while using a representation of a
11 deadly weapon or any object which a person present during
12 the commission of the robbery reasonably believed to be a
13 deadly weapon. A deadly weapon is any instrument or
14 substance which is likely to cause death or great bodily
15 harm.

16 Whether an instrument has been used as a deadly
17 weapon depends on the facts and circumstances of each
18 case. I will tell you that a gun may be a deadly weapon
19 even if it is not operational.

20 The Defendant is also charged with the offense of
21 burglary in the second degree under Section 16-11-312. To
22 prove second degree burglary, the State must prove beyond
23 a reasonable doubt that the Defendant entered a building
24 without consent with the intent to commit a crime within
25 the building.

JUDGE'S CHARGE TO THE JURY

1 A building is any structure, vehicle, watercraft,
2 or aircraft, where any person lodges or lives or where
3 people assemble for the purpose of business, government,
4 education, religion, entertainment, public transportation
5 or public use, or where goods are stored.

6 Finally, the State must prove beyond a reasonable
7 doubt at least one of the following. Number one, when
8 entering, while in the building or when fleeing, the
9 Defendant or an accomplice was armed with a deadly weapon
10 or explosive. A deadly weapon is any article, instrument
11 or substance which is likely to cause death or great
12 bodily harm.

13 Whether an instrument has been used as a deadly
14 weapon depends on the facts and circumstances of each
15 case, and I have given you examples of some items that are
16 considered deadly weapons earlier in this charge.

17 Or two, while entering, while in the building or
18 when fleeing, the Defendant or an accomplice used or
19 threatened to use a dangerous object.

20 Or three, when entering, while in the building or
21 when fleeing, the Defendant or an accomplice displayed
22 what was or appeared to be a knife, pistol, revolver,
23 ~~rifle, shotgun, machine gun or any other firearm.~~

24 Or four, the Defendant entered or remained in the
25 dwelling or the building in the nighttime. Nighttime is

JUDGE'S CHARGE TO THE JURY

1 the period between sunset and sunrise during which there
2 is not enough daylight to recognize a person's face except
3 by artificial light or moonlight.

4 Now, Mr. Foreman and ladies and gentlemen of the
5 jury, as you retire to begin your deliberations, I wish to
6 express the hope that each of you will be mindful of the
7 importance of this responsibility. You're not called upon
8 to serve as jurors very often and the proper performance
9 of the duty requires each of you to reach the height of
10 freeing your mind of all improper influences. You and I
11 are acting for the community and that is why we must see
12 to it that this trial is fair and the verdict is just.

13 You have observed that the presiding officer of
14 this Court is always addressed as Your Honor. Well the
15 reason is not because of the person wearing this robe but
16 that this Court is entrusted with the honor of this
17 community, the honor of this state, and the honor of this
18 country in seeking that every case that is tried here
19 receives fair and impartial justice.

20 Now you, the jury, you take into your care the
21 preservation of the honor of this community, the honor of
22 this state, and the honor of this country.

23 Please do not get the idea that I'm trying to
24 intimate to you how I think you should decide this case
25 because I've already told you under the laws of the State

JUDGE'S CHARGE TO THE JURY

1 of South Carolina you, the jury, are the sole judges of
2 all questions of fact.

3 It would be highly improper for me to influence
4 you in the performance of that duty. But as the presiding
5 officer of this Court, I am vitally concerned that
6 whatever your verdict is would be the result of your going
7 into the jury room and confining your deliberations and
8 your considerations to the evidence, and to the law that
9 you have heard in this courtroom, weighing it fairly and
10 impartially as I have every confidence you'll do.

11 Everyone is entitled to justice in this case, both the
12 State and the Defendant. All are entitled to justice.
13 Nothing more. Nothing less.

14 Your verdict in this case cannot be based on
15 sympathy, compassion, prejudice, or emotion or some other
16 consideration that's not found in the evidence. The Court
17 is of the confirmed opinion that whatever your verdict is
18 will represent the truth and justice for all parties
19 involved.

20 And remember that your verdict must be
21 unanimous. All of you must agree on the verdict. I'm
22 going to go over with you now the verdict form. It's very
23 simple. It's -- and as I tell everybody, take no note or
24 make no inference as to the order in which these are
25 listed. It's just any time you list more than one item

JUDGE'S CHARGE TO THE JURY

1 you got to list one before the other.

2 But the verdict form is simply this. It's the
3 State of South Carolina versus Alphonso L. Simmons. As to
4 the charge of armed robbery it says: We, the jury, find
5 the Defendant, Alphonso L. Simmons, either not guilty or
6 guilty of armed robbery.

7 Then you'll consider the charge of burglary
8 second degree. And that is, you know, again: We, the
9 jury, find the Defendant, Alphonso L. Simmons, either
10 guilty or not guilty of burglary in the second degree.

11 And then, Mr. Edmond, you will then sign as the
12 Foreman of the jury.

13 When you have reached a unanimous verdict, if you
14 would knock on the door and let the bailiff know that you
15 have got a verdict and then I'll bring you out and we'll
16 receive your verdict.

17 Now what I'm going to do is I'm going to ask you
18 if you would to retire to your jury room but possibly for
19 the last time ask you not to have any conversation yet
20 about the case. Do not begin your deliberations. I need
21 to speak to the lawyers to make sure that I've included
22 everything in the charge that needed to be there.

23 If there's any need -- if I've left out anything
24 and I need to bring you back to charge you anything
25 additional, I'll do that. If not, we'll gather the

1 exhibits and, Mr. Edmond, when you receive the exhibits
2 and this notebook, that will be your cue to begin
3 deliberations. So until then please have no discussion
4 about the case. And I'll be back with you shortly.

5 (Jury exits courtroom at 2:49 p.m.)

6 THE COURT: Any exceptions or objections to the
7 instructions from the State?

8 MS. GARRICK: No, Your Honor.

9 THE COURT: Anything from the defense?

10 MS. FULLWOOD: No, Your Honor.

11 THE COURT: Would y'all please go through these
12 exhibits to make sure they're all -- we have everything.
13 (Pause. Attorneys complying.)

14 THE COURT: When you take these back ask the
15 alternate to step out here.

16 (Alternate juror enters courtroom at 2:51 p.m.)

17 THE COURT: Ms. Brock, it appears that everyone
18 on the main panel is healthy and able to go forward. So,
19 thank you for your service. It's hard to be an alternate
20 because you done all the work but yet you don't get to
21 participate in deliberations but I guess as you can see,
22 if something did happen to one of the other jurors, it's
23 ~~very important that you were here for everything so that~~
24 ~~you could just step right in and go.~~

25 But it does appear that they're all healthy and

1 able to do so. We're going to have the whole jury panel
2 be back at 9:15 in the morning. We could have a couple
3 other cases we need to do, so you're free go. If you
4 would be back at 9:15.

5 THE JUROR: Tomorrow?

6 THE COURT: Yes, ma'am. If you'll just come up
7 here and have a seat.

8 THE JUROR: Where the regular jury was?

9 THE BAILIFF: Your Honor, I think she wants to
10 sit in the back of the courtroom and hear the verdict.

11 THE COURT: You're absolutely welcome to stay.
12 Yes, ma'am.

13 Ms. Brock, also, I just say for you, sometimes --
14 it's completely up to you, if you want to talk to the
15 lawyers, if they have questions about how they did or
16 whatever, if you want to talk to them, you can. But if
17 you'd rather not, you just tell them you'd rather not and
18 they won't push it.

19 THE JUROR: Okay.

20 THE COURT: Thank you.

21 THE BAILIFF: Your Honor, a couple jurors want to
22 take a little quick smoke break.

23 THE COURT: I don't have a problem with that but
24 just remind them that deliberations can only occur when
25 they're all present. So if they need to step out and

VERDICT

1 smoke, that's fine, and y'all can take them and do that
2 but then they need to make it short and get back in here
3 and work.

4 (Deliberations commence at 3:05 p.m. At 3:25 p.m. the
5 trial resumed as follows:)

6 THE COURT: Ladies and gentlemen, my
7 understanding is that the jury has a verdict. And, so, is
8 the State ready to receive the verdict?

9 MS. GARRICK: Yes, sir, Your Honor.

10 THE COURT: The defense?

11 MS. FULLWOOD: Yes, Your Honor.

12 THE COURT: All right, now is Casey around?

13 UNIDENTIFIED SPEAKER: They had to go down to the
14 third floor solicitor's office.

15 (Pause.)

16 MS. FULLWOOD: I'm sorry, Judge.

17 THE COURT: That's all right. Let me say this
18 while you're going to get Casey. And this is for everyone
19 involved. I sit here as you do and have no idea what the
20 verdict of the jury is. But what I would ask and actually
21 require is that the jury's verdict, whatever it is, be
22 received with professionalism and with respect for the
23 jury.

24 I don't ask everybody to agree with the jury's
25 verdict, but I do ask that you respect the fact that

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1 they've worked hard. It is their call. And they've made
2 the decision, whatever it is.

3 So, therefore, and that goes on both sides, if
4 you agree with the jury's verdict I don't expect there to
5 be an outburst of joy. If you disagree with the jury's
6 verdict, I don't expect there to be an outburst. As a
7 matter of fact, bottom line is I don't expect there to be
8 any outburst. Please, let's just receive the verdict,
9 whatever it is, and then we'll proceed accordingly with
10 whatever that might be.

11 We'll stand at ease right now until Casey gets
12 here and then we'll have the jury come in.

13 MS. FULLWOOD: Your Honor, Mr. Cornwell is here.

14 THE COURT: We'll ask the members of the jury if
15 they would join us, please, sir.

16 (Jury enters courtroom at 3:34 p.m.)

17 THE COURT: Thank you, ladies and gentlemen.
18 Please have a seat.

19 Mr. Edmond, has the jury reached a unanimous
20 verdict, sir?

21 FOREPERSON OF THE JURY: We have, Your Honor.

22 THE COURT: Thank you, sir. Would you please
23 pass that to the bailiff for me?

24 FOREPERSON OF THE JURY: (Complying.)

25 THE COURT: Thank you very much. If you could

POLLING OF THE JURY

1 please publish the verdict.

2 THE CLERK: Indictment 2008-GS-32-654 and
3 2008-GS-32-655, the State versus Alphonso L. Simmons. As
4 to the charge of armed robbery we, the jury, find the
5 Defendant, Alphonso L. Simmons, guilty of armed robbery.

6 As to the charge of burglary second degree we,
7 the jury, find the Defendant, Alphonso L. Simmons, guilty
8 of burglary second degree.

9 It is so signed.

10 Mr. Foreman, ladies and gentlemen of the jury, if
11 this is your verdict, please indicate, each of you, by
12 raising your right hand.

13 All hands raised, Your Honor.

14 THE COURT: Any request for polling from the
15 defense?

16 MS. FULLWOOD: The defense would request that the
17 jury be polled.

18 THE COURT: All right. Ladies and gentlemen, if
19 you would just give Madam Clerk your attention and she's
20 going to just confirm your verdict.

21 THE CLERK: As I call your name, if you'll hold
22 your hand up. I will ask you if these were your verdicts
23 and are they still your verdicts. At that time I'll need
24 you to respond, please.

25 Ronald McCathern, as to the verdicts were these

POLLING OF THE JURY

1 your verdicts and are they still your verdicts?

2 THE JUROR MCCATHERN: Yes, ma'am.

3 THE CLERK: Timothy Fanguy, as to the verdicts,
4 were these your verdicts and are they still your
5 verdicts?

6 THE JUROR FANGUY: Yes, they are.

7 THE CLERK: Brent Gregory, as to the verdicts,
8 were these your verdicts and are they still your
9 verdicts?

10 THE JUROR GREGORY: Yes.

11 THE CLERK: Verna Gentry, as to the verdicts,
12 were these your verdicts and are they still your
13 verdicts?

14 THE JUROR GENTRY: Yes, ma'am.

15 THE CLERK: Kim Eargle, as to the verdicts, were
16 these your verdicts and are they still your verdicts?

17 THE JUROR EARGLE: Yes, ma'am.

18 THE CLERK: Brandalyn Milford, as to the
19 verdicts, were these your verdicts and are they still your
20 verdicts?

21 THE JUROR MILFORD: Yes, ma'am.

22 THE CLERK: Clabie Edmond, as to the verdicts
23 were these your verdicts and are they still your
24 verdicts?

25 FOREPERSON OF THE JURY: Yes, ma'am.

1 THE CLERK: Susan McGowan, as to the verdicts,
2 were these your verdicts and are they still your
3 verdicts?

4 THE JUROR MCGOWAN: Yes, ma'am.

5 THE CLERK: John Keels, as to the verdicts, were
6 these your verdicts and are they still your verdicts?

7 THE JUROR KEELS: Yes, ma'am.

8 THE CLERK: Alan Wells -- oh, down here. Sorry.
9 as to the verdicts, were these your verdicts and are they
10 still your verdicts?

11 THE JUROR WELLS: Yes, ma'am.

12 THE CLERK: Russell Ricard, as to the verdicts,
13 were these your verdicts and are they still your
14 verdicts?

15 THE JUROR RICARD: Yes, ma'am.

16 THE CLERK: April Carter, as to the verdicts,
17 were these your verdicts and are they still your
18 verdicts?

19 THE JUROR CARTER: Yes, ma'am.

20 THE CLERK: All jurors polled, Your Honor.

21 THE COURT: Thank you, ma'am. Ladies and
22 gentlemen, I want to thank you for your service in this
23 case. We're going to proceed at this point to
24 sentencing.

25 What I want to let you know is a couple of

1 things. First of all, we're going to need you back. And
2 I thank you for your service in this case. But let me go
3 ahead and let you know that we will need you back tomorrow
4 at 9:15.

5 Okay. Now, with regards to this case, your
6 service in this case has concluded. But I always allow
7 members of the juries because you worked the case as well
8 as you're part of the public and this is a public forum,
9 you're more than welcome to stay for sentencing if you
10 wish to do so.

11 What I'm going to do though is I'm going to
12 excuse you as a jury panel because there may be some of
13 you that do not wish to stay. And I'll just see you back
14 tomorrow. But those of you that do wish to stay, I'm
15 going to excuse you at this time. If you do wish to go,
16 and if you have anything left in the jury room you can go
17 back and get your belongings and leave, but if you wish to
18 stay for sentencing you can simply come out of the jury
19 box and go have a seat in the courtroom if you do wish to
20 stay for that.

