

VOL II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

G. Edward Welmaker, Circuit Court Judge

RECEIVED

JAN - 7 2015

S.C. Supreme Court

PHILLIP FLEMING WATTS, JR.,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002720

A P P E N D I X

JOHN STROM
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ATTORNEY FOR PETITIONER

J. RUTLEDGE JOHNSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated September 22, 2008).....	1
APPLICATION FOR POST-CONVICTION RELIEF	666
RETURN	674
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated August 12, 2013).....	679
PLAINTIFF'S EXHIBIT #1 (INDICTMENT).....	715
ORDER OF DISMISSAL	717
INDICTMENT, SENTENCE SHEETS AND ARREST WARRANT	726

1 believed to be true, I find that it was this defendant who
2 committed the crime.

3 MR. FREEMAN: Thank you, Your Honor.

4 Your Honor, the final motion would be directed
5 specifically to the secondary charge. That would be
6 possession of a firearm.

7 Again, independent it is possible to commit an
8 armed robbery without a firearm. It's possible to commit
9 it, for example, with a weapon, such as a knife, or
10 something else. That would be similar to my first motion.

11 Also, I would argue that in this circumstance,
12 that charge creates an unconstitutional burden on this
13 defendant, violating due process, because he's got to defend
14 himself against the same charge twice, you commit an armed
15 robbery and you are armed while you committed crime B. So I
16 would submit that statute on its face is unconstitutional.

17 THE COURT: I would deny that motion.

18 MR. FREEMAN: Thank you, Your Honor.

19 THE COURT: And to the extent you made a motion
20 for a directed verdict on the possession of a weapon during
21 the commission of a violent crime, I deny a motion for that
22 as well.

23 MR. FREEMAN: Right, as a separate -- for the
24 record, that was a separate motion.

25 Your Honor, we had to address this issue before

1 and now would be the appropriate time to address it again.
2 I had indicated earlier for a variety of reasons that I
3 would ask that the court find that suppression of
4 Mr. Watts -- any mention of Mr. Watts' juvenile record is
5 appropriate, despite what the rule says. I believe it was
6 609(d), that any mention of it in the court's discretion far
7 outweighs the prejudice to Mr. Watts, far outweighs any
8 probative value to the State, in light of the court's
9 ruling.

10 THE COURT: One of your -- one of your problems in
11 that argument is that -- is Al Amin that says that robbery
12 is a crime of dishonesty in South Carolina, which -- and if
13 that's true, there is no balancing test under 609.

14 MR. FREEMAN: Your Honor -- that is true, Your
15 Honor, but I would take the threshold position that unless
16 there is some evidentiary rule, which I'm unaware, the court
17 always has that discretion to say regardless of the other
18 circumstances, I can say that under the circumstances of
19 this case that it is not appropriate to allow evidence, or
20 in this case his previous record.

21 I would also state that --

22 THE COURT: The question is -- you are asking me
23 if he testifies --

24 MR. FREEMAN: Yes, sir.

25 THE COURT: -- will I allow into evidence the

1 convictions that he had in juvenile court. And let's make
2 sure we understand what they are, because when he testified
3 during the Jackson v. Denno hearing, there was some dispute
4 about it.

5 MR. FREEMAN: I believe the solicitor has those.
6 He can read them out.

7 I'll stipulate that that's the correct record, by
8 the way.

9 THE COURT: Let me ask you this. Do you have
10 other witnesses, other than the defendant, that you plan to
11 call?

12 MR. FREEMAN: Yes, Your Honor. The defendant --

13 THE COURT: If you -- if the defendant does
14 testify, would you call those witnesses before or after he
15 testifies?

16 MR. FREEMAN: I would probably call one of them
17 before and two of them after.

18 THE COURT: And the one before, is that a short
19 witness?

20 MR. FREEMAN: Yes, sir.

21 The defendant had also, for the record, indicated
22 the defense of alibi, so that's two of the witnesses.

23 THE COURT: Okay. So -- all right. What are the
24 convictions?

25 MR. BRACKETT: If it please the court, he has been

1 convicted of common law strong armed robbery on three
2 occasions; armed robbery with a deadly weapon; attempted
3 armed robbery; and malicious injury to personal property
4 more than a thousand dollars.

5 We would submit all of those are felonies and in
6 excess -- they carry in excess of one year, a term of
7 punishment. However, we would point out, and this occurs to
8 me after I cross-examined the defendant, for the purposes of
9 cross-examining him in front of the jury, we would under
10 Green v. State limit our impeachment of him to saying he has
11 been convicted of two Class A felonies, malicious injury to
12 personal property, and three Class D felonies, because of
13 the strong armed robberies and the armed robberies under
14 Green v. State I believe would be too close in nature to
15 this -- to the crime he's being charged for. And I believe
16 that Green indicates that the prejudicial impact in a trial
17 for closely-related charges outweighs the probative value
18 for the purpose of impeachment.

19 THE COURT: You -- regardless of whether I let
20 them in, do you agree to his proposal that if I do let them
21 in, that he essentially sanitized them as he --

22 MR. FREEMAN: Yes, sir, I believe that's -- that's
23 correct. He identified them and I think they are the
24 appropriate level that he just identified.

25 THE COURT: Do you agree that that's the

1 appropriate way to handle them, if I let them in?

2 MR. FREEMAN: If you let them in, yes, sir.

3 THE COURT: Okay. All right.

4 MR. FREEMAN: Your Honor, I could, again with the
5 court's permission, I would be glad to do -- the second
6 alibi witness would be very short. Well, she's the minor
7 that I spoke about earlier. She would be relatively short.
8 I could take both of those and we could address this issue
9 maybe at the end of the day.

10 THE COURT: All right. Let's do that.

11 MR. FREEMAN: Thank you, Your Honor.

12 THE COURT: Bring in the jury.

13 (The following takes place in the presence of the
14 jury panel)

15 MR. FREEMAN: Thank you, Your Honor.

16 Your Honor, the defense would call Mrs. Valerie
17 Dunham to the stand.

18 VALERIE DUNHAM, having been first duly sworn,
19 testified as follows:

20 DIRECT EXAMINATION BY MR. FREEMAN:

21 Q. Ms. Dunham, if you would, give us your name and spell
22 your last name, please.

23 A. Valerie Denise Dunham, D-U-N-H-A-M.

24 Q. Ms. Dunham, make sure that you speak loud enough so
25 that you think that I can hear you. So everybody can hear

1 you, okay?

2 A. All right.

3 Q. Ms. Dunham, what is your relationship to Phillip?

4 A. My son.

5 Q. He's your son.

6 How many children do you have altogether?

7 A. Four.

8 Q. Where do you live, Ms. Dunham?

9 A. Street.

10 Q. And where is that Street?

11 A. It's in Rock Hill.

12 Q. Is that in the city or the county?

13 A. In the city.

14 Q. How long have you lived there?

15 A. Five years.

16 Q. And how many children currently live with you?

17 A. Two.

18 Q. That's your two youngest?

19 A. My twins.

20 Q. And what are their names?

21 A. Samuel and Samantha.

22 Q. And so Phillip would be the next and then you have one
23 older child?

24 A. Yes.

25 Q. Where do you work, Ms. Dunham?

- 1 A. Clinton Junior College.
- 2 Q. And that's in Rock Hill as well?
- 3 A. Yes.
- 4 Q. How long have you worked there?
- 5 A. Like 19 years.
- 6 Q. Briefly, what's your job title and what do you do?
- 7 A. Head cook.
- 8 Q. And what does the head cook do?
- 9 A. Cook. Cook food.
- 10 Q. Does Clinton offer three meals a day?
- 11 A. Yes.
- 12 Q. Do you have a particular shift that you work?
- 13 A. I work first shift, 6:00 to 2:00.
- 14 Q. So that would be breakfast and lunch?
- 15 A. Breakfast and lunch.
- 16 Q. What day do you normally work?
- 17 A. I work Monday through Friday.
- 18 Q. Now, tell me about Sundays at your house.
- 19 A. Well, Sundays are family day at our house. We go to
- 20 church. I stay at home a lot and my kids come over and eat
- 21 and we look at TV. And I go to bed real early, so don't too
- 22 much go on with a family day that I have at my house.
- 23 Q. Does anybody else stay at your house besides you and
- 24 the kids?
- 25 A. Phillip, he spends the night sometimes, but he wasn't

1 always at home.

2 Q. Are you married?

3 A. No.

4 Q. Do you have a gentleman who stays with you?

5 A. Yes.

6 Q. Now, tell me -- so January 20th was a Sunday, what does
7 family day mean?

8 A. We go to church and I always cook a big dinner on
9 Sunday. Family come over and we eat together and just sit
10 around laugh and talk.

11 Q. Well, let's talk about that. What time will you go?
12 Morning service or afternoon service?

13 A. We go to the morning service.

14 Q. Is that a church in the Rock Hill area?

15 A. Yes, on Highway 5, Right down from Northwestern.

16 Q. And all the family goes with you?

17 A. Yes.

18 Q. You make the kids get dressed up?

19 A. Yes.

20 Q. Then you come back to the house?

21 A. Yes.

22 Q. Who normally prepares the meals?

23 A. I do.

24 Q. Give me an example of what you have on --

25 A. Like ham, potato salad, green beans, chicken. A big

1 meal like, you know.

2 Q. Do you remember January 20th as different from any
3 other Sunday at your house?

4 A. No.

5 Q. Would it have been a couple days before Phillips
6 birthday, maybe?

7 A. Yes.

8 Q. Tell me who might come over to the house other than
9 family and your boyfriend?

10 A. Well, Stephanie had been over there one or two times.
11 I don't keep very much company at my house.

12 Q. Okay. If anybody comes over on Sunday, are they
13 welcome to eat?

14 A. My sister. My sister, mother, or dad, you know.

15 Q. So back -- do you remember any Sundays when family,
16 when y'all didn't do this?

17 A. No.

18 Q. This is the tradition?

19 A. If I didn't do it at my house, we would be at my
20 sister's house, every Sunday.

21 Q. Does she live in Rock Hill?

22 A. Yes.

23 Q. She lives nearby?

24 A. Yes.

25 Q. You and she are close?

1 A. Yes.

2 Q. Does she have any children of her own?

3 A. Yes, same age as my twins.

4 Q. Do her kids come over to your house?

5 A. Yeah, all the time. All the time.

6 Q. Have kids come over to your house?

7 A. Yes.

8 Q. The Sunday is the day at your house?

9 A. Family day.

10 Q. Stays around?

11 A. Yes.

12 Q. What do you do after that big meal?

13 A. Well, I lay around. I go in my room and I get ready
14 for work, because I have to go to work so early. I go to
15 bed real early every night.

16 Q. Do you usually watch TV before you go to bed?

17 A. A little. Very little TV I watch.

18 Q. Do y'all as a family talk about anything?

19 A. Yes, we discuss a lot of things together.

20 Q. Anything in particular, or just whatever is going on?

21 A. Whatever is going on. Look at a movie, laugh and talk
22 and kid around, like a family.

23 Q. And if your children have to be in school the next day?

24 A. ~~They are going to bed too. We go to bed real early.~~

25 Q. Now, the youngest children, are they still in high

1 school?

2 A. High school, yeah.

3 Q. And what -- where was Phillip going to school back at
4 the first of the year?

5 A. Clinton College.

6 Q. The same place that you were working?

7 A. Yes.

8 Q. Was he riding with you to work, or is he going on his
9 own?

10 A. Some sometimes. The majority of the time he would be
11 with Stephanie. Stephanie would bring him.

12 Q. He would get to school on his own?

13 A. Yes.

14 Q. But again on Sunday?

15 A. He's at home.

16 Q. That's the rule in the house?

17 A. That's the rule. That's the rule.

18 Q. Been that way since the kids were little?

19 A. Yes.

20 Q. I don't have any further questions. Please answer any
21 questions that the solicitor may have, Ms. Dunham.

22 MR. BRACKETT: Court's indulgence just one moment.

23 (Off the record)

24 (Back on the record)

25

1 CROSS EXAMINATION BY MR. BRACKETT:

2 Q. Good afternoon, Ms. Dunham.

3 A. Good afternoon.

4 Q. How are you?

5 A. Just fine.

6 Q. I just have a few questions.

7 A. Yes, sir.

8 Q. You go to church?

9 A. Yes.

10 Q. Yes, ma'am.

11 And you come home and have lunch?

12 A. I usually cook on Saturday nights, so we can come home
13 and just warm the food up and eat.

14 Q. And then you have --

15 A. Lounge around.

16 Q. You have your lunch, a big family lunch?

17 A. No, we just eat breakfast and dinner.

18 Q. Okay.

19 A. We don't go through the three meals on Sunday.

20 Q. But you sit around and have a family day?

21 A. Yes, sir.

22 Q. And then you go to bed early?

23 A. Yes.

24 Q. And what time is that?

25 A. I usually go to bed about nine.

1 Q. Okay. So is that pretty much your standard practice?

2 A. It's every night, yes, sir.

3 Q. What time do you have to be to work on Monday?

4 A. Six.

5 Q. You have to go to bed?

6 A. I have to go to bed. I get up at five o'clock every
7 morning.

8 MR. BRACKETT: Thank you, ma'am.

9 MR. FREEMAN: Nothing on redirect.

10 THE COURT: You can come down, ma'am.

11 MR. FREEMAN: Thank you, Ms. Valerie.

12 Your Honor, we would call Samantha Dunham to the
13 stand.

14 SAMANTHA DUNHAM, having been first duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION BY MR. FREEMAN:

17 Q. If you would, give us your name, please.

18 A. Samantha Denise Dunham.

19 Q. And Ms. Dunham, spell that last name for me.

20 A. D-U-N-H-A-M.

21 Q. What's your relationship to Phillip?

22 A. My brother.

23 Q. And your relationship to Ms. Valerie?

24 A. ~~My momma.~~

25 Q. Do you live with your mom?

1 A. Yes, sir.

2 Q. How old are you, Samantha?

3 A. 16.

4 Q. And you need to speak up. Make sure that you think I
5 can hear you, because everybody in the courtroom can hear
6 you, okay?

7 You are 16. Are you in school?

8 A. Yes, sir.

9 Q. Where do you go to school?

10 A. Northwestern.

11 Q. What grade are you in?

12 A. 11th.

13 Q. Okay. Do you get pretty good grades in school?

14 A. Yes, sir.

15 Q. When is your birthday?

16 A. August the 17th.

17 Q. You just turned 16?

18 A. Yes, sir.

19 Q. The first of year you would have been 15?

20 A. Yes, sir.

21 Q. Do you have a job?

22 A. No, sir.

23 Q. Was school in session back at the first of the year in
24 January?

25 A. Yes, sir, right after Christmas break.

1 Q. Tell me about Sundays at your house.

2 A. Well, we come home. My momma warm up the food. And
3 while the food is warming up, that's when the family start
4 coming.

5 Q. And you come home from what?

6 A. Church.

7 Q. You momma makes you go to church?

8 A. Yes, sir.

9 Q. She drives you normally?

10 A. Yes, sir.

11 Q. Tell me -- now, you said that family comes over. Can
12 you tell me a little bit more about that?

13 A. We just -- we all -- basic family. My aunt and her
14 kids, grandma.

15 Q. That's your cousins?

16 A. Yes, sir. And we watch TV and eat and goof around.
17 The adults be in the living room and the kids be in our
18 room.

19 Q. Would Phillip usually be there?

20 A. Yes.

21 Q. Would anybody other than family be there?

22 A. No, sir.

23 Q. Ever have any friends, close friends, boyfriends,
24 girlfriends, anything like that?

25 A. They don't come over to stay, but sometimes they come

1 and get a plate.

2 Q. Okay. Well, now tell me -- let's go back to the first
3 of the year. Do you remember January 20th different from
4 any other Sunday at your house?

5 A. No, sir.

6 Q. All right. Do you have to be at school Monday morning?

7 A. Yes, sir.

8 Q. What time is first bell?

9 A. 8:20.

10 Q. You have to be there at 8:20, or before 8:20?

11 A. Be -- the bell ring at 8:20, so we have to be there at
12 8:20.

13 Q. Do you usually drive to school, or somebody drops you
14 off, or you take the bus?

15 A. Take the bus.

16 Q. What time does the bus come by?

17 A. Like around 7:20 to 7:30.

18 Q. How long does it take you to get ready for the bus?

19 A. I get up at 6:30, and I leave my house sometimes at
20 7:15 or 7:20.

21 Q. What time do you go to bed then?

22 A. I go to bed no earlier than ten o'clock and no later
23 than 10:30.

24 Q. So you stay up later than your mom?

25 A. Yes, sir.

1 Q. Why?

2 A. Because I guess I don't be tired. Sometimes I be on
3 the phone and sometimes I be watching Sunday night shows.

4 Q. Okay. Would Phillip usually be there while you were
5 still up?

6 A. Yes, sir.

7 Q. Okay. Well, what about first thing Monday morning when
8 you get up?

9 A. He is laying on the couch, or sometimes he's not there,
10 but most of the times he's laying on the couch when I go out
11 the door.

12 Q. So he normally sleeps on the couch?

13 A. Yes, sir.

14 Q. Is it a pull-out couch or --

15 A. Just a regular couch, sir.

16 Q. Okay. Now, again, January 20th, that was a couple days
17 before Phillip's birthday. Does that -- do you remember
18 anything -- did y'all do anything different on the 20th than
19 any other day?

20 A. No, sir.

21 Q. Is it kind of known in the area that Sunday is family
22 day for y'all? I mean your family? Everybody knows Sundays
23 is the day?

24 A. Yes, sir.

25 Q. Does your mom usually do the cooking, or your aunt?

1 A. My mother.

2 Q. Is your mother a good cook?

3 A. Yes.

4 Q. You eat a big meal on Saturday -- I mean on Sundays?

5 A. Yes.

6 Q. Usually do you even eat dinner at all or --

7 A. Yeah.

8 Q. A third meal?

9 A. I only eat Sunday when she cooks.

10 Q. Now, how many times do you eat on Sunday, normally?

11 A. Oh, big -- my meal is like two times a day, but I'm
12 greedy, so I eat between times.

13 Q. You get hungry you go back?

14 A. Yes, sir.

15 Q. Pretty much everybody in the family would do that if
16 they wanted to, right?

17 A. Yes, sir.

18 Q. So normally when you get up early in the morning,
19 Phillip would be on the sofa?

20 A. Yes, sir.

21 Q. And, again, you get up at what time do you get ready
22 for the bus?

23 A. 6:30.

24 Q. And you go to bed no earlier than what time?

25 A. Ten o'clock.

1 Q. And usually what time?

2 A. Like 10:30.

3 Q. What's the latest that you would be comfortable with
4 staying up on a normal Sunday?

5 A. I wouldn't go past 10:30.

6 Q. Please answer any questions that the solicitor may
7 have, Samantha.

8 CROSS EXAMINATION BY MR. BRACKETT:

9 Q. Good afternoon, Samantha. How are you?

10 A. Fine.

11 Q. I just have a few questions for you.

12 Do you remember the day, Sunday, the 20th?

13 A. I don't remember exactly.

14 Q. Okay. So you can't say whether or not Phillip was
15 there on Sunday, the 20th?

16 A. I can say he was there during the afternoon and during
17 the nighttime, but when I was asleep, I couldn't say whether
18 he was there while I was asleep or whether he left or not.

19 Q. And sometimes Stephanie would come over with Phillip,
20 right?

21 A. Yes, but I don't think on Sundays.

22 Q. You knew Stephanie, didn't you?

23 A. Yes.

24 Q. ~~And that's Stephanie back over here?~~

25 A. Yes, sir.

1 Q. And she would come over sometimes even on Sundays and
2 get a plate and sometimes they would just stay for a little
3 while and get a plate and leave?

4 A. No, Stephanie don't get no plate. She just -- she
5 don't get no plate. She don't even really come over there
6 on Sunday, like I said before.

7 Q. But the 20th, do you specifically remember that day?

8 A. No, I don't.

9 Q. Okay. So you can't say for sure. You just remember
10 that sometime in that -- in January and February, on Sundays
11 this is what usually happens, but you can't say for sure
12 that on January 20th, 2008, Phillip, your brother, was there
13 with you?

14 A. Yes, I can say that, because we do that every Sunday.

15 Q. And he's always there without fail?

16 A. Yes. Yes, he is.

17 Q. Okay. So do you remember whether or not he spent the
18 night that night?

19 A. I don't know if he spent the night that night. I just
20 know he was there when I went to sleep.

21 Q. Okay. You are sure about that?

22 A. Yes, because --

23 Q. On January the 20th?

24 A. Yes.

25 Q. Okay. What time did you go to sleep?

1 A. I don't know, but I know it was no later than 10:30,
2 because I don't never go past 10:30.

3 Q. It could be earlier than 10:30?

4 A. Yes, but no earlier than ten o'clock.

5 Q. No earlier than ten o'clock. You mean no earlier than
6 ten o'clock and no later than 10:30?

7 A. Yes.

8 Q. Sometime in that half hour?

9 A. Yes.

10 Q. Are you saying he was there at that time?

11 A. Yes, he was.

12 Q. All right. And when you woke up the next morning to
13 get the bus, what time do you normally wake up?

14 A. 6:30.

15 Q. All right. And you woke up that morning at 6:30?

16 A. Yes, I did.

17 Q. Did you see him on the couch?

18 A. Yes, I did.

19 Q. Okay. And you were getting ready to go to school?

20 A. Yes, I was.

21 Q. Did he give you a ride to school or did you catch the
22 bus?

23 A. No, I caught the bus.

24 Q. You are sure?

25 A. Yes, I'm sure.

1 Q. All right. What time does the bus come to pick you up?

2 A. Around 7:20 or 7:30.

3 Q. Was he still at the house when you left for the bus
4 stop?

5 A. Yes, he was.

6 Q. How close to your house is the bus stop?

7 A. Right up the street. It's like not even long. I can
8 look out my door and see my bus stop.

9 Q. So you walk down to the bus stop and you waited?

10 A. Yes.

11 Q. The bus picked you up?

12 A. Yes.

13 Q. And Phillip was still at the house when you left?

14 A. Yes. When I walked out the door, he was laying on the
15 couch.

16 Q. Still asleep?

17 A. Yes.

18 Q. Okay. Was he dressed in his clothes or did he get in
19 his --

20 A. I don't know. He was up under the covers.

21 Q. Okay. Was the TV on, or was it off?

22 A. TV off.

23 Q. Did you have to tiptoe around so as not to wake him up?

24 A. I don't -- I really don't care if he wake up or not. I
25 just walked to get out the door.

1 Q. And you took the bus?

2 A. Yes.

3 Q. You know how important this is?

4 A. Uh-huh.

5 Q. And you are sure of all these facts?

6 A. Yes.

7 Q. When you left to go to the bus stop, he was asleep on
8 the couch?

9 A. Yes.

10 Q. No doubt in your mind?

11 A. No doubt.

12 Q. What time did you get home from school that day?

13 A. I really -- I can't recall what time I got home,
14 because sometimes the bus run late, but on normal days I
15 would be there like around four something.

16 Q. And you took the bus home, whatever time it dropped you
17 off?

18 A. Yes.

19 Q. 3:45, four o'clock, 4:10, somewhere in there?

20 A. Yes.

21 Q. And you went home?

22 A. Yes.

23 Q. Was Phillip there?

24 A. No, sir.

25 Q. He was gone?

1 A. Yes, sir.

2 Q. How did he get to the house the night before?

3 A. I don't know.

4 Q. When you left that morning, were there any cars parked
5 in your -- in the front on your way to the bus stop?

6 A. No, sir.

7 Q. Did you see Stephanie's Durango?

8 A. (Shaking head no)

9 Q. Did you see sometimes Phillip driving Stephanie's
10 Durango?

11 A. Yes, sir.

12 MR. BRACKETT: Court's indulgence just one moment.

13 (Off the record)

14 (Back on the record)

15 BY MR. BRACKETT:

16 Q. Now, do you remember Lieutenant Hager, this fellow over
17 here in the blue shirt and the yellow tie?

18 A. Yes.

19 Q. Do you remember him coming to talk to you at school?

20 A. Yes, sir.

21 Q. Okay. And he told you who he was?

22 A. Yes, sir.

23 Q. And he told you why he wanted to talk to you?

24 A. Yes, sir.

25 Q. And you wouldn't talk to him?

1 A. No, sir.

2 Q. Why?

3 A. Because I didn't want to talk to him.

4 Q. But you have this information that's helpful to your
5 brother, right?

6 A. Uh-huh.

7 Q. Why wouldn't you want to share that with --

8 A. Because I don't trust anybody, sir.

9 Q. All right. But Samantha Dunham is absolutely sure that
10 she went to church on Sunday, the 20th?

11 A. Yes.

12 Q. That she came home and spent the afternoon with her
13 family, including her brother Phillip, and that he was there
14 all day?

15 A. (Shaking head yes)

16 Q. She did not go to bed before ten o'clock, no later than
17 10:30, and Phillip Watts was still there with her?

18 A. When I went to sleep he was still there.

19 Q. You are absolutely sure?

20 A. Yes.

21 Q. You are absolutely sure you got up for school at 6:30
22 the next morning?

23 A. Yes.

24 Q. And you are absolutely sure you left for the bus at
25 about seven?

1 A. I don't leave my house at seven.

2 Q. What time did you leave for the bus stop?

3 A. I leave like around 7:15 or 7:20.

4 Q. Okay. Thank you.

5 You are absolutely sure you left on the 21st for school
6 at 7:15 or --

7 A. The 21st?

8 Q. Well, this was the 20th of January, so the next day was
9 the 21st.

10 A. Yes.

11 Q. Okay. So you left to go to school?

12 A. (Shaking head yes)

13 Q. And he was still there sleeping on the couch?

14 A. Yes, sir.

15 Q. You love your brother?

16 A. Yes, sir.

17 Q. A lot?

18 A. Yes, sir.

19 Q. You don't want to see anything bad happen to him, do
20 you, Samantha?

21 A. No, sir.

22 Q. You don't want to see him go to jail?

23 A. No, sir.

24 Q. You would do just about anything to prevent that
25 happening, wouldn't you?

1 A. No, sir.

2 MR. BRACKETT: Court's indulgence just one moment.

3 (Off the record)

4 (Back on the record)

5 MR. BRACKETT: I have no further questions, Your
6 Honor.

7 REDIRECT EXAMINATION BY MR. FREEMAN:

8 Q. Sunday is family day at your house?

9 A. Yes, sir.

10 Q. Sunday has always been family day at your house?

11 A. Yes, sir.

12 Q. Sunday is still family day at your house?

13 A. Yes, sir.

14 MR. FREEMAN: No further questions.

15 THE COURT: You can come down, ma'am.

16 MR. FREEMAN: Beg the court's indulgence just one
17 moment.

18 (Off the record)

19 (Back on the record)

20 MR. FREEMAN: Your Honor, the next defense witness
21 would be --

22 THE COURT: Well, I'm going to break for the day.

23 MR. FREEMAN: May I approach real quickly?

24 THE COURT: Sure.

25 (Whereupon, the lawyers approached the bench for

1 an off-the-record discussion)

2 THE COURT: We are going to hear one more witness.

3 MR. FREEMAN: Your Honor, we would call Mike
4 ChannelL to the stand.

5 MICHAEL CHANNELL, having been first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION BY MR. FREEMAN:

8 Q. Sir, if you would, give us your full name and spell
9 your last name, please?

10 A. My name is Michael ChannelL, C-H-A-N-N-E-L-L.

11 Q. Mr. ChannelL, how old are you, sir?

12 A. 62.

13 Q. What do you do for a living?

14 A. I'm a private investigator.

15 Q. Okay. Were you recently enlisted to help me in this
16 matter?

17 A. That is correct, sir.

18 Q. And at my request did you conduct an investigation of
19 this matter?

20 A. That is correct.

21 Q. Could you just very briefly tell the jury what your
22 investigation --

23 Well, before we do that, could you tell me your
24 background as an investigator?

25 A. Yes, sir, I have approximately three years in all

1 phases of the private investigation.