21 So having said that, thank you again for your
22 service in this trial. And I will see you back here at
23 9:15 in the morning. If you wish to go, you're certainly
24 excused and free to go. If you wish to stay, you're more
25 than welcome to have a seat. Thank you, ladies and

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1 gentlemen.

2 FOREPERSON OF THE JURY: Thank you, Your Honor.

3 (Jury excused at 3:41 p.m.)

4 THE COURT: Mr. Edmond, would you come around and
5 just sign these indictments for us?

6 FOREPERSON OF THE JURY: Okay.

7 (Pause.)

8 THE COURT: Is the defense ready to proceed?

9 MS. FULLWOOD: Yes, sir, we are.

10 THE COURT: Let me take up any motions if you
11 have any at this point.

12 MS. FULLWOOD: Your Honor, my first motion is for
13 a new trial on grounds of all the objections made and
14 exceptions taken during the course of this trial.

15 THE COURT: All right. Thank you, Ms. Fullwood.
16 I'm going to respectfully deny your motion. I believe
17 that the verdict is consistent with the evidence that the
18 jury heard, and I'm going to respectfully deny your
19 motion.

20 MS. FULLWOOD: I do also have a motion concerning
21 sentencing.

22 THE COURT: Yes, ma'am.

23 MS. FULLWOOD: And that motion is that in this,
24 this case is not a proper case for Mr. Simmons to be
25 sentenced under Section 17-25-45 of the Code. The State

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1 served Mr. Simmons with a notice of its intention to seek
2 the sentence of life without parole on March the 3rd of
3 this year.

4 It's probably already in the record of this case
5 but if not, I would like to include as a Court's Exhibit
6 that notice along with the attachments that include the
7 Richland County offenses that they intend to use as the
8 predicate convictions for most serious offenses in this
9 case.

10 THE COURT: All right. I think I have those.

11 MS. FULLWOOD: Okay. If they are already a part
12 of the record, that's fine.

13 THE COURT: Yes, ma'am. I do. I have those.
14 Thank you.

15 MS. FULLWOOD: And this is a three-fold motion,
16 Your Honor. First of all, all of these Richland County
17 convictions occurred during one trial and he was sentenced
18 on January, I think, the --

19 THE COURT: 12th.

20 MS. FULLWOOD: -- 12th of last year. They
21 involve one incident which is the robbery of a McDonald's
22 on Decker Boulevard in Columbia.

23 I have checked with the Office of Appellate
24 Defense and those convictions are still under appeal.
25 This means there is no final judgment in any of those

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1 cases. I think Section 17-25-45 requirement of conviction
2 would necessarily encompass the fact that any prior
3 predicate convictions be final convictions, and they are
4 not present in this case.

5 So that is one basis for my motion not to
6 sentence him to life without parole.

7 My second ground is that, as I'm sure the Court
8 is aware, our Supreme Court held in State V. Woody in 2004
9 that Section 17-25-45 has to be construed in conjunction
10 with Section 17-25-50. Section 17-25-50 deals with crimes
11 that are so closely, that are closely-connected offenses.
12 And it says that crimes that are so closely connected in
13 point of time as may be considered one offense can only be
14 treated as one offense for sentencing purposes.

15 Your Honor, at this time, I would like to put in
16 the record as a Court's Exhibit a CD that contains the
17 transcript of Mr. Simmons' Richland County trial and if
18 the State would like this --

19 MR. HUBBARD: What is it?

20 MS. FULLWOOD: This is a transcript of the
21 Richland County trial. If the State would like the
22 1200-page document, I would be glad to provide it, but I
23 would imagine they will accept my representation that it
24 is in fact that.

25 I'd also like to place in the record as a Court

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1 Exhibit material that was provided to me in the discovery
2 process. I think was prepared by Mr. Russell, outlining a
3 number of armed robberies that occurred in the Midlands
4 Area between March 5th, 2004 and April 19th, 2004 which is
5 the Richland County, Decker Boulevard McDonald's robbery.

6 Almost all of these offenses are attributed to
7 Mr. Simmons.

8 The armed robbery, kidnapping, et cetera, related
9 charges, that are predicate convictions for Richland
10 County, as I've said, constitute the robbery of a
11 McDonald's Restaurant on Decker Boulevard that occurred on
12 April 19th, 2004. That is just three days after the
13 offenses that he has just been convicted of today.

14 The State claims not only in the trials that he
15 has had but in outstanding warrants and indictments are
16 that Mr. Simmons engaged in a month or more long crime
17 spree. Given that the State's allegations are that this
18 was a crime spree, I would ask the Court to consider all
19 of them, including this one, in connection with the one
20 that he's been convicted of in Richland County as a
21 continuous course of criminal activity, therefore falling
22 within section 17-25-50 as crimes that are so closely
23 connected that they must be considered as one offense.

24 If I may, Your Honor, put this list in as a Court
25 Exhibit.

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1 THE COURT: Yes, ma'am.

2 (Thereupon Court's Exhibit No. 4, CD of trial
3 transcript, and Court's Exhibit No. 5, list of activities,
4 were marked and received into the record.)

5 MS. FULLWOOD: Your Honor, my third ground is the
6 fact that the predicate conviction in this case is that
7 the Richland County conviction, that actual offense
8 occurred after the crime that he has been convicted
9 today. The crime he has been convicted of today occurred
10 on April 16th of 2004.

11 The Richland County robbery that he's been
12 convicted of happened on April 19th of 2004.

13 I believe that the legislature's intent in
14 enacting Section 17-25-45 was to punish the recidivism.
15 In other words, to subject people to enhanced punishment
16 who have been convicted of crimes and sentenced and
17 punished for crimes and thereafter when they were released
18 from their punishment ignored all efforts to correct their
19 behavior and offended again.

20 THE COURT: Well, let me ask you this just for
21 argument's sake.. So are you saying that if this case
22 would have been tried prior to the Richland case and he
23 was convicted on this one, then Richland could seek life
24 without parole but Lexington can't because Richland beat
25 them to the punch?

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1 MS. FULLWOOD: No, sir. Because I think you
2 could still make this argument if that trial had occurred
3 later because he still would have never been sentenced for
4 any of this stream of robberies that he was accused of
5 having committed during March and April of 2004.

6 I know our Court has ruled that 17-25-45 does not
7 constitute cruel and unusual punishment, but that's in
8 context of people who are true recidivists, who have been
9 convicted of crimes, done time, come out and do it again.

10 I think when you subject an individual to that
11 type of enhanced punishment which is a day-for-day time
12 box life-type of punishment, when they are not in fact
13 true recidivists but are people who have simply committed
14 a group of crimes within the same time period, then I do
15 think that there are commitment implications and
16 imposition of life without parole on that type of
17 individual would constitute cruel and unusual punishment.

18 So those are my three bases for asking the Court
19 not to impose punishment under 17-25-45.

20 THE COURT: All right. Thank you very much. Any
21 response from the State?

22 MS. GARRICK: Thank you, Your Honor. May it
23 please the Court.

24 Your Honor, I think we should just all give the
25 statute 17-25-45 its plain, ordinary meaning. And it says

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1 straight out that upon a conviction for a most-serious
2 offense, a person must be convicted to life if that person
3 has a prior conviction for a most-serious offense. It
4 doesn't talk about, well, if the case is up on appeal
5 you'll just have to wait.

6 The ordinary plain reading of the statute as done
7 by our legislature says if there's a prior conviction and
8 you do the appropriate paperwork and serve it properly,
9 then for a second conviction on a most-serious offense,
10 the punishment will be life without parole. So we would
11 ask you to take that under consideration.

12 As far as it being a continuous crime spree or
13 and things of that nature, and the case that she cited,
14 Your Honor, we're talking about two different
15 jurisdictions. We're talking about Richland County versus
16 Lexington County. We're talking -- I don't even know what
17 the actual facts and circumstances were of that
18 McDonald's. I don't know if it was at day or not. I
19 don't know if it was to customers or a store manager. I
20 just don't know the facts of that case.

21 THE COURT: Well, I believe, and I may be
22 mistaken, but I think that that case that you're operating
23 under, Ms. Fullwood, holds the premise that if an
24 individual is indicted on an indictment for two crimes
25 that are similar in nature and time and place and is

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1 convicted under that indictment that that would be
2 considered as one conviction.

3 I don't believe it applies in this situation
4 where it's convictions in two separate jurisdictions under
5 two separate courts and separate indictments.

6 MS. GARRICK: And also, Your Honor, as far as her
7 last argument as far as the date of the incident of the
8 Richland County conviction, once again, by the statute
9 there's no limitation put on the order that the cases need
10 to be tried or disposed of. And, once again, we're
11 talking about different jurisdictions.

12 If we're just following the plain, ordinary
13 language of the statute, a conviction is a conviction.
14 We're not talking about arrest dates or incident dates.
15 So we think that the prior conviction from Richland County
16 would be enough to enhance this case.

17 THE COURT: Let me look at something real quick,
18 see if the statute addresses that.

19 (Pause.)

20 THE COURT: I'm reading the statute right out of
21 the book. For purposes of this section only, a conviction
22 shall be considered a second conviction only if the date
23 of the commission of the second crime occurred subsequent
24 to the imposition of the sentence of the first offense.

25 The conviction shall be considered a third

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1 conviction only if the date of the commission of the third
2 crime occurred subsequent to the imposition of the
3 sentence for the second offense.

4 MR. HUBBARD: Your Honor, what section is that?

5 THE COURT: I'm looking at Section 17-25-45, One
6 subpart C.

7 MR. HUBBARD: Thank you, Your Honor, that may be
8 the amended section of that statute.

9 THE COURT: Well, I looked.

10 MR. HUBBARD: I'm looking --

11 THE COURT: Let me double-check. I thought I
12 just looked there but I may have missed it. And I'll be
13 candid with you, I do not know if the last supplement I
14 have here is a 2005 supplement. I don't know.

15 Let me see if I can pull it up here. I'm looking
16 at that and that statute has in fact been amended. And it
17 indicates here that for purpose of determining a prior or
18 previous conviction under this section, and Section
19 17-25-50 a prior or a previous conviction shall mean that
20 the defendant has been convicted of a most serious or
21 serious offense as may be applicable on a separate
22 occasion prior to the instant adjudication.

23 There is no requirement that the sentence for the
24 prior or the previous conviction must have been served or
25 completed before a sentence of life without parole can be

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1 imposed in this section.

2 So, it clearly, Ms. Fullwood, it appears that the
3 legislature did consider exactly what you've mentioned,
4 and amended the statute to simply require that a prior
5 conviction must have occurred on a separate occasion and
6 be prior to the instant adjudication.

7 MS. FULLWOOD: If Your Honor please. Your Honor,
8 please, I believe that that section of the statute that
9 was part of the 2006 amendment. So I think that the
10 language you initially read was in effect at the time this
11 crime he has been convicted of was committed. So I
12 believe he is entitled to be sentenced under the provision
13 of that statute.

14 THE COURT: Well, I'm not sure it applies to the
15 time of commission of the crime or at the time of the --

16 MS. FULLWOOD: I, I would think that it would be
17 an ex post facto problem if there would be no notice at
18 the time he committed the crime of the punishment that he
19 would, could possibly be subjected to.

20 MR. HUBBARD: Your Honor, the one thing that
21 statute doesn't do is put a grandfather clause in there or
22 anything like that. The legislature had that
23 opportunity. That is their expression of their intention
24 of what that law means and what it should mean, so.

25 THE COURT: But let me ask you this. Would you

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1 not agree the changed, the statutes change on a fairly
2 regular basis, for example, the sentence imposed on
3 various offenses changes, and is it not typical that the
4 appropriate sentence for an individual would be the
5 sentence that was in place at the time the crime was
6 committed versus the time he ends up being adjudicated?

7 MR. HUBBARD: It can be, Your Honor, but usually
8 that's as to something that carries 10 years or 15 years
9 or whatever. This, I think the legislature here is really
10 in response to a case where the Supreme Court talked about
11 recidivism and all of that.

12 They came back and basically said, this is what
13 we meant, basically took that case and said, no, that's
14 not what we meant. We never meant that.

15 I think that's the plain reading of that statute,
16 of reading what it means that, that -- Your Honor, it's
17 not saying we're changing sentences or anything like
18 that. That's what we mean.

19 So, Your Honor, I would say there's a distinction
20 there and that it applies now.

21 MS. FULLWOOD: Your Honor, I think if the
22 legislature intended to make its amendment retroactive to
23 the fact actually affect the punishment and enhance the
24 punishment that an individual is going to receive for a
25 crime prior to the amendment of the statute, it would be

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1 required to express and state that statute was
2 retroactive.

3 MR. HUBBARD: Actually I think it's just the
4 opposite. I think that if there was a grandfather clause
5 there, they're trying to say this takes effect on
6 such-and-such a date or, like so many statutes do, that's
7 what it would say. I think that was their intent all
8 along so they didn't need to say that and didn't.

9 And that's the plain reading as I see it, Your
10 Honor.

11 THE COURT: One second.

12 (Pause - 4:04 p.m., until 4:10 p.m.)

13 THE COURT: Yes, ma'am.

14 MS. FULLWOOD: If Your Honor please, if I could
15 also direct the Court's attention to State V. Gordon at
16 588 Southeast Second 105. That discusses the Court's view
17 of recidivism under our statutory scheme in Section 45 --
18 17-25-45.

19 MR. HUBBARD: Your Honor, that's the case that
20 statute amended and addressed. That's the point where our
21 legislature, quite frankly, says the court done got it
22 wrong. It's not what we said.

23 Then their language comes back in this amended
24 statute saying, here's what we mean. And it came boom
25 boom.

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1 MS. FULLWOOD: But nevertheless the law that was
2 in effect in 2004 when this crime was committed wasn't
3 imposition of sentence of life without parole under this
4 set of facts.

5 MR. HUBBARD: Disagree there. This isn't like
6 they've taken it from 10 to 15 years. This is is our
7 legislature saying, whoa, what we meant from the very
8 git-go is what we're saying. Now y'all want it in even
9 more explicit terms with that Gordon case, we'll make it
10 more explicit.

11 Your Honor, it fell right on the heels of that.
12 This is what our legislature intended the entire time.
13 And, Your Honor, isn't changing a statutory scheme. This
14 is basically our legislature saying, this is what we
15 intended.

16 MS. FULLWOOD: Judge, it's worse than taking it
17 from ten to 15 years. It takes it from 30 years to life.
18 I mean, how much more severe, how much more severely can a
19 punishment be changed after commission of a crime?

20 MR. HUBBARD: Again, Your Honor, we're just
21 saying, there's no change. It's just a reiteration by our
22 legislature saying, whatever the Court has said, here's
23 what we meant.

24 So, Your Honor, I think there's a huge
25 difference. This isn't like when they changed kidnapping

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1 from automatic life to 30 years. This is our legislature
2 saying, you know, we're not tinkering with life. This is
3 what we meant. This is what we intended our prosecutors
4 to seek.

5 THE COURT: Be patient with me and let me look at
6 some things.

7 (Pause from 4:11 p.m., until 4:15 p.m.)

8 THE COURT: I hear you citing Gordon in support
9 your position that these are so close in time as to be one
10 offense; is that correct?

11 MS. FULLWOOD: That's right, and --

12 THE COURT: Because I'm satisfied -- now, I may
13 be wrong, but I disagree with you. I don't think that's
14 what the statute says. I don't think that's what the case
15 says. I don't think that's what the statute says. This
16 is a crime, although I agree, close in time, it's like,
17 but it's a whole different jurisdiction in a completely
18 different court, set forth under a completely separate
19 indictment considered by a separate Grand Jury.

20 And I think that that case was considering a
21 situation where, for example, if all of these crimes had
22 been committed here in Lexington County and that April the
23 19th armed robbery was being tried at the same time this
24 April 16th armed robbery was being tried, then -- and if
25 the Defendant was convicted of both of those charges, that

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1 would then be considered one conviction under that case.

2 This is a completely different jurisdiction, a
3 completely separate indictment in another jurisdiction.

4 And I don't believe that's what the case law is.

5 MS. FULLWOOD: Let me also add as a ground of
6 argument just so the record is clear. He's entitled to be
7 sentenced under the version of 17-25-45 that existed at
8 that time.

9 THE COURT: That's what I'm looking at. And
10 that's the question in my mind I'm trying to resolve now.

11 MS. FULLWOOD: Yes, sir.

12 THE COURT: Yes. But that -- I mean, you weren't
13 citing Gordon for that proposition.

14 MS. FULLWOOD: No, sir; I was referring the
15 Court's attention to that for the Court --

16 THE COURT: Recidivism.

17 MS. FULLWOOD: Recidivism. That's exactly
18 correct.

19 THE COURT: Right.

20 MS. FULLWOOD: Your Honor, there is one
21 proposition of law in Gordon, one additional proposition
22 of law that I'd like to apply in Gordon.

23 THE COURT: All right.

24 MS. FULLWOOD: And this is really black letter
25 law but Gordon does state the general rule that courts are

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1 to strictly construe penal statutes in a Defendant's
2 favor.

3 THE COURT: All right. Just give me five
4 minutes. Just remain at ease for just a moment.
5 (Pause from 4:18 p.m., until 4:28 p.m.)

6 THE COURT: All right. I've been doing some
7 research. I'm trying -- and I don't -- I did not find a
8 definitive answer, however with regard to, Mr. Hubbard,
9 what you were propositioning; I understand your position.

10 Here's the problem. Is -- if it's not a matter
11 of the legislative intent with this new statute. I mean
12 it is, but the statute that was in place at the time that
13 this crime was committed was clear that for the purposes
14 of that statute it would have to be that a conviction
15 would have had to have been, the actual conviction would
16 have had to have been prior to the offense for which he's
17 been adjudicated today.

18 Then there was some case law that interpreted the
19 recidivism part of that. And then the legislature did
20 respond and they did come up and they did amend the
21 statute, and they have the statute which is in place
22 today.

23 I've not found anything to the contrary, but I'm
24 going back to my days, which might be a big mistake, going
25 back to my days in law school and statutory interpretation

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1 and application with regards to criminal statutes. And it
2 is always been a rule that the statute that was in place
3 at the time of the offense is the ruling statute, the
4 applicable statute.

5 I'll use as an example, you know, it used to be
6 in South Carolina that murder was parole able. It is no
7 longer. If you are convicted of murder in South Carolina,
8 that is life without parole. But if you are before the
9 Court on a murder that occurred 15 years ago and you're
10 convicted, you must be sentenced under the law as it was
11 15 years ago.

12 That's clear. And I think that applies in this
13 case.

14 So, I guess I'm granting your motion with regards
15 to Mr. Simmons being sentenced under the life without
16 parole under 17-25-45.

17 Now, go ahead, sir.

18 MR. HUBBARD: I was just going to say, that's
19 fine, Your Honor. We're prepared to go ahead and let you
20 know what else is out there as a standard sentence goes.

21 THE COURT: Thank you, sir. And that's what I
22 was going to ask. Are you prepared to go forward with
23 sentencing then, Ms. Fullwood?

24 MS. FULLWOOD: Yes, sir.

25 THE COURT: And the State's prepared. All

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1 right.

2 If you would, please, I'll be happy to hear from
3 the State with regards to his prior record and any other
4 sentencing consideration.

5 MS. GARRICK: Thank you, Your Honor. May it
6 please the Court.

7 Your Honor, Mr. Simmons was first convicted, he
8 has some minor conviction in 1998 for trespassing. In
9 1990s for simple possession of marijuana. In April of
10 1999 he was convicted of burglary in the second degree.
11 He received a 15-year sentence. He was convicted at that
12 same time for grand larceny and he received a ten-year
13 sentence.

14 Your Honor, it's my understanding that he was
15 released from prison, I believe, in February of 2004 which
16 was just a couple weeks prior to these incidences that
17 we're talking about today or our conviction today from
18 April 16th of 2004.

19 Your Honor, in April of 2004, he also committed
20 the Richland County -- committed the Richland County
21 crimes that we were talking about. He received eight
22 counts of kidnapping. It was a jury trial. He was found
23 guilty January 12th of 2007. He was given a 20-year
24 sentence at that time.

25 He was convicted of grand larceny and received a

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1 ten-year consecutive sentence. He was convicted of five
2 counts of armed robbery, and those armed robbery
3 convictions were ten-year sentences concurrent with each
4 other but consecutive to the kidnapping charges.

5 Those are the instances that were, I believe the
6 incident date was April 19th of 2004.

7 THE COURT: Yes.

8 MS. GARRICK: And ours was April 16 of 2004.

9 Your Honor, he has other pending charges here in
10 Lexington County. He has multiple pending armed robberies
11 and kidnappings here. He has multiple pending kidnapping
12 and armed robberies out of Richland County. He has home
13 invasion, burglary first, two counts of assault and
14 battery with intent to kill pending out of Kershaw
15 County. And those cases, I believe, are scheduled to go
16 forward in the fall.

17 Your Honor, he has pending charges for escape and
18 throwing bodily fluids.

19 Your Honor, based on his prior convictions, the
20 '99 burglary and grand larceny, and then all of the
21 convictions out of Richland County from 2007, the fact
22 that he had just gotten out of prison when he committed
23 our offense here today that he's now been convicted of,
24 because of that we are asking for a maximum sentence on
25 armed robbery. We're asking for a consecutive sentence on

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1 a burglary second.

2 Based on his behavior and his conduct, we think
3 that this would be the kind of case where a consecutive
4 sentence and a maximum sentence would be appropriate. We
5 would ask that you hear from the detective that worked
6 this case and the other pending Lexington County cases.

7 THE COURT: All right. More than happy to hear
8 from anyone.

9 MS. GARRICK: And, Your Honor, we would ask that
10 these convictions be consecutive to the Richland
11 convictions, too.

12 THE COURT: All right. Yes, sir, Detective?

13 DET. RUSSELL: Detective Eric Russell, Lexington
14 County Sheriff's Department.

15 THE COURT: Yes.

16 DET. RUSSELL: Mr. Simmons is a very dangerous
17 man. In the spring of 2004 he led us all over the place,
18 robbing everything he could get to. He was caught. He
19 showed that he had no remorse for these crimes by trying
20 to escape. Like she said, there's plenty of other pending
21 charges in Lexington County and Richland County. These
22 are all armed robbery related charges and kidnappings and
23 things along those lines.

24 I would agree with Ms. Garrick. We would ask for
25 as maximum a sentence as possible, run it consecutive to

Lexington County Courthouse RANDOM STRIKE SHEET

JUDGE NAME: Russo, Thomas A.

TRIAL TYPE: Criminal

INEL ID: 2008-GS-32-654

COURTROOM CTR

DESCRIPTION: The State v. Alphonso Simmons

Sorted by: Random Nbr

Trial

NAME	AGE	DOB	RACE	SEX	STATE	ZIP	CTR	REMARKS
1 McEachern, Ronald W	115		W	M	()	()	()	
2 Craft, Bonnie H	45		W	F	()	()	()	
3 Fanguy, Timothy S	66		W	M	()	()	()	
4 Gregory, Brent A	78		W	M	()	()	()	
5 Burgess, Pat H	35		W	F	()	()	()	
6 Gentry, Verna K	74		W	F	()	()	()	
7 Eargle, Kim D	57		B	F	()	()	()	
8 Milford, Brandalyn L	123		W	F	()	()	()	
9 Edmond, Clabie C	60		B	M	()	()	()	
10 McGowan, Susan L	118		W	F	()	()	()	
11 Brennan, Kevin M	30		W	M	()	()	()	
12 Keels, John D III	97		W	M	()	()	()	
13 Wells, Alan H	173		W	M	()	()	()	
14 Ricard, Russell D	135		W	M	()	()	()	
15 Carter, April L	39		W	F	()	()	()	
16 Brock, Amy R	33		W	F	()	()	()	
17 Davis, Laura E	53		W	F	()	()	()	
18 Taylor, Matthew W	157		W	M	()	()	()	
19 Cooper, Tracy M	103		W	F	()	()	()	
20 Davis, Kathy C	52		B	F	()	()	()	
21 Jurick, Katherine E	95		W	F	()	()	()	
22 Schussler, Triston M	141		W	M	()	()	()	
23 Dooley, Hali C	55		W	F	()	()	()	
24 Bray, Christian A	29		W	M	()	()	()	

**Lexington County Courthouse
RANDOM STRIKE SHEET**

JUDGE NAME: Russo, Thomas A.

TRIAL TYPE: Criminal

CASE ID: 2008-GS-32-654

DESCRIPTION: The State v. Alphonso Simmons

Sorted by: Random Nbr

Trial

COURTROOM CTR

NAME	JUROR NBR	RACE	SEX	SUPP	DEF	CRIM	REMARKS
25 McCall, Vivian	114	W	F	()	()	()	
26 Atwood, Bonnie D	10	W	F	()	()	()	
27 Balding, Yvonne M	12	W	F	()	()	()	
28 Huff, Carolyn L	87	W	F	()	()	()	
29 Sharpe, Vicki E	145	W	F	()	()	()	
30 Edwards, Kenneth R	61	W	M	()	()	()	
31 Cobb, James O III	42	W	M	()	()	()	
32 Fuller, Elmer W	73	W	M	()	()	()	
33 Farley, Andrew B	67	W	M	()	()	()	
34 Morales, Wilberg	125	H	M	()	()	()	
35 Toole, James C	162	W	M	()	()	()	
36 Lawley, Bradley J	105	W	M	()	()	()	
37 Lanford, Charlene M	104	W	F	()	()	()	
38 Dooley, James Brent	56	W	M	()	()	()	

Total Number of Jurors:

38

** END OF REPORT **

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of LEXINGTON)Alphonse E. Simmons)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent

2012CP3201074INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lee Correctional Institution, Bishopville, SC.
2. Name and location of Court which imposed sentence General Sessions Court
Lexington County
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2008-GS-32-0654 - Robbery While Armed With A Weapon - § 16-11-0330(A)
 - (b) 2008-GS-32-0655 - Burglary 2nd - § 16-11-0312(B)
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 15, 2008 - 30 years - Consecutive to 2008-GS-32-0655
 - (b) April 15, 2008 - 15 years - Consecutive to 2008-GS-32-0654
 - (c) _____

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty **YES** _____
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? **YES** _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. **South Carolina Court of Appeals** _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. **Conviction and Sentence AFFIRMED** _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. **Filed May 11, 2011** _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. **Unpublished Opinion No: 2011-UP-212** _____
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) **Applicant was denied the right to effective assistance of** _____
- (b) **counsel guaranteed by the Sixth and Fourteenth Amendments** _____
- (c) **to the United States Constitution and by Article 1, §§ 3** _____
and 14 of the South Carolina Constitution - during his _____
criminal trial. _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)
- (a) **SUPPORTING FACTS: Trial Counsel's performance prior to trial and during applicant's criminal trial was both**
- (b) **unreasonable and prejudicial. SEE STRICKLAND -vs- WASHINGTON, 466 U.S. 668 (1984). Counsel's acts or**
- (c) **omissions included, but were not limited to the following:**
- SEE ATTACHED PAGE**

11. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? **NONE**
- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? **NONE**
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) **NONE**
- (d) any other petitions, motions or applications in this or any other Court? **NONE**

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- 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. _____

FILED
2017 MAR -8 12:13
JETHA CARRIGS
CLERK OF COURT

CONTINUED FROM THE PRECEDING PAGE:

Alphonso L. Simmons -vs- State of South Carolina (PCR Application)

10(A):..... Counsel failed to adequately investigate and subject the prosecution's case to a meaningful adversarial testing procedure. Such conduct deprived the jury of critical information relevant to an accurate assessment of applicant's guilt or innocence. SEE: WIGGINS -vs- SMITH, 539 U.S. 510 (2003) and U.S. -vs CRONIC, 466 U.S. 648, 104 S.Ct. 2039, (1984).