2 Q. Okay. And just very briefly what kind of stuff have
3 you investigated?

4 A. Anything from murder, bank robbery, domestic, workmen's
5 comp, insurance fraud, arson.

6 Q. What did you do before you became a private
7 investigator?

8 A. I was a paramedic.

9 Q. Okay. And did you have a career before that?

10 A. Yes, sir, I had a business career.

11 Q. So how many years were you a paramedic?

12 A. About 17.

13 Q. Was that in York County?

14 A. Yes, sir, it was, at Piedmont Medical.

15 Q. Are you from this area, from York County?

16 A. Yes, sir, I'm a native of Rock Hill.

17 Q. Now, I'm sorry, turning to this case specifically, did
18 I, again, ask you to assist me in this matter?

19 A. Yes, sir.

20 Q. And tell me just the highlights of what your
21 investigation consisted of.

22 A. The biggest -- the biggest portion of the investigation
23 that I did was actually doing measurements, taking video and
24 photos of the One Stop on Main Street.

25 Q. That's the place where we have been talking about?

1 A. That is correct, yes, sir.

2 Q. When you went out there, did you talk to the people who
3 were there?

4 A. Yes, sir, I did.

5 Q. You let them know why you were there?

6 A. I identified myself each time, yes, sir.

7 Q. Said what you were there for?

8 A. Yes, sir, I did.

9 Q. They said no problem, you can do whatever it is that
10 you wanted to do?

11 A. That's correct. In fact, I was carried inside to the
12 office and shown videos from inside the office.

13 Q. All right. So they let you see their video equipment?

14 A. Yes, sir.

15 MR. FREEMAN: I would ask that this be marked as
16 Defense 1 for identification purposes.

17 (Diagram of Scene marked as Defendant's Exhibit
18 No. 1 for identification)

19 MR. FREEMAN: Your Honor, with the court's
20 permission I would ask the witness to come around. I think
21 it's a little easier to view that from here.

22 THE COURT: Sure.

23 BY MR. FREEMAN:

24 Q. Mr. Channell, if you would come around here. Come on
25 around.

1 (Witness off the witness stand)

2 BY MR. FREEMAN:

3 Q. If that falls, please pick it up.

4 And I'm also going to hand you, just so you will have
5 it, State's 12 and 13, which are aerial shots of the One
6 Stop.

7 A. Right.

8 Q. I see that you have in your hand a smaller version of
9 what we have as a poster board, is that correct?

10 A. That's correct.

11 Q. In fact, did you have that poster board made?

12 A. Yes, sir, I did.

13 Q. So it's a blown up copy of exactly what you got in your
14 hand?

15 A. Yes, sir, I did this on a computer and then took this
16 to Office Depot and had them to blow it up.

17 Q. If I could have the small one to refer to for reference
18 purposes.

19 Tell me what the line is at the bottom, the dark line?

20 A. This line is Highway 5.

21 Q. Is that also Main Street in Rock Hill?

22 A. That's West Main Street, that's correct.

23 Q. Now, tell me, you have got some gray shaded boxes that
24 say gas pumps?

25 A. Yes, sir.

1 Q. What are those?

2 A. Starting on this side would be pumps 1 and 2, all the
3 way over to pumps 9 and 10.

4 Q. Do the pumps have a pump on one side and the other?

5 A. Yes, sir, it's a double fastened pump.

6 Q. All right. Now, show -- if you would, hold up beside
7 that the aerial shot and show the jury where the pumps are.
8 Is that the stuff that's white?

9 A. Yes, sir, it is. On the photos for them it would be
10 hard to see.

11 Q. Well, take the other one that's larger. If you would
12 use that one, please.

13 A. All right. This is the pump. This is the building
14 here. This is the store itself.

15 Q. Yes, sir.

16 A. These pumps facing the store. This store is facing
17 Main Street, Highway 5.

18 These are -- these lines represent different
19 measurements to different spots. This would be on
20 Meadowlark Drive.

21 Q. So those lines aren't actually there? You added them?

22 A. These lines are added, yes, sir, for reference.

23 Q. Okay. Well, let's start with the simple measurement.

24 ~~From Highway 5 to the back of the car wash, how far is that?~~

25 A. Okay. Well, actually from the pump to the back of the

1 car wash is 310 feet.

2 Q. And is it a couple feet further to the road?

3 A. Yes, sir, it is. Approximately 15 feet.

4 Q. So that's 310 feet?

5 A. Yes, sir, this is 310 feet from the pump -- actually
6 from the first pump where you would have stopped to pump
7 your fuel, we are -- you noticed this is about middle ways
8 of the pump. It's -- this is back to the tree line, 310
9 feet.

10 Q. Okay. Mr. Channell, I'm going to show you some of the
11 State's photographs what I will call the front of the
12 building. Now, these are taken in the daytime. Does that
13 appear to be sort of a representation of what you were just
14 talking about?

15 A. Yes, sir, this was taken actually to the left of the
16 building.

17 Q. Which number is that on the back, State's which? If
18 you turn the picture over.

19 A. This is State's 11 -- 19, I'm sorry.

20 Q. Let me give you then State's 18. And if you would,
21 that's -- where does that one appear to be taken from?

22 A. This is probably from the sidewalk, a little to the
23 left of the store, front left of the store.

24 Q. ~~So that was taken further out from the pumps?~~

25 A. Yes, sir, it was. This was taken further to Main

1 Street.

2 Q. Did you go by this store both in the daytime and the
3 nighttime?

4 A. Yes, sir, I visit it very frequently.

5 Q. Okay. Did you go by it, say, about ten o'clock in the
6 evening?

7 A. Actually it was about ten. It was after ten.

8 Q. A little bit after ten in the evening.

9 Told them why you were there?

10 A. Yes, sir, I did.

11 Q. Okay. Now, tell me -- before I get to that, tell me
12 how you came up with these distances. How are you so exact
13 on these distances?

14 A. I actually take a measuring wheel, an orange wheel
15 about so big around, about 12 inches in diameter, and you
16 roll it and it rolls a foot each time it makes a revolution.

17 Q. All right. So that's how you --

18 A. Actually it's a surveyor's wheel is exactly what it is.

19 Q. That's how you came up with those distances?

20 A. That's correct.

21 Q. And just for the jury's information, there is no
22 driveway or anything on that map?

23 A. No, sir, we did not -- we did not do any driveways.

24 Q. Okay. Well, looking at the other one then, State's
25 Exhibits, tell me where on the blowup thing where the

1 egresses and ingresses are? Where are the roads in and out?

2 A. Actually the road would be approximately -- the front
3 driveway would approximately be approximately in this area.

4 Q. And you are pointing behind the pump but ahead of the
5 store?

6 A. That's correct.

7 Q. Okay.

8 A. And actually this would be -- it would be over here on
9 Meadowlark. It would be approximately here, the front
10 drive, and then the back driveway approximately over here.

11 Q. And that again opens onto Meadowlark?

12 A. That's correct, both of them do, yes.

13 Q. Is there also a direct opening onto Highway 5 from the
14 front of the store?

15 A. Yes, sir, it is.

16 Q. And, again for reference, this is all basically across
17 the street from Northwestern?

18 A. Actually, yes, sir. From -- actually the school
19 districts offices I believe it is there.

20 Q. Okay.

21 MR. FREEMAN: Your Honor, if I could --

22 BY MR. FREEMAN:

23 Q. If you would, Mr. Channell, I want to show a video and
24 I want to ask you if you can identify who took this and when
25 it was taken?

1 A. Yes, sir.

2 (Videotape played)

3 (Videotape stopped)

4 BY MR. FREEMAN:

5 Q. Where are you at this point?

6 A. Here we are down at the back of the car wash. You can
7 see -- I don't step in here, but you can see the big metal
8 things to the left, we are standing there. Video towards
9 the back of the --

10 Q. If you would go back to that, it's not too dark, and
11 just put your finger approximately where you are at this
12 point in the video?

13 A. Okay. We are down in this area here.

14 Q. Okay. What kind of light did you -- now, I note your
15 camera puts the day and time. Does that appear to be an
16 accurate representation when you did it?

17 A. That is correct. That is correct.

18 Q. Tell me what the lighting was to the naked eye. Not
19 the camera, but what was your lighting to the naked eye?

20 A. Without the what question call the night light on that
21 camera, you could not have taken those images. It was dark.

22 Q. Was it raining that evening?

23 A. It was drizzling.

24 Q. Okay. Was it significantly overcast that you had to
25 carry an umbrella?

1 A. No, sir.

2 Q. Was there anything physically that stuck in your view,
3 like did a truck block it, or anything like that?

4 A. No, sir.

5 Q. Please continue.

6 (Videotape played)

7 (Video stopped)

8 BY MR. FREEMAN:

9 Q. So you are now walking?

10 A. We are now moving towards Meadowlark.

11 And as you can see, just stop it there just a minute,
12 you can see there you cannot see the pumps from actually
13 where we are at.

14 Q. You can't see any of the pumps?

15 A. You may be able to see the edge of the front edge of
16 the building to the left, just a little bit of the pump
17 there to the left.

18 Q. But you can't see all the pumps?

19 A. No, sir.

20 Q. Was there any point at the car wash where you could
21 actually see all the pumps?

22 A. No, sir. No, sir.

23 Q. I'm sorry, please continue.

24 (Videotape played)

25 (Videotape stopped)

1 A. Now, this is actually -- we have moved actually up to
2 the back of the building here.

3 BY MR. FREEMAN:

4 Q. So you have walked from the car wash to the main
5 building?

6 A. Not all the way. That's actually -- that's actually
7 enlarged there with the camera.

8 Q. Show me -- put your finger to what wall I'm looking at
9 of the building.

10 A. Okay. It would be this wall here.

11 Q. Okay. I'm sorry, and you are pointing which door?

12 A. Walking towards the back wall of the building.

13 Q. And that is brick, not glass?

14 A. That is brick, yes, sir. The entire back is brick.

15 Q. Thank you.

16 (Videotape played)

17 (Videotape stopped)

18 A. If you will look close at that range, you can see, you
19 know, up to Highway 5, or actually see a car pass by once in
20 a while.

21 BY MR. FREEMAN:

22 Q. That's --

23 A. By the reflection of the light.

24 Q. That's Main Street.

25 Where are you standing?

1 A. This is -- this is to the right facing the store. This
2 is to the right of the car wash.

3 Q. The car wash is still --

4 A. Facing the store, yes, sir.

5 Q. So --

6 A. If you zoom back just a little bit.

7 Okay. We are standing -- we are standing right at the
8 edge of the car wash on the concrete pad. We are shooting
9 towards the front of the store with a straight line. You
10 know, you can't see anything in front of the store there.

11 Q. Is that the other side of the store?

12 A. That is the opposite side, yes, sir.

13 Q. Again, put your finger on this map where you were.

14 A. That would be on this side here and we are shooting
15 from back here in this area in here.

16 Q. Thank you.

17 (Videotape played)

18 (Videotape stopped)

19 A. All right. That's close up. You still don't see the
20 pumps.

21 We are just doing this in reference to -- with the zoom
22 on it.

23 BY MR. FREEMAN:

24 Q. ~~You didn't actually move these views? You zoomed in?~~

25 A. Used the zoom, yes, sir.

1 Q. What am I looking at there?

2 A. We are just showing the back of the store in reference
3 in coming from the front, what you would see if you was
4 actually out in the parking lot looking that way.

5 Q. So --

6 A. That is -- that is actually part of the back of the
7 store.

8 Q. Still standing at the car wash then?

9 A. Yes, sir. You could see just a little bit of the pump
10 on the right.

11 Q. So, again, you still can't see all the pumps?

12 A. No, sir.

13 You would have to be on the very outside of both sides
14 of the pumps to see the car wash.

15 Q. That's extremely dark. What is that?

16 A. That is actually what you are seeing.

17 Q. That's without your --

18 A. That is without -- that is without the night shot.

19 Q. What's that?

20 A. Now, this is the following night. We came back and did
21 the sides of the store. This is where they were talking
22 about the pizza place.

23 Q. You are now in front of the building at this point?

24 A. No, sir, we are actually to the side of the building.

25 Q. So if you would put your finger for the jury?

1 A. We are actually to the side of the building here, out
2 in this area here.

3 Q. I see that that wall is partially glass?

4 A. That is correct. That is -- that's the pizza place.
5 If you are facing the store, that's to the right of the
6 store.

7 Q. I'm sorry?

8 A. That's to the side that they are referring to the
9 locked door being on.

10 Q. Yes, sir.

11 (Videotape played)

12 (Videotape stopped)

13 A. Okay. That's a shot to -- actually a shot from the
14 pizza place there down to the car wash. You still can't see
15 from that side. This is actually a side view of the car
16 wash. I mean actually the store, I'm sorry.

17 BY MR. FREEMAN:

18 Q. Is that the front of the store?

19 A. That's a shot of the front of the store there from
20 Meadowlark.

21 Q. Now, I see what appears to be a post. Is that one of
22 the posts at the pump?

23 A. That's one of the posts that holding the awning up, the
24 roof up --

25 Q. So you are standing --

1 A. -- at the pump.

2 Q. You were standing next to a pump on this shot?

3 A. We were standing out from the pump, yes, sir.

4 Q. Could you see at all around that other corner?

5 A. No, sir, you could not.

6 Q. Now --

7 A. You could see how black it is away from the store.

8 Q. So it's lit under there?

9 A. Yes, sir, very well lit under it.

10 Q. Okay. Please continue.

11 (Videotape played)

12 (Videotape stopped)

13 A. This is just sweeping the pumps showing the positions
14 of the pump.

15 BY MR. FREEMAN:

16 Q. Have you moved at this shot?

17 A. Yes, sir, this -- we have moved over a little bit.

18 This is showing the left-hand corner of the building and
19 showing -- you can see an image in the far left-hand corner.
20 That is part of the car wash there.

21 Q. Is that --

22 A. That is actually -- this is actually from the outside
23 pump, No. 10.

24 Q. Show me again with your finger approximately where you
25 were when you took this shot?

1 A. Outside pump No. 10 here, in this area we are hitting
2 here.

3 Q. So what's that little row of what appears to be lit?

4 A. That's -- that's a reflection from the car wash in
5 there.

6 Q. That's all you can see?

7 A. That's a reflection. That's all it is.

8 Q. Okay. Please continue.

9 (Videotape played)

10 (Videotape stopped)

11 A. Now, you only have two lights on that side, if you
12 could see. You see the reflection of the light up in the
13 air.

14 BY MR. FREEMAN:

15 Q. Are those street lights or the kind of lights that you
16 saw before?

17 A. It's actually the round dome light type thing I think
18 it is.

19 Now we are sweeping the store as you are standing at
20 the gas pumps looking towards the car wash.

21 If you stop it there. That's a straight shot back.
22 This white van sitting here is actually an employee's van
23 and it's parked on the side of the store, and this is
24 shooting straight. ~~This is shooting back towards the car~~
25 wash.

1 Q. All right.

2 A. This is coming back towards the store.

3 You will see the front of the store there. That's the
4 front of the store.

5 Q. Now have you zoomed in?

6 A. We have gone to the -- we have gone to the front corner
7 of the store and zoomed in on the car wash there.

8 As you can see the lights that are up on the car wash,
9 they are small cylindrical lights.

10 Q. If you would pause it, please.

11 So have you moved at all? You said that you have gone
12 up?

13 A. We actually went to the front corner of the store, yes,
14 sir.

15 Q. Okay.

16 A. Moved from the gas pumps to the front of the store.

17 Q. Okay.

18 A. This is where we take it in front of the store looking
19 at the counter a view from the gas pumps.

20 This is shooting over towards Meadowlark.

21 Q. Doesn't appear to be any light past the edge of that
22 driveway?

23 A. No, sir, that's actually where they are referring to
24 vehicles coming up on Meadowlark there where we just saw.

25 Q. Now, I see you can make out a white vehicle. Could you

1 have distinguished colors on the --

2 A. The white vehicle is parked beside the store under the
3 lights.

4 And that's a view of the gas pumps and the front of the
5 store from the sidewalk on Main Street.

6 Q. And, again, this is a different date, but it's still
7 about 9:30 at night?

8 A. Actually, yes, we did it in two nights, yes, sir.

9 Q. What are those trees?

10 A. That's the trees that you would be looking at if you
11 were going down Main Street there.

12 Q. Is that the stop light that we just heard about?

13 A. Yes, sir, that is the stop light. That's actually
14 taken from the sidewalk.

15 Q. Now, do you think this camera -- and I realize the
16 camera --

17 Resume your seat, if you would.

18 (Witness back on the witness stand)

19 BY MR. FREEMAN:

20 Q. I realize the camera is not the same as the naked eye.
21 Do you feel like that camera showed more or less or in a
22 different way what you could see with your naked eye?

23 A. Yes, sir, actually, you know, you are viewing it with
24 the naked eye and this is what you are seeing. And until
25 we -- and it is the naked eye until you actually zoom it in.

1 It's a 40 zoom.

2 Q. All right. Now, you said we. Did someone else go with
3 you?

4 A. Yes, I have two or agents that were with me.

5 Q. Did you ever have them stand at a distance from you?

6 A. Yes, sir, I did. Actually we went inside. I went
7 inside the office.

8 Q. The store?

9 A. The store, yes, sir, the office in the store. And a
10 lady named Sarah put the video on the car wash itself. I
11 had an agent stand down at the very end. This agent
12 happened -- just happened to be my son, and you could not
13 identify him who he was from that.

14 Q. Could you even make out that it was a person?

15 A. No, sir.

16 Q. Now, did you ever physically stand at the front pumps
17 and just with your naked eye have someone stand at the back?

18 A. Yes, sir, we did.

19 Q. Could you actually see them around the store?

20 A. You could see -- you could see them -- you could see
21 them closer up from the car wash, but you could not identify
22 them.

23 Q. Okay. If you were standing at any of the middle three
24 pumps, could you see anybody once they turned the first
25 corner?

- 1 A. No, sir.
- 2 Q. If you were parked on one side, could you see somebody
- 3 around the other side at all?
- 4 A. No, sir.
- 5 Q. And, in fact, if you were at the pumps, would you have
- 6 trouble seeing anybody, once they turned that first corner?
- 7 A. Yes, sir. Yes, sir, except the two outside pumps.
- 8 Q. And on each of the outside pumps, you can't see the
- 9 other side at all?
- 10 A. No, sir, and you would have to be on the outside of the
- 11 outside pump to see past the building.
- 12 Q. Okay. To see around the building decently, would you
- 13 physically have to walk away from the pumps?
- 14 A. You would have to walk -- you would have to walk
- 15 several feet from the outside of the pump.
- 16 Q. And from where you --
- 17 A. Away from the pump.
- 18 Q. From where you were standing you said that you could
- 19 see that traffic light on Meadowlark?
- 20 A. From the car wash?
- 21 Q. No, no, from the front pump.
- 22 A. From the front, yes, sir. From the front you could.
- 23 Q. Could you make out detail on vehicles that pulled up?
- 24 A. ~~You could -- you could identify, maybe see the vehicle,~~
- 25 but you could not identify the person inside, and we used a

1 vehicle that did not have tinted windows.

2 Q. So even without tint, you couldn't possibly see through
3 the window?

4 A. No, sir, you could not tell the race of the person,
5 the -- female, male, you could not make it out.

6 Q. Again, the people with you, you knew who they were?

7 A. Right. They were both my sons.

8 Q. And still couldn't identify them?

9 A. That's correct.

10 Q. Did you in the course of your investigation have
11 opportunity to speak with any of the State's witnesses?

12 A. Actually I spoke to the victim, and I spoke to one of
13 her coworkers, and that's probably about it.

14 Q. Did they give you a statement or just decline to talk
15 to you?

16 A. I talked to the victim, and I understood she -- you
17 know, she said she would just rather not talk about it and I
18 told her that was fine.

19 Q. You didn't press that?

20 A. No, sir, I did not press her.

21 Q. Now, you are not related to Mr. Watts in any way?

22 A. No, sir.

23 Q. You don't currently work. More recently have you
24 worked for any law enforcement agency in York County?

25 A. No, sir.

1 Q. Do you believe all the distances and measures and the
2 physical descriptions that you have given us are accurate?

3 A. They are positive.

4 Q. You went out at either 9:30 one night or after ten the
5 other night?

6 A. Ten the first night and 9:30 the second night.

7 Q. Now, you don't know exactly what the weather conditions
8 were on January 20th?

9 A. No, sir, I don't.

10 MR. FREEMAN: Your Honor, that's all the questions
11 that I have of this witness.

12 CROSS EXAMINATION BY MR. THOMPSON:

13 Q. I'm just curious. On the drawing of the store here, it
14 doesn't quite look the same as, for instance, the aerial
15 photo that actually shows the shape of the store. Why is
16 that?

17 A. Well, actually we did measurements, and that is pretty
18 close to what it is. The store is not square. The store is
19 sort of angled off. If you will look at -- you look at it
20 here?

21 Q. State's Exhibit 12 --

22 MR. THOMPSON: If you could flip the lights off?

23 BY MR. THOMPSON:

24 Q. That's what the store looks like, not necessarily quite
25 like what you have there?

1 A. Actually that would be half of the store there.

2 Q. So you cut it off?

3 A. That would be the front half. That would be the front
4 half.

5 Q. But at what parts of the sides of the store become
6 parallel to each other like this?

7 A. The very back of it. If you -- well, it's sort of hard
8 to see in that picture, but we walked the distance and that
9 is the distance.

10 Q. Now, with the camera on, I'm curious, with all the
11 black and white, that could be some sort of night vision, is
12 that right?

13 A. Actually it goes to black and white on night vision.

14 Q. Right.

15 So you could actually see colors when you were there at
16 night, correct?

17 A. Right. Right.

18 Q. And as you said, it's pretty well lit, especially right
19 underneath that canopy?

20 A. Yes, sir, very well lit on the front, yes.

21 Q. And actually we saw from your video up at the
22 intersection of Highway 5 and Meadowlark it was actually
23 quite well lit too?

24 A. From the sidewalk.

25 Q. Well, from the sidewalk -- from any direction, because

1 once it's well lit in one spot, it's well lit from any
2 direction, is it not?

3 A. No, sir, you have blind spots there from the sidewalk.
4 Actually from the -- actually from the pump, if you were
5 looking up to the light, you can actually see the light, the
6 color, you know, but you can't -- you can't really visualize
7 a person at that distance.

8 Q. So now you are saying, though, from the sidewalk you
9 could look and we could see it pretty good? Is that pretty
10 well lit, but down at the --

11 A. No, no, from the sidewalk you have got a shadow from --
12 it's got trees on the sidewalk.

13 Q. Right.

14 A. Or next to the sidewalk.

15 Q. You are telling us -- in September there is a lot of
16 trees in September, right?

17 A. At lot greenery, yes, sir.

18 Q. Foliage?

19 A. Yes, sir.

20 Q. In January that foliage won't necessarily be there?

21 A. That's correct.

22 Q. And another problem that we always experience with
23 cameras is that basically when you are looking at something,
24 then you bring up that camera lens, there is a difference in
25 the look of the distance, is there not?

1 A. Especially when you are using them, yes, sir.

2 Q. So would some of the camera things that we are looking
3 at here, not necessarily what would completely look like if
4 you stood and saw it, because you would actually be seeing
5 it, but then you lift up that camera and suddenly now the
6 angle is this wide?

7 A. You are just looking through one eye then.

8 Q. But if you are looking through, you are --

9 A. No, the camera shows -- the camera shows actually what
10 you are looking at until you zoom it, which makes it larger.
11 You are still seeing -- you are still seeing -- if you took
12 a picture of that back door, the gentleman standing at the
13 back door, which, you know, you are standing here with the
14 naked eye, that's exactly what the camera is. Like looking
15 in a mirror is what it is.

16 Q. But it's difficult as well for a camera, though, when
17 it's dark to really get the picture, isn't it?

18 A. Dark, yes, sir. Dark makes it more difficult.

19 Q. All right. So it's actually almost better if you are
20 going to see where things are to look at it in the daylight,
21 correct, or --

22 A. Oh, yeah. Daylight, of course.

23 Q. Or the naked eye actually does a better job than the
24 camera at night, does it not?

25 A. Unless you are using a zoom.

1 Q. Okay. Thank you.

2 MR. THOMPSON: No further questions.

3 REDIRECT EXAMINATION BY MR. FREEMAN:

4 Q. The building kind of looks like a square turned
5 sideways, doesn't it, in this picture?

6 A. Yes, sir. We did not do the building to scale. We did
7 it to a measurement.

8 Q. Okay. And, in fact, this little part right here is the
9 front what I'll call flat area?

10 A. That is correct.

11 Q. So that corner is cut off kind of like that corner?

12 A. That is correct.

13 Q. And your angle of vision --

14 A. We actually did different angles from one side to the
15 next, and front to back from each side.

16 Q. You are standing here, it's pretty limited this way.
17 Standing there, pretty limited that way?

18 A. That's correct.

19 Q. Standing up front, limited all the way?

20 A. Right. If you could see the way the building is
21 shaped, it blocks the view of the back.

22 MR. FREEMAN: No further questions.

23 MR. THOMPSON: Nothing further, Your Honor.

24 THE COURT: You can step down, sir.

25 THE WITNESS: Thank you, sir.

1 MR. FREEMAN: Thank you, Your Honor.

2 THE COURT: All right, ladies and gentlemen, we
3 are going to break here for the day.

4 I'm going to remind you that you may not discuss
5 this case. And we will -- also I want to remind you to be
6 very careful not to allow yourself to be exposed to any
7 media coverage about the case.

8 We should be ready for closing arguments sometime
9 in the morning and have you the case maybe around lunchtime,
10 or even beforehand for you to start deliberating.

11 Have a nice night and please be back in the jury
12 room tomorrow morning at 9:30.

13 (The following takes place outside the presence of
14 the jury panel)

15 THE COURT: Are there any special requests for
16 charge?

17 MR. FREEMAN: Your Honor, I believe I had already
18 indicated I asked for a redaction charge.

19 If the defendant elects not to testify, I believe
20 that would be one of your standard charges.

21 Hold on a second. I have a note on it.

22 I would request the court charge credibility of
23 witnesses, again a standard charge.

24 I would request that the court consider a charge
25 of strong armed robbery as a lesser included offense of

1 armed robbery. I think there is some evidence from which a
2 jury could find that is a potential lesser included charge
3 under the circumstances.

4 I assume again a standard charge, if the defendant
5 elects not to testify, that would be one you would instruct
6 the jury as well.

7 I believe that was all that the nonstandard stuff
8 that I have.

9 THE COURT: All right. State?

10 MR. THOMPSON: As far as the lesser included,
11 judge, we would object to that. I don't think it's proper.
12 There has been nothing to show that has been anything but an
13 armed robbery. The clerk of court (sic) says he pulled a
14 gun. It's pretty obvious on the video at that point that he
15 pulled the gun. Some of the still shots were taken. There
16 has been nothing that says he hasn't pulled a gun to commit
17 this robbery, and I think it would be kind of along the line
18 of when a manslaughter is not warranted under a murder
19 charge.

20 THE COURT: I would like -- I would probably watch
21 the video again in the morning and look at the still shots,
22 but I'll decide that tomorrow, but any other special
23 requests to charge?

24 MR. THOMPSON: I think, Your Honor, the defense
25 has tried to present an alibi today, while the State asserts

1 it's not one of great weight. We have had some problems in
2 the past where some charge regarding alibi has not been made
3 and caused trouble on appeal, so the State will seek out a
4 suggested charge tonight for night.

5 THE COURT: You don't need to.

6 MR. FREEMAN: Your Honor, I neglected. They are
7 correct. I should have asked for that.

8 THE COURT: Well, I'm going to give you all a
9 draft of the charges. It does not have anything in there
10 about strong armed robbery and it does not have anything in
11 there about alibi. I will take care of those two issues
12 before I actually get ready for the charge. And y'all can
13 review what I have and let me know if you have any
14 objections, but I need your E-mail addresses. You can come
15 and give me those in just a moment.

16 Anything else before we break for the night?

17 MR. THOMPSON: Not from the State, Your Honor.

18 MR. FREEMAN: Nothing from the defense, Your
19 Honor.

20 THE COURT: Okay. If y'all will come up here and
21 let me have your e-mail addresses and I'll give you a copy
22 of the charge.

23 (Whereupon, proceedings were adjourned to
24 September 24, 2008)

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 PHILLIP FLEMING WATTS,) 2008-GS-46-2083
7 JR.,) 2008-GS-46-2083-A
8) SEPTEMBER 24, 2008
9) York, South Carolina
10 Defendant.

11 (VOLUME III)

12 B E F O R E:

13 THE HONORABLE JOHN C. FEW, JUDGE. ; and a jury.

14
15 A P P E A R A N C E S:

16 KEVIN BRACKETT, SOLICITOR
17 WILLY THOMPSON, DEPUTY SOLICITOR
18 Attorneys for the State

19 JOHN FREEMAN, ESQUIRE
20 Attorney for the Defendant

21 Michael R. Watts
22 Circuit Court Reporter
23
24
25

INDEX

(SEPTEMBER 22, 2008)

WITNESSES

PAGE

(JACKSON V. DENNO HEARING)

LIEUTENANT TIM HAGER (SW)

DIRECT EXAMINATION BY MR. BRACKETT 26

CROSS EXAMINATION BY MR. FREEMAN 116

REDIRECT EXAMINATION BY MR. BRACKETT 127

RE CROSS EXAMINATION BY MR. FREEMAN 128

DETECTIVE BRUCE HAIRE (SW)

DIRECT EXAMINATION BY MR. BRACKETT 130

CROSS EXAMINATION BY MR. FREEMAN 134

PHILLIP FLEMING WATTS, JR. (DW)

DIRECT EXAMINATION BY MR. FREEMAN 141

CROSS EXAMINATION BY MR. BRACKETT 144

(JURY TRIAL)

JURY VENIRE EXAMINATION -- PAGE 39

JURY SWORN -- PAGE 171

OPENING STATEMENT BY MR. BRACKETT -- PAGE 178

OPENING STATEMENT BY MR. FREEMAN -- PAGE 185

INDEX

(SEPTEMBER 22, 2008)

WITNESSES PAGE

ANNETTE HICKS (SW)

DIRECT EXAMINATION BY MR. BRACKETT 192

VOIR DIRE EXAMINATION BY MR. FREEMAN 205

CONT'D DIRECT EXAMINATION BY MR. BRACKETT 208

VOIR DIRE EXAMINATION BY MR. FREEMAN 215

CONT'D DIRECT EXAMINATION BY MR. BRACKETT 215

CROSS EXAMINATION BY MR. FREEMAN 220

REDIRECT EXAMINATION BY MR. BRACKETT 232

RECROSS EXAMINATION BY MR. FREEMAN 234

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

(SEPTEMBER 23, 2008)

WITNESSES

PAGE

SOMMER YOUNG (SW)

DIRECT EXAMINATION BY MR. BRACKETT 257

CROSS EXAMINATION BY MR. FREEMAN 268

REDIRECT EXAMINATION BY MR. BRACKETT 278

RECROSS EXAMINATION BY MR. FREEMAN 279

DAVE KEENER (SW)

DIRECT EXAMINATION BY MR. THOMPSON 279

CROSS EXAMINATION BY MR. FREEMAN 289

DANIEL KEENER (SW)

DIRECT EXAMINATION BY MR. THOMPSON 306

CROSS EXAMINATION BY MR. FREEMAN 314

REDIRECT EXAMINATION BY MR. THOMPSON 324

RECROSS EXAMINATION BY MR. FREEMAN 325

OFFICER GLENDA OLIVER (SW)

DIRECT EXAMINATION BY MR. THOMPSON 345

VOIR DIRE EXAMINATION BY MR. FREEMAN 354

CONT'D DIRECT EXAMINATION BY MR. THOMPSON 355

CROSS EXAMINATION BY MR. FREEMAN 364

DETECTIVE WILLIE BURRIS (SW)

DIRECT EXAMINATION BY MR. THOMPSON 377

CROSS EXAMINATION BY MR. FREEMAN 384

25

INDEX

(SEPTEMBER 23, 2008)

WITNESSES

PAGE

STEPHANIE DAWN STOREY (SW)

DIRECT EXAMINATION BY MR. THOMPSON 400

CROSS EXAMINATION BY MR. FREEMAN 422

REDIRECT EXAMINATION BY MR. THOMPSON 430

RE CROSS EXAMINATION BY MR. FREEMAN 431

LIEUTENANT TIM HAGER (SW)

DIRECT EXAMINATION BY MR. BRACKETT 432

CROSS EXAMINATION BY MR. FREEMAN 453

DETECTIVE BRUCE HAIRE (SW)

DIRECT EXAMINATION BY MR. BRACKETT 460

CROSS EXAMINATION BY MR. FREEMAN 464

REDIRECT EXAMINATION BY MR. BRACKETT 469

RE CROSS EXAMINATION BY MR. FREEMAN 470

OFFICER KEVIN TOLSON (SW)

DIRECT EXAMINATION BY MR. THOMPSON 471

CROSS EXAMINATION BY MR. FREEMAN 484

STATE RESTS -- PAGE 485

INDEX

(SEPTEMBER 23, 2008)

WITNESSES

PAGE

VALERIE DUNHAM (DW)

DIRECT EXAMINATION BY MR. FREEMAN 505

CROSS EXAMINATION BY MR. BRACKETT 512

SAMANTHA DUNHAM (SW)

DIRECT EXAMINATION BY MR. FREEMAN 513

CROSS EXAMINATION BY MR. BRACKETT 519

REDIRECT EXAMINATION BY MR. FREEMAN 527

MICHAEL CHANNELL (DW)

DIRECT EXAMINATION BY MR. FREEMAN 528

CROSS EXAMINATION BY MR. THOMPSON 549

REDIRECT EXAMINATION BY MR. FREEMAN 553

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

(SEPTEMBER 24, 2008)

WITNESSES PAGE

DEFENSE RESTS -- PAGE 572

JENNIFER ANDERSON (SW) (REBUTTAL)

DIRECT EXAMINATION BY MR. BRACKETT 572

CROSS EXAMINATION BY MR. FREEMAN 574

REDIRECT EXAMINATION BY MR. BRACKETT 576

CLOSING ARGUMENT BY MR. FREEMAN -- PAGE 586

FINAL ARGUMENT BY MR. BRACKETT -- PAGE 605

JURY INSTRUCTIONS -- PAGE 621

JURY VERDICT -- PAGE 650

SENTENCING -- PAGE 657

REPORTER'S CERTIFICATE -- PAGE 665

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-1	DEFENDANT STATEMENT WAIVER PAGE		459
4	S-2	DEFENDANT STATEMENT (3 PAGES)	37	
5	S-2-A	DEFENDANT STATEMENT (REDACTED	445	
6	S-3	STORE VIDEO DISK		208
7	S-4	PHOTOGRAPH		
8	S-5	PHOTOGRAPH		
9	S-6	PHOTOGRAPH		
10	S-7	PHOTOGRAPH		
11	S-8	PHOTOGRAPH		
12	S-9	PHOTOGRAPH		215
13	S-10	PHOTOGRAPH		215
14	S-11	HERALD NEWSPAPER ARTICLE		
15	S-11-A	HERALD NEWSPAPER ARTICLE (REDACTED)		
16	S-11-B	HERALD NEWSPAPER ARTICLE (REDACTED)		
17	S-12	PHOTOGRAPH		353
18	S-13	PHOTOGRAPH		353
19	S-14	PHOTOGRAPH		354
20	S-15	PHOTOGRAPH		354
21	S-16	PHOTOGRAPH		354
22	S-17	PHOTOGRAPH		354
23	S-18	PHOTOGRAPH		354
24	S-19	PHOTOGRAPH		354
25	S-20	PHOTOGRAPH		354

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
3	S-21	PHOTOGRAPH		354
4	S-22	PHOTOGRAPH		354
5	S-23	PHOTOGRAPH		472
6	S-24	PHOTOGRAPH		453
7	S-25	PHOTOGRAPH		472
8	S-26	PHOTOGRAPH		472
9	S-27	PHOTOGRAPH		472
10	S-28	PHOTOGRAPH		472
11	S-29	PHOTOGRAPH		472
12	S-30	PHOTOGRAPH		472
13	S-31	PHOTOGRAPH		404
14	S-32	PHOTOGRAPH	394	
15	S-32-A	PHOTOGRAPH		451
16	S-33	RECEIPT FROM EXECUTIVE INN		
17	S-34	NIKE BOX WITH BLUE BAG		499
18	S-35	BROWN BAG & .22 CALIBER REVOLVER	479	
19	S-35-A	REMARKED FROM STATE'S 35		499
20	S-36	PHOTOGRAPH	482	
21	S-37	SCHOOL CALENDAR		574
22				
23	D-1	DIAGRAM OF SCENE	530	
24	CT-1	SLED REPORT	645	
25	CT-2	JURY NOTE	46	

1 believe I need any additional time to discuss it with him.

2 THE COURT: Mr. Watts, would you please stand and
3 raise your right hand.

4 PHILLIP FLEMING WATTS, JR., having been first duly
5 sworn, testified as follows:

6 THE COURT: All right. You can put your hand
7 down.

8 Now, I'm just going to talk to you for a few
9 minutes about this same topic that I have been talking with
10 Mr. Freeman about, because I want to make sure that you
11 understand these rights and I want to make sure that you
12 understand the decision that you have to make about whether
13 or not you are going to testify. Okay?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You have the right to remain silent.
16 That right comes to you by way of the Fifth Amendment of the
17 United States Constitution, and that means that nobody can
18 make you or nobody can compel you to testify in the trial of
19 this case.

20 If you choose not to testify, then I will explain
21 to the jury in very clear terms that this is a
22 Constitutional Right that you have and that an exercise of
23 that right cannot and must not be held against you. Do you
24 understand all that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: But, on the other hand, you have the
2 right to testify.

3 If you testify, if you choose to testify, then
4 just like all of the other witnesses who have testified, you
5 are subject to cross-examination on any subject that might
6 be relevant to this case, and that includes your
7 credibility. And as we discussed yesterday, that raises the
8 question of whether or not some of these juvenile
9 convictions that you have might be used to impeach your
10 credibility or to attack your credibility. Do you
11 understand all that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, you should listen very carefully
14 to Mr. Freeman's advice. You should listen to the advice of
15 anybody else whose judgment you trust, but in the end you
16 are the one who has to make this decision as to whether or
17 not you are going to testify. Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You can't let Mr. Freeman make that
20 decision for you. You have to make that decision. Do you
21 understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you ready to make the decision?

24 ~~THE DEFENDANT: Yes, sir.~~

25 THE COURT: You don't need any more time to talk

1 to Mr. Freeman or anybody else?

2 THE DEFENDANT: No, sir.

3 THE COURT: What is your decision?

4 THE DEFENDANT: I don't want to testify.

5 THE COURT: You are not going to testify?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. You can be seated.

8 Is there any further evidence from the defense?

9 MR. FREEMAN: No, sir, Your Honor.

10 THE COURT: And you can rest in front of the jury.

11 MR. FREEMAN: Yes, sir.

12 THE COURT: But do you anticipate putting up any
13 reply?

14 MR. BRACKETT: One brief witness, Your Honor.

15 THE COURT: When the jury is here -- are they
16 here?

17 THE BAILIFF: Yes.

18 THE COURT: Then we will bring the jury in. You
19 can rest, you can call your reply witness, and we will take
20 a short break to move into closing arguments. During that
21 break we will discuss the question of the lesser included
22 offense and we will then close.

23 We have the matter of this SLED report to take
24 care of.

25 Is there any -- both of you have been given a copy

1 of the report of the SLED document examiner concerning the
2 authenticity of the signatures of Mr. Watts on his
3 statement. Is there any comment about how that should be
4 handled? It obviously would be made part of the record, but
5 is there any further comment about how it should be handled?

6 MR. FREEMAN: I would prefer to address that at
7 the close of the trial in chief. I don't want it to
8 distract from the main task at hand.

9 THE COURT: Okay. Solicitor?

10 MR. BRACKETT: I have no problem with that. I
11 don't -- I think, as you indicated, this was obtained for
12 your assistance in making a determination in the Jackson v.
13 Denno hearing, so you have that now.

14 MR. FREEMAN: I would point out in responding to
15 the solicitor's argument, the statement had already been
16 admitted in a redacted form anyway, so this simply
17 buttresses what you have already done.

18 THE COURT: Well, it -- and I already made the
19 findings of fact that I was required to make. And what it
20 really does is it eliminates any cloud that might have
21 otherwise been over this statement. So we will take it up,
22 as Mr. Freeman suggests, after all the -- after the trial,
23 or at least after closing argument and the jury charge.

24 All right. Bring in the jury.

25 (The following takes place in the presence of the

1 Q. I'm showing you a document that's marked State's
2 Exhibit 37 for identification. Do you recognize that?

3 A. Yes, sir.

4 Q. What is that?

5 A. This is the school calendar for the 2007-2008 school
6 year.

7 Q. Does it indicate days of teacher work days and holidays
8 and so forth when school is in and out?

9 A. Yes, it does.

10 Q. And does it accurately reflect which days school was
11 open for the Rock Hill school district for the 2007-2008
12 school year?

13 A. Yes, sir.

14 Q. All right.

15 MR. FREEMAN: No objection.

16 MR. BRACKETT: Your Honor, I would seek to
17 introduce State's Exhibit 37 into evidence at this time.

18 MR. FREEMAN: No objection.

19 THE COURT: It's admitted.

20 BY MR. BRACKETT:

21 Q. Thank you very much, Ms. Anderson.

22 Please answer any questions that Mr. Freeman has for
23 you, please.

24 CROSS EXAMINATION BY MR. FREEMAN:

25 Q. Ms. Anderson, how long have you been with the school

1 district, approximately?

2 A. 22 years.

3 Q. How long have you been in the office doing what you are
4 doing now?

5 A. 22 years.

6 Q. Okay. Has the calendar ever deviated?

7 A. No, sir.

8 Q. Y'all ever taken days off that were originally not
9 scheduled or had to come for maybe for makeup days, say for
10 weather?

11 A. Yes, sir.

12 Q. So when is that calendar printed? I assume it's
13 printed before school starts?

14 A. Yes, it's printed in the summer before we start the --

15 Q. And so what's the first month? It's August? I guess
16 the kids go back in August?

17 A. Yes, sir. The calendar actually starts in July.

18 Q. And I'm going to guess, the school board is the one who
19 really approves days on and days off?

20 A. Yes, sir.

21 Q. But, again, they have no way to know in, let's say,
22 June when they are making next year's calendar which days
23 are going to be snow days, or bad weather days, or things of
24 that nature?

25 A. They do designate on our calendar what bad weather

1 makeup days would be.

2 Q. And so those are potential days? I guess my point is
3 the calendar has -- it could change? That piece of paper is
4 printed before the school year starts.

5 A. Well, the bad weather makeup days are already
6 designated on this calendar as to what days we would be
7 making up.

8 Q. I understand, but the calendar is printed well before
9 school starts, is it not?

10 A. Yes.

11 Q. And a copy is probably sent home with every kid the
12 first day of school, or something like that?

13 A. Correct.

14 MR. FREEMAN: No further questions.

15 MR. BRACKETT: Just one quick question.

16 REDIRECT EXAMINATION BY MR. BRACKETT:

17 Q. Ma'am, was the school closed, the Rock Hill school
18 district closed? We know now because we are past that day,
19 right?

20 A. Right.

21 Q. So it's not looking forward. We are looking back. Was
22 the school open on January 21st, 2008?

23 A. No, sir.

24 Q. It was not?

25 A. No, sir.

1 Q. Do you ever use holidays as makeup days?

2 A. Yes, sir.

3 Q. Okay. Did you this year?

4 A. No, sir.

5 Q. So the Northwestern High School was not open on January
6 21st?

7 A. That's correct.

8 Q. You have those records with you today?

9 A. Right, I do.

10 Q. Thank you very much.

11 MR. FREEMAN: Nothing further.

12 THE COURT: You can step down, ma'am.

13 MR. BRACKETT: That's the extent of the State's
14 reply.

15 THE COURT: Ladies and gentlemen, that will be all
16 of the testimony and evidence that you will hear in this
17 case. We are going to need to take another short break,
18 even though we have just gotten started to deal with some
19 legal matters. We will get you back in 10 or 15 minutes to
20 begin with closing arguments. I'm going to send you back
21 into the jury room at this time.

22 (The following takes place outside the presence of
23 the jury panel)

24 THE COURT: Can you cue up that video of the
25 robbery for me to watch?

1 (Whereupon, the videotape was played)

2 THE COURT: All right, I have seen enough.

3 You can bring the lights back up.

4 Other than the question of the lesser included
5 offense, which we will address in just a moment, I gave
6 y'all a draft of the jury charge. Were there any objections
7 or problems, understanding that I still have to put the
8 alibi charge in?

9 MR. FREEMAN: Yes, sir, but that in addition to
10 that, I didn't -- and I may have missed it, I didn't see the
11 charge on redaction. I know that you had made the statement
12 each time the evidence went in.

13 Also -- and again, I do have a question about your
14 form. In a couple of places you have sort of a smaller font
15 at the end. Was that you -- for example, it says defendant
16 did not testify and it's just erased.

17 THE COURT: I was just waiting to see what
18 happens.

19 MR. FREEMAN: Okay. So we are going --

20 THE COURT: Now that I know that he did not
21 testify, I'll insert my standard charge about his not
22 testifying.

23 MR. FREEMAN: All right.

24 THE COURT: And the same with those notes. Any
25 time that you see something that's not in all caps, that's

1 just a reminder to me to decide whether or not to put that
2 in there.

3 MR. FREEMAN: That's what I thought that you would
4 expand on it.

5 And then I guess at the very end, and perhaps you
6 will discuss this when you explain the verdict form, you
7 said "ladies and gentlemen, your verdict must be unanimous."

8 THE COURT: Yes.

9 MR. FREEMAN: It would be -- I would suggest that
10 that should say "ladies and gentlemen, your verdict must be
11 unanimous as to both charges."

12 THE COURT: I will -- all right. Yes, you are
13 right. Separate verdicts, all right.

14 Now, anything else?

15 MR. FREEMAN: Other than the issue of the --
16 again, you have already addressed alibi. Other than the
17 issue of the lesser included offense, and I do have some
18 argument on that.

19 THE COURT: All right. Solicitor, other than
20 lesser included offense, anything that you want to say about
21 the charge?

22 MR. THOMPSON: No, Your Honor. I do agree
23 nothing -- I think your charge on redaction was very good
24 earlier. That would be fine with you if you put it in. I
25 think that they would serve well at the end. But other than

1 that, I have no objections to the charge that you have given
2 us. I think it is appropriate.

3 THE COURT: Okay. And just before we hear the
4 your arguments on the lesser included offense, I'm not going
5 to -- I'm not planning on charging circumstantial, nor
6 anything about anybody's criminal record, nor anything about
7 an expert, or any stipulation.

8 And I will charge -- I'm just going over the notes
9 that were in the -- I will charge, of course, that the
10 defendant -- my standard charge that the defendant did not
11 testify and the significance of that, which I'll let you see
12 it, if you need to.

13 And then that brings us to the point where you can
14 make your argument about the lesser included offense.

15 MR. FREEMAN: Thank you, Your Honor.

16 Your Honor, as I indicated at the close of the
17 trial yesterday, I believe that a charge of a lesser
18 included offense of strong armed robbery, or more commonly
19 known as common law robbery, is appropriate. I am not
20 saying that you should not charge armed robbery and simply
21 saying that I believe the case law suggests that, I'll just
22 say robbery to distinguish them, that robbery would be an
23 appropriate charge.

24 There -- I did -- I was able to find a few cases
25 along those lines, which I would just call to the court's

1 attention.

2 The first was State v. Muldrow, M-U-L-D-R-O-W.
3 The cite is 559 S.E. 2d 847. In that case, which under the
4 facts are kind of oddly similar, the State produced evidence
5 that the petitioner entered the store and asked for a pack
6 of cigarettes and then handed a note that read "give me all
7 your cash or I'll shoot you." When the clerk asked if he
8 was serious, the petitioner responded yes, hurry up before
9 he shot her.

10 The court -- I believe it was the Supreme Court
11 from the Court of Appeals reversed the Court of Appeals and
12 said that the trial judge had directed a directed -- denied
13 a directed verdict motion and had submitted both charges.

14 Now, that case was later clarified in State v.
15 Robert Brown, 602 S.E. 2d 392. And it apparently now stands
16 for the proposition that if the court fails to charge a
17 lesser included offense and a sentence is subsequently
18 overturned, double jeopardy attaches and you cannot go back,
19 for example, and say I direct you to find him guilty of the
20 lesser offense. It becomes an all or nothing game. There
21 are six elements, which I won't read them all out, it's a
22 moderately long paragraph, but this is where they are
23 clarifying Muldrow, and that -- that appears to be the most
24 current case I could find dealing with both lesser included
25 offenses and robbery, in particular.

1 I would just submit -- again, I'm not asking you
2 not to charge armed robbery. I'm simply asking you to
3 charge --

4 THE COURT: Let me ask you a question.

5 MR. FREEMAN: Yes, sir.

6 THE COURT: If Mr. Watts walked into the One Stop
7 store and held up to the clerk what clearly to the clerk and
8 clearly to Mr. Watts was the pistol that had been entered
9 into evidence -- that has been entered into evidence as
10 State's Exhibit 35, then there would be no room for a charge
11 of strong armed robbery, because, if anything, if it was a
12 robbery, the use of that pistol would make it an armed
13 robbery. Isn't that right? Do you agree with that?

14 MR. FREEMAN: Actually, Your Honor, that's what
15 Muldrow speaks to. It speaks --

16 THE COURT: Muldrow does not have anything to do
17 with the actual use of a deadly weapon. Muldrow deals with
18 the other way of proving armed robbery, which is the
19 representation of a deadly weapon.

20 MR. FREEMAN: I understand that, Your Honor.

21 THE COURT: And The question in Muldrow is whether
22 words alone, as opposed to a physical representation of a
23 weapon, can constitute armed robbery under the armed robbery
24 statute. ~~So we are not -- Muldrow is not relevant to our~~
25 inquiry.

1 I'm talking about a situation in which the
2 perpetrator of the robbery holds up and visibly displays
3 what clearly is a pistol. In that circumstance is there any
4 way that the jury could find that he was not using a deadly
5 weapon.

6 MR. FREEMAN: Taking your hypothetical, assuming
7 those conclusions, no, sir, I would concede that point.

8 THE COURT: All right. Well --

9 MR. FREEMAN: It would be my --

10 THE COURT: I have -- I'll let you finish, but I
11 have looked at the video and when you stopped -- I don't
12 know if you marked exactly where you stopped it a moment ago
13 when I looked at it, but you can clearly see a pistol in his
14 right hand as he extends that hand across the counter toward
15 the clerk. And I looked at it and there is no doubt in my
16 mind that that is the pistol. There is no version of that
17 evidence that would support the jury's conclusion that what
18 he has in his hand is not a pistol. And the use of a pistol
19 during a robbery makes it armed, and there is -- so I'm not
20 charging the lesser included.

21 MR. FREEMAN: Your Honor, if I could, again just
22 to finish, I believe that it's possible, of course, if you
23 are going to instruct the jury on the witnesses, they could
24 believe a portion of Ms. Hicks testimony that she was
25 robbed. They could then disregard the portion of her

1 testimony that it was a weapon and choose to believe the
2 testimony of the State's own witnesses, the other witnesses,
3 who said "I saw someone go around the counter and back. I
4 saw no weapon." That would suggest the possibility that Ms.
5 Hicks was robbed through intimidation, or threat of force,
6 or being overborne by the other person. So, again, I
7 realize --

8 THE COURT: If all we were dealing with was the
9 testimony of the clerk, I would agree with you. But with
10 that video in evidence, there is no way that the jury could
11 conclude that if it was a robbery, it was not an armed
12 robbery, so I'm not going to charge it.

13 MR. FREEMAN: Thank you, Your Honor.

14 THE COURT: All right. Is there anything further?

15 MR. THOMPSON: No, Your Honor.

16 THE COURT: Are y'all ready for closing arguments?

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

18 THE COURT: The State will open?

19 MR. BRACKETT: State will waive opening.

20 MR. FREEMAN: That's fine.

21 THE COURT: Are you prepared to open?

22 MR. FREEMAN: Yes, sir.

23 THE COURT: Approximately how much time do you
24 believe that you will need for closing?

25 MR. FREEMAN: I would like to be home before dark.

1 I would anticipate 20 to 30 minutes at most, Your
2 Honor.

3 MR. BRACKETT: Approximately the same.

4 THE COURT: Okay. All right. We will take a very
5 short break of about three minutes. Then we will come back
6 for closing arguments.

7 MR. FREEMAN: Thank you, Your Honor.

8 MR. BRACKETT: Thank you.

9 MR. FREEMAN: Your Honor?

10 THE COURT: Sir?

11 MR. FREEMAN: I don't know the court's policy. Is
12 your plan to address the jury before we do and say we would
13 now move to that phase that you were --

14 THE COURT: I'll tell them that we are now ready
15 for closing arguments and I'll turn it over to you.

16 MR. FREEMAN: Thank you, Your Honor.

17 MR. BRACKETT: The issue of the handwriting would
18 be delayed until after the reply?

19 MR. FREEMAN: I would ask you to hold that until
20 the conclusion of the trial.

21 THE COURT: All right.

22 (Whereupon, proceedings were recessed)

23 (Whereupon, proceedings were reconvened)

24 THE COURT: Bring in the jury, please.

25 When they come in, I'm going to ask the question

1 that I neglected to ask the question about --

2 MR. FREEMAN: Press coverage?

3 THE COURT: -- press coverage.

4 (The following takes place in the presence of the
5 jury panel)

6 THE COURT: Mr. Freeman, you can begin your
7 closing argument.

8 MR. FREEMAN: Your Honor, did you --

9 THE COURT: Oh, yeah.

10 MR. FREEMAN: You indicated --

11 THE COURT: Thank you.

12 Ladies and gentlemen, I promised you that each
13 morning when you get here that I would ask you whether or
14 not any of you had been exposed to any press coverage since
15 you last left the courthouse, and I neglected to do that
16 when you first got here. So if there is any member of the
17 jury panel who has inadvertently or in any other way been
18 exposed to any press coverages about this case, or if you
19 had any conversations with anybody about this case, please
20 signify that you have by raising your hand and then I'll
21 talk to you individually.

22 (No response)

23 THE COURT: All right, thank you very much.

24 Nobody raised their hand.

25 MR. FREEMAN: Thank you, Your Honor.

1 Ladies and gentlemen of the jury, as you heard at
2 the beginning, my name is John Freeman. We talked I guess
3 it was two days ago and the trial turned out to be pretty
4 much what I said. A little bit more stuff, a couple extra
5 pictures and pieces of paper, but mostly it was people
6 sitting in that chair right there talking to us and letting
7 you listen.

8 Now, you may notice I have some notes up here. I
9 hate it when people read straight to me, unless I'm trying
10 to fall asleep, but there is a lot of things I want to cover
11 and I don't necessarily trust my memory to cover all of
12 those.

13 Now, the way cases work, as Your Honor told you at
14 the beginning, it's sort of steps. We are at the steps now
15 that are called closing arguments. These are statements
16 from the attorneys. Under the rules somebody has to go
17 first and somebody has to go second. It's just that simple.
18 I'm sure if the lawyers, we both like to respond and we
19 would talk until we are blue in the face, because we both
20 want to get the last word, but the rules define that for us
21 so we don't have to fight about it. But what that means is
22 whatever I say to you, the solicitor has the opportunity to
23 respond, and I don't get to stand back up, then he stand
24 back up. Again, we would be here infinitely. So what I'm
25 going to ask you to do is hold in your heads and your hearts

1 what we discuss what you have heard from there, those
2 memories. The solicitor told a good story, and I anticipate
3 he will tell another good story. But, again, I don't get a
4 chance to respond to those points. So what I want to do is
5 talk to you about at least what I believe the evidence was.

6 Now, remember when we talked at the beginning --
7 and, again, the judge is going to -- actually the last
8 person y'all are going to hear from is him, is the judge.
9 Not the lawyers, not our arguments, but the judge. And the
10 judge is going to say here is what the law is. Here is the
11 law and apply it to the evidence.

12 Now, some things are in evidence, maybe some
13 things aren't. You have heard some discussions about
14 redaction and you will hear some charges and all of that.
15 Evidence is what we have submitted for y'all to do, but
16 y'all are the ones that determine what evidence is
17 important, what evidence carries any weight, what evidence
18 that you really want to consider. You may say, well, this
19 picture helps me, this picture doesn't do anything for me.
20 It's in evidence, but that doesn't mean that you have to
21 make any use of it. But the real evidence, again, is the
22 testimony that you have heard.