FILED

2012 MAR -8 P 12:13

BETH A. CARRIGS
CLERK OF COURT
LEXINGTON SC

(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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? **NONE**

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) **NONE**
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? **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 application with respect to this conviction, which you filed? **PCR Application filed Pro Se.**

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Elizabeth Fullwood, 206 E. Main St., Lexington, SC., 29072 (trial)

ii. _____

iii. Kathrine H. Hudgins, Office of Appellate Defense, Columbia, SC. (Appeal)

(b) the proceedings at which each such attorney represented you:

i. Trial - Elizabeth Fullwood

ii. _____

iii. DIRECT APPEAL - Kathrine H. Hudgins - Appellate Defender

18. State clearly the relief you seek in filing this application.

Reverse Conviction and Sentence and grant New Trial

19. Are you now under sentence from any other court that you have not challenged?

NONE

FILED
2012 MAR -8 12:14
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

VERIFICATION

ORIGINAL

I, ALPHONSO L. SIMMONS, JR., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Alphonso L. Simmons

Sworn to and subscribed before me

This 7 day of Mar, 2012

Bracey Sim L.S.
Notary Public for South Carolina

My Commission Expires 5-17-14

2012CP3201074

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, ALPHONSO L. SIMMONS, JR., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or 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 proceeding or give security therefor.

Alphonso L. Simmons
Applicant

Sworn to and subscribed before me

This 7 day of Mar, 2012

Bracey Sim L.S.
Notary Public for South Carolina

My Commission Expires: 5-17-14

2012 MAR - 8 2 12:14
JETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	Case No: 2012-CP-32-01074
	)	
Alphonso L. Simmons, #279349	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed March 8, 2012, 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 Lexington County Clerk of Court. The Applicant was indicted at the March 2008 term of the Lexington County Grand Jury for one (1) count of Robbery While Armed With a Deadly Weapon (08-GS-32-654) and one count of Burglary 2nd (08-GS-32-655). Applicant was represented by Elizabeth Fullwood, Esquire and Casey Cornwell, Esquire. The Applicant proceeded to trial and was found guilty. On April 15, 2008, the Honorable Thomas A. Russo sentenced the Applicant to confinement for forty-five (45) years.

A notice of appeal was filed at the South Carolina Court of Appeals. Katherine H. Hudgins, Esquire of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Simmons, Op. No. 2011-UP-212 (S.C. Ct. App. filed May 11, 2011).

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records. 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:

I. Ineffective Assistance of Counsel

- a) Failed to adequately investigate
- b) Failed to subject prosecution's case to adversarial testing

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the State requests that a hearing be held.

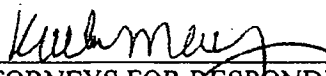
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

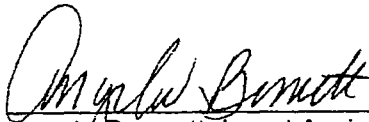
August 3, 2012.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2012-CP-32-1074
	)	
ALPHONSO L. SIMMONS, #279349	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jennifer Butler, Esquire
P.O. Box 849
Lexington, South Carolina 29071

DATED this 6th day of August, 2012


 Angela Bennett, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON)

Alphonso L. Simmons,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Responding.)

PCR HEARING
 2012-CP-32-1074

BEFORE THE HONORABLE EDGAR W. DICKSON, JUDGE
 August 13, 2013
 LEXINGTON, SOUTH CAROLINA

A P P E A R A N C E S:

Benjamin A. Stitely, Esq.
 For the Applicant

Daniel Gourley, Esq.
 For the State

REMA K. GANTT THOMAS
 CIRCUIT COURT REPORTER

I N D E X

PAGE NO.

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E X H I B I T S

FOR THE APPLICANT:

PAGE NO.

Applicant's Exhibit One, records receipt

22

1 THE COURT: All right, what is next?

2 MR. GOURLEY: We are going to call for our
3 next case Alphonso L. Simmons, Your Honor.

4 THE COURT: All right, and do you have a
5 packet for me?

6 THE CLERK: Yes, sir.

7 MR. GOURLEY: Yes, it's right here, Your
8 Honor.

9 THE COURT: Thank you.

10 MR. GOURLEY: May it please the Court?

11 THE COURT: Yes sir.

12 MR. GOURLEY: Your Honor, our next case is
13 Alphonso Simmons versus the State of South Carolina;
14 docket number 2012-CP-32-0174, the applicant was
15 indicted in the March 2008 term of the Lexington County
16 Grand Jury for one count of robbery while armed with a
17 deadly weapon and for one count of burglary in the
18 second degree.

19 Elizabeth Fullwood, Esquire represented the
20 Applicant. On April 14, 2008 the Applicant did have a
21 jury trial before the Honorable Thomas A. Russo.

22 On April 15th 2008 Applicant was found
23 guilty, Judge Russo sentenced Applicant to 30 years
24 imprisonment for robbery while armed with a deadly
25 weapon and 15 years imprisonment for burglary in the

1 second degree with sentencing running consecutively.

2 Applicant filed a timely notice of appeal
3 and appeal was perfected through the South Carolina
4 Court of Appeals and confirmed Applicant's convictions
5 and sentences.

6 Subsequently, Applicant filed a timely
7 application for post-conviction relief on March 8th
8 2012 alleging he is being held in custody unlawfully
9 based on the following allegations: ineffective
10 assistance of counsel for failing to adequately
11 investigate; for failing subject to prosecution's case
12 adversarial testing.

13 And on August 8, 2013 through PCR counsel
14 Applicant amended his application to ineffective
15 assistance of counsel for lack of handwriting expert;
16 lack of pursuit on missing footprint evidence; lack of
17 follow up on employee who left the fingerprint; no
18 attack on the ID during trial; unlawful sentencing;
19 improper attack on Miranda issues; improper attack on
20 the line-up; indictment outside 90 days; no
21 preliminary hearing; no objection to the solicitor
22 leaving a sign up during trial; and mental health
23 issues.

24 The State made it's return on August 6, 2012.
25 He is represented in this action today by Ben Stitley,

1 Esquire.

2 THE COURT: Thank you.

3 All right, Mr. Stitley?

4 MR. STITLEY: Yes, sir. May it please the
5 Court? Just for the record's sake I think additionally
6 Mr. Simmons was appointed counsel, Jennifer Butler, who
7 used to be one of our family court lawyers. Jennifer
8 has left practice and I'm handling PCR's for our
9 office. Same office, Judge, the same thing.

10 One thing I'd like to approach real quick. I
11 showed the attorney general this -- before I forget. I
12 had to order some medical records and SCDC of course
13 decided to bill me for them. So before I forget I want
14 to hand you an order for the \$218.00 so I can get these
15 medical records paid, just before I forget. I didn't
16 think they would bill me.

17 THE COURT: Yes, sir.

18 MR. STITLEY: Thank you, Judge, I appreciate
19 it very much.

20 THE COURT: Thank you, very much.

21 MR. STITLEY: I think that's the only issue I
22 have as far as clarification for the record. Just
23 needed to get this taken care of.

24 THE COURT: Okay.

25 MR. STITLEY: Your Honor, at this time we

1 would call Ms. Fullwood to the stand.

2 THE COURT: All right, Ms. Fullwood please
3 come to the stand.

4 DIRECT EXAMINATION

5 ELIZABETH FULLWOOD, having
6 first been duly sworn, testified as follows:-

7 Q Hey, Beth, how are you today?

8 A Good morning.

9 Q Do you recall this case?

10 A Oh, yes.

11 Q And it was actually several years ago that
12 you tried it so it has been a while before it got here
13 today.

14 A That's right.

15 Q And this actually was a trial, correct?

16 A That's right.

17 Q All right. And at the time you got Mr.
18 Simmons' case he actually had already been tried in
19 Richland County?

20 A That's my recollection.

21 Q And gotten a sentence over there.

22 A That's right.

23 Q Okay. Was there ever an offer in this case
24 that you remember?

25 A There was.

Elizabeth Fullwood - Direct

8

1 Q Do you remember what it was?

2 A Let me --

3 Q Sure.

4 A Let me say this, I brought this file. It is
5 the trial file. However, I believe there is another
6 file we haven't been able to locate. A lot of my time
7 sheets and everything would have been in that file. I
8 have a little bit of that stuff so I'm going to have to
9 do the best I can.

10 Q No problem. It has been several years, I
11 know that.

12 A Yeah. What I do have here though is that --
13 you were asking about an offer, right?

14 Q Yes, if there was one.

15 A On October 18th of 2007 he was transported to
16 the court house here from the Department of
17 Corrections. He was offered a plea of 30 years
18 concurrent with the sentence he was serving.

19 Q Okay. And that was in October of 2007?

20 A That is right.

21 Q Do you know at that point if he had already
22 filed his appeal or PCR on the Richland case; do you
23 have any knowledge of that?

24 A I wouldn't know. Although, since he had been
25 convicted I think he would have had at least an appeal.

1 Q Okay. And what would be the outcome, in your
2 legal experience, if you were to go ahead and plead
3 concurrent time but then get your other sentence
4 overturned, pretty much get stuck with the 30 years?

5 A That's right.

6 Q This case ended up ultimately with the
7 solicitor serving the LWOP notice, is that correct?

8 A All right, but I don't remember that. I
9 don't remember.

10 Q Okay, pretty much because he had the previous
11 conviction in Richland they thought they could pursue a
12 life in prison without parole on the Lexington case?

13 A That's right.

14 Q And you all went to trial?

15 A That's right.

16 Q And actually it was a pretty quick trial from
17 the look of it, only three witnesses involved?

18 A Yeah, it was stream-lined.

19 Q Okay. I am going to ask you a couple of
20 specifics as it comes up to the trial, if you remember
21 it.

22 A Okay.

23 Q One of the issues that came up in this case
24 was an alleged confession letter or an alleged letter
25 requesting that the State come and speak with Mr.

Elizabeth Fullwood - Direct

10

1 Simmons while he was in jail. Do you remember that,
2 Ms. Fullwood?

3 A This morning I saw that letter. I don't have
4 a very specific memory from that time but it was a
5 really short letter. Dear Detective Russell, I'm ready
6 to confess, come talk to me. It was something like
7 that.

8 Q Okay. And that actually became a pretty big
9 argument in trial because ultimately Mr. Simmons'
10 statements weren't really admitted much more than there
11 was a letter saying he wanted to confess, which
12 ultimately came in at trial, correct?

13 A I don't -- I don't completely recall.

14 Q Okay.

15 A I mean, the transcript will show what
16 happened at the trial.

17 Q The State did rely on that letter though,
18 saying that he wanted to confess in their case in
19 chief?

20 A I do believe as part of their evidence, yes,
21 sir.

22 Q And during the pre-trial hearing there was
23 argument that Mr. Simmons maybe didn't offer that
24 letter, there was no authentication. Do you remember
25 that?

1 A I reread that portion of the transcript
2 yesterday and it did say something about
3 authentication.

4 Q Do you recall if you ever employed the use of
5 any kind of any expert hand-writing exemplars to look
6 at the letter and compare it to any of Mr. Simmons'
7 work?

8 A I did not.

9 Q Do you think if there was a possibility that
10 could have maybe showed it was an authenticator at
11 least provide a stronger argument to challenge
12 authentication?

13 A If an expert's opinion would have been to his
14 benefit that certainly would have helped out.

15 Q But none was employed in this case?

16 A There wasn't.

17 Q Another issue that came up during, I guess
18 during discovery and during the trial was at some point
19 the State lifted some prints off of a counter at the
20 McDonalds. Do you remember that?

21 A It's in the transcript if it happened.

22 Q You asked a detective during the trial about
23 specifically a palm print and a shoe impression that
24 were found on the counter at McDonalds. And he replied
25 they were missing in cyber space. Do you remember

Elizabeth Fullwood - Direct

12

1 that?

2 A I don't remember but I read the pre-trial
3 hearing again and that came up at that point. I
4 believe from reading the transcript that the
5 information about that shoe print had just recently
6 been provided to us.

7 Q Right, you only got it very briefly before
8 the trial?

9 A Maybe the Friday before or something like
10 that.

11 Q Did you make any moves for a continuance or
12 to hire an expert in digital forensics to try to
13 recover the items which could have possible been
14 exculpatory?

15 A Well, it was my understanding they were not
16 available and would never been available so it would be
17 pointless to do that.

18 Q The police pretty much said they lost them
19 somehow?

20 A Right. And you know, that, of course, is
21 sloppy police work.

22 Q And it does show an item that came up during
23 the trial. There was a fingerprint located on the
24 alleged point of entry into the McDonalds. Do you
25 remember that?

1 A Sort of.

2 Q They said that Mr. Simmons allegedly came in
3 through the drive-through window?

4 A Right.

5 Q And apparently--

6 A It was open and that's why the woman turned
7 to go out of the store.

8 Q Right. And there was a fingerprint located
9 on the window, is what the testimony from Detective
10 Russell was, or from the discovery it came out, some
11 fingerprint on that window that they ran. Do you
12 remember that?

13 A Vaguely. Wasn't it the fingerprint of an
14 employee?

15 Q It was. It was the fingerprint of an
16 employee but not Mr. Simmons.

17 A Right.

18 Q Did you all employ any resources,
19 investigators to chase down who that employee was? Do
20 you recall?

21 A No, I don't think so. Now, I will say this,
22 we did have Dave McDougal do some work in this case.
23 Again, this is not my complete file so I can't say
24 definitely we did or not but I don't recall that we
25 did.

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1 Q The reason I ask is part of this case is --
2 it wasn't a caught red-handed, it was an ID case using
3 a photo line-up, correct?

4 A In part, yes.

5 Q In-court ID as well as a photo line-up,
6 correct?

7 A Both.

8 Q Okay. If it was possible, there was no way
9 to tell that that fingerprint maybe was another black
10 male matching a similar description of Mr. Simmons?
11 Because we didn't catch the name. It was never
12 provided in the transcript or an identifier of that
13 employee. Do you remember looking into that? Anything
14 specific?

15 A I don't have any recollection one way or the
16 other.

17 Q Okay. One thing that happened during the
18 actual trial, in the pre-trial you did make an attack
19 on the identification. You had a long hearing arguing
20 Neal v. Biggers, that the lineup was unlawfully
21 suggestive, all the proper arguments.

22 Is there a particular reason why at trial you
23 didn't argue in front of the jury problems with the
24 lineup? There was no line of questioning to Detective
25 Russell challenging the lineups configuration during

1 the trial. Is there any particular reason you went
2 that route?

3 A Why I did not criticize the way--

4 Q During the trial, you attacked it pretrial
5 but is there any reason you didn't present it to the
6 jury as a problematic identification?