23 Now, I just want to go through some at least the
24 evidence that I heard and I will point out to you, you have
25 the opportunity if you are not sure, you are not really sure,

1 what I remember to hear the testimony again. I'm sure the
2 court reporter doesn't like me telling you that, but you do
3 have that opportunity to come back and say we want to hear
4 this element of testimony again.

5 I told you at the beginning we don't dispute that
6 the store was robbed. That is an awful thing. It's a
7 regrettable thing. No one likes that. Again, that's not
8 the question. It's kind of weird like -- a crime occurred.
9 Yes, we admit that. Why would we deny it like that, but Mr.
10 Watts said "it wasn't me. It may be a fellow who looked
11 like me. It may be somebody who looked a little bit like
12 me. Obviously he has a different build, but it wasn't me."

13 He doesn't have to tell you who it was, because he
14 wasn't there. He doesn't know. Remember what I said about
15 proving yourself innocent. How could you come up and say
16 "not only did I not do this, law enforcement, with the
17 resources that you have, I didn't do this, but let me tell
18 you who did? No -- again, no ordinary citizen could ever do
19 that, to not only prove themselves not guilty, but innocent.
20 That's -- that's not our burden. That's their burden to
21 prove him guilty.

22 Again, you don't say "well, I have charged you
23 with a crime Mr. And Mrs. Smith, Watts. And if you didn't
24 do it, you have to tell me who did." Well, who could do
25 that? No one could do that.

1 So, again, I just want to talk about at least some
2 of the testimony as I heard it. Of course, you remember it
3 collectively the way that you remember it. If you have some
4 question, of course, you can ask to hear that portion of it
5 again.

6 First we heard -- the first person we heard from
7 was the State's witness Ms. Hicks, the lady that was working
8 there that night. She indicated that she was robbed. Guess
9 what, I just told you that. That's true. We don't dispute
10 that.

11 She indicated that she didn't know the person. I
12 don't dispute that.

13 She said it was a light skinned black male. Well,
14 again, Mr. Watts didn't speak to you. He doesn't have to
15 say anything to you, by the way. Again, that's that
16 constitutional protection. You don't have to get on the
17 stand and say "not only am I not guilty, but let me show you
18 where I'm at? He doesn't have to say a word. Again, the
19 Founding Fathers gave him that right.

20 But, I'm sorry, anyway, she indicated a light
21 skinned black male. I think she used the phrase "he jumped
22 up on the counter." Now, I didn't see that in the video.
23 He appeared to walk around and back around, whoever it was,
24 ~~but what I want to talk to you there about is human nature.~~
25 Somebody did something to you and you didn't know who it was

1 and it sort of sat on your mind and you wanted to know who
2 it was and you really wanted to know, and it's kind of
3 eating at you a little bit. Maybe you happened to see a
4 picture of somebody at a later date and your mind matches
5 those two together. Okay. "I was robbed by a black male
6 with hair about like this, or facial hair, or these general
7 facial features. I couldn't really see the rest of it," and
8 then there is a picture of somebody. Does my mind connect
9 those two dots together? I don't know. If you are not
10 sure, by the way, then you have an obligation under both of
11 those oaths you took on Monday to return a verdict of not
12 guilty.

13 Now -- and so you see the picture. You call the
14 police. "That person I saw in that picture is the person
15 who robbed me." My mind has connected the dots four weeks
16 later.

17 Was there a sketch taken of the person at the
18 time? No. Apparently not. The police didn't think that
19 was necessary.

20 We then heard testimony from what I'm going to say
21 several witnesses. The young lady who spoke, said she
22 didn't really get a good look at the person; the twins, Mr.
23 And Mr. Keener, the same thing. One saw a little bit. One
24 didn't really see much of anything. And they have all sort
25 of said -- a couple of them -- I mean Ms. Young, the girl,

1 said couldn't really be sure of the gender in response to my
2 question. She was in tinted windows looking through at
3 least two panes of glass.

4 And now that's one of the things I do want to talk
5 about with the evidence. You are going to see -- we have
6 pictures of the store in the daytime. I mean, let's be
7 truthful. You saw what it looked like at night. It's
8 almost impossible to see through two panes of glass and
9 through windows in your car, but you have the ability to
10 judge the credibility of the witnesses. Did they have the
11 opportunity to actually see what they saw, or were they kind
12 of filling in the gaps? "It looks like something odd is
13 going on in there. I'm not sure." One of the twins, I
14 don't recall which one, the both look alike, one of the
15 Keener boys said looked like a customer at first. And
16 neither of them could really identify the person. In
17 response to my questions, Sommer said could have even been
18 wearing gloves. She's not even sure the race of the person.
19 It's January. It's the middle January at 10:30 at night.
20 10:22 at night. The person could have been wearing gloves.

21 Now, we also heard some testimony from several law
22 enforcement officials. And not to diminish law enforcement
23 at all, but in this case law enforcement, I submit to you,
24 came and just sort of took a report. They did not -- they
25 did not provide eyewitness testimony. They did not provide

1 any testimony that in any way, I submit to you, directly
2 enhanced the question of who robbed the store. That's the
3 question, who robbed the store. Excuse me. I mean, you
4 heard -- of course, officers are human beings. One of the
5 officers said "I went to the wrong address" and immediately
6 spun around and came back. One of the other officers said
7 "I was officer on call. I didn't even go out there. They
8 just called me on the phone and do I do that? Yeah, do
9 that, don't do this."

10 You also heard some testimony, in addition to, I
11 believe it was four or five police officers, and I'm going
12 to come to two of those officers in a minute from Ms.
13 Storey. Ms. Storey, and I have some specific notes, had
14 some very interesting testimony. I just want to remind you
15 about that. Ms. Storey said that she was Phillip's
16 girlfriend. You saw her demeanor on the stand. It's very
17 hard for her. It's very hard for her to be here. Hard for
18 her to look at Phillip, or anyone in the courtroom. Saw how
19 upset she became. Ms. Storey is charged with a serious
20 crime. Ms. Storey, in response to my question -- and,
21 again, listen to the testimony if you don't remember, said
22 that she was saying what the solicitor wanted her to say. I
23 believe I said "you hoped for something better?"

24 "I do."

25 The solicitor hadn't promised her anything, I

1 understand that, but "you know this is testimony that the
2 solicitor wants from you?

3 "Yes, I do."

4 So, again, are we filling in those dots to help
5 ourselves? Are we resolving those doubts in our own mind,
6 not to a legal standard, but in our own mind in the way
7 that's best for us? If I'm Ms. Storey, am I doing that? Am
8 I trying to help myself tell the police what they want to
9 hear?

10 Now, there is little things sometimes and you have
11 to sort of connect the evidence together. Ms. Storey said,
12 and I don't recall any other person saying this, that this
13 Durango that she had -- and they made a big thing about the
14 Durango. I'm not sure what color it is. Burgundy, wine,
15 purple, plumb, or something. It's dark. It had in the back
16 several large stickers. She's very proud of her sorority.
17 We have all seen those, the big letters that stick in the
18 back. Some decals. All of the other witnesses who said "I
19 saw the Durango and then it turned away from me," in this
20 well lit area, by the way. Again, the State made a big
21 thing about the lighting. Did one single one of them say "I
22 saw any decals in the back window"? Couldn't see through
23 it. I understand it was tinted. Saw any decals in the back
24 window? Those big bright letters that we have all seen on
25 vehicles from fraternities and sororities driving around

1 town. Did one single person say that? I asked a couple of
2 about "did you see any markings, decals labels, logos?"
3 Again, the State's position is very well lit. Clear
4 opportunity to see "I can see from the pump inside the
5 store; I can see the light when the vehicle turns." The
6 testimony appears, by the way, to be uncontradicted that
7 whatever this vehicle was, it waited for the light and then
8 it turned away. So the back of the vehicle -- you are going
9 to have the map. The back of the vehicle is going to see
10 because this person who just said they had great visibility.
11 Did one single person, other than Ms. Storey, who wasn't
12 there, by the way, say they saw a decal in the back?

13 Again, the State is trying to connect those dots
14 that just don't quite connect. They want it so hard to be
15 Mr. Watts that did this robbery. They want it so hard.
16 They want to push that square peg into that round hole.
17 They are going to shave off the edges until it fits. It's
18 up to you. It's not up to them. Y'all are the final word
19 we hear on that.

20 Again, Ms. Storey said in response to my question
21 "I don't know what happened with the vehicle when I wasn't
22 there." That's sort of a common sense question, by the way.
23 You know, some questions you sort of ask "do you know what
24 people are doing when you are not around?"

25 "No.

1 "Do you know if other people have access to your
2 vehicle?" I believe she said, friends and family and her
3 boyfriend all have access to the vehicle.

4 "Is there anything that prevents any of those
5 people from taking it?"

6 Even if you say it was the vehicle, are we
7 connecting those dots yet? How does that put Phillip behind
8 the wheel of that vehicle, again, but where is the testimony
9 of these visible logos on the back in this great well lit
10 area?

11 Again, those little things. Remember what I said
12 at the beginning about taking the small steps. That's what
13 solicitor wants you to do. He wants you to step over those
14 little gaps. "Oh, I have connected these two dots now. But
15 I didn't quite. Beyond a reasonable doubt connect those two
16 dots."

17 Now, we also heard some testimony from, excuse me
18 ladies and gentlemen, two detectives, and I want to speak
19 about them specifically. That would be one detective with
20 the sheriff's department and one detective with the city.
21 They spoke about a statement that they said Phillip gave.
22 You are going to have a copy of it. It's redacted. The
23 judge is going to charge you on all that kind of stuff. You
24 have the opportunity to judge. Again, are people trying to
25 pound that square peg into that round hole. Let's be very

1 blunt. You had obviously, I suggest to you, different
2 policies. You have the City of Rock Hill and the County of
3 York. One does things one way and one does things another
4 way. "Who types up the statement?"

5 "Well, we're at the sheriff's department, they'll
6 type it up." But they will use the other guy's notes to
7 type up the statement and Phillip is not in the room when
8 they type up the statement. And you can see it's typed, by
9 the way. It ain't handwritten. Why not have someone write
10 out a statement? If his handwriting is illegible, then go
11 type it? Why not get a ten dollar tape recorder and tape
12 it? Because you are trying to pound that peg into that
13 hole. You have a person who, as a law enforcement officer,
14 you believe has been charged with very serious offense -
15 armed robbery - let's spend ten dollars for a tape recorder
16 and 15 cents for a cassette tape, in addition to all the
17 technology to type the statement out.

18 You saw audio -- I mean a video, a digital video?
19 Where is -- again, let's spend ten cents for a DVD. Burn a
20 copy of it, then type it up or have him write it.

21 Again, they are trying very hard to get those pegs
22 to fit, so they skip over these little gaps in what I call
23 believability. Let's take a small step over here.

24 Now, the judge is going to charge you, I believe,
25 and, again, the law comes from him, not from us, not from

1 either one of us, about what they call reasonable doubt. As
2 I told you Monday, each and every one of you has to find
3 this person did this thing -- actually two things. I'm
4 going to talk about that in a second. Did these things
5 beyond a reasonable doubt for each and every one of you, and
6 it has to be every element of the crime. Not well, I think
7 so; or not, well, not sure; or I will just flip a coin. It
8 doesn't work like that. Again, remember the awesome power
9 of the State. Remember the awesome power of the resources
10 of the State against an individual. Had it not been for the
11 Founding Fathers, we probably wouldn't have a whole lot of
12 trials, because most people wouldn't have a chance. But
13 they place it in your laps, in each and every one of your
14 laps, and they say hold them to that burden on both charges.

15 And, again, there are two charges. The judge gave
16 you those at the beginning. I believe he's going to revisit
17 those at the end. You're going to get a piece of paper that
18 has armed robbery on it. That's a dramatic word. It has
19 armed robbery on it. It's a piece of paper that says we
20 believe this person did that thing. That's all it is. And,
21 by the way, it's computerized too. It's all typed up.
22 There are some signatures on there, but it's all typed up.

23 We have got to hold them to that standard to say
24 before, before we as the representatives of society find
25 that this person did these things, we are going to hold you

1 to that test and make you connect every dot. We are not
2 going to let you pound the square peg into the round hole.
3 We are going to make sure the pegs fit.

4 Now, armed robbery, again, is almost a common
5 sense kind of charge. It's taking something from somebody
6 that ain't yours while you are armed or pretend to be armed
7 with a weapon.

8 What's a weapon? Gun, a knife. In this -- we
9 actually have an archaic word under the statute, a dirk.
10 From the 17th Century, I guess. It's a weapon.

11 Again, so you have to not only find that the
12 person was robbed, but that the other person had a weapon.
13 And there is no doubt there was a weapon. Okay.

14 You are going to have in your jury room evidence
15 that I submit to you is very dramatic - a gun. Most of us
16 don't even handle guns. You know, it's just not something
17 that we do in our every day business. That's very dramatic
18 evidence. Oh my gosh. I'll resist the urge to drop it on
19 the table to let it clank and be even more dramatic. A gun
20 was found at an address where Phillip apparently may have
21 been staying and you are going to have photographic evidence
22 of where it was found - above a bunch of women's clothes in
23 what clearly appear to be a woman's apartment. Again, let's
24 connect those dots. I found a gun in a woman's apartment so
25 it's a guy's gun.

1 I found a driver's license with a different
2 address. Therefore, he must have been staying there.
3 Therefore, it must have been his gun. See how nicely I
4 moved around to connect those dots without actually
5 connecting them? That's what they want you to do.

6 Again, that's very dramatic evidence. You know,
7 if you have never handled a gun, and I admit I'm not a gun
8 person. I probably wouldn't know the difference in a .22
9 and a .38. I do know the difference in a rifle and a
10 pistol, and that's about it, but that's very dramatic
11 evidence.

12 One of the witnesses I believe testified, in fact,
13 the gun that they think they saw was silver. I submit to
14 you that gun is black. Again, ladies and gentlemen, it's on
15 them to prove that.

16 Now, I believe also the judge is going to charge
17 you that, again, your verdicts have to be unanimous. That's
18 the law from the judge. So if some of you are sure and some
19 of you are not, you don't set those concerns aside. You
20 don't say "well, for the good of the majority I'll just go
21 along with it." You hold in your heart the State to the
22 burden on both charges.

23 The second charge, our legislature many years ago
24 ~~passed a statute that said it's illegal to have a weapon~~
25 during the commission of certain other crimes. Kind of a

1 piggyback charge is the way I call it. Not only is it
2 illegal to commit armed robbery, it's illegal to have a gun
3 while you commit an armed robbery. I submit to you those
4 charges kind of go together, by the way. If you didn't do
5 the one, you couldn't have the done the second, but it is
6 certainly possible that you could find the first person
7 believed they were being robbed, but there was, in fact, no
8 weapon. So it is conceivable that you could find a person
9 guilty of armed robbery and not the second charge.

10 Again, you are going to judge each witness and
11 y'all -- I don't envy you this task to have to go back in
12 there and kind of weigh them all against each other.

13 Now, again, Phillip doesn't have to speak to you,
14 but he did. He spoke to you through the system and said I
15 didn't do this thing. He had some people come out to
16 testify - his mother and his sister. Her daughter, his
17 sister, and they said -- and quite frankly, you heard some
18 testimony this morning there wasn't any school that Monday.
19 Well, Samantha is a teenager. I'm going to guess there is
20 no school, she probably slept in even later, so Phillip was
21 there when she got up. The testimony was "he was there when
22 I got up."

23 The reason she may not remember it or Ms. Valerie
24 may not remember it is it didn't stand out for them. If I
25 went to somebody and said tell me what you were doing seven

1 months ago on this day. Unless it's your birthday, your
2 wedding, your child's birthday, Christmas, how are you going
3 to remember that? So the best I could do is say well -- or
4 the best she could, excuse me, is say tell me about Sundays
5 in general. Every Sunday is family day. No question about
6 that. The family comes over. It's that one day a week when
7 Ms. Valerie says "by goodness, we are all going to spend the
8 time together. I'm going to make my kids go to church. We
9 are going to come home and we are going to eat a big lunch
10 and probably all take a nap or watch the ball game, or
11 whatever, and spend time together." And she, I think would
12 be a fair phrase, insist on that.

13 But how can I go to them and say "well, tell me
14 about this one day," if it doesn't stand out? Because it
15 doesn't stand out to them. "Phillip was with me on that
16 Sunday because he was with me every Sunday.

17 Samantha said "here is what I normally did. I
18 stayed up late." Again, I'll submit to you that if she knew
19 she didn't have school, maybe she stayed up later. I don't
20 know. She's a teenager. Teenagers are completely
21 unpredictable. My child is a little bit younger than that,
22 but teenagers are completely unpredictable. She's very
23 consistent on that point. "Phillip was sleeping in the
24 morning. ~~He was there when I got up. He was there when I~~
25 went to bed." Sunday is family day. Sunday is always

1 family day at the Watts house. Sunday is still family day
2 at their house by the way.

3 Ladies and gentlemen of the jury, as I said, I
4 hate it when people read to me, unless I'm trying to fall to
5 sleep, but Phillip does speak to you. He says that "I
6 didn't do this."

7 Now, the other thing, and I had Mr. Channell
8 testify, I had him take video. In fact, the only video that
9 I believe that we have seen of the outside at night. We
10 don't really have the -- despite what you see on TV, juries
11 don't typically go out to the crime scene. That's TV, by
12 the way. So that's the best we can do to put you there.
13 What is the opportunity people have to see things? What is
14 the realistic probability that they can actually see what
15 they say they have seen? Now, the building, this is a
16 computer representation, but you can look at this. The
17 front of it is in one of the pictures maybe two car lengths
18 apart, so that's 12 feet. Once you turn one of those
19 corners, I submit to you your angles are lost for everyone
20 else. Once I walk around that one corner at night, at 10:20
21 at night, there is no visibility from the other person.
22 Once I take more than about ten steps, the visibility is
23 significantly reduced, even from the people on the outside.
24 Y'all didn't leave your common sense outside. You are
25 sitting at the pumps on the left, you can't see to the

1 right, and vice versa. Just that simple.

2 They want -- this is a big dot, by the way. The
3 solicitor even knows he wants to connect these dots. It's a
4 huge dot. Whoever walked out of the store must be the same
5 person that drove up this street on the side a moment later,
6 waited for the light, turned in a dark colored vehicle that
7 apparently didn't have any bright decals in the back window.
8 That's a huge dot. The solicitor even knows he needs to
9 connect those dots. He's tried very hard to connect those
10 dots. But, again, if I walk out of there and then a moment
11 or two later you hear a car start, does it make it my car?
12 Does it make it me getting in the car, first of all? Big
13 dot the solicitor is trying to connect there.

14 Ladies and gentlemen, again, you have common sense
15 collectively. No twelve people have more or less common
16 sense in York County. I want you to hold the State to that
17 test on both charges.

18 Again, the solicitor gets to speak to you next. I
19 don't get to respond to that. The solicitor, as you heard
20 at the beginning, tells a great story. I anticipate he will
21 tell another very good story. He's going to probably say
22 "well, I have connected all these dots. We are glad to hold
23 our burden." Maybe he will show us the video again. Very
24 ~~dramatic. Maybe he will wave the gun around. Very~~
25 dramatic.

1 Y'all are the last word we hear in the courtroom,
2 by the way. That's not even the judge. The last words in
3 this trial is y'all. Y'all are the ultimate people who
4 determine the facts. And the fact that matters most is
5 whether or not the State has met its burden of proof on both
6 charges.

7 I submit to you I have pointed out a couple of
8 things where I don't think they have connected the dots. I
9 only have to find one, by the way, that they haven't
10 connected, but I think there is several. And I think the
11 oaths that you took on Monday oblige you to sit down and
12 spend your time with this evidence, figure out -- each and
13 every one of you have resolved each and every doubt. What
14 is the reasonable doubt? It's a doubt that would make you
15 hesitate. It's a doubt that might make that wince. I'm not
16 sure.

17 Each and every one of you have to resolve each and
18 every doubt before, under your oaths, you can come back and
19 find that this man did this bad thing.

20 Thank you for your time.

21 MR. BRACKETT: May it please the court?

22 THE COURT: Solicitor.

23 MR. BRACKETT: You know, it's funny that Mr.

24 Freeman would choose to tell you that I tell a great story,
25 and I'm flattered, Mr. Freeman. Thank you very much,

1 because I -- when I was driving home yesterday, I tried to
2 find a song. I like jazz. I like it a lot, and I listen to
3 a lot of old jazz from the fifties, modern jazz, and I can
4 usually think of a song. A song occurs to me during each of
5 my trials that sort of encapsulates the trial for me, or a
6 line from a song, and I was driving home last night and a
7 song occurred to me that really fits this trial.

8 Particularly one line from a giant in world of jazz, the
9 great Duke Ellington, and it really fits Mr. Watts. It's a
10 line from an old line from the fifties, maybe even earlier
11 than that, and the line goes "the saddest tale told on land
12 or sea is the tale they told when they told the truth on
13 me."

14 Now, Mr. Freeman has said that it's all very
15 dramatic, that I'm going to show the video and wave the gun.
16 It is dramatic. It was certainly dramatic on January the
17 20th of 2008, at 10:30 at night for Annette Hicks, who was
18 standing in her store, earning a living, minding her
19 business, trying to do a good job, when Mr. Watts came into
20 the store and pointed this gun at her. And she didn't know
21 if she was going to see the morning, and that is dramatic,
22 and I'm not going to apologize for it. It was certainly
23 dramatic for Ms. Hicks, who sits here still now traumatized
24 by what happened to her seven months ago.

25 You are going to hear a lot about the defendant's

1 rights, and I have a burden of proof, and what I have to do,
2 and what his rights are, and he has a lot of rights, and
3 they are important and you need to pay attention to them,
4 but he's not the only one with rights in this courtroom.
5 Today is Annette Hicks' day too, for Annette Hicks, she has
6 some rights today too, and this is her day for justice. You
7 need to be just as considerate of her rights as you are of
8 Mr. Watts.

9 Madam Clerk?

10 (Videotape played)

11 MR. BRACKETT: This is where Annette Hicks works
12 on West Main Street, right across from Northwestern High
13 School. This is just like any other convenience store;
14 chips, drinks, smokes, Slim Jim's, gas up front that costs
15 way too much. That's where she's worked the second shift
16 now from 3:00 to 11:00 a couple of years. That's where she
17 was working on January 20th of 2008.

18 And this is Ms. Hicks at that moment right before
19 her life was about to change forever. Coming through the
20 door, while her back is turned, she is looking at some
21 paperwork or something, is the man who would change her life
22 forever. And it is my job to prove to you that the man
23 coming through the door is the man seated over there next to
24 Mr. Freeman, and I submit that we have done that.

25 Again, her back is turned. She has no idea of

1 what's about to happen to her.

2 (Off the record)

3 (Back on the record)

4 MR. BRACKETT: Well, just bear with me one minute.

5 Sorry for the delay, but back in the old days I

6 used to have to stand up here with the pictures and walk

7 back slowly back and forth trying to show you my point.

8 This is a little bit cumbersome when it crashes, but it's a

9 lot more effective when I'm trying to show you the evidence

10 that you need to consider when you are making your decision.

11 (Off the record)

12 (Back on the record)

13 MR. BRACKETT: You will have access to the video
14 in there. For some reason it's not working and I don't want
15 to risk it crashing again, but you have seen the video once.

16 You will have access to the video and clearly what it shows
17 is Ms. Hicks standing behind the counter and an individual
18 walking up, walking around the counter, displaying a gun to
19 her, pointing it at her. She pulls the register drawer out,
20 lays it on the counter, pulls some cash out of it, puts it
21 into a brown paper bag and hands it across the counter to
22 that man right there, who we submit is Phillip Watts.

23 Now, in addition to this photograph, which you
24 will have back in the jury room with you, we have some still
25 photographs. We also have a small photograph, State's

1 Exhibit 32-A, which when you hold it up next to Mr. Watts'
2 face, you hold his face up next to the Gold Hill individual
3 there, I submit to you, ladies and gentlemen, although the
4 picture taken in this one here appears to have a flash in
5 it, that's the same man. When you see his face in here,
6 look at the skin tone of the robber. It's the same man
7 that's seated in the courtroom with you here today.

8 Now, next slide.

9 There is no question, ladies and gentlemen, that
10 this was an armed robbery. The still photos that we pulled
11 from the video, he's clearly displaying a gun, this gun
12 within the video right there.

13 And the next one. See it again. Again. One more
14 time.

15 Look at the shape of the gun. There is a
16 cylinder, a barrel. He's holding the gun, pointing it at
17 her just like this. And you watch the video, he pulls it in
18 and out of his pouch. He's holding it in his right hand.
19 He pulls it out, points it at her and puts it back. Walks
20 around. He's holding it out again and then ultimately he
21 puts it back in the pouch. When he gets the money, he puts
22 that in the pouch and walks out the door.

23 . Incidentally, you will notice that this gun here,
24 which has been verified to be unloaded, also has a zip tie
25 which was placed around it after the gun was secured from

1 where the defendant was picked up on February the 18th.
2 Whatever you see the photographs as it was being pulled out
3 of the box, this gun was secured after that, so that there
4 is -- even though it's unloaded, there is no way it could be
5 loaded and fired. The zip tie was not on it when it was
6 found.

7 Now, as I told you in the opening, this case was
8 unsolved until February the 18th. The police did come out
9 they did take statements. The witnesses who were at the
10 scene - Annette Hicks, the Keener brothers - were taken to
11 the police department. You heard them when they testified
12 "we were waiting at the police department. It was late. I
13 signed a statement. They typed it up at the police
14 department." No there is no indication and there was no --
15 the video was viewed at the scene by the police officer.
16 There was absolutely no way that the witnesses who made the
17 statement at the police department saw the videos. They
18 didn't conform their statements. Even if you were inclined
19 to believe that people are just going to walk in and make
20 something up that they didn't see, they didn't even see the
21 video. It was on the computer at the convenience store, at
22 the One Stop. They didn't have access to it at the time
23 they were making their statements that very night at the
24 Rock Hill Police Department. And what did they say?

25 What did Sommer Young say when she testified? She

1 knew something was going on inside that convenience store
2 when she drove by. And if you watch one of the angles on
3 the video, the one that shoots behind the clerk's station
4 and looks out towards the front of the store, right at about
5 42 seconds, if you stop it, you will see a white truck like
6 car that goes by real fast. It's only captured in one
7 frame. That is Sommer Young's. I asked her specifically
8 for that very reason; "what kind of car were you in."

9 " A white Ford Explorer Four Trac. We went to the
10 side door first on the left side. And then when that was
11 locked, we went around the front."

12 You can see their car driving by, and he's going
13 out the door about six or seven seconds later, just long
14 enough for them to have pulled into a parking space and
15 Sommer Young goes to open the door and step out, where she
16 was several feet from the robber as he came out the door.

17 She didn't -- nobody embellished their story. If
18 Sommer Young or the Keener brothers wanted to embellish
19 their story, like Mr. Freeman is suggesting, why didn't they
20 just come in court and go "that's him. That's the guy. I
21 would remember his face anywhere." They didn't. Sommer
22 testified she didn't even really get a good look at his
23 face. She wasn't sure of his race, although there is no
24 doubt when you look at the pictures of the individual in the
25 store, particularly State's Exhibit 5, the photograph that

1 shows him walking out the door, no question the individual
2 who robbed Annette Hicks was a black male wearing a Gold
3 Hill blew shirt with Gold Hill written in white letters
4 across the front of it.

5 What else did they say in their statements?
6 Purple or dark burgundy Durango that went by. And you know
7 the layout. You know the layout of the store. They are at
8 the gas pumps or they are over by the front door.
9 Meadowlark runs down this side. When that car drove by,
10 they were looking at the side of the car, not the back of
11 the car. But it's interesting that they told the police
12 that night, before we ever knew who Stephanie Story was. We
13 had no idea who she was or that she owned a purple or
14 burgundy dark plumb colored, whatever you want to call it,
15 Durango, and that she was Phillip Watts' girlfriend. And,
16 further, that she had left the car with him with the keys
17 the very night of the robbery. The Keener boys could never
18 have known that. What a coincidence. That's not direct
19 evidence of his guilt. That in and of itself by itself is
20 insufficient to justify a guilty verdict, but you don't look
21 at the evidence piecemeal. You don't look at the evidence
22 bit by bit and dismiss one piece at a time, as Mr. Freeman
23 would like you to do. No, no, no. You consider the
24 evidence in the totality.