7 A Because experienced police officers in
8 Detective Russell's line know how to get that to just
9 role off and be more helpful to them than to the
10 defense. That's -- a lot of times it can backfire on
11 you and it's better to argue it later or something like
12 that.

13 Q Okay. So the trial strategy move?

14 A Yes, definitely.

15 Q Do you remember having a Miranda hearing
16 dealing with him -- statements, both the written
17 handwriting thing as well as any alleged statements
18 specifically one in particular that it was fun while it
19 lasted?

20 A I read that portion of the transcript.

21 Q And that there was a hearing challenging the
22 admissibility of any statements that Mr. Simmons gave,
23 correct?

24 A We had a Jackson v. Denno hearing.

25 Q And he actually went to the stand during that

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1 hearing?

2 A He did.

3 Q Pre-trial?

4 A Right.

5 Q And there was a big argument between yourself
6 and the solicitor about whether or not Mr. Simmons
7 adequately requested his right to counsel. Do you
8 recall that?

9 A Yes.

10 Q Okay. And ultimately you were unsuccessful
11 and the judge said that his statements could come in,
12 is that correct?

13 A Right.

14 Q Were there any other angles you could have
15 played, a different attack on that Miranda issue that
16 you think would have better served his interests in
17 protecting his rights there?

18 A I can only say the transcript speaks for
19 itself.

20 Q Right.

21 A If there was something else I suppose that
22 would be pointed out.

23 Q Okay. In this case, the case was brought
24 forward on indictments. Do you have copies of those
25 with you?

1 A Yes, in fact, it's sort of confusing because
2 of the way the file was put together, it kind of looks
3 like maybe he was initially indicted in 2204 or 2005
4 and then they got a superseding indictment in 2008.
5 That's what it looks like.

6 Q Right, which is obviously more than 90 days
7 outside the window of the crime.

8 A Right.

9 Q Did you make a collateral attack on the
10 indictment prior to trial?

11 A No.

12 Q Not before the jury was sworn?

13 A No.

14 Q No? Say if they weren't within the 90 days?

15 A No. Because there's case law about those
16 rights.

17 Q Do you recall if you ever had a preliminary
18 hearing in this case?

19 A No.

20 Q You don't recall or you know you didn't? Do
21 you remember one way or the other?

22 A I don't remember. I don't recall.

23 Q Okay. All right, it's possible but you can't
24 specifically say you had one?

25 A It's possible but unlikely because we were at

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1 the point with Mr. Simmons in 2005 and I think that was
2 after those initial indictments and the True Bill.

3 Q Right. So are you familiar with the code
4 section that says an indictment can't be sought until a
5 prelim has been had if requested? Have you ever seen
6 that?

7 A No, I haven't, as a matter of fact. However,
8 in this case it looks like they have the first
9 indictment before he had counsel unless he made a
10 request for a prelim on his own, we wouldn't have made
11 that until after he had been indicted.

12 Q So that's actually possible, him not even
13 being appointed counsel within the time frame where you
14 could have possibly requested a preliminary hearing.
15 And your office obviously wasn't involved because you
16 didn't get the case until a year later?

17 A That's right. Well, after the True Bill
18 itself.

19 Q Right, but in 2005 and these alleged events
20 happened in 2004, so it's the period after?

21 A Yes.

22 Q During trial, and this doesn't come up in
23 the transcript, I will have to ask if you remember it.
24 Do you remember the solicitor making a sign that said
25 "It was fun while it lasted" on a big piece of card

1 stock or poster board?

2 A I do not. It might be -- I have no
3 recollection of that.

4 Q You don't recall specifically them leaving a
5 sign up on, like on a podium, on an easel -- that's it,
6 on an easel that said "It was fun while it lasted"
7 during the majority of their case?

8 A No, I don't remember that.

9 Q Would you have objected if they had done
10 that?

11 A Oh, yeah.

12 Q Just a couple of more things. In this case
13 at the end, upon conviction, you made an argument
14 obviously to challenge the State's attempt to receive
15 an LWOP, correct?

16 A Uh--

17 Q You were successful. Judge Russo agreed with
18 you that they were unable to LWOP Mr. Simmons.

19 A That's right.

20 Q Because pretty much there was no prior number
21 of convictions because these convictions all happened
22 around the same time.

23 A Right.

24 Q So he accepted your argument that LWOP was
25 inappropriate?

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1 A Yes.

2 Q Do you remember specifically making the
3 argument, however, that this was all part of one nexus
4 of events one crime spree where it was inappropriate
5 for him to sentence him consecutively to the armed
6 robbery in Richland?

7 A I don't recall whether I did or not. I don't
8 remember.

9 Q Okay. In your experience, there is an
10 argument, correct, that you can say that this is all
11 one chain of events, one crime spree, one criminal
12 enterprise, and the sentencing should be part and
13 parcel to one case? Is that correct, under 17-25-50?

14 A Yes, I am familiar with that section of the
15 Code and while it's been a while since I have
16 researched the application of that section, you know,
17 right here, right now talking about it, yes.

18 Q To your recollection these offenses, the
19 Lexington armed robbery charge and the Richland armed
20 robbery charge all happened within like a couple days
21 time span, correct, back in April 2004?

22 A Yes, I think it was within three or four
23 days?

24 Q Right, so the charges happened within one set
25 time frame, correct?

1 A You certainly could see it that way.

2 Q It wasn't -- Mr. Simmons was arrested, bonded
3 and allegedly committed another crime out on bond?

4 A No, not at all.

5 Q And he wasn't arrested, ultimately convicted
6 of course, and then committed another crime?

7 A No, he was accused of committing a number of
8 crimes in the Midlands area and then being apprehended.

9 Q Okay. And all of those or the majority of
10 those happened in another county. Only one of them
11 allegedly happened at Lexington County?

12 A I'm not sure about that. Because there was
13 the St. Andrews Seafood Market and I don't remember if
14 that was Lexington or Richland County. Again, I do not
15 clearly remember any of that. I do not clearly
16 remember that.

17 Q But his convictions happened mostly for
18 Richland charges and one for Lexington?

19 A Yeah.

20 Q Do you recall specifically making the
21 argument this was like one criminal enterprise and he
22 should have been sentenced in one case?

23 A I don't recall whether I did nor not but the
24 transcript will show.

25 Q Okay, the last thing I'd like to go over with

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1 you, and I briefly asked you this before, did you make
2 an opportunity to have Mr. Simmons evaluated for the
3 previous trial?

4 A No. .

5 MR. STITLEY: Your Honor, at this time,
6 and I've already shown the attorney general this and if
7 she doesn't have the knowledge I'm just going to use
8 her as a witness.

9 MR. GOURLEY: Your honor, I would object
10 for the record. We have no authentication of where the
11 records come from. Furthermore, I wouldn't have the
12 opportunity to cross-examine anybody regarding these
13 records.

14 MR. STITLEY: Your Honor, I think if
15 they are regularly conducted business documents -- I'll
16 just show her a copy. This is the records I got from
17 SCDC.

18 FOR THE STATE: I know in talking
19 through Ms. Fullwood and I'm just using her as a
20 witness on the stand, and their clinical psychologist
21 put up a fuss when I subpoenaed her. She said that she
22 is one of two and that she is unable to come down here
23 short of an act of God because she is one of two
24 psychiatrists from all of SCDC right now.

25 I spoke to the attorney general's office

1 and I told them that I would be requesting this as a
2 affidavit or a letter form from her just stating what
3 his current level of status is. He is currently in the
4 second highest tier of mental health they actually have
5 in a specialized unit for schizophrenics.

6 I am not asking specifically for these to be
7 used to determine that he had a mental condition at the
8 time. Simply, as an example that there was none done.
9 And obviously at this point he is being treated for a
10 mental illness. I know Ms. Fullwood doesn't have
11 specific knowledge of this but she is just the witness.

12 THE COURT: What you are doing is just -- she
13 is testifying that she didn't do it. I guess you or
14 the attorney general will ask if she had any reason.

15 FOR THE STATE: Your Honor, just for the
16 record, I would just like to make an objection that the
17 proper foundation has not been laid nor would I have
18 the opportunity to adequately cross-examine the doctor
19 who these medical records come from.

20 THE COURT: Well, I don't think he is trying
21 to get anything in that you would need to even cross-
22 examine the psychiatrist about other than you have a
23 reason to believe these were not from the medical
24 records of SCDC?

25 FOR THE STATE: I am not accusing Mr. Stitely

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1 of anything of that nature but, you know --

2 THE COURT: I understand. I am going to note
3 your objection just for the purpose that you do not
4 indicate that he had a medical condition at the time of
5 the trial.

6 MR. STITLEY: And I will ask questions about
7 that, Judge. And that's right, and I have the actual
8 receipt if it will help for the record's sake to know
9 where they came from.

10 THE COURT: All right.

11 MR. STITLEY: We can mark this as Applicant's
12 One.

13 THE COURT: Exhibit One.

14 (Applicant's Exhibit One,
15 records receipt, was received in evidence.)

16 Q And obviously, Ms. Fullwood, you have not
17 seen these before?

18 A I just thumbed through them.

19 Q Do you recall in the pre-trial there's
20 actually some discussion about some instances of
21 outbreaks or misbehaviors by Mr. Simmons at SCDS while
22 incarcerated that led to him having to wear an extra
23 security belt?

24 A Right. I think he had spit on some people.

25 But that he had also escaped a few times and concocted

1 an elaborate scheme to escape from the Kershaw County
2 Detention Center.

3 Q So that had had some issues at least with him
4 in some ways before during his incarceration?

5 A Right. He was considered on the escape list.

6 Q In your dealings with him, and you never
7 sought any medical or expert opinions as far as his
8 mental condition?

9 A There was no reason to question his mental
10 condition. He was always logical, he understood legal
11 concepts and he understood evidence. He understood
12 things like suppressing evidence, he was -- he
13 understood LWOP, he seemed to have a really good
14 knowledge of the legal system and nothing seems odd
15 about the way he thought and there was no reason to seek
16 any type of mental evaluation.

17 MR. STITLEY: One second, if it would
18 please the Court, Your Honor.

19 THE COURT: Okay.

20 Q Ms. Fullwood, when you tried this case, and
21 you have a lot of legal experience. You have been
22 doing this for a couple of years, correct?

23 A Yes.

24 Q It kind of seemed that in this one Mr.
25 Cornwell had a great deal of jury time. He did the

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1 opening statements.

2 A That's right.

3 Q Was there a particular reason you all broke
4 down your trial that way?

5 Q Yeah, there was. For one thing, Mr. Cornwell
6 had agreed to assist me with the case and we were going
7 to break it down in certain ways. And he specifically
8 requested that I would like to do the opening and
9 closing statements. And I thought that was a good
10 idea.

11 Sometimes when you are cross-examining
12 witnesses you have to get pretty stern with them and
13 you might end the trial with the jury not liking you.
14 Also, I knew that Mr. Cornwell was an excellent very
15 persuasive public speaker so I thought that was a
16 really logical way to divide up the work in the case,
17 the courtroom work, at least.

18 Q Do you remember at that time how many trials
19 Mr. Cornwell had had?

20 A I don't know.

21 Q Do you remember when he started with your
22 all's office?

23 A No.

24 MR. STITLEY: That is all the questions I
25 have. Thank you very much.

1 MS. FULLWOOD: You are welcome.

2 THE COURT: Mr. Gourley?

3 CROSS-EXAMINATION

4 By Mr. Gourley

5 Q Ms. Fullwood, how long have you been
6 practicing law?

7 A Since 1979, more or less.

8 Q Do you recall when you became appointed in
9 this case?

10 A It was in 2005.

11 Q And can you give a rough approximation as to
12 how many times you met with Mr. Simmons?

13 A No, I can't because the portion of the file
14 that would have the time sheets is missing. It is not
15 in the file.

16 Q Okay. More than ten?

17 A It wouldn't have been more than ten, I would
18 doubt.

19 Q Okay.

20 A It could have been, but that's not real
21 likely.

22 Q Okay. So maybe five?

23 A At least, yes.

24 Q And during those meetings with Mr. Simmons
25 did Mr. Simmons seem to comprehend everything that you

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1 all discussed?

2 A Yes.

3 Q Did he have any questions during those
4 meetings?

5 A Of course he did. He was charged with a
6 crime and he had plenty of questions about the evidence
7 against him and what we were going to do at trial and
8 how we would fight certain pieces of incriminating
9 evidence.

10 Q Right. So he seemed to understand everything
11 and you adequately addressed all the questions that he
12 had?

13 A Yes.

14 Q And you discussed the elements of the
15 offenses that he was charged with?

16 A Of course.

17 Q And he seemed to understand what he was
18 charged with in the indictment, the elements of the
19 offense?

20 A Yes.

21 Q Did you review the possible punishment and
22 the fact that he was facing an LWOP on these charges?

23 A I did.

24 Q And he understood that?

25 A Yes.

1 Q Did you inform him of his constitutional
2 rights and his right to a jury trial?

3 A I did.

4 Q And he understood those?

5 A He appeared to.

6 Q Did you advise him of legal problems that
7 could occur if he testified?

8 A I did.

9 Q And he understood that as well?

10 A He seemed to.

11 Q You advised him of the State's burden of
12 proving him guilty?

13 A I did.

14 Q And he understood that?

15 A He seemed to.

16 Q Did you discuss the applicant's or Mr.
17 Simmons burden of the case?

18 A Yes.

19 Q And what did he exactly tell you?

20 A That he didn't do it.

21 Q He didn't do it. Did you feel that there was
22 any reason on -- did you have any doubts that the
23 Applicant was competent to stand trial?

24 A None at all and I still don't because these
25 records seem to cover the period of 2012 and 2013 which

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1 was long before I represented him. So--

2 Q Yes, Ma'am.

3 A --so kind of, it kind of looks like he
4 developed some mental health issues a few years later
5 on.

6 Q And he never indicated to you that he
7 suffered from any kind of mental illness?

8 A No.

9 Q Did any family members approach you and tell
10 you he suffered from any type of mental illness?

11 A No.

12 Q Okay. Did you file for discovery in this
13 case?

14 A Yes.

15 Q Did you review the discovery with the
16 Applicant?

17 A Yes. It is my policy to always send client's
18 copies of their discovery. And that would have been
19 done in this case and of course we would have reviewed
20 it.