25 What are the odds that the man who confessed to

1 Tim Hager and Detective Bruce Haire that he committed this
2 robbery, when they weren't even asking him about the
3 robbery, what are the odds that he also happens to have
4 access to his girlfriend's purple, plumb, Durango the night
5 of the robbery? She was not around to say what he did with
6 it, but he had access. He had the keys and she had left the
7 car with him. What are the odds? Pretty slim.

8 What are the odds that on February 18th, a month
9 after the robbery, a month after the robbery, Annette Hicks
10 shows up for her second shift, like she always does, at the
11 One Stop Express, gets the Herald, picks it up and there is
12 an article in the Herald that has a picture of Phillip
13 Watts? You heard Detective Burris testify to two things
14 particular to that. First, the article didn't have anything
15 to do with the One Stop. There was nothing in the article
16 that would have led Annette Hicks to read that and go ah-ha,
17 this is the guy. It wasn't about the One Stop. It was a
18 completely different article, but his picture was in there.
19 And she looked at his picture and knew immediately this is
20 the guy that robbed me. This is the guy. And she called
21 Detective Burris and told him within minutes, within ten
22 minutes of her seeing that picture in the newspaper she knew
23 that was him and she was on the phone with Detective Burris,
24 who verifies that and says he did a supplemental report.
25 What are the odds?

1 Mr. Freeman wants you to think well, maybe she
2 just randomly picks a photograph out of the newspaper. How
3 many pictures of guys do you think there were in the Herald
4 in the month prior to February 18th? Why did she just
5 happen to pick this guy? Maybe it's because she really did
6 recognize the man who robbed her and she really did identify
7 him and she knew this is the guy that pointed the gun at me
8 and took the money. Maybe that's the case.

9 What was happening while this was going on? This
10 is another little interesting thing. That article -- back
11 it up one. February the 18th.

12 February the 18th. The time that he was read his
13 rights, Phillip Watts. The testimony of Tim Hager and
14 Detective Haire. The signatures are right there and signed
15 that at 2:21 they are interviewing Phillip Watts, forty
16 minutes before Annette Hicks ever showed up for the second
17 shift. Forty minutes they are talking to him. Forty
18 minutes before she ever showed up to work, looked down and
19 saw that newspaper with the photograph in it and said that's
20 the guy. She's calling Detective Willie Burris to say this
21 is the guy, while Tim Hager and Bruce Haire are interviewing
22 him down at the sheriff's office, forty yards from here.
23 Nobody told her. She just saw it in the paper and knew she
24 found her man.

25 Well, what about that interview? What about the

1 interview that took place on February the 18th, while
2 Annette Hicks is calling Detective Burris? Detective Haire
3 and Lieutenant Hager are taking a statement, and what did
4 they tell you? I asked, "what was the subject matter? Was
5 the subject matter of your interview this robbery?

6 "No.

7 "Who brought this robbery up? Did you ask him
8 about it, Lieutenant Hager?

9 "No, sir. I did not. He brought it up on his
10 own.

11 "Detective Haire, did you ask him?

12 "No, sir, he brought it up on his own.

13 "What did he tell you about that?

14 "He said I robbed the store across from
15 Northwestern High School. I drove Stephanie's burgundy
16 Dodge Durango and parked on the street behind the store and
17 walked up there. I was wearing a blue hooded sweatshirt
18 that had Gold Hill across the front in white lettering.
19 People saw me leave in the Durango."

20 Lieutenant Hager, his department wasn't even
21 tasked with the responsibility of investigating this case.
22 And Detective Haire, it wasn't his case either. It's
23 Detective Burris' case. This isn't their case to
24 investigate. It's his case, but he's telling them details
25 about the case that Detective Burris testified were never

1 released to the public. Nobody knew about this blue hooded
2 sweatshirt with Gold Hill written across the front of it.
3 Nobody knew about that, except the police, Annette Hicks,
4 and the man who robbed Annette Hicks - Phillip Watts.
5 That's how he knew to tell that back to two guys who didn't
6 have anything to do with that investigation.

7 "Leaving in the Durango. Stephanie's Durango,"
8 just like Stephanie said.

9 "People saw me," just like the Keeners said; just
10 like Sommer Young said. They saw that Durango. And that
11 night, as it was driving by and they are looking at it go by
12 them, they knew that it had some significance. It's awfully
13 odd that the robber disappears in the back of the store and
14 less than a minute later a Durango is pulling out. They put
15 two and two together that night and that's why they told the
16 police about the Durango. And the only other people that --
17 the only other person that would have known about the
18 Durango was the actual robber himself, Phillip Watts.

19 There it is. Stephanie's Durango and her father.

20 There is more. This is where the police found Mr.
21 Watts. But they didn't just find Mr. Watts at this
22 apartment. They also found Mr. Watts' keys and Mr. Watts'
23 wallet. And in addition to that they found a box of
24 ~~ammunition, which Stephanie Storey testified they bought at~~
25 Wal-Mart, and a dark .22 revolver, 22-caliber revolver, just

1 the same caliber, style of gun. It appears to be the same
2 as I showed you in that picture. This thing, cylinder,
3 barrel, 22-caliber, just like Annette Hicks told the police.
4 She testified giving her statement to the police, she said
5 it was a .22. What do they find where Phillip Watts was? A
6 .22 revolver. That, I submit, is gracious plenty upon which
7 to base a verdict of guilty.

8 I submit to you, ladies and gentlemen, there is no
9 doubt Phillip Watts is the man who pointed this gun at that
10 good woman and took her money and left the store.

11 Now, the defense isn't required to put up a case.
12 They're not, but they do have the right to put up one, if
13 they want to, and in this case they chose to. And
14 essentially what they said was they put up two witnesses -
15 his momma. And the judge is not going to charge you that
16 the momma has a Constitutional Right to take the stand in
17 defense of her baby, but they do. I don't fault Ms. Dunham
18 for coming into this courtroom and saying that he was with
19 her that night. She loves her son. I understand that.

20 And, likewise, his sister Samantha, she loves her
21 brother. She told you so. She said she wouldn't lie for
22 him, but I told her -- you probably have figured this out by
23 now, but when I was questioning Samantha I knew that the
24 21st was Martin Luther King day. The minute she talked and
25 said she had gone to school on the bus, I thought to myself

1 isn't that right around the time of Martin Luther King day?
2 I asked my assistant when was Martin Luther King day. She
3 said it was the 21st. So I made sure that Stephanie knew --
4 Samantha, rather, knew, A, how important it was that she be
5 accurate, and I asked her "how confident are you in your
6 memory of these events?" It's so important. I wanted her
7 to be absolutely certain, because when you give testimony in
8 a case like this, you need to be absolutely certain. Y'all
9 have a heavy job and you need the best information that you
10 can have to do that job, but Samantha doesn't know. I
11 submit to you, at best, she is confused. She doesn't know
12 what day. Mr. Freeman acknowledged in his closing argument
13 people can't remember what happened seven months ago, and at
14 best, she's confused. At worst, she's trying to help her
15 brother out stretching the truth and saying something ain't
16 quite right. I don't fault her. She is young and she loves
17 her brother, but, ladies and gentlemen, that alibi doesn't
18 wash. Momma's testimony isn't even an alibi. She went to
19 bed at nine o'clock. This crime happened at 10:30. She
20 can't say where her son was at 10:30. All we know about
21 Samantha, she doesn't know what day it was. She can't say
22 what time he was there, because her memory has been proven
23 beyond any doubt to be faulty, that she was absolutely
24 certain that she went to school the next day. She got on
25 the bus and Phillip was on the couch, but there was no

1 school the next day. It was Martin Luther King day.

2 So ultimately the only thing you can believe are
3 the measurements that Mr. Channell took from the defense
4 case. That's it. There is no alibi. Mr. Watts has no
5 explanation for where he was that night, because the
6 explanation of his witnesses gave you is false.

7 Now, the law in this case is fairly
8 straightforward. He's charged with armed robbery - the
9 taking of another persons property while armed with a deadly
10 weapon with the intent to permanently deprive the owner of
11 the property. I submit to you that's been proven by Annette
12 Hicks' testimony and the video that you have.

13 The other charge, possession of a firearm during
14 the commission of a violent crime. The judge will charge
15 you that armed robbery is a violent crime. If you find him
16 guilty of armed robbery and you believe he was carrying this
17 gun, then I submit to you that if you find him guilty of
18 armed robbery, you have found him guilty of caring this gun
19 and he's guilty of possession of a firearm during the
20 commission of a violent crime.

21 The judge will instruct you as to what reasonable
22 doubt is. Nothing he will tell you can be proven with
23 absolute certainty. Nothing in this world can be proven
24 with absolute certainty. Proof of evidence beyond a
25 reasonable doubt is proof that leaves you firmly convinced

1 of the defendant's guilt.

2 I submit to you, ladies and gentlemen, that the
3 defendant is awash in guilt. He is the man that went in and
4 pointed that gun at Annette Hicks that night. He is the man
5 that Sommer Young saw through the window yelling at her. He
6 is the man that the Keener boys saw coming out of the store
7 and walking back around the store. He's the man that drove
8 Stephanie Storey's burgundy or plum colored Durango away
9 from the scene of the crime. He's the man that confessed to
10 doing these things to Detective Haire and Lieutenant Hager.
11 He signed his name saying "yes, I am the guilty man," a copy
12 of which you have in evidence.

13 This is a photograph in the daytime of where
14 Annette Hicks works. Maybe later today or tomorrow Annette
15 Hicks will go back to the Exxon One Stop and she will walk
16 into the door. She will put her things down on the counter.
17 She will go over and get her register ready and she will be
18 standing back there waiting for customers to come in, and
19 she will know what happened to her on January 20th, 2008.
20 And every time the door bell rings at night indicating that
21 another customer is coming to the door, her chest will
22 tighten up a little bit. She will bear the psychological
23 scars of what happened to her the rest of her life. What
24 ~~she should be able to do, I submit this evidence justifies~~
25 beyond any question, beyond any reasonable doubt. She

1 should be able to stand there and look at the man who did.
2 that to her has been brought to justice. We have done our
3 job. Now you do yours. Phillip Watts is guilty. He did
4 this thing and find him guilty. Thank you.

5 (Whereupon, at 11:00 a.m., the Court charged the
6 jury panel)

7 THE COURT: Ladies and gentlemen, now that you
8 have heard all of the evidence and the arguments of the
9 attorneys, it becomes my responsibility to explain to you
10 the law that is applicable to this case.

11 As I instructed you on Monday, under our
12 Constitution and Code of Laws here in South Carolina, only
13 the jury can make the findings of fact in this case, and I
14 am not permitted to indicate to you how I might feel about
15 the facts. So if I have said anything or done anything
16 during the course of this trial that might lead you to
17 believe that I have an opinion about the facts, then you
18 should disregard that.

19 To determine the facts in this case, you will have
20 to evaluate the credibility, which, of course, means the
21 believability of the witnesses who have been called on to
22 testify. And some of the things that you might wish to
23 consider as you decide whether to believe a witness'

24 testimony about a particular matter include the following:

25 The manner and appearance of the witness who

1 testified. Was he or she straightforward or hesitant in
2 answering questions.

3 Was the testimony of a witness consistent or
4 inconsistent.

5 How did the witness come to know the facts that he
6 or she is testifying to and what is that witness' ability to
7 know those facts.

8 Is there some reason that a witness might want to
9 give testimony that would help or hurt one side or the
10 other?

11 Is the testimony of a witness strengthened or
12 weakened by other testimony and evidence?

13 As members of the jury you can believe as much or
14 as little of each witness' testimony as you think is
15 appropriate to do. You can believe the testimony of one
16 witness against all the rest of them, or you can do just the
17 opposite, and you are not required to accept testimony as
18 true, even if it is uncontradicted.

19 Now, I have admitted into evidence two exhibits
20 that have been redacted. And as I instructed you at the
21 time those exhibits were introduced, you should not concern
22 yourself with what was redacted from those exhibits or why
23 that evidence was redacted. The evidence that was taken out
24 of the exhibit or redacted from the exhibit was determined
25 by me not to be relevant to the case and you should not

1 concern yourself with what that evidence might have been or
2 what impact it might have had on the case. You should just
3 consider the evidence that was actually admitted into the
4 trial.

5 Now, the same Constitution and Code of Laws that
6 make you the exclusive judges of the facts also makes me the
7 exclusive judge of the law. So if you have some idea as to
8 what the law is or what the law should be and if that
9 differs from what I now tell you the law is, then you are
10 obligated under the oath that you have taken as jurors to
11 set your notion of the law aside and to accept and apply the
12 law precisely as I now explain it to you.

13 The fact that the defendant was arrested and
14 charged and indicted in this case is not evidence and cannot
15 be considered by you in any way as evidence of the
16 defendant's guilt, nor does it create any presumption or
17 inference of guilt. The indictment is simply the formal
18 written instrument that contains the allegations that have
19 been made against the defendant, and the indictment serves
20 to process the case and bring it into this court for trial.

21 The defendant has pled not guilty to both counts
22 of this indictment. And the plea of not guilty casts the
23 burden on the State to prove the defendant guilty beyond a
24 reasonable doubt.

25 A person charged with committing a crime in South

1 Carolina is never required to prove themselves innocent.

2 Now, it is a very important rule of law in our
3 country, as I explained to you on Monday, that the defendant
4 in a criminal trial will always be presumed to be innocent
5 of the crimes with which he has been charged, unless, and
6 until, his guilt has been proven by evidence that satisfies
7 you of that guilt beyond a reasonable doubt.

8 The presumption of innocence is not merely a legal
9 theory. It is not just a legal phrase that we use. It is a
10 substantial Constitutional Right to which every defendant is
11 entitled. The presumption of innocence accompanies the
12 defendant from the time he is charged, throughout the trial,
13 and into the jury room, until you reach a verdict of guilt
14 that is based on evidence that has satisfied you of that
15 guilt beyond a reasonable doubt.

16 Now, ladies and gentlemen, I instruct you now and
17 I emphasize to you that the fact that the defendant did not
18 testify in this trial cannot be considered by you in any
19 manner during your deliberation. The defendant has a
20 Constitutional Right to remain silent and the exercise of
21 that right cannot and must not be held against the
22 defendant. Under the oath that you have taken as jurors,
23 you are to draw no inference and no conclusion whatsoever
24 from the fact that the defendant did not testify. Do not
25 even discuss this in the jury room. The defendant is not

1 required to prove anything. The burden of proof remains on
2 the State.

3 A reasonable doubt is a doubt which makes an
4 honest, sincere, conscientious juror in search of the truth
5 in the case to hesitate to act.

6 Proof beyond a reasonable doubt must, therefore,
7 be proof of such a convincing character that a reasonable
8 person would not hesitate to rely on it and act on it in the
9 most important of his or her own affairs.

10 Proof beyond a reasonable doubt can also be
11 described as proof that leaves you firmly convinced of the
12 defendant's guilt.

13 Now, there are very few things in this world that
14 we know with absolute certainty, and in criminal cases the
15 law does not require proof that overcomes every possible
16 doubt.

17 If, based on your consideration of the evidence,
18 you are firmly convinced that the defendant is guilty of the
19 crime charged, then you must find him guilty.

20 But, on the other hand, if you think that there is
21 a real possibility that he is not guilty, then you must give
22 him the benefit of the doubt and find him not guilty.

23 I have admitted into evidence in this case
24 statements alleged to have been made by the defendant.
25 Before you can consider this statement as evidence for any

1 purpose, you must first find that the State has proven
2 beyond a reasonable doubt that the answer is yes to both of
3 the following questions, and the questions are:

4 Did the defendant make the statement?

5 And, second, was the statement made voluntarily?

6 The word voluntarily, of course, means that he
7 freely chose to make the statement, that it was not induced
8 by pressure or force or intimidation.

9 If the statement was voluntarily made, it may be
10 used against him. But if the statement was not voluntary,
11 it cannot be used against the defendant.

12 In determining whether or not the statement of the
13 defendant was voluntary, you should consider all of the
14 facts and circumstances surrounding the statement, including
15 the defendant's age and maturity, his level of education and
16 intelligence, his physical and mental health, his background
17 and his environment, the nature of any questioning, and any
18 other evidence that you believe bears on the voluntariness
19 of the defendant's statement.

20 If the defendant was in custody at the time the
21 statement was made, then you should consider also the place
22 and length of his custody and whether or not he was given
23 and whether or not he understood his Constitutional Rights
24 or what are commonly referred to as his Miranda Rights and
25 these rights are:

1 That he has the right to remain silent.

2 That any statement that he does make can and will
3 be used against him in court.

4 That he has the right to consult a lawyer before
5 and during any questioning.

6 That if he cannot afford a lawyer, the court will
7 appoint one to represent him at no cost to him.

8 And that he has the right to exercise these rights
9 at any time and terminate questioning or not answer
10 questions or not make any statement.

11 Now, ladies and gentlemen, I find as a matter of
12 law that the defendant was in custody at the time the
13 statement was allegedly made.

14 Before you may convict the defendant of either of
15 these crimes, you must first find that the State has proven
16 beyond a reasonable doubt that this defendant is the person
17 who committed the crime.

18 Now, in this regard you have heard the testimony
19 of witnesses who have identified the defendant.

20 Identification testimony is an expression of
21 belief or impression by a witness, and you must evaluate the
22 credibility of each identification witness in the same way
23 that you would for any other witness. You must determine
24 not only whether the witness' testimony is truthful, but you
25 must also determine whether the witness' identification is

1 accurate.

2 In considering the accuracy of the identification,
3 you should consider whether the witness had an adequate
4 opportunity to observe the offender at the time of the
5 offense. This will be affected by factors such as the
6 length of time available for observation, the distance from
7 the defendant to the witness, the lighting conditions, and
8 whether the witness had the chance to see or know the person
9 in the past.

10 You should also consider whether the later
11 identification made by the witness was the product of its
12 own recollection. This will be affected by the same factors
13 listed above, and also by the time that elapsed between the
14 witness' observation of the defendant and his later
15 identification; whether there were any occasions on which
16 the witness failed to make an accurate identification; the
17 strength of the education and the circumstances under which
18 it was made; and any other circumstances which you deem to
19 be important.

20 I emphasize to you that the State must prove every
21 element of the crime charged, and this specifically includes
22 the burden of proving beyond a reasonable doubt the identity
23 of the defendant as the person who committed these crimes.

24 If, after examining all of the evidence in this
25 case, you have a reasonable doubt as to whether this

1 defendant committed the crimes, then you must find the
2 defendant not guilty.

3 The defendant is charged with armed robbery.

4 In order to convict the defendant of armed robbery
5 the State must prove five essential elements each beyond a
6 reasonable doubt.

7 First, the State must prove that the defendant
8 took personal property from the person or presence of
9 another person.

10 Second, the State must prove that the defendant
11 carried the property away.

12 Third, the State must prove that the defendant
13 intended to permanently deprive the owner of the property
14 and to keep the property for the defendant's own use.

15 Fourth, the taking and carrying away of the
16 property must have been done with violence or by putting the
17 owner of the property in fear of violence.

18 And, finally, the State must prove beyond a
19 reasonable doubt that the defendant was armed with a deadly
20 weapon during the robbery.

21 Now, property is in the presence of another person
22 if it is within the person's reach, inspection, observation,
23 or control, so that the person could, if not overcome with
24 violence or prevented by fear, keep possession of the
25 property.

1 The slightest removal of the property or the
2 complete possession of the property, even for an instant, by
3 the defendant is sufficient to show a taking and a carrying
4 away of the property.

5 A deadly weapon is any article, instrument, or
6 substance which is likely to cause death or great bodily
7 harm.

8 And whether an instrument has been used as a
9 deadly weapon depends on the facts and circumstances of each
10 case.

11 The defendant is also charged with possession of a
12 weapon during the commission of a violent crime.

13 In order to convict the defendant of this crime,
14 you must first find that the defendant -- you must first
15 find the defendant guilty of armed robbery, which is
16 classified as a violent crime under South Carolina law.

17 In addition, you must find that the State has
18 proven beyond a reasonable doubt that the defendant
19 possessed a firearm during the commission of the crime of
20 armed robbery.

21 The defendant has raised the defense of alibi.
22 When the defense of alibi is raised, then the State must
23 refute the alibi defense. There is no burden on the
24 ~~defendant to prove an alibi. The burden is on the State to~~
25 prove beyond a reasonable doubt that the defendant was

1 actually present at the scene of the crime, that he actually
2 committed the crime, and that he was not somewhere else; in
3 other words, the State has the burden of disproving the
4 defendant's alibi defense beyond a reasonable doubt.

5 Ladies and gentlemen, your verdict must be
6 unanimous. In order for you to convict the defendant, all
7 twelve of you must agree on a verdict of guilty.

8 In order for you to acquit the defendant, all
9 twelve of you must agree on a verdict of not guilty.

10 In just a few minutes I'm going to send you back
11 into the jury room, but I'm going to ask you not yet to
12 begin your deliberations, because I will have some matters
13 of law that I need to take up with the attorneys.

14 While I do that, I would like for you all to
15 select a foreperson to serve the jury. The job of the
16 foreperson is to preside over the deliberations. And then
17 when it becomes necessary to communicate with the court, and
18 those communications will have to be in writing.

19 There are two counts in the indictment and you
20 must separately deliberate as to each count. It is possible
21 that you might find a different verdict as to different
22 counts. You must separately unanimously reach different
23 verdicts for each count. They could be the same. They
24 might be different.

25 What goes on in the jury room is private and

1 should not be disclosed to anyone, and that is particularly
2 true for votes that you may take that do not result in a
3 unanimous verdict. If the jury takes a verdict and the vote
4 is not unanimous, you should not reveal the vote or the
5 results of that vote to anyone until it is unanimous.

6 In just a few moments after you all have told us
7 who the foreperson is, I will then send back into the jury
8 room the exhibits that have been introduced into evidence.
9 I will also include for you a verdict form which will give
10 you these two options on each count:

11 On Count I, your verdict options are either guilty
12 or not guilty.

13 And on Count II, your verdict options also are
14 either guilty or not guilty.

15 Now, I always instruct the jury when we have a
16 firearm in evidence of the obvious fact that this is
17 something that must be dealt with very carefully. There
18 will not be -- there are no -- there is no ammunition
19 admitted. Okay.

20 MR. BRACKETT: No, sir.

21 THE COURT: You will not have any ammunition with
22 you in the jury room. You will have the firearm back there.
23 The firearm, as the officer explained during his testimony,
24 ~~is disabled so that it cannot be fired in its current~~
25 condition.

1 If there is any member of the jury who feels that
2 you must examine the firearm in a fashion where it could be
3 fired, in other words, that you might need to remove the
4 plastic restraint that has been put on it, don't do that in
5 the jury room. Just let me know and we will get you back
6 out here into the courtroom to remove that disabling device
7 and you all can examine it under my supervision here in the
8 courtroom.

9 Mr. Stephens and Ms. Vanover, would you please
10 remain in your seats. If you have anything in the jury
11 room, the bailiff will get it out for you. The rest of you
12 please go back into the jury room. Do not begin your
13 deliberations until I have sent back to you the exhibits and
14 the verdict form, and at that time you will get an
15 instruction from the bailiff that you may begin.

16 (Whereupon, at 11:15 a.m., the jury panel retired
17 to the jury room to await instructions to begin
18 deliberations)

19 THE COURT: Would one of you gentlemen please take
20 these two alternates back into the hall, or if you need to
21 stay in here, you can find someone to take them back in the
22 hall, but not into the jury room?

23 THE BAILIFF: Yes, sir.

24 THE COURT: All right. Thank you.

25 (Whereupon, the alternates left the courtroom)

1 THE COURT: Any exceptions to the charge?

2 MR. THOMPSON: Your Honor, there is just two
3 things we would ask. And I just may be mistaken what I read
4 last night, but it was my impression that with an alibi
5 defense, we don't have to disprove it beyond a reasonable
6 doubt, but by a preponderance of the evidence. We would
7 have to disprove it, in other words, the alibi by a
8 preponderance of the evidence, not beyond a reasonable
9 doubt. And I -- I may be mistaken on that, but I just want
10 to clarify that in the instruction, if that is correct or
11 not.

12 THE COURT: Okay. What was the other matter?

13 MR. THOMPSON: In addition, Your Honor, I think
14 one of the things we would like us for the jury to be
15 instructed basically consider the armed robbery first,
16 because if, for instance, the jury were to come for a
17 compromised verdict, they may -- I think at this point may
18 not realize they can convict him. They can't convict him of
19 the possession of a firearm in the commission of a violent
20 crime if they do not convict him of the armed robbery. So I
21 would like for them to understand that they have to -- they
22 have to find him guilty of the armed robbery to even
23 consider the possession of a firearm -- of firearm in the
24 ~~commission of a violent crime.~~

25 THE COURT: I think I was fairly clear about that.

1 I told the jury that in order to convict the defendant of
2 possession of a weapon during the commission of a violent
3 crime, they must first find the defendant guilty of armed
4 robbery.

5 MR. THOMPSON: All right. You did. You did.

6 Then I -- we won't worry about that, but I do want
7 to look into that one --

8 THE COURT: Okay.

9 MR. THOMPSON: -- thing on alibi.

10 THE COURT: All right. Mr. Freeman, any
11 exceptions?

12 MR. FREEMAN: You had already -- judge, the second
13 one, Your Honor, I thought the standard for alibi was beyond
14 a reasonable doubt. Obviously if the case law indicates
15 differently, that's fine.

16 If you are going to bring them back in, I was
17 following along on your proposed charge. You actually -- or
18 I did not hear you indicate that their verdict must be based
19 solely on the evidence. I know that you addressed the
20 evidence and other things like that when you spoke about
21 their obligations that they have to independently -- under
22 your section indicated finders of the fact. I just made
23 note that their verdict just has to be based on evidence, or
24 not emotion, or other things.

25 THE COURT: I'm sorry, what now?

1 MR. FREEMAN: At the end of your proposed charge I
2 did not hear the court indicate to them that the jury must
3 independently weigh the evidence presented in this trial and
4 render a verdict based solely on that evidence. I just
5 didn't hear you indicate that their verdict has to be based
6 just on evidence.

7 THE COURT: Well, I wouldn't have told them that
8 because that wouldn't be true. They have to -- they have to
9 base it on the law and the evidence. I have been clear
10 throughout the course of the trial that they can't base it
11 on evidence, except that evidence which comes before them in
12 this trial. I could tell them that they can't base their
13 verdict on sympathy or passion, but I usually don't make a
14 charge like that, because I usually tell -- I have been very
15 clear in telling the jury what the elements are. And the
16 elements don't include anything, such as sympathy or
17 passion. So -- I would like for you to be more specific as
18 to exactly what it is that you think I should tell the jury.

19 MR. FREEMAN: Your Honor, in the proposed charge
20 you had given under the section that headlines the jury,
21 finders of the fact, or at least I didn't hear you charge
22 that last sentence.

23 THE COURT: All right. Let me --

24 MR. FREEMAN: That's all I'm just saying in that
25 one sentence. I was paraphrasing your sentence.

1 THE COURT: Under what section?

2 MR. FREEMAN: Finders of the fact. It would be
3 the first full paragraph, actually on, I guess, page one.

4 THE COURT: Okay. I did leave out that sentence.

5 MR. FREEMAN: I was paraphrasing the rest of it,
6 Your Honor.

7 THE COURT: I did leave out that sentence. I
8 don't think that that is legally incorrect.

9 MR. FREEMAN: Okay.

10 THE COURT: And so in order for me to figure out
11 exactly what you are asking me, can you tell me now?

12 MR. FREEMAN: Your Honor, if you --

13 THE COURT: You just want me to charge that one
14 sentence?

15 MR. FREEMAN: Yes, sir, and any other charge that
16 may be appropriate based on the State's objections, simply
17 that I instruct you must independently weigh the evidence
18 presented in this trial and render a verdict based solely on
19 that evidence.

20 MR. THOMPSON: Your Honor, I see where there is
21 case law which says that it's an error to instruct the jury
22 that alibi is an affirmative defense which must be proved
23 by -- or must be proved by a preponderance of the evidence,
24 but --

25 THE COURT: I -- I believe that you are mistaken

1 and --

2 MR. THOMPSON: I may be, judge.

3 THE COURT: I -- I don't see how you could --
4 really the alibi defense is nothing more than a factual
5 presentation by the defendant to the sort of overriding
6 elements that you have to prove who did it, and you clearly
7 have to prove who did it beyond a reasonable doubt.