21 Q And did he seem to understand the discovery
22 materials?

23 A Yes.

24 Q Did the Applicant ever give you any leads to
25 investigate?

1 A No.

2 Q Did you discuss any possible defenses with
3 the Applicant?

4 A Yes.

5 Q And what were those?

6 A Our defense was basically reasonable doubt.
7 I mean, he wasn't providing an alibi or anything like
8 that so the thing to do would be to go in there and
9 attack identification, attack any alleged statements,
10 just try to do everything we could to weaken every
11 point of evidence that was in front of me.

12 Q And did he give any confessions to the police
13 in this case?

14 A He gave statements that came into evidence.
15 They weren't direct confessions.

16 Q Did you develop an opinion regarding the
17 State's evidence and their ability to prove the
18 defendant guilty?

19 A Well, yes, of course I did. They didn't have
20 a bad circumstantial case.

21 Q Right.

22 A But it was circumstantial.

23 Q Okay.

24 A I realize that a witness on identification is
25 more like direct evidence.

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1 Q Right.

2 A But that woman had just a very short period
3 of time to look at the man who was in the McDonalds
4 that day.

5 Q Okay. And I believe you testified earlier
6 that there was a plea offer in this case?

7 A That's right.

8 Q That was 30 years, to run concurrently with
9 the Richland County charges?

10 A That's right.

11 Q And he chose to not pursue that offer?

12 A That's right.

13 Q And I believe you testified earlier that your
14 particular trial strategy in this case was to attack
15 the ID and basically the circumstantial evidence in
16 this case?

17 A That's right.

18 Q Did you discuss that with the applicant prior
19 to the trial?

20 A Yes.

21 Q Did he seem to understand that?

22 A He did.

23 Q And you didn't call any witnesses in this
24 case, correct?

25 A No.

1 Q Do you have a particular reason why you did
2 not?

3 A Well, there really weren't any to call, for
4 one thing.

5 Q Okay.

6 A And of course you get what could be
7 considered a strategic advantage of being able to argue
8 last to the jury.

9 Q Okay. Now going to the allegations raised by
10 the Applicant, he's asserting you were ineffective for
11 failing to pursue a handwriting expert. In your
12 opinion, did you need a handwriting expert in this
13 case?

14 A Well, I felt like -- it's my recollection
15 now, it's my recollection that there was nothing that
16 would show me that they were going be able to show it
17 was his handwriting, you know?

18 Q Right.

19 A And I believe that that's one of the
20 arguments I made at the suppression hearing is that
21 there was no authentication, you know. There was just
22 his name on the return address of an envelope.

23 Q Okay. Let's take a step back. Mr. Simmons
24 wrote a letter to Detective Russell or allegedly wrote
25 a letter to Detective Russell stating that he was going

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1 to confess, correct?

2 A That's right.

3 Q Okay. And Detective Russell testified during
4 the pre-trial matters that he visited Mr. Simmons in
5 jail.

6 A Right.

7 Q In response to that letter?

8 A Right.

9 Q And as he arrived at the jail and discussed
10 this with Mr. Simmons, Mr. Simmons indicated and
11 expressed or essentially gave knowledge that he wrote
12 the letter, correct?

13 A If that's what it says.

14 Q And he was willing to discuss the case with
15 detective Russell so long as he wasn't present at the
16 jail, correct? He was afraid of being called a snitch
17 by the others?

18 A Yes, that is what Detective Russell's
19 testimony was.

20 Q And in response to that you argued that the
21 letter was too vague and there was no authentication.

22 A That's right.

23 Q And I believe the judge denied the motion to
24 suppress it, correct?

25 A That's right.

1 Q Regarding the foot print evidence, did you
2 have any means of obtaining that evidence?

3 A I don't think anybody did.

4 Q And it was essentially lost in cyber space,
5 correct?

6 A That's what they said.

7 Q Did you cross-examine Detective Russell
8 during the trial on his particular footprint evidence
9 issue?

10 A I don't have a recollection. But if the
11 transcript said I did then I did.

12 Q And with the McDonalds employee who left the
13 fingerprint evidence on the outside of the drive-
14 through window, it was alleged it could have happened
15 at a drive-through window at any McDonalds, correct?

16 A That's right.

17 Q And again there was a fingerprint found on
18 that drive-through window?

19 A Right.

20 Q And that fingerprint did not match the
21 applicant, correct?

22 A Right.

23 Q And that was pointed out during the trial,
24 correct?

25 A If the transcript says so.

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1 Q You argued that was a McDonalds' employee,
2 right?

3 A Again, whatever the transcript says. It
4 speaks for itself.

5 Q During the failure to attack during the ID
6 during the trial, did you have any particular strategy
7 when you cross-examined the victim Ms. Walker in this
8 case?

9 A I'm sure I did but I don't know now what it
10 was.

11 Q Well, during cross-examination did you not
12 early attack her identification, the fact that she had
13 only mere seconds to visually see the applicant as she
14 had a gun to the side of her head and she was required
15 to walk forward.

16 A I didn't know all that. If that's what
17 happened then, yes.

18 A If that's what happened, yes. If the
19 transcript reflects that.

20 Q Regarding the unlawful sentencing, you argued
21 to Judge Russo the fact that he could not be sentenced
22 to life without parole under the current statute at the
23 time for 2005. The crime he committed in 2004 and you
24 argued that he should be charged under the 2004
25 statute, correct?

1 A Yes.

2 Q And you also argued to the judge that the
3 Lexington crime was committed prior to the Richland
4 County crime, correct?

5 A Right.

6 Q And therefore that Richland County crime
7 should not be held as a strike against the Applicant,
8 correct?

9 A Yes.

10 Q And you ultimately were successful in that
11 argument, correct?

12 A Yes.

13 Q So the Applicant did not face a life without
14 parole sentence, correct?

15 A Correct.

16 Q As a matter of fact, with those two crimes,
17 there was a three-day time period between -- a time
18 period between the Lexington County crime and the
19 Richland County crime, correct?

20 A Yes. A short period of time. It was less
21 than a week.

22 Q And those were two different counties?

23 A That's right.

24 Q Two different victims?

25 A Right. I think they were both McDonalds.

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1 Q But two different McDonalds?

2 A Right, right.

3 Q Regarding the Miranda issues, how many pre-
4 trial motions to suppress have you done in your career?

5 A I have no idea.

6 Q Several hundred?

7 A Probably.

8 Q And do you feel like you argued those motions
9 properly?

10 A To the best of my ability, yes, sir.

11 Q Regarding the improper lineup identification
12 that was shown to the victim. I believe during the
13 pretrial, during the Neal v. Biggers hearing you argued
14 that the pictures could have been developed more
15 properly. There could have been a clearer image,
16 particularly a color image, facial characteristics
17 could have been more distinguished, been more similar
18 or not similar, correct?

19 A Right.

20 Q Do you feel like you could have done anything
21 more to attack that photo lineup?

22 A No.

23 Q The failure to request a preliminary hearing,
24 did you feel there was any need for a preliminary
25 hearing in this matter?

1 A No. I mean, I don't know if he had one or
2 not.

3 Q Right.

4 A In this case he probably would have been
5 denied one because he would have been indicted before
6 they even received his request.

7 Q Right.

8 A In this case, it was of no consequence. You
9 can see, his file was voluminous. No, it wouldn't have
10 made a bit of difference in this world.

11 Q I believe you were appointed after the time
12 frame allowed for him to request a preliminary hearing?

13 A We were appointed after the first indictments
14 had been True billed.

15 Q Okay. Even if -- if you thought there was
16 enough probable cause to -- obviously there was enough
17 probably cause to indict him, correct?

18 A Yes.

19 Q For the indictments, you don't feel there was
20 any kind of basis for objecting, under the current case
21 law, it would have been frivolous, essentially?

22 A A frivolous argument.

23 Q Regarding the sign, do you recall anything
24 about a sign--

25 A I've been in trials where they tried to do

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1 things like that and I objected to them and had them
2 taken down. I would hope if there was a sign displayed
3 in this trial I would have made the same motion if that
4 happened.

5 Q If there's nothing in the transcript that
6 reflects a sign would you dispute that, like a sign
7 being displayed or used in this trial?

8 A I'm not sure what you mean.

9 Q I'll withdraw the question.

10 Do you feel like that sign would have
11 prejudiced your client in any way?

12 A Well, I don't think that one party should be
13 able to display a sign or some kind of slogan during
14 the entire trial. I just don't think it would have
15 been done in this case. If they had something like
16 that printed up as a visual during their closing
17 argument. And at that point they would have been able
18 to keep that sign up during their closing argument.
19 But I feel sure if they had done something like that we
20 would have removed it.

21 MR. GOURLEY: Those are all my questions,
22 Your Honor.

23 THE COURT: Redirect?

24 MR. STITLEY: Very brief, Your Honor.

25 REDIRECT EXAMINATION

1 By Mr. Stitley

2 Q Ms. Fullwood, to your recollection, Mr.
3 Simmons always contended he didn't give a statement or
4 confess, correct? He told you he denied what Mr.
5 Russell said?

6 A Right, right. He did.

7 Q It wasn't a situation where he kind of
8 admitted to giving these statements, writing these
9 letters and then when you attacked them, he always
10 denied them to you, as to what happened?

11 A Right.

12 Q And he told you that whatever Mr. Russell
13 said was not true?

14 A Right.

15 MR. STITLEY: No further questions, Your
16 Honor.

17 MR. GOURLEY: Just one question, if I may,
18 just quickly.

19 THE COURT: On that issue.

20 MR. GOURLEY: Yes, sir.

21 RECROSS-EXAMINATION

22 By Mr. Gourley

23 Q And you argued those motions to suppress
24 those statements, correct?

25 A That's right and I put Mr. Simmons up to give

Elizabeth Fullwood - Recross

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1 his version during the suppression hearing.

2 MR. GOURLEY: Thank you, Your Honor.

3 THE COURT: And Ma'am, you may step down.

4 THE COURT: Mr. Stitley, your next witness?

5 MR. STITLEY: We call Mr. Cornwell, briefly,
6 Your Honor.

7 DIRECT EXAMINATION

8 RICHARD CASEY DALE CORNWELL,
9 having first been duly sworn, testified as follows:

10 By Mr. Stitley

11 Q Mr. Cornwell, how are you today?

12 A Hey, how are you doing?

13 Q You were here while Ms. Fullwood was
14 testifying?

15 A Yes.

16 Q Okay. Just to get through the majority of it
17 without having to rehash it, as far as things like
18 getting experts, not getting experts, dealing with
19 discovery, your recollections would pretty much be the
20 same as hers, correct?

21 A Yes, that's correct.

22 Q Okay. You are not familiar with change as
23 far as your all's heading into trial and trial strategy
24 and trial prep?

25 A No, that's about what I recall.

1 Q In this case, what was your role?

2 A I was second chair, to do the opening and
3 closing statement and I think I crossed one of the
4 witnesses. I'm not sure.

5 Q How many trials had you done before this one?

6 A I'm not sure, maybe five.

7 Q Okay. When did you start with the Lexington
8 PD's office?

9 A In 2007.

10 Q And it was in 2008 when you all tried this>

11 A Yes, sir.

12 Q Had you ever tried a case of this magnitude
13 before that? Do you recall?

14 A I had a CSC with a minor. I think that was
15 my first trial in Lexington.

16 Q Okay. Before this armed robbery trial?

17 A Yes.

18 Q Were you pretty much involved with all the
19 meetings with Mr. Simmons that Ms. Fullwood had or
20 would she had done them separate from you?

21 A She had the case for a while before I came on
22 so they possibly would have met at some time. I'm sure
23 they met without me on occasion but I had meetings with
24 her also.

25 Q Do you remember any particular trial

Casey Cornwell - Direct

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1 strategies as to why you were going to do the opening
2 and closing?

3 A I'd asked to do the opening and closing. We
4 talked about it. It was kind of a jury tactic since
5 that they might like her after she crossed the
6 detective. So it kind of played well to do it that
7 way.

8 Q Did you all run that by Mr. Simmons ahead of
9 time? Do you remember?

10 A I'm pretty sure we told him who would be
11 doing what. I can't one hundred percent recall if we
12 did.

13 MR. STITLEY: I have no further questions for
14 Mr. Cornwell.

15 Thank you.

16 THE COURT: Anything on cross?

17 CROSS-EXAMINATION

18 By Mr. Gourley

19 Q Mr. Cornwell, I believe you said it was trial
20 strategy for you to do the opening and closing?

21 A Yes.

22 MR. GOURLEY: No further questions, Your
23 Honor.

24 THE COURT: Anything on redirect?

25 MR. STITLEY: No, sir. Thank you.

1 THE COURT: Any objection to Mr. Cornwell
2 being excused?

3 MR. STITLEY: None, Your Honor.

4 MR. GOURLEY: Not at all, Your Honor.

5 THE COURT: All right.

6 MR. STITLEY: Your Honor, we call Mr. Simmons
7 to the stand.

8 THE COURT: All right, Mr. Simmons.

9 MR. GOURLEY: Your Honor, if we may excuse
10 Ms. Fullwood as well.

11 THE COURT: Ms. Fullwood, you are also
12 excused unless you just want to hang around.

13 MS. FULLWOOD: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 ALPHONSO L. SIMMONS, having
16 first been duly sworn, testified as follows:

17 By Mr. Stitley

18 Q Mr. Simmons, how old are you today>

19 A I'm 32.

20 Q How far did you go in school?

21 A Oh, I made it to the twelfth grade but didn't
22 finish.

23 Q So you didn't graduate from high school? Did
24 you ever go to college, law school?

25 A No.

Alphonso Simmons - Direct

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1 Q What would you say your knowledge of the
2 legal system was back in 2004 and 2008?

3 A None.

4 Q No formal training as a lawyer?

5 A No.

6 Q Would you have known proper legal arguments,
7 things to raise of that nature back when your case was
8 pending?

9 A No.

10 Q You have the benefit of course once you -- I
11 call it a benefit, I guess I shouldn't say that. Once
12 you are in SCDC where at least there is access to a law
13 library? Correct?

14 A Yeah.

15 Q And kind of the force of being there you
16 start to familiarize yourself with some of the legal
17 elements of the case, correct?

18 A Yeah.

19 Q To the best of your ability?

20 A Yeah.

21 Q Going back to this trial, Mr. Simmons, do you
22 remember meeting with Ms. Fullwood before your trial?

23 A Yeah.

24 Q She says there was an offer brought to you at
25 some point in 2007. Do you recall that?

1 A Okay.

2 Q Do you recall requesting a preliminary
3 hearing in this case?

4 A I think.

5 Q Did you ever have your prelim?

6 A No.

7 Q When Ms. Fullwood was appointed to you almost
8 a year later had you had counsel in the interim?

9 A I don't think so.

10 Q Did you have a lawyer between when you got
11 arrested and charged and Ms. Fullwood coming to see you
12 about a year later?

13 A No.

14 Q And you never had a prelim?

15 A No.

16 Q Were you served indictments at that point?

17 A I think so.

18 Q And then some new indictments came in 2008?

19 A Yeah.

20 Q To your recollection pretrial, before the
21 jury was selected and sworn, was there a challenge to
22 your indictments?

23 A No.

24 Q As far as your actual case in chief, when we
25 heard some testimony before about statements, letters,

Alphonso Simmons - Direct

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1 did you write a letter to Detective Russell?

2 A No.

3 Q Did you provide him any statements that would
4 be a confession?

5 A No.

6 Q Did you provide him any statements that said
7 you had anything to do with this or any of these
8 alleged robberies?

9 A No.

10 Q Were any statements he made would you
11 construe them as having to do with you confessing?

12 A No.

13 Q Would you take the position that you never
14 voluntarily spoke with him at all?

15 A Right.

16 Q He came and got you out of the Richland
17 County -- Detective Russell came and got you out of the
18 Richland County jail, correct?

19 A Yes.

20 Q And at trial you told the judge that you told
21 him that you wanted to talk to a lawyer, correct?

22 A Yes.

23 Q And at that point he brought you back to the
24 jail?

25 A Yes.

1 Q And the one statement they kept relying on
2 "It was fun while it lasted" and you tried to explain.
3 What were you talking about?

4 A That statement -- he came and picked me up at
5 the jail and brought me back. And I made that
6 statement and I was talking about the opportunity,
7 being in jail, I was locked down 20 hours a day. So at
8 the end of the trip I was grateful that he gave me that
9 opportunity, me being in jail.

10 Q He actually took you to get some street food,
11 right?

12 A Yeah.

13 Q And you said that was the first food you had
14 had that wasn't jail food in a while?

15 A Yes, two and a half years.

16 Q But you never confessed to these crimes?

17 A No.

18 Q Did you tell Ms. Fullwood and Mr. Cornwell
19 that you did not write that letter?

20 A Right.

21 Q You told them that it wasn't your signature,
22 it wasn't your handwriting?

23 A It was Ms. Fullwood and another young lady.
24 I don't remember talking to the young lady.

25 Q But you at least told Ms. Fullwood that?

Alphonso Simmons - Direct

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1 A Yes.

2 Q When she came and saw you before your trial?

3 A Yes.

4 Q Okay. Prior to 2004 had you ever been
5 institutionalized?

6 A The hospital?

7 Q For mental health?

8 A When I was maybe 12.

9 Q How long were you institutionalized?

10 A I don't remember.

11 Q Is that something that your mother would
12 remember?

13 A Yes.

14 Q What were you in the mental unit for back
15 then?

16 A I can't remember.

17 Q Is that something that your mother would
18 remember?

19 A I guess.

20 Q Do you recall if anyone went out and spoke to
21 your family about your prior mental health?

22 A No.

23 Q You don't remember or they didn't?

24 A I don't remember.

25 Q Okay. Since you have been at SCDC you are

1 now in a different unit, right? What's the unit you
2 are in?

3 A Intermediate care.

4 Q Okay. And what are you being treated for?

5 A Mood disorder with psychotic features.

6 Q Okay. Schizophrenia?

7 A I'm not really sure what mood disorder is.
8 I've just been talking to them.

9 Q Okay. Is it different today than it was in
10 2004? Or are you pretty much the same as you have
11 been?

12 A This is the first time I've actually heard a
13 title to anything.

14 Q But as far as you though, are you the same
15 now that you were back then?

16 A Yeah.

17 Q Same as when you went into an institution
18 when you were 12 or 13?

19 A Right.

20 Q This has been an on-going problem for you
21 during your lifetime that you have been aware of?

22 A Yeah.

23 Q Okay. We talked a little bit about the sign,
24 you told me this, it didn't show up in the transcript.
25 Tell the Court what this sign was and when it went up

Alphonso Simmons - Direct

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1 and what you recall about it.

2 A I remember after the prosecutor took the sign
3 down off the easel, or whatever you want to call it,
4 she put it down like on this wall, facing the jury.

5 Q Like outside the witness stand?

6 A Yes, sir, facing out towards the jury where
7 the jury would see it the whole time.

8 Q And you say the whole time, during the case
9 in chief and closing?

10 A Even since they put it on the easel to make
11 their issue and took it down and put it there the whole
12 time during the trial.

13 Q Okay. How about during defense's closing?

14 A It was there the whole time.

15 Q What else did you want to say as far as --
16 I've covered most of the issues but have I left
17 anything off that we haven't talked about that you can
18 specifically think of? ID, Miranda, I talked about
19 that, is there anything else that I'm forgetting as far
20 as issues that came up before trial or during trial
21 that you felt should have been handled differently or
22 that led to improper assistance of counsel?

23 A I'm not sure.

24 Q Okay.

25 MR. STITLEY: Please answer any question the

1 attorney general has.

2 THE COURT: Mr. Gourley?

3 MR. GOURLEY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 By Mr. Gourley

6 Q Mr. Simmons, how many times did you meet with
7 counsel prior to your jury trial? If you can recall,
8 just a rough estimate?

9 A One time I was in Lee County.

10 Q Okay, just that one time?

11 A I don't remember.

12 Q Okay, that's fine, thank you.

13 A Yeah.

14 Q Do you recall ever going over discovery with
15 your counsel, the evidence that was in your case?

16 A We talked about it.

17 Q Okay. Did you all discuss any possible
18 defenses to the charges that you were facing?

19 A Maybe.

20 Q Do you recall what those were?

21 A I thought it was -- it was lawyer talk, like.

22 Q Okay. You didn't really understand?

23 A Partly.

24 Q Okay. Did you ever ask your counsel to
25 explain something to you, or ask any questions to your

Alphonso Simmons - Cross

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1 counsel about that?

2 A I was nervous a lot of times and I just
3 really, you know.

4 Q Okay. What type of jobs have you had in your
5 past, if you can recall?

6 A I worked at -- a lot of it was fast food.

7 Q Okay. While in jail are you on any type of
8 work-release program or anything like that?

9 A I can't.

10 Q Okay, are you pursuing your GED or have you
11 received your GED while you were in jail? Did you get
12 your GED?

13 A I did.

14 Q You did get your GED?

15 A Right.

16 Q And when was that?

17 A It was in 2001.

18 Q It was in 2001 when you got your GED?

19 A Yeah.

20 Q Mr. Simmons, did you ever tell your attorneys
21 you were suffering from some sort of mental illness?

22 A Some type.

23 Q Okay. Do you have any evidence to show that
24 the sign was left up during your trial?

1 A No.

2 MR. GOURLEY: I have no further questions,
3 Your Honor.

4 THE COURT: Okay.

5 Anything on redirect?

6 MR. STITLEY: Judge, I'll have argument at
7 the appropriate time.

8 THE COURT: Thank you. You may step down.

9 That concludes your case?

10 MR. STITLEY: Yes, sir, just argument.

11 THE COURT: Any witnesses?

12 MR. GOURLEY: No, Your Honor.

13 THE COURT: Mr. Stitley, I am assuming it's
14 going to be a brief argument?

15 MR. STITLEY: Sure, Your Honor. I will be
16 brief.

17 MR. GOURLEY: I would agree to that, Your
18 Honor.

19 THE COURT: Okay.

20 CLOSING ARGUMENT

21 BY MR. STITLEY

22 May it please the Court, Your Honor. Mr.
23 Simmons' application, you've heard a lot of issues with
24 Miranda and ID. I think those will speak for

Closing Argument by Mr. Stitley

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1 themselves when Your Honor reviews the record.

2 I really want to focus on only two or three
3 things. One, in a case like this, and as Your Honor
4 reads the transcript you'll see that there was an
5 entire chain of events that Mr. Simmons was allegedly
6 involved in.

7 The allegations even talk about the problems
8 he had while in jail, while he had problems at SCDC,
9 there's obviously something hidden, something that
10 wasn't quite right with Mr. Simmons.

11 And I think through his testimony, and he
12 even told the Court he had been admitted prior as a
13 child, he had suffered mental problems his whole life,
14 there was no inquiry made to his family about his
15 mental health history.

16 And the fact he currently now is being held
17 in the second highest tier that SCDC has, as far as
18 those with mental issues, I think the argument
19 definitely exists that it would have been proper for
20 Ms. Fullwood or Mr. Cornwell to seek a mental
21 evaluation prior to going to trial.

22 Any time you have a fact pattern like this,
23 specifically someone who has so many things going on.
24 And Your Honor, his record sort of speaks to the fact
25 that there definitely has been something going on in

1 Mr. Simmons' life.

2 I think it would have been appropriate at
3 that time and I think it rises to the question of
4 reasonable assistance of counsel. He should have at
5 least been evaluated to determine whether or not he was
6 in the right mind set to even consider a plea if one
7 was given, to plead or proceed forward to be liable or
8 accountable or to properly assist counsel, Your Honor.
9 That would be our first issue, Your Honor.

10 Our second issue, Your Honor, is one
11 specifically dealing with the preliminary hearing and
12 indictment. It's a difficult issue because Ms.
13 Fullwood doesn't necessarily have everything to do with
14 it. In this case Mr. Simmons requested a preliminary
15 hearing. And as Ms. Fullwood said, he probably never
16 probably would have gotten one because the State would
17 have indicted first.

18 Your Honor, I want to read you a code section
19 I found when I was preparing for a CLE that I wasn't
20 aware of, and I want to read it to you, and I apologize
21 for pulling out my phone. This is 22-5-320. And if
22 you skip down to the middle of the middle of the
23 paragraph.

24 It says, "When such a hearing has been so
25 demanded the case shall not be submitted to the court

Closing Argument by Mr. Stitley

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1 of general sessions nor submitted to the grand jury
2 until a preliminary hearing shall been have held. The
3 magistrate shall obtain jurisdiction and the court of
4 general sessions shall not acquire jurisdiction until
5 after a preliminary hearing is held." That is 22-5-
6 320.

7 It's inappropriate to get an indictment where
8 a preliminary hearing has been requested. You can't
9 even go and get a superseding indictment later on if
10 the original request for preliminary hearing was never
11 granted. This is only compounded by the fact that Mr.
12 Simmons sat for more than a year before they gave him a
13 lawyer.

14 Your Honor, obviously in this situation he
15 had already been held with no bond for two and a half
16 years. He was not getting a lawyer, he never had one.
17 Ms. Fullwood's office becomes involved and at that
18 point she was the PD, so I am referring to her office.
19 They don't get involved until a year later.

20 He was denied his rights and it would have
21 been improper to proceed forward on his trial without
22 attempting to suppress or -- excuse me, quash the
23 indictments of burglary second and armed robbery
24 without giving him his preliminary hearing. That's the
25 law.

1 Failing to object prior to the jury being
2 selected is ineffective assistance of counsel. Part
3 because she wasn't the lawyer possibly when an offer
4 went down. And second, just not following up to
5 determine whether those indictments were properly
6 sought.

7 Also, there were indictments sought after the
8 90-day period which is elaborated in the court rules as
9 far as the time when an indictment should be sought.
10 That would be a secondary argument.

11 The third and final thing I want to talk
12 about, Your Honor, is the lack of a handwriting expert.
13 In this case, if you read the transcript, pretty much
14 the ID in court by the witness was very weak. She said
15 she didn't catch a ton of it.

16 The big thing that went in the State's favor
17 was this alleged confession. It would have been
18 appropriate at that time, where there was no
19 authentication, to even get the handwriting person even
20 if it was for her own trial prep to give her some
21 insight whether or not Mr. Simmons could have offered
22 that document.

23 He told them he denied it was him. There was
24 no follow-up on that. It would have been appropriate
25 just to get an expert to see whether or not there was

Closing Argument by Mr. Stitley

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1 some authenticity there, even to determine whether or
2 not it would have been appropriate at trial to put Mr.
3 Simmons up to say I didn't do it, I didn't confess,
4 it's not my handwriting. No expert was sought and I
5 think that was a failure on the part of counsel as far
6 as reasonable assistance, Your Honor.

7 Thank you very much.

8 THE COURT: Thank you, very much.

9 MR. GOURLEY: Briefly, Your Honor.

10 THE COURT: Yes sir.

11 CLOSING ARGUMENT

12 By MR. Gourley

13 Your Honor, in regard to the mental health
14 issues, I believe counsel stated Applicant was able to
15 adequately consult with counsel, understood the law,
16 understood the charges against him, was able to help
17 with his trial.

18 Your Honor, *Dudley (PH) v. United States*, a
19 Supreme Court case while held that in regards to
20 ineffective assistance of counsel and whether or not an
21 applicant could be mentally competent. The test must
22 be whether he has sufficient present abilities to
23 consult with his lawyers with a reasonable degree of
24 rational understanding.

25 And whether he has a rational as well as

1 factual understanding of the proceedings against him.
2 Through the testimony of counsel it was clear that
3 Applicant had a rational understanding of the case,
4 Your Honor.

5 In regards to the preliminary hearing and the
6 indictment issue, Your Honor, I don't have the statutes
7 in front of me. However, it's my understanding that in
8 order to request a preliminary hearing there has to be
9 some sort of document submitted stating that a
10 preliminary hearing has been requested.

11 The Applicant has not provided any such
12 evidence to this court and any testimony is mere
13 speculation as far as requesting any type of
14 preliminary hearing.

15 Again, with the handwriting expert, I would
16 submit to the Court the same argument. An expert has
17 not been presented to this Court regarding the
18 handwriting. And as a matter of fact, a letter has
19 been introduced into evidence for this Court to
20 observe.