8 MR. THOMPSON: Right.

9 THE COURT: So I just have looked through every
10 case that mentions alibi and reasonable doubt in the same
11 paragraph and there is nothing in here that gives any
12 indication that what you said was correct. And so I'm --
13 I'm -- and I'm satisfied that you have to prove who did it
14 beyond a reasonable doubt, and alibi defense is simply a
15 response to the allegations of who did it.

16 MR. THOMPSON: All right. Thank you, Your Honor.

17 THE COURT: All right. Then as far as -- so you
18 also want me to -- you have asked me to instruct the jury
19 that they have to consider the armed robbery count first. I
20 think I have done that.

21 And then the objection from the defense is that I
22 omitted a sentence from my proposed charge.

23 Any other objection from the defendant?

24 MR. FREEMAN: Nothing as to the charge, no, sir.

25 THE COURT: That sentence is correct, but it's

1 really just a way that sometimes I restate the proposition
2 that they can't be affected by what I do and that they have
3 to -- they are the ones who have to render the verdict and
4 not me, and I -- I don't know that -- I'm going to leave it
5 as it is.

6 MR. FREEMAN: Yes, sir.

7 THE COURT: All right. The foreperson is Terrence
8 Williams.

9 I would like for you all to come up and look over
10 these exhibits and make sure that you agree on what the
11 exhibits are, and I will then be working on a verdict form.

12 (Off the record)

13 (Back on the record)

14 (State's Exhibit No. 35-A marked for
15 identification)

16 MR. FREEMAN: We agree on the exhibits.

17 MR. THOMPSON: We agree.

18 THE COURT: Your Honor, I have had an opportunity
19 to review the exhibits with the solicitor and I agree that
20 what's in evidence is what the court properly admitted
21 obviously there were objections as we went along, but I
22 think it is all the items, two or three things that were
23 redacted and one specific exhibit that was not to be
24 introduced at all and that's not to be sent back. That's
25 not being sent back to the jury.

1 THE COURT: All right. If you will hold on just
2 one moment, I'm going to have the verdict form printed.

3 (Off the record).

4 (Back on the record)

5 THE COURT: I think what I'm going to do is I'm
6 going to bring the jury back in here and because of all this
7 influence, possibly -- I'm satisfied that it really has not
8 reached the jury, but because of all the press coverage, I'm
9 going to instruct them again that they must render a verdict
10 that's based solely on the testimony and evidence that they
11 presented -- that was presented here in the courtroom, and
12 not based on what they might have heard or saw before the
13 trial, or anything else. And that will satisfy your
14 objection. That will satisfy me that I have renewed my
15 emphasis to them that they should ignore press coverage, and
16 I will do that and then send them back to deliberate.

17 I'm also going to mention to them what their
18 options are for lunch.

19 MR. FREEMAN: Do you have the verdict form to
20 review?

21 THE COURT: It's coming up right now.

22 MR. FREEMAN: Thank you.

23 (Off the record)

24 (Back on the record)

25 THE COURT: Bring the jury in.

1 (The following takes place in the presence of the
2 jury panel)

3 THE COURT: All right, ladies and gentlemen just a
4 couple little things before I send you back to begin your
5 deliberations.

6 I want to reemphasize to you, as I have told you
7 several times during the course of this trial, that it is
8 your responsibility as jurors to come into this trial and
9 now to enter into your deliberations with open mind and to
10 consider carefully all of the evidence that has been
11 presented before you in this trial, and to render a verdict
12 that is based solely on the evidence that you have seen and
13 heard in the trial, and not based on anything else, and in
14 light of the law as I have now explained it to you.

15 I have prepared for you a verdict form, and I'm
16 going to go over it with you very quickly. It has two
17 paragraphs.

18 The first paragraph reads on Count I of the
19 indictment for armed robbery, we, the jury, unanimously find
20 the defendant, and then I have listed two options.
21 Obviously I had to put them in some order. I couldn't put
22 both of them at the same time. There is no significance to
23 the order that I chose in giving you your verdict options,
24 but the options are guilty and not guilty.

25 The second paragraph reads on Count II of the

1 indictment for possession of a firearm during the commission
2 of a violent crime. We, the jury, unanimously find the
3 defendant, and then again either guilty or not guilty.

4 Now, it is twenty minutes to twelve. It's getting
5 close to lunch. I would be surprised if your deliberations
6 did not carry you past lunch, and so I want to explain to
7 you that we will provide you lunch. I expect that it will
8 take about an hour, right?

9 THE CLERK: Uh-huh.

10 THE COURT: Well, we will have the clerk bring to
11 you some menus and then you can order from those menus and
12 we will have the lunch brought to you as quickly as we can.

13 I'm assuming that you would like for us to go
14 ahead and do that right now, so we will have those menus
15 brought back to you within the next few minutes. And as you
16 are beginning your deliberations, you can make your lunch
17 selections and let us know as soon as you are ready what
18 those are and we will get it to you as quickly as we can.

19 With that I'm going to send you back into the jury
20 room. You will have brought to you immediately the exhibits
21 and the verdict form and you may begin your deliberations.

22 Also Ms. Stephens and -- I'm sorry, Mr. Stephens
23 and Ms. Vanover, I would like for you -- you are going to
24 stay with us. We will bring you lunch and we will keep you
25 in a separate room back there. I'll ask you not to discuss

1 the case nor to allow anyone else to discuss this case with
2 you, and we will see you during the course of the afternoon.
3 All right.

4 Take the jury back.

5 And you have another room you can put the
6 alternates in, right?

7 THE BAILIFF: Yes.

8 THE COURT: Thank you.

9 (Whereupon, at 11:42 a.m., the jury retired to the
10 jury room to begin deliberations)

11 THE COURT: Now, are there any objections to the
12 original charge or to the supplemental charge, from the
13 State, other than the one that you already mentioned about?

14 MR. BRACKETT: None from the State, Your Honor.

15 THE COURT: From the defense?

16 MR. FREEMAN: Nothing from the corrected
17 instruction, no, sir.

18 THE COURT: So to make it clear, you believe that
19 my supplemental instruction has corrected whatever defects
20 that you found in the first instruction?

21 MR. FREEMAN: Yes.

22 THE COURT: Thank you.

23 All right. Then let's take up the question of

24 this SLED report and then we will see what other business
25 the solicitor's office would like for me to attend to while

1 we wait for the jury to reach a verdict.

2 I don't really know there is anything to decide
3 about it, unless somebody -- I mean, what I plan to do is to
4 make the -- I have a two page exhibit whose conclusion is
5 that it was, in fact, Phillip Watts, Jr. Who wrote the
6 questioned signatures on the statement and that he made the
7 initials on the statement that he. So the SLED agent
8 concluded that he did, in fact, sign the statement. I don't
9 know if there's anything else to do but make that a part of
10 the record.

11 Anything further from y'all?

12 MR. BRACKETT: No, sir.

13 MR. FREEMAN: Your Honor, I just suggest that you
14 add the fax cover page as well, which has some information
15 about where it came from. There would be a three page
16 exhibit.

17 Had it come back differently, obviously I might
18 have made a motion for a mistrial or something like that,
19 but it didn't, so I would ask the court to direct it just a
20 court exhibit at this point.

21 THE COURT: All right, then, is there anything
22 further?

23 MR. FREEMAN: Nothing from the defendant at this
24 time.

25 MR. BRACKETT: No, sir.

1 THE COURT: All right. I'm going to take a short
2 break and I will be back out here to see what else y'all
3 want to do.

4 MR. BRACKETT: Do you want us to stay close to the
5 courthouse during lunch, or do you give us a brief period of
6 fo time. The only other question comes in if they take a
7 smoke break. It just occurred to me if they do, that they
8 shouldn't continue deliberating in the absence of the
9 smokers.

10 THE COURT: Right. They won't take a smoke break
11 without me knowing about it, and I will -- I don't -- well,
12 in that event, since we are going to be getting lunch, would
13 it suffice for y'all for me to have the bailiff instruct the
14 jury when she allows the smoke break, that they should cease
15 their deliberations, or would you like me to bring them
16 back --

17 MR. FREEMAN: No, that message from the bailiff is
18 sufficient. She could say the judge told me to tell you if
19 you take a smoke break just stop while you are smoking.

20 THE COURT: Got it?

21 THE BAILIFF: Got it.

22 THE COURT: All right.

23 (SLED Report marked as Court's Exhibit No. 1 for
24 identification).

25 (Whereupon, at 11:44 a.m., proceedings were

1 adjourned, pending the verdict of the jury panel)

2 (Whereupon, at 12:40 p.m., proceedings were
3 reconvened)

4 THE COURT: All right. I don't know that we need
5 the defendant out here. Y'all take a look at this note.

6 (Whereupon, the lawyers approached the bench for
7 an off-the-record discussion)

8 THE COURT: Let's get the defendant out here for
9 this discussion.

10 (Jury Note marked as Court's Exhibit No. 2 for
11 identification)

12 THE COURT: All right. I have a note from the
13 jury. It's actually not signed by the foreperson, but it
14 was brought to me by the bailiff. And the question appears
15 to be "11-B and 32-A, are these the same pictures?"

16 MR. BRACKETT: I think 11-B refers to the
17 newspaper article that's been redacted on the photograph.

18 32-A is the photo that's taken at the detention
19 center that I redacted from his jumpsuit by cutting the head
20 out, basically. They are not the same pictures and I think
21 Mr. Freeman --

22 MR. FREEMAN: I would concede they can't be the
23 same picture.

24 ~~THE COURT: Well, the first question is whether or~~
25 not that is a question that I can even answer, because -- I

1 mean, if y'all agree that I should answer the question no,
2 then I suppose there is no problem in me actually answering
3 the question.

4 MR. BRACKETT: I have no problem with you --

5 MR. FREEMAN: I think we all agree that they are
6 not. Perhaps rather than just coming out having them say
7 no, maybe we could agree, but they are both items of
8 evidence and I have already instructed you on evidence, and
9 that's it. I mean, I don't know that you want to bring them
10 out here and say --

11 THE COURT: I can write no to this page.

12 MR. FREEMAN: That would be fine.

13 THE COURT: If that's what you want me to do.

14 MR. BRACKETT: It suits me.

15 THE COURT: Well, how is it that you are so sure
16 that they are not the same picture?

17 MR. BRACKETT: One is from the driver's license
18 photograph. The other is from his mug shot taken at the
19 detention center.

20 MR. FREEMAN: They can't be, because the picture
21 in the paper on the 18th would have had to have been taken
22 at a day before the 18th.

23 MR. BRACKETT: True.

24 MR. FREEMAN: The picture when he was arrested was
25 taken on the 18th. So logically the paper had the picture

1 at some day before the 18th.

2 THE COURT: All right.

3 So you -- you want me to answer the question
4 simply by writing no and signing my name?

5 MR. BRACKETT: That suits us.

6 MR. FREEMAN: Unless the court's thinks again a
7 very small instruction. But, yeah, I don't -- we both agree
8 the answer is no.

9 THE COURT: Well, I hate to be too demanding, but
10 that doesn't answer my question. Do you want me to answer
11 the question simply by writing no and signing my name?

12 Now, you have two options and I list them in no
13 particular order; yes or no?

14 MR. FREEMAN: Yes.

15 THE COURT: Okay. Here it is. Take a look at it
16 and if they agree, send it back.

17 MR. BRACKETT: That appears to be a negative
18 answer.

19 THE COURT: Show it to Mr. Freeman.

20 MR. FREEMAN: Yes, sir. You have already put the
21 sticker on there. You had already put the sticker on there.
22 I just don't want them to say what was Court's 1. That's
23 fine.

24 THE COURT: I'm not concerned about that.

25 MR. FREEMAN: Okay. Yes, sir. Does it -- is it

1 dated? I didn't catch it. I didn't think anybody dated it
2 or anything.

3 THE COURT: It's not dated.

4 All right. Take it back to the jury. And I am
5 going to take a short break, because I have been told that
6 lunch is here.

7 (Whereupon, at 12:45 p.m., proceedings were
8 adjourned, pending the verdict of the jury panel)

9 (Whereupon, at 1:16 p.m., proceedings were
10 reconvened)

11 THE COURT: All right. I understand we have a
12 verdict. Is everybody ready?

13 MR. THOMPSON: Mr. Freeman stepped to the bathroom
14 just briefly, Your Honor. He will be right back.

15 (Off the record)

16 (Back on the record)

17 THE COURT: Are you ready, Mr. Freeman?

18 MR. FREEMAN: We are, yes, sir.

19 THE COURT: Bring in the jury.

20 (Whereupon, at 1:22 p.m., the jury panel returned
21 to open court to report its verdict)

22 THE COURT: Mr. Foreman, has the jury reached a
23 verdict?

24 JURY FOREPERSON: Yes.

25 THE COURT: Would you pass the verdict form to the

1 bailiff, please?

2 THE CLERK: In the State of South Carolina versus
3 Phillip Fleming Watts, Jr., with Indictment 2008-GS-46-2083,
4 on Count I of the indictment for armed robbery, we, the
5 jury, unanimously find the defendant guilty.

6 On Count II of the indictment for possession of a
7 firearm during the commission of a violent crime, we, the
8 jury, unanimously find the defendant guilty.

9 Signed by the foreperson this day.

10 If this so be your verdicts, so say you all by
11 raising your right hand.

12 Let the record show all affirmed.

13 THE COURT: Mr. Freeman, anything else with the
14 jury before we move into sentencing?

15 MR. FREEMAN: I would simply ask that the clerk
16 poll the jury individually.

17 THE CLERK: Ladies and gentlemen of the jury,
18 please stand.

19 Once you have affirmed your verdict, you may be
20 seated. I'm going to start with the foreperson.

21 Number 193, is this your verdict?

22 JUROR NUMBER 193: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR NUMBER 193: Yes.

25 THE CLERK: You may be seated.

1 Number 87, is this your verdict?
2 JUROR NUMBER 87: Yes..
3 THE CLERK: Is this still your verdict?
4 JUROR NUMBER 87: Yes, sir.
5 THE CLERK: You may have a seat.
6 Number 169, is this your verdict?
7 JUROR NUMBER 169: Yes..
8 THE CLERK: Is this still your verdict?
9 JUROR NUMBER 169: Yes..
10 THE CLERK: You may have a seat.
11 Number 68, is this your verdict?
12 JUROR NUMBER 68: Yes..
13 THE CLERK: Is this still your verdict?
14 JUROR NUMBER 68: Yes..
15 THE CLERK: You may be seated.
16 Number 25, is this your verdict?
17 JUROR NUMBER 25: Yes, ma'am.
18 THE CLERK: Is this still your verdict?
19 JUROR NUMBER 25: Yes, ma'am.
20 THE CLERK: You may be seated.
21 Number 161, is this your verdict?
22 JUROR NUMBER 161: Yes..
23 THE CLERK: Is this still your verdict?
24 JUROR NUMBER 161: Yes..
25 THE CLERK: You may be seated.

1 Number 176, is this your verdict?
2 JUROR NUMBER 176: Yes.
3 THE CLERK: Is this still your verdict?
4 JUROR NUMBER 176: Yes.
5 THE CLERK: You may be seated.
6 Number 6, is this your verdict?
7 JUROR NUMBER 6: Yes.
8 THE CLERK: Is this still your verdict?
9 JUROR NUMBER 6: Yes.
10 THE CLERK: You may be seated.
11 Number 46, is this your verdict?
12 JUROR NUMBER 46: Yes.
13 THE CLERK: Is this still your verdict?
14 JUROR NUMBER 46: Yes.
15 THE CLERK: You may have a seat.
16 Number 81, is this your verdict?
17 JUROR NUMBER 81: Yes.
18 THE CLERK: Is this still your verdict?
19 JUROR NUMBER 81: Yes.
20 THE CLERK: You may be seated.
21 Number 95, is this your verdict?
22 JUROR NUMBER 95: Yes.
23 THE CLERK: Is this still your verdict?
24 JUROR NUMBER 95: Yes.
25 THE CLERK: You may have a seat.

1 Number 90, is this your verdict?

2 JUROR NUMBER 90: Yes.

3 THE CLERK: Is this still your verdict?

4 JUROR NUMBER 90: Yes.

5 THE CLERK: You may have a seat.

6 THE COURT: Mr. Freeman?

7 MR. FREEMAN: Nothing further from the panel.

8 THE COURT: All right. Bring him around for
9 sentencing, please.

10 Solicitor, let me hear about his record.

11 MR. BRACKETT: Yes, sir. Mr. Thompson, my deputy
12 solicitor, has that information.

13 MR. THOMPSON: If it please the court, Your Honor,
14 his record starts in 2000.

15 In the year 2000, when he was simply 12 years old
16 with interfering with the operation of a school bus.

17 Then in the same year, three counts of assault and
18 battery.

19 Then once again within that -- in the year 2002,
20 use of car without owner's consent.

21 And in 2003, he had a number of convictions,
22 including another simple assault and battery, two counts of
23 armed robbery, one count of attempted armed robbery,
24 malicious injury to property over \$1,000, and driving
25 without license.

1 THE COURT: All of those were in Family Court?

2 MR. THOMPSON: Yes, all those were in Family
3 Court. He served time in Family Court. He was not
4 released. When he turned 17, he was sent to the Department
5 of Corrections and continued serving that sentence. He was
6 released in September of 2007.

7 MR. BRACKETT: Four months prior to this incident.

8 I have spoken with the victim in this case, Ms.
9 Hicks, who is, of course, still here in the courtroom. She
10 indicates that she did not wish to come up and address the
11 court. However, she did want to thank the court and the
12 jury for their service in this case, and she wanted me to
13 relate to the court that she is still cared every day she
14 goes to work. She hopes that she can put this behind her,
15 but hasn't as of yet. This has just been a terrible ordeal
16 for her ever since this crime happened.

17 As far as sentencing is concerned, Your Honor, the
18 only other input that the State would have -- you, of
19 course, have heard all the details in the case. I note and
20 would emphasize the fact that he had only been out of jail
21 several months prior to committing this crime, but we have
22 no reason to suspect that he will ever change his ways, so
23 we feel the maximum sentence is appropriate in this case.

24 THE COURT: All right, sir.

25 MR. FREEMAN: You may have heard during the trial

1 Phillip is from 20 years old. He is from Rock Hill his
2 whole life. His family is here.

3 His mother, Ms. Dunham, is present and has been
4 present throughout the entire trial. I did not ask her if
5 she wants to address the court, but I certainly would want
6 the court to know she was here, and she may wish to speak at
7 the end of my comments.

8 Although Phillip does, in fact, have a juvenile
9 record, but what the solicitor, I believe, has not mentioned
10 is that at the end of his time in that system, the
11 Department of Juvenile Justice, in fact, recommended that he
12 go back to school and try to make something of himself. As
13 you may have heard, he was attending Clinton Junior College,
14 which is a local college here in York County in January of
15 this year. And obviously this explains why he was not there
16 last semester of last year.

17 He has consistently denied throughout this
18 proceeding his involvement. Of course, understanding the
19 jury's verdict, we would just ask the court, number one,
20 not -- certainly not to penalize him for exercising his
21 Constitutional Rights, and also to take note of the fact
22 that he does not have an adult record. The arguments I made
23 earlier about letting people start over, quite frankly, I
24 don't make arguments that I have no faith in, that you treat
25 it as a person who is before you for the first time, albeit

1 a serious offense, who is still before you for the first
2 time charged with a serious offense, but would also, of
3 course, like to make the court aware, and the court, I
4 believe, has become aware there are other charges pending
5 against him. Regardless of the disposition today, he will
6 not be at liberty to move around. So we would just ask the
7 court, again, to consider a sentence that you would
8 otherwise impose on someone with a first time offense, to
9 run the time, any time that you may give on both charges
10 concurrently.

11 Again, I submit that second charge is, as I
12 indicated, sort of a duplicative charge to begin with. I
13 have already made arguments on the nature of that charge;
14 that is the possession of a firearm charge. We would just
15 ask Your Honor to take all that into consideration.

16 Phillip is, of course, welcome to address the
17 court also, but, again, his mother is here on the front row.
18 I don't know if she wants to speak with you. She's -- of
19 course, you have already had the opportunity to hear her
20 speak from the stand. If I could, one second.

21 (Off the record)

22 (Back on the record)

23 MR. FREEMAN: Your Honor, she indicated it would
24 be too difficult, but she's here.

25 THE COURT: Mr. Watts, do you have anything that

1 you want to say?

2 THE DEFENDANT: No, sir.

3 THE COURT: Anything further, Mr. Freeman.

4 MR. FREEMAN: Your Honor, I had some post-trial
5 motions, but I don't mind just waiting until -- you know,
6 until we have resolve this issue, if you want to handle
7 those.

8 THE COURT: The sentence on the armed robbery
9 charge is 30 years.

10 The sentence on the possession of a weapon during
11 the commission of a violent crime is five years.

12 Those sentences will run consecutively.

13 Good luck to you, sir.

14 MR. BRACKETT: May it please the court, before Mr.
15 Watts is removed from the courtroom, while Mr. Freeman is
16 still here, there are a number of other charges pending from
17 other armed robberies and shooting incidents, and I would --
18 to save the Department of Corrections transportation costs,
19 which are exorbitant right now, I would like to serve notice
20 of intent to seek life without parole, using this conviction
21 as a predicate under the two strikes law. So if we can
22 accomplish that, I can do it in the next 30 minutes, if Mr.
23 Freeman can remain available.

24 MR. FREEMAN: Actually, Your Honor, there was a
25 matter I would want to take up outside the presence of the

1 jury, which I had already articulated to the solicitor and
2 the deputy solicitor, really as it relates to me
3 specifically. I anticipated that the State would make that
4 notification.

5 THE COURT: All right. Well, just hold Mr. --

6 Do you anticipate that your appointment will be --

7 MR. FREEMAN: That's the item I wanted to address,
8 Your Honor. I felt that needed to be dealt with by the
9 chief administrative judge, who is not present this week.

10 THE COURT: All right. Well, your representation
11 of him will last at least long enough for you to consider
12 whether or not to file a notice of appeal.

13 MR. FREEMAN: Your Honor, well, I have not
14 discussed that matter with him, I believe the rules do not
15 prohibit oral notification, so I would put the solicitor on
16 notice that that is probably our intent, but I wish to
17 discuss that with Phillip.

18 THE COURT: All right. Well, just hold him back
19 here. He won't be transported out today, but keep him in
20 this holding cell for an hour or so, until the solicitor
21 gets a chance to prepare that notice.

22 And, Mr. Freeman, if you don't mind, you can stick
23 around for at least that long and we will --

24 MR. FREEMAN: Yes, sir.

25 THE COURT: All right. Take him away.

1 MR. FREEMAN: Your Honor, did you want me to make
2 the trial-related motions?

3 THE COURT: Do you want to make the motions now,
4 sir?

5 MR. FREEMAN: Yes, sir.

6 THE COURT: Hold on.

7 MR. FREEMAN: Hold on. I will make those.

8 Your Honor, we would simply ask that the court
9 rule that under the circumstances, given the extraordinary
10 amount of press coverage, that it was virtually impossible
11 for Mr. Watts to receive a completely and impartial fair
12 trial. I understand your instruction, and I also understand
13 human nature.

14 I would also renew the arguments I made at both
15 the close of the State's case and at the close of the case
16 in general, which were made by way of directed verdict and
17 ask the court to consider those and grant him a new trial on
18 these charges alone.

19 THE COURT: All right. I deny the motions.

20 MR. FREEMAN: Thank you, Your Honor.

21 I would also ask the court to reconsider its
22 sentence for the reasons I indicated during the sentencing
23 phase.

24 THE COURT: I deny the motion to reconsider the
25 sentence?

659

MR. FREEMAN: Thank you, Your Honor.

2

THE COURT: Take him back.

3

MR. BRACKETT: Thank you, Your Honor.

4

We would be ready within 30 minutes.

5

(Whereupon, the defendant was taken out of the

6

courtroom)

7

THE COURT: Ladies and gentlemen, we all

8

appreciate your service in this case and I am going to ask

9

you to step back into the jury room for a few minutes and

10

I'll come back there and speak to you.

11

(Whereupon, at 1:35 p.m., the jury panel was

12

discharged)

13

(Whereupon, at 1:36 p.m., proceedings were

14

adjourned)

15

(Whereupon, at 2:10 p.m., proceedings were

16

reconvened)

17

MR. BRACKETT: If it please the court, Your Honor,

18

this is in reference to Docket Number 2008-GS-46-2084 and

19

2085, the State of South Carolina versus Phillip Fleming

20

Watts, Jr..

21

In the above-captioned case the defendant is

22

charged with armed robbery and assault and battery with

23

intent to kill at the Saltwater Seafood Market in York

24

County.

25

Each of these charges are defined as a most

1 serious offense in Section 17-25-45(c)(1) of the South
2 Carolina Code of Laws.

3 The State of South Carolina, hereby, advises that
4 this defendant has been convicted of a most serious offense
5 of armed robbery on September 24th, 2008. The State,
6 hereby, gives notice that a conviction for any of the most
7 serious offenses listed in the first paragraph above will
8 require the imposition of a sentence of life imprisonment
9 without the possibility of parole, as indicated in Section
10 17-25-45, and it's the State's intention to seek a sentence
11 of life without parole, should he be convicted on one of
12 those two offenses.

13 And I'm providing to the defendant a copy and to
14 his counsel.

15 In addition, Your Honor, in reference to
16 Indictment Numbers 2008-GS-46-2086, 2087, 2088 and 2089.

17 In the above-captioned cases the defendant is
18 charged with armed robbery, two counts of assault and
19 battery with intent to kill and kidnapping, which occurred
20 at John Boy's Convenience Store in York County.

21 Each of these charges are defined as a most
22 serious offense in Section 17-25-45(c)(1) of the South
23 Carolina Code of Laws.

24 The State of South Carolina, hereby, advises that
25 this defendant has been convicted of a most serious offense

1 of armed robbery on September 24th, 2008.

2 The State, hereby, gives notice that a conviction
3 for any of the most serious offenses listed above on these
4 indictments above will require the imposition of a sentence
5 of life imprisonment without the possibility of parole, as
6 mandated in Section 17-25-45 of the South Carolina Code of
7 Laws, and the State hereby announces our intention to seek a
8 sentence of life without parole.

9 I'm providing certified true copies to the
10 defendant and his counsel right now.

11 Finally, 2008-GS-46-2090, 2091, 2092, the State of
12 South Carolina versus Phillip Fleming Watts, Jr..

13 In the above-captioned case the defendant is
14 charged with attempted armed robbery, assault and battery
15 with intent to kill and kidnapping, which occurred at Cash
16 on the Spot Check Cashing in York County.

17 Each of these charges is defined as a most serious
18 offense in Section 17-25-45(c) (1) of the Code of Laws of
19 South Carolina.

20 The State of South Carolina, hereby, advises that
21 this defendant has been convicted of a most serious offense
22 of armed robbery on September 24th, 2008. The State,
23 hereby, gives notice that a conviction for any of the most
24 serious offenses listed in the first paragraph above will
25 require the imposition of a sentence of life imprisonment

1 without the possibility of parole, and, hereby, give notice
2 of our intention to seek a sentence of life without parole
3 for these charges, based on his previous conviction for
4 armed robbery.

5 I am providing a copy to the defendant at this
6 time and now to his counsel.

7 MR. FREEMAN: Your Honor, for the record, Mr.
8 Watts is present and has received copies.

9 I do not believe we are waiving any rights.

10 And I also believe that 17-25-45 is -- I believe
11 there are some cases about whether it's violative of the
12 cruel and unusual punishment clause of the United States
13 Constitution.

14 I believe it's violative of due process.

15 THE COURT: Well, all that comes up only on the
16 second conviction.

17 MR. FREEMAN: I understand, Your Honor. I'm just
18 preserving these for the record.

19 I also believe it is inappropriate to provide
20 these until Mr. Watts has either resolved an appeal or his
21 time to file an appeal has lapsed. So I believe it is
22 violative of due process to serve him with these notices at
23 this time, based upon those arguments.

24 THE COURT: All right. Take him back.

25 MR. BRACKETT: Thank you, Your Honor.

1 MR. FREEMAN: Thank you, Your Honor.

2 (END OF REQUESTED TRANSCRIPT OF RECORD)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CERTIFICATE

2 I, the undersigned, Michael R. Watts, Official Court
3 Reporter for the Sixteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete Transcript of Record of the
6 proceedings had and the evidence introduced in the trial of
7 the captioned case, relative to appeal, in the Court of
8 General Sessions for YORK County, South Carolina, on the
9 22nd, 23rd, and 24th days of September, 2008.

10 I do further certify that I am neither of kin, counsel
11 nor interest to any party hereto.

12
13
14 January 16, 2009.

15
16
17 Michael R. Watts

18 Michael R. Watts
19 Circuit Court Reporter
20
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

IN THE COURT OF COMMON PLEAS)

2012CP46-988

Phillip Fleming Wath, Jr. #302284)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention (SCDC) PERRY CORRECTIONAL INSTITUTION
430 Oaklawn Rd, Pelzer, S.C. 29669
2. Name and location of Court which imposed sentence York County's General Sessions,
York, S.C. 29145
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) (COUNT ONE) - ARMED ROBBERY Docket No. 2008-GS-46-2023

- (b) (Court Two) - Possession of a Firearm During the Commission of a Violent
- (c) CRIME - DOCKET NO. 2008-GS-46-2083A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2008-GS-46-2083, SENTENCED 9/24/08 30 yrs.
- (b) 2008-GS-46-2083A, SENTENCED 9/24/08 5 yrs. CONSECUTIVE.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- YES
8. If you answered **yes** to (7), list:
- (a) the name of each Court to which you appealed:
- i. COURT OF APPEALS, S.C. (Direct Appeal)
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS - DENIED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. SEPTEMBER 20, 2011
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered **no** to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHMENT
- (b) /
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? ~~YES~~ NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. N/A
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. N/A
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. N/A

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. N/A

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. N/A

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. N/A

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. N/A

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) INEFFECTIVE ASSISTANCE OF COUNSEL - THIS IS FIRST OPPORTUNITY TO PRESENT.
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. P. John FREEMAN
235 EAST MAIN ST., P.O. Box 11643 - ROCK HILL, S.C. 29731
 ii. M. CELIA Robinson
SOUTH CAROLINA Commission on Indigent Defense - Division of Appellate Defense
 iii. P.O. Box 11589, Columbia, S.C. 29211

(b) the proceedings at which each such attorney represented you:

i. P. John FREEMAN - TRIAL ATTORNEY
 ii. M. CELIA Robinson - Appellate Attorney
 iii. _____

19. State clearly the relief you seek in filing this application:

VACATE SENTENCES AND REMAND FOR NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

I AM UNDER SENTENCES, BUT I HAVE CHALLENGED THEM

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of GREENVILLE)

I, PHILLIP FLEMING WAHLS JR. # 307234, 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.

Phillip J. Wahls Jr. # 307234

SWORN to and subscribed before me this 12th
day of March, 2012.

Steven T. Munday (L.S.)
Notary Public

My Commission Expires: January 7, 2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, PHILIP FLEMING WATTS, JR. #307234, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Philip J. Watts Jr. #307234
Applicant

SWORN or affirmed to and subscribed before me this
12th day of March, 2012.

Steven F. Melanick
Notary Public

My Commission Expires: November 7, 2016

ATTACHMENT TO APPLICATION
FOR POST-CONVICTION RELIEF

11. STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH
OF THE GROUNDS SET OUT IN (10):

A). INEFFECTIVE ASSISTANCE OF COUNSEL

I. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

- 1). Counsel failed to conduct reasonable investigation critical to defense.
THIS RESULTED IN DENIAL OF DUE PROCESS.

P.W

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Phillip Fleming Watts, Jr., #307234,

2012-CP-46-0988

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

FILED-RECEIVED
2012 JUL 15 AM 10:21
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

In response to the post-conviction relief application filed on March 19, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the May 2008 term of the York County Grand Jury for Armed Robbery (2008-GS-46-2083) and Possession of a Firearm during the Commission of a Violent Crime (2008-GS-46-2083A). John Freeman, Esquire, represented him. On September 22-24, 2008, the Applicant proceeded to a jury trial pursuant to which he was found guilty of both charges as indicted. The Honorable John C. Few sentenced the Applicant to confinement for thirty (30) years for Armed Robbery and five (5) years, consecutive, for the weapons charge.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Watts, Op. No. 2011-UP-421 (S.C. Ct. App. filed September 20, 2011). The Remittitur was issued on October 13, 2011

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "Counsel failed to conduct reasonable investigation critical to defense. This resulted in denial of Due Process."

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, and the record on appeal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there

is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT

Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 2, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2012-CP-46-0988

PHILLIP FLEMING WATTS, JR.

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

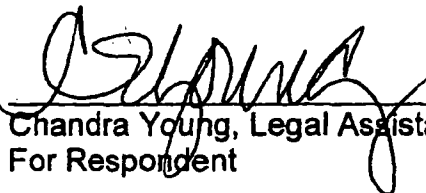
STATE OF SOUTH CAROLINA,

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(s) by depositing same in the United States mail, postage prepaid:

James W. Hancock, Jr., Esquire
Post Office Box 2851
Rock Hill, South Carolina 29732

DATED this 31st day of May, 2012.


Chandra Young, Legal Assistant
For Respondent

State of South Carolina)
)
 County of York)

In the Court of Common Pleas
 Sixteenth Judicial Circuit
 2012-CP-46-0988

Phillip Watts,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent,)
)
)
)
)
)

Transcript of Record

August 12, 2013
 York, South Carolina

B E F O R E:

The Honorable G. Edward Welmaker, Judge

A P P E A R A N C E S:

James W. Hancock, Jr. Esquire
 Attorney for Applicant

J. Rutledge Johnson, Esquire
 Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
 Circuit Court Reporter

I N D E X

Proceedings	4
TESTIMONY - WITNESS	
Phillip F. Watts, Jr.,	
Direct Examination by Mr. Hancock	5
Cross-Examination by Mr. Johnson	14
John Freeman, Esq.,	
Direct Examination by Mr. Johnson	24
Cross-Examination by Mr. Hancock	31
Certificate Page	36

EXHIBITS

No.	Description	Page No.
P-1	Indictment	10

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:19 a.m.)

THE COURT: All right. Mr. Johnson?

MR. JOHNSON: May it please the Court, Your Honor:
It's the case of *Phillip Fleming Watts, Jr., v. State of South Carolina*. It's Case No. 2012-CP-46-0988.

Mr. Watts was indicted by the May 2008 term of York County Grand Jury for armed robbery and possession of a firearm during the commission of a violent crime. He was represented by John Freeman. On September 22nd through 24th, 2008, he proceeded to a jury trial, pursuant to which he was found guilty on both charges as indicted. The Honorable John C. Few sentenced him to confinement for 30 years for the armed robbery and 5 years consecutive for the weapons charge.

A notice of appeal was filed on his behalf. An appeal was perfected pursuant -- the South Carolina Court of Appeals affirmed his conviction and sentence. The remittitur was thereafter issued on October 13th, 2011.

Mr. Watts filed a postconviction relief application on March 19th, 2012. And the state filed its return on July 2nd, 2012. He is represented here today by Mr. Bill Hancock.

THE COURT: Mr. Hancock, be glad to hear from you.

MR. HANCOCK: If it please the Court, I'd like to call

DIRECT EXAMINATION BY MR. HANCOCK - PHILLIP F. WATTS, JR. 5

1 my first witness.

2 THE COURT: Yes, sir.

3 MR. HANCOCK: All right. Call to the witness stand
4 Mr. Phillips Fleming Watts, Jr. Phillip, now, you're going
5 to have to walk around here this side.

6 (Whereupon, the witness came forward.)

7 MR. HANCOCK: As well as you can, put your left hand
8 on the bible, raise your right hand, and be sworn.

9 PHILLIP F. WATTS, JR., having been first duly
10 sworn, testified as follows:

11 THE BAILIFF: Watch your step.

12 DIRECT EXAMINATION

13 BY MR. HANCOCK:

14 Q You are Phillip Fleming Watts, Jr., the application --
15 the applicant in this PCR matter; is that correct, sir?

16 A Yes, sir.

17 Q And do you mind if I call you Phillip?

18 A No, sir.

19 Q All right. Now, Phillip, you just heard what the
20 attorney general said? You were tried in this Court for
21 armed robbery and possession of a weapon during that armed
22 robbery in 2008; is that correct?

23 A Yes, sir.

24 Q And in that trial you were represented by Mr. John P.
25 Freeman, seated in the courtroom to your left; is that

DIRECT EXAMINATION BY MR. HANCOCK - PHILLIP F. WATTS, JR. 6

1 correct, sir?

2 A Yes, sir.

3 Q All right. Now, you indicated that Mr. Freeman didn't
4 do certain things that you think a -- an attorney should
5 have done in your best interests; is that correct, sir?

6 A Yes, sir.

7 Q And that it did not rise to the level of the
8 competency that you believe or the law requests that he
9 rise; is that correct, sir?

10 A Yes, sir.

11 Q And in the particulars, you are indicating that Mr.
12 Freeman, without your consent, agreed to the amendment of
13 the indictment in this matter; is that correct, sir?

14 A Yes, sir.

15 MR. HANCOCK: If I may approach the witness ---

16 THE COURT: You may ---

17 MR. HANCOCK: --- Your Honor?

18 THE COURT: --- do so, Mr. Hancock.

19 Q Mr. Watts, I'll ask you to identify that which I have
20 just placed into your hand.

21 A It's the indictment.

22 Q An indictment for what, sir? If you would turn it
23 over and read what the two counts of the indictment are,
24 you can read them there.

25 A Armed robbery and possession of a firearm during the

DIRECT EXAMINATION BY MR. HANCOCK - PHILLIP F. WATTS, JR. 7

1 commission of a violent crime.

2 Q All right. And have those indictments in any way been
3 altered?

4 A Yes, sir.

5 Q And in what manner have they been altered, sir?

6 A The original indictment said January 22nd, and it was
7 altered to say January the 20th.

8 Q Now, did you allow that altering of that indictment,
9 sir?

10 A No, sir.

11 Q If I may, is your initial anywhere -- initials, are
12 they anywhere on that indictment where it says "changes it
13 to zero"?

14 A No, sir.

15 Q And is your signature anywhere on that document?

16 A No, sir.

17 Q And -- and I will refer to -- and did -- again, I'll
18 ask you: Did you consent to that indictment?

19 A No, sir.

20 Q And how did you think that was critical to your case,
21 sir?

22 A Because my alibi had reflected the 20th, instead of
23 the -- I mean, 22nd, instead of the 20th.

24 Q And had that -- was that information that you gave to
25 your attorney, Mr. Freeman?

DIRECT EXAMINATION BY MR. HANCOCK - PHILLIP F. WATTS, JR. 8

1 A Yes, sir.

2 Q Did that, sir, change the entire nature of your alibi?

3 A I don't understand.

4 Q In other words, you had an alibi for the 22nd, not the
5 20th; is that right?

6 A Yes, sir.

7 Q And that's what you wanted presented as a defense; is
8 that not right, sir?

9 A Yes, sir.

10 Q Okay. If you will turn it over, there is -- there is
11 writing -- and I refer to the right side of this document
12 to the lower portion. And if ---

13 MR. HANCOCK: Your Honor, I believe this is in your
14 packet, sir.

15 THE COURT: Yes, sir.

16 Q And is there writing that you can read on that, sir?

17 A Yes, sir.

18 Q And what does that writing say?

19 A (As read): "Amended date allowed by consent."

20 Q And ---

21 A And the signature of John Few.

22 Q Is your ---

23 A I mean ---

24 Q --- signature anywhere ---

25 A --- John ---

DIRECT EXAMINATION BY MR. HANCOCK - PHILLIP F. WATTS, JR. 9

1 Q --- on ---

2 A --- Freeman.

3 Q Excuse me. I didn't mean to interrupt. Go right
4 ahead, sir.

5 A I think it say "John Freeman."

6 Q Does that appear to be Mr. Freeman's signature? Does
7 it appear to be his signature?

8 A Yes, sir.

9 Q And did you -- did he discuss this with you?

10 A No, sir.

11 Q Did you instruct him in any way to alter that
12 indictment or consent to its alteration?

13 A No, sir.

14 MR. HANCOCK: If I may approach the witness, Your
15 Honor?

16 THE COURT: You may do so.

17 MR. HANCOCK: (To the court reporter) I would like
18 this marked for -- Applicant's Exhibit 1 for
19 identification.

20 THE COURT: With -- without ---

21 MR. JOHNSON: It's already in evidence. It's in your
22 judicial packet ---

23 THE COURT: All right.

24 MR. JOHNSON: --- Your Honor.

25 THE COURT: Without objection, it'd be marked as

DIRECT EXAMINATION BY MR. HANCOCK - PHILLIP F. WATTS, JR. 10

1 Exhibit 1.

2 (Whereupon, Plaintiff's Exhibit 1 was marked and
3 entered into evidence.)

4 Q Now, you're also alleging that Mr. Freeman did not do
5 something else that you requested of him. And what was
6 that, sir?

7 A Look into my mental health issue.

8 Q Mental health issues?

9 A Yes, sir.

10 Q Did you ---

11 A I said ---

12 Q --- have mental health issues, Mr. Watts?

13 A Yes, sir.

14 Q Okay. And had you previously had mental health
15 issues?

16 A Yes, sir.

17 Q All right. And what were those issues?

18 A I don't know the diagnosis at that time, but I was
19 seeing Catawba Mental Health.

20 Q Now, Catawba Mental Health, is that a mental health
21 institution in York County, South Carolina?

22 A Yes, sir.

23 Q And how long had you been going to Catawba Mental
24 Health?

25 A Since October 2007, I think, at that time.

DIRECT EXAMINATION BY MR. HANCOCK - PHILLIP F. WATTS, JR. 11

1 Q And how many times have you been there prior to the
2 trial?

3 A Two or three.

4 Q Okay. Two or three?

5 A (No audible response.)

6 Q Did you have an extensive record with them, sir?

7 A Yes, sir.

8 Q Okay.

9 MR. HANCOCK: If I may indulge -- beg indulgence of
10 the Court, sir?

11 THE COURT: Yes, sir.

12 Q And did you request of Mr. Freeman to obtain your
13 records from Catawba Mental Health?

14 A Yes, sir.

15 Q And to what purpose would you have wanted him to
16 obtain those records?

17 A Just to see if he could do something with my record.

18 Q All right. And did -- was there ever a hearing
19 requested in this matter for you to be evaluated as to your
20 competency to stand trial?

21 A No, sir.

22 Q Did you ever ask for that hearing from Mr. Freeman?

23 A My family did.

24 Q Okay. And are these -- can you just identify those,
25 sir? If I may, prior to that.

DIRECT EXAMINATION BY MR. HANCOCK - PHILLIP F. WATTS, JR. 12

1 (Whereupon, Mr. Hancock and Mr. Johnson conferred.)

2 Q Now, sir, I have a folder here before me. And it is
3 quite extensive. All right, sir?

4 Now, what -- what do you have in your hands?

5 A Mental health file from Catawba Mental Health.

6 Q And how did you come in possession of those?

7 A A prior case; Attorney Leah Moody obtained it for me.

8 Q And did --- you requested copies from her; is that
9 correct?

10 A Yes, sir.

11 Q Okay. And are these all mental health records?

12 A No, sir. It's also a DJJ record.

13 Q Your DJJ records, do they reflect any treatment from
14 mental health, anything of that nature?

15 A Yes, sir.

16 Q Okay. And the file is thick enough that you hold it
17 in your hands; is that correct?

18 A Yes, sir.

19 Q Okay.

20 MR. HANCOCK: If I may approach the witness, Your
21 Honor?

22 THE COURT: You may.

23 Q Now, to your knowledge, in the trial was a hearing
24 ever requested -- and I believe I'm repeating myself --
25 concerning your mental health issues?

DIRECT EXAMINATION BY MR. HANCOCK - PHILLIP F. WATTS, JR. 13

1 A No, sir.

2 Q Did you have any discussion with Mr. Freeman
3 concerning those mental health issues?

4 A Yes, sir.

5 Q And when did you have that discussion, sir?

6 A When -- when he first came to see me the first time,
7 because I was under mental health care at that time. I was
8 taking mental health medications before, during, and after
9 his representation.

10 Q Now, why were you taking medications prescribed by
11 mental health? Where -- excuse me. Was the medication you
12 were taking prescribed from Catawba Mental Health?

13 A Yes, sir.

14 Q Okay. And why were you taking that medication, sir?

15 A Schizophrenia and bipolar at that time.

16 Q At that time?

17 A Yeah.

18 Q And did you make Mr. Freeman aware of this?

19 A Yes, sir.

20 Q And how many discussions did y'all have about it?

21 A Every time he came to see me, we talked about it
22 briefly.

23 Q Did he ever give you the option to have a hearing in
24 this matter or not have a hearing; it's your choice?

25 A No, sir.

CROSS-EXAMINATION BY MR. JOHNSON - PHILLIP F. WATTS, JR. 14

1 Q And are you saying that you think a -- a hearing of
2 that nature was necessary in your particular case due to
3 your prior background?

4 A I mean, I don't know.

5 Q You don't know?

6 A (Shook head from side to side.)

7 Q But you're thinking that he should've done it; is that
8 correct, sir?

9 A Yes, sir.

10 Q And I believe, during the trial, that -- that
11 evaluation was raised -- was waived for you, was it not,
12 sir?

13 A Yes, sir.

14 Q And did you have any discussion with Mr. Freeman prior
15 to that that you indicated to him you wanted to waive it?

16 A No, sir.

17 Q I have no further questions. Please answer any
18 questions this gentleman might have.

19 MR. JOHNSON: Thank you, Your Honor. May it please
20 the Court.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q Mr. Watts, let's discuss the facts of this case. You
25 went to a trial. There were witnesses that were put up by

CROSS-EXAMINATION BY MR. JOHNSON - PHILLIP F. WATTS, JR. 15

1 the state, and your attorney put up witnesses, and the jury
2 convicted you; isn't that correct?

3 A Yes, sir.

4 Q And your main defense was alibi, that you were at home
5 when this crime occurred; isn't that correct?

6 A Nah. I was at my mama house.

7 Q So -- but you were at home. You were -- okay -- at
8 your mother's house ---

9 A Yeah.

10 Q --- right?

11 And your sister testifies that she went to school with
12 you the next day -- or that she was going to school that
13 next day?

14 A Yeah. She believed.

15 Q Right.

16 A Yeah.

17 Q But she was wrong, wasn't she? Because what she
18 testifies to is that she would have gone to school on
19 Martin Luther King Day; isn't that correct?

20 A She never stated Martin Luther King Day.

21 Q She said she went to school on that Monday, correct?

22 A Yeah.

23 Q And then, there was a witness that came in after you
24 rested your case that said the schools were closed that
25 day; isn't that right?

CROSS-EXAMINATION BY MR. JOHNSON - PHILLIP F. WATTS, JR. 16

1 A What'd you say?

2 Q So -- the state then presented a witness that said on
3 that Monday, which your sister claimed to have gone to
4 school, the schools were actually closed; isn't that
5 correct?

6 A Yeah.

7 Q Okay. And this is the robbery of the One Stop there
8 across from Northwestern High School, is it not?

9 A Yeah.

10 Q Okay. And there are four witnesses that testified
11 they see you go into the store with a Gold Hill sweatshirt
12 on; isn't that correct?

13 A No, sir.

14 Q That's not -- that's not in the testimony at trial?

15 A Nah.

16 Q They testified that they see a person go in there with
17 a Gold Hill sweatshirt?

18 A A person. Yeah.

19 Q Okay. And then, they -- there are also four witnesses
20 that testified they see a person drive off in a purple
21 Durango from the scene; isn't that correct?

22 A Nah.

23 Q So what you're saying is that in your trial, there is
24 no testimony from witnesses that say they see a person
25 drive off in a purple Durango?

CROSS-EXAMINATION BY MR. JOHNSON - PHILLIP F. WATTS, JR. 17

1 A Nah. I mean, it wasn't exact like you making
2 identification of a Durango.

3 MR. JOHNSON: Court's indulgence, Your Honor.

4 THE COURT: Yes, sir.

5 Q Did your girlfriend testify that she had a purple
6 Durango you had access to; isn't that correct?

7 A Yeah.

8 Q And that she went to a sorority function; isn't that
9 correct?

10 A Yeah.

11 Q But you had the keys to that car, correct?

12 A Yeah.

13 Q All right. And that's what she testifies to?

14 A (Nodded head up and down.)

15 Q All right. And she also testifies that she sees you
16 on the video and knows a hundred percent that it was you.
17 Wasn't that in the evidence at trial?

18 A She said looked like me too.

19 Q But she said it was ---

20 A Twice.

21 Q --- it was you on the video; isn't that correct?

22 A Man ---

23 Q ~~That's the evidence that came out ---~~

24 A She said ---

25 Q --- at trial ---

CROSS-EXAMINATION BY MR. JOHNSON - PHILLIP F. WATTS, JR. 18

1 A --- it looked like me.

2 Q And there are two witnesses that were pumping gas that
3 night who see the -- the purple Durango pull off from that
4 station and head down on -- on Highway 5; isn't that
5 correct?

6 A I don't know.

7 Q Do you -- okay. Were you at your trial?

8 A Yeah.

9 Q Did you hear all the testimony?

10 A Yeah.

11 Q You don't remember that?

12 A Nah.

13 Q Would you agree with me, if it was in the -- the
14 transcript?

15 A I don't know.

16 MR. JOHNSON: Your Honor, I'd direct you to page 286.
17 May I approach the witness?

18 THE COURT: You may.

19 MR. JOHNSON: Let the record reflect I'm showing Mr.
20 Watts a copy of the transcript at page 286, line 22. And
21 this is Mr. Dave Keener.

22 Q Have you read that before, Mr. Watts?

23 A Nah. I ain't got no transcript.

24 Q Okay. But would you agree with me that this is the
25 transcript from your trial in 2008?

CROSS-EXAMINATION BY MR. JOHNSON - PHILLIP F. WATTS, JR. 19

1 A Yeah.

2 Q Okay. And would you please read line 18 through 23
3 for me out loud?

4 A What the "A" stand for right there?

5 Q Answer. Yes, sir.

6 A (As read): "A short time later after he -- he
7 disappeared, my attention got drawn to the clerk coming to
8 the door with the other family in their car at the front of
9 the store. And it might have -- it might have been 30
10 seconds later or so, what appeared to be a purple Dodge
11 Durango with black-tinted windows drove up to the side road
12 to the stoplight on Highway 5."

13 Q Okay. So you would agree with me, by reading that
14 excerpt, that there's evidence in the trial transcript that
15 a purple Dodge Durango was seen, soon after this robbery
16 occurs, pulling off onto Highway 5, correct?

17 A Yeah.

18 Q Okay. And there's also evidence in the transcript
19 that you gave a confession; isn't that correct?

20 A What you say?

21 Q There is evidence in the transcript that you gave a
22 confession in this case; isn't that correct?

23 A I mean, it was said. Yeah.

24 Q Okay. And they actually were not investigating you
25 concerning this incident; they were investigating you

CROSS-EXAMINATION BY MR. JOHNSON - PHILLIP F. WATTS, JR. 20

1 concerning a different armed robbery and ABWIK; isn't that
2 correct?

3 A Yeah.

4 Q And that your statement comes in that you were
5 involved in this crime, correct?

6 A What you say? Last part ---

7 Q There ---

8 A --- what you ---

9 Q --- there is ---

10 A --- said?

11 Q --- testimony that -- that you give a confession and
12 they read the confession into the transcript at trial;
13 isn't that correct?

14 A You say it was testimony?

15 Q Yes, sir.

16 A Yeah, then.

17 Q Okay. And that testimony says that you were wearing
18 the Gold Hill sweatshirt and you drove the purple Durango
19 and that you robbed the One Stop; isn't that -- isn't that
20 what the confession says that comes in at trial?

21 A That's what the testimony say.

22 Q Okay. And so your big gripe is that the indictment
23 was amended without your consent; isn't that correct?

24 A (Nodded head up and down.)

25 Q Okay. And all ---

CROSS-EXAMINATION BY MR. JOHNSON - PHILLIP F. WATTS, JR. 21

1 A Uh-huh.

2 Q --- that changes the date, right? That's the only
3 thing that's changed?

4 A Nah.

5 Q Not ---

6 A Because ---

7 Q Correct?

8 A --- the date -- the original date is the date that Mr.
9 Freeman spoke with my family about.

10 Q Okay. And that's the one that your alibis were
11 prepared for, correct?

12 A Yeah.

13 Q Not the 20th?

14 A (Nodded head up and down.)

15 Q But then, as I asked earlier, your alibi was found not
16 credible because she couldn't remember when she went to
17 school, correct?

18 A Yeah.

19 Q Okay. So in the end your alibi just didn't hold up,
20 right?

21 A I guess so.

22 Q Okay. Because you gave a confession in this case,
23 correct?

24 A Nah.

25 Q Police interviewed you, and you gave a confession to

CROSS-EXAMINATION BY MR. JOHNSON - PHILLIP F. WATTS, JR. 22

1 them; isn't ---

2 A Nah.

3 Q --- that correct?

4 So you're saying that the evidence presented at trial
5 was a lie?

6 A Yeah.

7 Q Okay. And actually, Judge Few had a SLED handwriting
8 expert come in and identify your handwriting, correct?

9 A Yeah. A ---

10 Q Okay.

11 A --- signature.

12 Q And your other gripe is that you were not -- you
13 didn't have an evaluation to see your mental competence;
14 isn't that correct?

15 A (Nodded head up and down.)

16 Q Okay.

17 A Yes, sir.

18 Q And that was never done?

19 A Nah.

20 Q Okay. Matter of fact, you have prior convictions for
21 armed robbery, don't you?

22 A A juvenile record.

23 Q Uh-huh.

24 A No adult record.

25 Q And that's -- and also, three assault-and-batteries?

CROSS-EXAMINATION BY MR. JOHNSON - PHILLIP F. WATTS, JR. 23

1 A I can't remember everything I was locked up for.

2 Q Okay. But you've done violent crimes before this one,
3 correct?

4 A I got a juvenile history, no adult history.

5 Q Okay. But you were convicted through all the
6 testimony and all the evidence, and the jury obviously
7 didn't believe your alibi because they convicted you,
8 correct?

9 A Guess so.

10 MR. JOHNSON: No further questions at this time, Your
11 Honor.

12 THE COURT: Okay. Any redirect?

13 MR. HANCOCK: None, Your Honor.

14 THE COURT: All right. Thank you, sir. You may step
15 down, Mr. Watts.

16 (Whereupon, the witness exited the witness stand.)

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

19 MR. HANCOCK: The applicant rests at this time, Your
20 Honor.

21 THE COURT: All right. Anything from the state?

22 MR. JOHNSON: Yes, sir. We call John Freeman to the
23 stand.

24 THE COURT: Come around and be sworn, please.

25 (Whereupon, the witness came forward.)

1 JOHN FREEMAN, having been first duly sworn, testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. JOHNSON:

5 Q Good morning, Mr. Freeman.

6 A Good morning.

7 Q Do you remember becoming involved with Mr. Watts'
8 case?

9 A Yes, sir.

10 Q And were you appointed or retained?

11 A I was appointed. I was not his original attorney, but
12 I was later appointed.

13 Q Okay. And did you meet with Mr. Watts?

14 A I did.

15 Q And about how many times did you meet with him?

16 A I don't recall. Several times. I was appointed
17 fairly close in time to the actual trial, as I recall.

18 Q Do you feel that you had ample time to prepare for his
19 case?

20 A Yes, I do.

21 Q And what all did you investigate, if anything, about
22 this case?

23 A Well, initially, Mr. Watts told me that he didn't do
24 it, so we settled on a defense of alibi, as well as a
25 general denial -- excuse me -- of the state's case. I

DIRECT EXAMINATION BY MR. JOHNSON - JOHN FREEMAN 25

1 retained, with Court permission, a private investigator to
2 help me evaluate the physical scene. And then, we had some
3 witnesses, all of whom were family members of his, to
4 confirm his alibi.