21 As far as that, Your Honor, we submit to the
22 Court that any type of testimony from an alleged expert
23 would be speculation.

24 THE COURT: Yes, sir, all right. Thank you
25 very much.

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1 Gentlemen, what I will do is read over the
2 transcript and I will get back to you all when I can.

3 MR. STITLEY: Thank you.

4 MR. GOURLEY: Thank you, Judge. I appreciate
5 it.

6 --END OF TRANSCRIPT OF RECORD--
7

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF LEXINGTON)

3 COURT REPORTER'S CERTIFICATION

4 I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER,
5 AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
6 CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
7 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
8 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-
9 CAPTIONED CASE ON AUGUST 13, 2013, IN LEXINGTON, SOUTH
10 CAROLINA.

11 I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR
12 KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR
13 AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

14 IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
15 AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE SEVENTH
16 DAY JULY, 2014.

17

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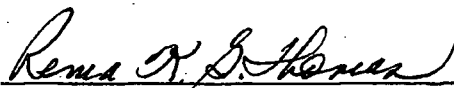
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REMA K. GANTT THOMAS

FILED

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON 2014 APR 14 9 12:20 AM FOR THE ELEVENTH JUDICIAL CIRCUIT

Alphonso Simmons, #279349,)
 BETH A. CARRIGG)
 CLERK OF COURT)
 Applicant, LEXINGTON, SC)

Case No. 2012-CP-32-01074

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 8, 2012. Respondent made its Return on August 6, 2012. An evidentiary hearing into the matter was convened on August 13, 2013, at the Lexington County Courthouse. Applicant was present at the hearing and was represented by Ben Stitely, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the 2008 term of the Lexington County Grand Jury for one count of Robbery While Armed With a Deadly Weapon (2008-GS-32-654) and one count of Burglary 2nd Degree (2008-GS-32-655). Elizabeth Fullwood, Esquire and Casey Cornwell, Esquire represented him. The Applicant proceeded to trial and was found guilty. On April 15, 2008, the Honorable Thomas A. Russo sentenced the Applicant to confinement for forty-five years.

A notice of appeal was filed at the South Carolina Court of Appeals. Katherine H. Hudgins, Esquire of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Simmons, Op. No. 2011-UP-212 (S.C. Ct. App. filed May 11, 2011).

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel.
 - a. Failure to object to prosecutor's demonstrative evidence
 - b. Failure to call certain witnesses
 - c. Failure to have Applicant subjected to a mental examination.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant called trial counsel, Elizabeth Fullwood (Counsel Fullwood), Casey Cornwell (Counsel Cornwell) and also testified on his own behalf. This Court also had before it a copy of trial transcript, the Lexington County Clerk of Court records, the Applicant's appellate records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return. Additionally, PCR Counsel introduced SCDC medical records during the evidentiary hearing.¹

During the evidentiary hearing, Counsel Fullwood testified she has been practicing criminal law since 1979. Counsel Fullwood stated she was appointed in this case in 2005. Counsel Fullwood testified that she met with Applicant multiple times. Counsel Fullwood stated she reviewed the elements of the offenses, possible punishments, the State's burden of proof, and the discovery material. Counsel Fullwood stated Applicant appeared to comprehend everything

¹ The SCDC medical records were not introduced for purpose of saying the Applicant had mental condition, but were instead introduced to see if Counsel had considered them as part of her trial preparation.

that was discussed and Counsel Fullwood stated she saw no indication that Applicant suffered from any type of mental illness. Counsel Fullwood stated Applicant asked various questions during their discussions and she addressed those questions. Counsel Fullwood further stated none of Applicant's family members expressed concerns about Applicant's mental competency. Counsel Fullwood further stated that the SCDC medical records are from 2012-2013 and a years after the conclusion of the trial. Counsel Fullwood stated Applicant had multiple escape attempts and by all accounts an intelligent person. Counsel Fullwood ultimately concluded that she had no reason to question Applicant's mental capacity.

Counsel Fullwood stated Applicant never gave her any leads or witnesses to investigate. Counsel Fullwood stated Applicant told her he did not commit the crime. Counsel Fullwood further stated that she discussed potential trial strategies including attacking the identification and the alleged statement. Counsel Fullwood further stated it was part of her strategy not to call any witnesses or present any evidence in order to preserve the right to have the final closing argument. Counsel Fullwood stated it was a strong circumstantial case. Counsel Fullwood stated Applicant ultimately received a thirty year sentence to run concurrent with the other sentences he was previously serving.

Counsel Fullwood testified that it was alleged that the Applicant used the drive through window to enter the store. Counsel Fullwood stated there was finger print found on the drive through window; however it did not match Applicant. Counsel Fullwood stated she argued this fact to the jury and pointed out that the fingerprint actually belonged to a McDonald's employee. Counsel Fullwood stated she felt she argued the point as best she could. Counsel Fullwood stated her strategy was to attack the identification of Applicant. Specifically, Counsel Fullwood stated the witness only had a few moments to look at Applicant and it was Counsel Fullwood's

strategy to argue to the jury that it was not enough time to positively identify Applicant. Counsel Fullwood stated she challenged the identification by requesting a Neil v. Biggers, 93 S.Ct. 375, 409 U.S. 188 (1972) ^{pre-trial hearing. ~~for~~} Counsel Fullwood stated she argued that the pictures were not similar in

facial characteristics, that color photos of higher quality could have been used and that the photos used weren't original photo copies. Counsel Fullwood stated there was no other way to challenge the identification of the Applicant.

Additionally, Counsel Fullwood stated she did not call any hand writing expert's because the State was unable to prove that Applicant was the one who wrote a letter to the officer stating he was willing to confess to the crime. Counsel Fullwood testified she did not use a footprint expert because no one had the evidence in their custody.

Counsel Fullwood stated Applicant had multiple previous convictions. Specifically, Counsel Fullwood stated Applicant was convicted ^{of ~~the~~} various charges in Richland County which occurred on April 19, 2004. Counsel Fullwood stated the crimes Applicant proceeded to trial on in Lexington County took place on April 16, 2004. Counsel Fullwood explained that there was a three day time period between the two crimes occurring, they were in different locations, and there were different victims. Counsel Fullwood stated she argued successfully to the trial judge that because the Richland County crime actually took place three days after the Lexington county crime, Applicant should not be facing life without the possibility of parole. Counsel Fullwood agreed that the sentences Applicant received were within the statutory guidelines.

Counsel Fullwood stated she made a pretrial motion to suppress the statements made by Applicant to Detective Russell. Counsel Fullwood stated that in her opinion they were not statements, but still attempted to suppress them. Counsel Fullwood stated she felt she argued the motion as best she could and could not think of any other way to argue the motions hearing.

Counsel Fullwood stated the Judge ultimately denied her motion to suppress.

Counsel Fullwood stated she had no basis to object to the indictment. Counsel Fullwood stated Applicant was true bill indicted and that there was sufficient probable cause to charge Applicant. Counsel Fullwood further stated had there been something improper in the indictment, the State could merely amend the indictments. Counsel Fullwood stated there was no need for a preliminary hearing and requesting a preliminary hearing would have been of no consequence. Counsel Fullwood stated she could not recall any type of sign remaining in the court room. Counsel Fullwood further stated had she seen a sign she would have objected to it.

Following Counsel Fullwood's testimony, Counsel Cornwell was called to testify by the Applicant. Counsel Cornwell stated he was second chair in Applicant's case. Counsel Cornwell stated he aided in opening and closing arguments. Counsel Cornwell testified that he may have cross examined various witnesses, but did not have a specific recollection. Counsel Cornwell stated he had maybe five trials before Applicant's. Counsel Cornwell stated he had been with the Lexington Public Defender's office for approximately one year prior to Applicant's trial. Counsel Cornwell stated he attended some of the meeting with Counsel Fullwood and Applicant. Counsel Cornwell stated it was their strategy to have him do the opening and closing's because the Jury may not like Counsel Fullwood after her cross-examination of various witnesses. Counsel Cornwell stated they explained this strategy to the Applicant.

Following Counsel Cornwell's testimony, Applicant testified on his own behalf. Applicant testified he met with his Counsels one time prior to his trial. Applicant recalled going over discovery and possible defenses with them. Applicant stated he gave them various witness and leads to investigate. Applicant stated he requested a preliminary hearing but did not get one. Applicant testified that he did not write a letter to Detective Russell nor did he give any type of

statement. Applicant testified he never voluntarily spoke to Detective Russell. Applicant stated his comment to Detective Russell that "it was fun while it lasted" was taken out of context at the trial. Applicant explained that he was stating the trip of the jail was fun. Applicant stated the Solicitor took a sign of an easel and rested it against a wall facing the jury. Applicant stated he had no evidence to show that the Solicitor left a sign up during the trial.

Applicant stated he graduated high school, but did not attend college. Applicant stated he has had various jobs in the fast food industry. Applicant stated he was institutionalized when he was twelve of thirteen years old. Applicant stated he was in the SCDC unit for mood disorder and psychotic features. Applicant stated the symptoms he is currently suffering from are the same symptoms he suffered from as a child. Applicant testified that he never told his attorneys that he suffered from any mental illness.

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. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is less credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington,

466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

INEFFECTIVE ASSISTANCE OF COUNSEL

Appointed trial counsel failed to object to demonstrative evidence.

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to object to demonstrative evidence is without merit. Applicant stated counsel should have objected to the Solicitor leaving a sign in the view of the jury. Counsel stated she could not recall any sign being left in the view of the jury. Counsel further stated had she seen a sign, she would have objected to it. This Court finds Applicant's testimony less than credible, while Counsel's testimony credible. This Court further finds Applicant has failed to present any evidence that there was some type of sign displayed to the jury. This Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of

reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to show he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Counsel failure to call certain witnesses

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to call various witness is without merit. Counsel testified it was her trial strategy not to present any evidence or call any witnesses in order to preserve the opportunity to have last closing argument. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Furthermore, prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

Counsel was ineffective for failing to subject Applicant to a mental evaluation

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to subject him to a mental evaluation is without merit. A defendant must be mentally competent to stand trial to assist counsel in his defense. Drope v. Missouri, 420 U.S. 62 (1975).

In determining if counsel is ineffective for failing to request a competency hearing, an applicant must show that a reasonable probability exists that he would be found incompetent at the time of this trial or plea. Jeter v. State, 308 S.C.230, 417 S.E.2d 594 (1992). Counsel may reasonably rely on his own perceptions in deciding if a client is competent to stand trial. *Id.* Counsel Fullwood testified that she met with Applicant multiple times. Counsel Fullwood stated she reviewed the elements of the offenses, possible punishments, the State's burden of proof, and the discovery material. Counsel Fullwood stated Applicant appeared to comprehend everything that was discussed and Counsel Fullwood stated she saw no indication that Applicant suffered from any type of mental illness. Counsel Fullwood stated Applicant asked various questions during their discussions and she addressed those questions. Counsel Fullwood further stated none of Applicant's family members expressed concerns about Applicant's mental competency. Counsel Fullwood further stated that the SCDC medical records are from 2012-2013 and a years after the conclusion of the trial. Counsel Fullwood stated Applicant had multiple escape attempts and by all accounts an intelligent person. Counsel Fullwood ultimately concluded that she had no reason to question Applicant's mental capacity.

Furthermore, Applicant stated he never told his counsels that he suffered from any type of mental illness. See Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993) (finding trial counsel was not ineffective for failure to interview the victim who already gave a damaging statement to the police - counsel, "unless clairvoyant, could not have reasonably known that any additional benefit would accrue to his client"). This Court finds Counsel's actions were

reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, Applicant has failed to show he was prejudiced such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Therefore, this Court finds this allegation should be denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

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 notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an

Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 9th day of April, 2014.



EDGAR W. DICKSON .
Presiding Judge
Second Judicial Circuit

Orangeburg, South Carolina

FILED
2014 APR 14 P 12:20
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

WITNESSES

Lexington County Sheriffs Department

Eric Russell

DVM

ARREST WARRANT NUMBER

H500261

ACTION OF GRAND JURY

TRUE BILL

Linda J. Schilling
Foreperson of Grand Jury
Date: *3/10/08*

VERDICT

Guilty

Charles E. [Signature]
Foreperson of Petit Jury
Date: *4/15/08*

DOCKET NO. 2008-GS-32- *CS4*

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2008

THE STATE

vs.

Alphonso L Simmons

CDR #: 0139

Indictment for

**ROBBERY WHILE ARMED WITH A
DEADLY WEAPON**

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR
ROBBERY WHILE ARMED WITH A DEADLY
WEAPON

§ 16-11-0330(A)

At a Court of General Sessions, convened on MARCH 2008, the Grand Jurors of Lexington County present upon their oath:

That **Alphonso L Simmons** did in Lexington County, South Carolina on or about April 16, 2004 knowingly and willfully while armed with a deadly weapon, to wit: a gun did feloniously take from the person or presence of the manager of McDonald's Restaurant located at 600 St. Andrews Road, by means of force, threats or intimidation goods or monies being described as follows: U. S. currency with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

-50026-

WITNESSES

Lexington County Sheriffs Department

Eric Russell

DVM

ARREST WARRANT NUMBER

H500283

ACTION OF GRAND JURY

TRUE BILL

Linda J. Schilling
Foreperson of Grand Jury
Date: 3/10/08

VERDICT

Guilty

Chas. E. O.
Foreperson of Petit Jury
Date: 4/15/08

DOCKET NO. 2008-GS-32-

655

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2008

THE STATE

vs.

Alphonso L Simmons

CDR #: 0086

Indictment for

BURGLARY 2ND

§ 16-11-0312 (B)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
BURGLARY 2ND
§ 16-11-0312 (B)

At a Court of General Sessions, convened on MARCH 2008, the Grand Jurors of Lexington County present upon their oath:

That Alphonso L Simmons did Lexington County, South Carolina on or about April 16, 2004, knowingly and willfully enter a building at 600 St. Andrews Road (McDonald's) without consent and with the intent to commit a crime therein, to wit: to commit the crime of larceny, and was armed with a deadly weapon and/or the entering or remaining occurred in the nighttime, in violation of § 16-11-312 (B) of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY

[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
ASSISTANT SOLICITOR

H-508