5 Q And that alibi would be that he was at his mother's
6 house on the date in question?

7 A Right. This happened in the night -- in the
8 nighttime. But that is correct.

9 Q Okay.

10 A I believe I also received a copy of the public
11 defender's file, if any, because they had represented him
12 prior to my appointment. And I don't think they had any
13 other defense indicated in there. I would've discussed
14 that with him.

15 Q Okay. So specifically, your defense is alibi: He
16 said he wasn't there?

17 A (Nodded head up and down.)

18 Q And then, at trial his sister testified; isn't that
19 correct?

20 A Yes. That is ---

21 Q And ---

22 A --- correct?

23 Q And then, the state discredits her by showing that she
24 was mistaken about the day that she said she was going to
25 school?

1 A That is correct.

2 Q Okay. So that alibi kind of fell apart, correct?

3 A That is correct. His mother also testified, but her
4 testimony was more general: "We -- we always do this
5 family thing on Sunday evening." And the event in question
6 supposedly happened Sunday evening.

7 Q Now, specifically, he is raising that he did not
8 consent to an amendment of the indictment. Have you
9 received a copy of that indictment?

10 A I -- I have not.

11 Q Okay.

12 (Whereupon, Mr. Johnson and Mr. Hancock conferred.)

13 MR. JOHNSON: May I approach the witness, Your Honor?

14 THE COURT: You may.

15 MR. JOHNSON: And I'm using Plaintiff's Exhibit 1.

16 A Thank you.

17 Q And have you seen that document before?

18 A I'm sure I saw it at the time of trial.

19 Q And did you consent an amendment of the indictment?

20 A I did not.

21 Q You ---

22 A My ---

23 Q --- did not?

24 A --- my signature's not on this document.

25 Q Okay. But that seems to be Judge Few's signature,

1 correct?

2 A Judge Few was the presiding judge at the time. That
3 is correct.

4 Q Okay.

5 A My first name -- my middle name is also John, and I
6 sign John. But that's not -- that's Judge Few's signature,
7 not mine.

8 Q Okay. Would you have consented to, you know, changing
9 the dates? Because that's the only thing that was changed
10 in that indictment; isn't that correct?

11 A It appears to be. And it looks like a hand
12 correction. I don't know if that was done by the solicitor
13 or by Judge Few. Insofar as our alibi went to that
14 specific date, I wouldn't have opposed it.

15 Q And why wouldn't you have opposed it?

16 A An alibi is for a specific date, time, and location.
17 To let them change it to a different date, other than the
18 20th, which is the date we were preparing for, would've
19 grossly weakened that defense, if not just outright
20 eliminated it.

21 Q So in your opinion, is there any reason not to consent
22 to that?

23 A I can't think of any in hindsight, or none would've
24 occurred to me at the time. Again, it appears that they
25 put the 21st of January and somebody's -- excuse me -- the

1 22nd. Someone's marked through the 2 and put zeroes to
2 make it January 20th. And it -- and the evidence we had
3 that warrants the -- all of it led to the 20th, and that
4 was the date we prepared the alibi defense -- excuse me --
5 alibi defense for.

6 Q For the 20th?

7 A Yes, sir.

8 Q Okay. So that changing of the indictment wouldn't
9 have affected your defense in any way, shape, or form; is
10 that correct?

11 A That's correct.

12 Q Okay.

13 A But whether ---

14 Q And so ---

15 A --- whether I would've consented, I honestly don't
16 recall. As -- again, but my signature is not on there. So
17 my consent was not requested.

18 Q Okay. Second big issue Mr. Watts raises is that you
19 failed to have him mentally evaluated in preparation for
20 trial. Did you ever have any discussions with Mr. Watts
21 about his mental health?

22 A I do not recall any. And I didn't have any concern at
23 the time about his mental health or ability to assist me in
24 his defense. As I indicated, I was not his first counsel.
25 He had a public defender; then he said he didn't want a

DIRECT EXAMINATION BY MR. JOHNSON - JOHN FREEMAN

29

1 public defender and he was appearing pro se. And then the
2 judge, at his request, based on what I was given, also then
3 appointed me to represent him.

4 I had reviewed the file. The motions he had made
5 appeared fine. But in my discussions with him, no. I did
6 not have any concerns about his mental competence or his
7 ability to assist me. If I had, I would've requested he be
8 evaluated.

9 Q And how long have you been practicing law?

10 A I graduated in '91, so 22 years.

11 Q And have you handled criminal cases before?

12 A Yes. I clerked for a judge for the first year out of
13 law school. Then I was an assistant solicitor for about a
14 year and a half in the Lowcountry. Then I moved back up to
15 York County, where I'm from, and a portion of my practice
16 has always consisted of criminal defense, more or less,
17 over the years. And I've been on the appointment list ever
18 since I returned, so it's also consisted of appointed
19 cases, as well as retained cases, general sessions and
20 magistrate and municipal court cases.

21 Q And have you handled cases where a mental issue was
22 involved?

23 A I've had clients -- not a lot, but clients over the
24 years where I really had a question about their competence,
25 either to stand trial or to help me assist in their

1 defense. And in those cases I would -- I would make the
2 other side aware of it immediately: "I have a question
3 about so-and-so's competence, and I believe he needs -- he
4 or she needs to be evaluated -- or that needs to be taken
5 into account or" -- depending on the case.

6 Q And so you've had clients that have been evaluated?

7 A I have. Not -- again, not many because I know the
8 standards are fairly low for competence. And in my
9 dealings, both as a solicitor and as a private attorney, it
10 -- it's often obvious which clients would fall below that
11 standard and which would not.

12 Q And Mr. Watts never exhibited any of these ---

13 A In my opinion ---

14 Q --- symptoms?

15 A --- he did not.

16 Q And he never brought it to your attention?

17 A Not that I can recall. And I didn't see any
18 reflection in my notes either. Again, I have the motions
19 that appointed me, which are handwritten by him, directed
20 to, I believe, then-Chief Administrative Judge Hayes. But
21 I don't recall if the was the chief administrative judge at
22 that time or it was Judge Alford.

23 Q And Mr. Watts was actually attending junior college at
24 this point, was he not?

25 A He was. That -- that was my understanding. Yes, sir.

CROSS-EXAMINATION BY MR. HANCOCK - JOHN FREEMAN

31

1 Q Okay. So your decision not to have him evaluated was
2 based on your experience and the facts of this case?

3 A And my interactions with him.

4 Q Okay.

5 MR. JOHNSON: I think that's all I have at this time,
6 Your Honor.

7 THE COURT: You may cross-examine the witness, Mr.
8 Hancock.

9 MR. HANCOCK: If it please the Court, sir.

10 CROSS-EXAMINATION

11 BY MR. HANCOCK:

12 Q Mr. Freeman -- Mr. Freeman, did you have any
13 discussions with him concerning his treatment with mental
14 health?

15 A I do not recall any.

16 Q You don't recall any?

17 So if he did tell you that he was being treated at
18 mental health, you just don't remember?

19 A I don't remember it. And I reviewed my notes, and I
20 don't see anything where I made a notation of that. He
21 could have told me and either I didn't write it down or I
22 felt he was competent and said, "Do what the doctors tell
23 you."

24 Q But then, would it surprise you if I told you he had
25 quite a lengthy history of mental health issues?

1 A It would not, because I am familiar with the ultimate
2 disposition of his later cases, where he was represented by
3 a different attorney. And I understood that attorney did
4 have him evaluated prior to entering those pleas.

5 Q And he has quite a lengthy ---

6 A I -- yes. I accept that as -- as true.

7 Q All right.

8 A I don't have a copy of his record, but I accept that
9 as true.

10 Q And do you not believe, in his representation, it
11 would have possibly, in your experience, could've helped
12 you if you had taken his records and reviewed them?

13 A Certainly, that's possible.

14 Q But you found it wasn't necessary to review his mental
15 health records and his previous mental health state before
16 your trial?

17 A I did not. And I didn't have any concerns about his
18 ability to understand my questions and respond to them in
19 our meetings.

20 Q All right. And you are not a mental health
21 professional; is that correct, sir?

22 A I am not.

23 Q All right. And you're aware, since you've done it
24 before, that the State of South Carolina provides mental
25 health practitioners to determine whether he is competent

1 to stand trial?

2 A That is correct. Or they would send him to Columbia
3 and have him evaluated.

4 Q Right. And you found it not necessary to do that in
5 this case?

6 A In my opinion, that's correct.

7 Q Right. And yet he had told you that he had mental
8 health issues?

9 A I don't dispute that he told me. I ---

10 Q You ---

11 A --- just don't have a reflection of that in ---

12 Q I ---

13 A --- my notes.

14 Q I'm sorry. I misquoted the -- or misspoke on your
15 answer. You said that you did not in any way remember
16 having in your file that you had discussed his mental
17 health issues?

18 A If he'd told me -- again, I -- I -- I have no dispute
19 that he may have told me. I didn't have any concern that
20 it rose to the level that I needed to have him evaluated or
21 raise his competency as a defense.

22 Q All right. All right. So you can't say whether he
23 discussed it with you and requested you -- that you get
24 these records; is that correct, sir?

25 A If he had asked me to get the records, I would've

1 requested them.

2 Q Okay.

3 A So I don't -- I believe he did not ask me that.

4 Q And again, you say it's in your experience. But
5 you're not a trained mental health professional to look for
6 these matters of competency, are ---

7 A That is ---

8 Q --- you, sir?

9 A --- correct. I am not.

10 MR. HANCOCK: I have no further questions, Your Honor.

11 THE COURT: Any redirect?

12 MR. JOHNSON: None, Your Honor. The state has no
13 further witnesses.

14 THE COURT: You may step down ---

15 THE WITNESS: Thank you ---

16 THE COURT: --- Mr. Freeman.

17 THE WITNESS: --- Your Honor. Does the Court want the
18 exhibit back?

19 THE COURT: Yeah. Thank you.

20 THE WITNESS: Yes, sir.

21 (Whereupon, the witness exited the witness stand.)

22 THE COURT: You may call your next witness.

23 MR. JOHNSON: The state has no further witnesses, Your
24 Honor.

25 THE COURT: All right. Anything in reply?

1 MR. HANCOCK: Nothing in reply, Your Honor.

2 THE COURT: All right. I'll review part of the
3 transcript and, hopefully, have a order issued or a
4 notification of my decision in a week's time. Thank you
5 very much.

6 MR. JOHNSON: Thank you, Your Honor.

7 MR. HANCOCK: Thank you, Your Honor.

8 (Whereupon, the proceeding was concluded at 10:53 a.m.)

9 --- END OF TRANSCRIPT OF RECORD ---

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE EXCERPT OF TRANSCRIPT OF RECORD IN THE
HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN
THE CIRCUIT COURT FOR YORK COUNTY, SOUTH CAROLINA, ON
THE 12TH DAY OF AUGUST, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JULY 11, 2014

WITNESSES

RHPD / Haiti

mac

ARREST WARRANT NUMBER

COUNT ONE - K315527
COUNT TWO - K315533

ACTION OF GRAND JURY

TRUE BILL

Obispo & more

For person of Grand Jury

Date: 5/15/08

VERDICT

At 1 Guilty

At 2 Guilty

For person of Petit Jury
Date: 9-22-08

DOCKET NO. 2008-GS-46-2083

-20834

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

MAY 15, TERM 2008

THE STATE

vs.

PHILLIP FLEMING WATTS, JR.

Indictment for

COUNT 1 - ARMED ROBBERY

SC Code: § 16-11-0330

CDR Code: 0139

COUNT 2 - POSSESSION OF A
FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME

SC Code: 16-23-0490

CDR Code: 0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

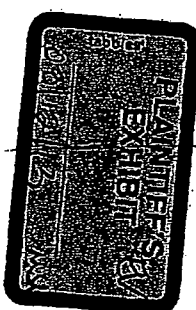
Witness:

C.C.C. PLS. AND G.S.

Reminded last allowed by

consent.

John S. [Signature]
9/22/08



STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on May 15, 2008, the Grand Jurors of York County present upon their oath:

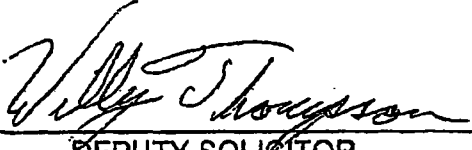
COUNT ONE - ARMED ROBBERY

Phillip Fleming Watts, Jr. did in York County on or about January 21⁰, 2008, feloniously steal United States currency and/or other items of value from the One Stop Exxon Store located at 2460 West Main Street in Rock Hill, South Carolina. Phillip Fleming Watts, Jr. stole said items by means of force or intimidation by holding One Stop Exxon employee Annette Mobley Hicks at gunpoint. Phillip Fleming Watts, Jr. committed this robbery while armed with a deadly weapon in violation of Section 16-11-0330, *Code of Laws of South Carolina* (1976, as amended).

**COUNT TWO - POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME**

Phillip Fleming Watts, Jr. did in York County on or about January 21⁰, 2008, possess a firearm while committing the violent crime of armed robbery at the One Stop Exxon Store located at 2460 West Main Street in Rock Hill, South Carolina, all in violation of Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

RECEIVEDSTATE OF SOUTH CAROLINA
COUNTY OF YORKIN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT**S.C. Supreme Court**

Phillip Fleming Watts, Jr., #307234,

2012-CP-46-0988.

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED-RECEIVED
2013 SEP 27 AM 11:31

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 19, 2012. The Respondent made its Return on July 5, 2012. An evidentiary hearing into the matter was convened on August 13, 2013, at the Moss Justice Center in York, SC. Bill Hancock, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. P. John Freeman, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript and the appellate records.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. Applicant was indicted by the May 2008 term of the York County Grand Jury for Armed Robbery (2008-GS-46-2083) and Possession of a Firearm during the Commission of a Violent Crime (2008-GS-46-2083A). P. John Freeman, Esquire, represented him. On September 22-24, 2008, Applicant proceeded to a jury trial pursuant to which he

[Handwritten signature]

was found guilty of both charges as indicted. The Honorable John C. Few sentenced Applicant to confinement for thirty (30) years for Armed Robbery and five (5) years, consecutive, for the weapons charge.

A notice of appeal was filed and an appeal perfected pursuant to Anders v. California, 386 U.S. 738 (1967). After a thorough review of the entire record, the South Carolina Court of Appeals dismissed Applicant's appeal. State v. Watts, Op. No. 2011-UP-421 (S.C. Ct. App. filed September 20, 2011). The Remittitur was issued on October 13, 2011.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. "Counsel failed to conduct reasonable investigation critical to defense. This resulted in denial of Due Process."

At the hearing, Applicant proceeded on his claims of ineffective assistance of trial counsel for failing to obtain Applicant's consent before allowing Judge Few to amend the indictment and failing to request a mental evaluation before the trial.

SUMMARY OF TESTIMONY

Applicant testified Counsel did not obtain his consent to amend the indictment for Armed Robbery. The indictment was amended to reflect the crime occurred on January 20, 2008 instead of January 22, 2008. Applicant stated he neither signed nor initialed the amendment. Applicant testified that his alibi defense was for the 20th and not the 22nd as reflected in the original indictment.

Applicant also testified Counsel failed to look into his mental health history. Applicant claimed he had a long history of mental health issues, including on-going treatment at Catawba Mental Health located in York, SC. Applicant claimed he and his family requested Counsel obtain

these records. Applicant also stated the Department of Juvenile Justice records would have shown a history of mental health issues. He further stated he was not taking his prescription medications at the time of the incident. Applicant lastly testified Counsel did not give him the option of having a mental competence evaluation before his trial nor that he allowed Counsel to waive his right to a mental health evaluation.

On cross-examination, Applicant agreed that his alibi defense witness (Applicant's sister) testified at his trial that she had gone to school the next morning after the incident and that Applicant was at home that day. However, Applicant admitted that this witness was completely discredited by the State's rebuttal witness which proved that the York County schools were closed on the day she claimed as it was Martin Luther King, Jr. Day, a national holiday. Thus, Applicant admitted that his alibi defense fell apart at trial. Additionally, after much discussion, Applicant admitted that at least four independent witnesses, including Applicant's own girlfriend, identified him as the perpetrator of the Armed Robbery either by being an eye-witness or by viewing the video of the scene. Three witnesses testified that Applicant was wearing a "Gold Hill" sweatshirt during the robbery and saw Applicant driving his girlfriend's distinctive purple Dodge Durango while fleeing the scene of the robbery. Further, Applicant, while claiming all of the evidence at the trial was false and that he never gave a confession to law enforcement, admitted that his full confession was read into the record at trial.

Counsel testified he met with Applicant several times and that Applicant's defense is that he did not commit crime. Counsel stated he hired a private investigator to examine the scene of the crime, the One-Stop gas station on Highway 5 in York County, SC. He also testified Applicant's mother and sister testified on Applicant's behalf as alibi witnesses.

Counsel testified he did not object to Judge Few's amendment of the indictment because if he had, it would have weakened Applicant's defense. Counsel stated the alibi defense was for January 20 not January 22 and had he objected to Judge Few's amending the indictment, it would have completely discredited the alibi defense. Further, Counsel stated the indictment had no effect on the outcome of Applicant's case.

Additionally, Counsel testified he found no reason to request a mental health evaluation for Applicant. Counsel stated, according to his interactions and meetings with Applicant, he had no concerns about Applicant ability to understand the proceedings and assist in his own defense. Counsel testified he has been practicing law for 22 years and has handled cases where the client has had mental issues. He stated in these cases he would make the solicitor aware of the issues and seek a mental evaluation for his client. However, Counsel testified this was not one of those cases.

On cross-examination, Counsel testified he could have reviewed all of Applicant medical records but he found this to be unnecessary as he had no concerns with Applicant's ability to assist in his own defense. This was the reason Counsel did not raise mental incompetency as a defense.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court also has read the trial transcript, all of which assists the Court in judging their credibility. This Court finds Applicant's testimony concerning Counsel's alleged ineffective assistance not credible while also finding Counsel's testimony 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 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. 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.

Failure to object to the amendment of the indictment

The Applicant alleges Counsel was ineffective for failing to object to Judge Few amending the Armed Robbery indictment.

Under S.C. Code Ann. § 17-19-100 (1976), an indictment may be amended at trial only if the amendment does not change the nature of the offense charged. Further, where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Caprood v. State, 338 S.C. 103, 525 S.E.2d 514 (2000). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel." Whitehead v. State, 308 S.C. 119, 417 S.E.2d, 529 (1992).

This Court finds Counsel was not ineffective for failing to object to Judge Few's amendment of the Armed Robbery indictment. As Counsel testified, the indictment was amended to reflect that the Armed Robbery occurred on January 20, 2008 instead of January 22, 2008. Counsel stated this was the date with which the alibi witnesses were concerned. Counsel further testified had he objected to the amendment and the indictment was kept with January 22, 2008 as the date, Applicant's alibi defense would have been completely discredited. As such, Counsel's decision not to object was sound strategy in these circumstances based on the facts of the case. Additionally, the amendment only changed the date and not the nature of the charge. Further, Applicant has failed to prove any resulting prejudice from Counsel's alleged deficiency. Accordingly, this allegation is denied.

Failure to request a mental evaluation

Applicant alleges Counsel was ineffective for not requesting an independent mental health evaluation before trial.

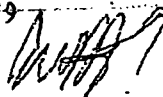
No prejudice can be shown for Counsel's alleged failure to request a mental evaluation where

no medical evidence is presented at the PCR hearing suggesting that Applicant was incompetent to stand trial or to participate in his own defense. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997).

This Court finds Counsel was not ineffective for failing to have Applicant independently evaluated in this case. While Applicant claims he has a long history with mental illness documented by his Department of Juvenile Justice files, he failed to show he was mentally incompetent to stand trial or assist in his own defense. Applicant provided no expert testimony or other competent evidence to prove that he was incompetent at the time of his trial. He only provided his own self-serving testimony that he asked Counsel to obtain his mental health records and that he asked Counsel for a mental evaluation.

Counsel testified Applicant was fully involved in assisting with his own defense. Applicant provided alibi witnesses for Counsel to interview and present at the trial. Counsel also testified he did not recall Applicant ever discussing Applicant's mental health issues with him. Counsel testified he found no reason to ask for an evaluation because Applicant was able to assist in his own defense. Counsel also has experience with clients that have had mental health issues and has experience with having clients evaluated. Counsel lastly testified that based on his interactions with Applicant and his experience, he decided a mental evaluation was not needed in this case.

This Court finds Counsel was effective in his representation of Applicant. Applicant has failed to prove Counsel's actions fell below the reasonableness standard in this case. Further, Applicant has failed to prove any resulting prejudice as he provided no medical evidence that he was incompetent to stand trial or unable assist in his own defense. Accordingly, this allegation is denied.



CONCLUSION

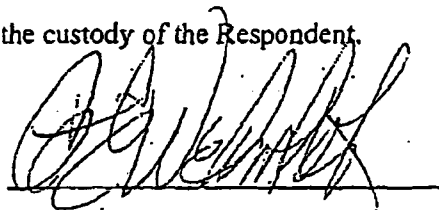
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

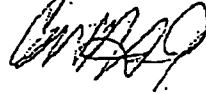
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



G. Edward Welmaker
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

9-12, 2013
Pickens, South Carolina

A handwritten signature in dark ink, appearing to be "C. H. H. H.", located at the bottom right of the page.

WITNESSES

RHPD / Haire

mac

ARREST WARRANT NUMBER

COUNT ONE - K315527
COUNT TWO - K315533

ACTION OF GRAND JURY

TRUE BILL

Devinia B. Moore

Foreperson of Grand Jury
Date: 5/15/08

VERDICT

At 1 Guilty

At 2 Guilty

Foreperson of Petit Jury

Date: 9-22-08

726

DOCKET NO. 2008-GS-46- 2083

- 2083A
The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

MAY 15, TERM 2008

THE STATE

VS.

PHILLIP FLEMING WATTS, JR.

Indictment for

COUNT 1 - ARMED ROBBERY

SC Code: § 16-11-0330
CDR Code: 0139

COUNT 2 - POSSESSION OF A
FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME

SC Code: 16-23-0490
CDR Code: 0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

Amended date allowed by

Consent.

John F. [Signature]
9/22/08

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

At a Court of General Sessions, convened on May 15, 2008, the Grand Jurors of York County present upon their oath:

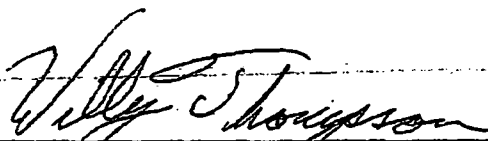
COUNT ONE – ARMED ROBBERY

Phillip Fleming Watts, Jr. did in York County on or about January 21⁰, 2008, feloniously steal United States currency and/or other items of value from the One Stop Exxon Store located at 2460 West Main Street in Rock Hill, South Carolina. Phillip Fleming Watts, Jr. stole said items by means of force or intimidation by holding One Stop Exxon employee Annette Mobley Hicks at gunpoint. Phillip Fleming Watts, Jr. committed this robbery while armed with a deadly weapon in violation of Section 16-11-0330, Code of Laws of South Carolina (1976, as amended).

**COUNT TWO – POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME**

Phillip Fleming Watts, Jr. did in York County on or about January 21⁰, 2008, possess a firearm while committing the violent crime of armed robbery at the One Stop Exxon Store located at 2460 West Main Street in Rock Hill, South Carolina, all in violation of Section 16-23-490, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

728

SOUTH CAROLINA

County of York
 State of South Carolina
 VS.
Phillip Fleming Watts, Jr.

AKA: _____

Race: B Sex: M Age: 20

DOB: _____ SS#: _____

Address: _____ Street _____

Rock Hill, SC 29732DL#: SC SID#: SC 01804551

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS46-02083A/W#: K315527Date of Offense: 1/20/2008S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: ARMED ROBBERY

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor Brackett, Kevin S.Defendant Phillip WattsAttorney for Defendant John Freeman

SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 ~~days~~ ^{years} or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %)		\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	<u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§ 56-5-2995 (DUI Assessment)	\$12	\$	
§ 35.13 (Public Def/Prob)	\$500	\$	
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$	<u>25</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$	
§ 50-21-114(BUI Breath Test Fee)	\$50	\$	
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
3% to County (if paid in installments)		\$	
§ 90.11 TP (SCCJA Surcharge)	\$5	\$	<u>5</u>
TOTAL		\$	<u>330</u>

David Hamilton
 Clerk of Court/ Deputy Clerk

Michael Watts

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP
 Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 211-213Sentence Date: 9-24-08

INDICTMENT/CASE#: 2008-GS46-02083A

A/W#: K315533

Date of Offense: 1/20/2008

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

OF York
VS.
Phillip Fleming Watts, Jr.
AKA:
Race: B Sex: M Age: 20
DOB: SS#
Address: Street
Rock Hill, SC 29732
DL#: SC SID#: SC 01804551

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: POSSESSION OF A FIREARM DURING A VIOLENT CRIME

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kevin S. Brackett Solicitor *Phillip Watts* Defendant *P. Adam Greene* Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Count One

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5

TOTAL \$ 130

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE *[Signature]*

Judge Code: 2111213

Sentence Date: 9-24-08

David Hamilton
Clerk of Court/ Deputy Clerk
Michael Watts

ARREST WARRANT

K-315533

STATE OF SOUTH CAROLINA

☐ County ☐ Municipality of
 Rock Hill Municipal Court

 THE STATE
 against

William Fleming White Jr

Address: Peachtree Street

Rock Hill, SC 29731-1706

Phone: SSN

Sex: Race: Height: 6'0" Weight: 175

DL State: DL #:

Agency ORI# SC0460300

Prosecuting Agency: Rock Hill Police Department

Prosecuting Officer: William Morris

Offense: Possession of a Firearm During the Commission of a Violent Crime.

Offense Code: 23-490

Code/Ordinance Sec: 16-23-490

 This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant William Fleming White Jr
 on 04/21/2003

 Signature of Constable/Law Enforcement Officer
SPBain 13533

RETURN WARRANT TO:

ROCK HILL MUNICIPAL JUDGE

Peach Street

SC 29731-1706

730

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

Rock Hill Municipal Court

Personally appeared before me the affiant William Morris

 being duly sworn deposes and says that defendant William Fleming White Jr
 did within this county and state on February 20, 2003 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of Rock Hill Municipal Court)

in the following particulars:

DESCRIPTION OF OFFENSE: Possession of a Firearm During the Commission of a Violent Crime.

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

 The defendant did willfully and unlawfully violate SC code of laws, section 16-23-490 possession of a
 firearm during the commission of a violent crime, in that he did have in his possession a handgun during
 the commission of an armed robbery while at the Shop Store located at 2466 West Main Street within
 the city limits of Rock Hill SC.

 Statement from victim
 Police Investigation.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

Rock Hill Municipal Court

Affiant's Address 120 E. Black Street

Rock Hill, SC 29731-1706

Affiant's Telephone 803-329-7295

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 defendant William Fleming White Jr

 did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of Rock Hill Municipal Court)

DESCRIPTION OF OFFENSE: Possession of a Firearm During the Commission of a Violent Crime.

(as set forth below:

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of his execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 04/21/2003Signature of Issuing Judge William Morris (s)Judge Code: 16703

Judge's Address 120 E. Black Street

Rock Hill, SC 29731-1706

Judge's Telephone 803-329-7295

Issuing Court ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

K-315533

Ref #: 0001201077

York

VS.

Phillip Flemming Watts, Jr.

AKA:

Race: B Sex: M Age: 20DOB: SS#:Address: StreetRock Hill, SC 29732DL#: SC SID#: SC 01804551

INDICTMENT/CASE#: 2008-GS46-02084

A/W#: K315528Date of Offense: 1/28/2008S.C. Code §: 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Robbery / Armed Robbery, robbery while armed with a deadly weaponin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☒ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Solicitor Brackett, Kevin S.Defendant Phillip F. Watts Jr.Attorney for Defendant David HamiltonSC Bar# 2383WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of life without parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 3300; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100-

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25-

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5TOTAL \$ 130-David Hamilton
Clerk of Court/ Deputy ClerkWanda NelsonLWOP
Sentencing 3/30/09
John C. Hamilton
days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Sentencing Taken under advisement -
Report left open for
further evidence on issue of
GBMI☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.Sentencing 3/30/09PRESIDING JUDGE John C. HamiltonJudge Code: 2 0 1 4 0 9Sentence Date: 12-15-08