

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Kershaw County

James R. Barber, III, Circuit Court Judge

RECEIVED

JAN - 7 2015

S.C. Supreme Court

JARVIS GIBBS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000447

APPENDIX

JOHN H. STROM
Appellate Defender

ALAN WILSON
Attorney General

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

MEGAN HARRIGAN
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

VOLUME TWO OF TWO
PAGES 501 - 727

INDEX

INDEX.....	i
------------	---

VOLUME 1

TRIAL TRANSCRIPT (November 17 – 19, 2009).....	1
COURT OF APPEALS OPINION NO. 2011-UP-511 (November 28, 2011).....	493
REMITTITUR (Dated December 15, 2011).....	496
APPLICATION FOR POST-CONVICTION RELIEF	497

VOLUME 2

APPLICATION FOR POST-CONVICTION RELIEF (continued)	501
RETURN	505
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	514
POST-CONVICTION RELIEF HEARING TRANSCRIPT (June 6, 2013).....	519
PLAINTIFF'S EXHIBIT #1 (INVESTIGATIVE NOTES).....	659
PLAINTIFF'S EXHIBIT #2 (RAP SHEETS ON CHAD MOORE).....	663
PLAINTIFF'S EXHIBIT #3 (DOCKET SHEETS)	675
PLAINTIFF'S EXHIBIT #4 (AFFIDAVIT OF RONALD W. MOAK).....	683
PLAINTIFF'S EXHIBIT #5 (MOTION FOR REDUCTION OF SENTENCE IN RE: CHAD MOORE)	685
RESPONDENT'S MEMORANDUM OF LAW	687
ORDER OF DISMISSAL	691
RULE 59(e) SCRCF, MOTION TO ALTER OR AMEND	707
RETURN TO APPLICANT'S "RULE 59(e) SCRCF, MOTION TO ALTER OR AMEND"	712

ORDER DENYING APPLICANT’S “RULE 59(e) SCRCP, MOTION TO ALTER OR
AMEND.....716

INDICTMENTS 719

SENTENCING SHEETS 725

(c) did he represent me in a perjury. My lawyer also never investigated my case. This only denied me a fair trial under the Sixth Amendment. My lawyer had my case for about 4 to 5 months and deprived me of the legal assistance that I need.

FILED FOR RECORD
2012 MAR 26 AM 9:13
JOYCE McDONALD
CLERK OF COURT
Kershaw County, S.C.

- (a) ineffective of counsel failure to call witness on my behalf
 (b) failure to move to suppress line up identification evidence
 (c) failure to question state witness per trial on investigation

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) under the Compulsory Process I the defendant
 (b) my lawyer never moved to suppress a line up
 (c) my lawyer never questioned the state witness

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Direct Appeal
 (b) any petition in State or Federal Courts for habeas corpus or post-conviction relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. The court entered sound decision in the admission of testimony
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. (State court) State of South Carolina in the Court of Appeals
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

- (a) your arraignment and plea? _____
- (b) your trial, if any? NO
- (c) your sentencing? NO
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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. S. Michael Babur

ii. Robert M. Pachak

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Teril

ii. Direct Appeal

iii. _____

19. State clearly the relief you seek in filing this application:

A fair trial conducted by someone who cares about the well-being of the defendant and takes my case seriously.

20. Are you now under sentence from any other court that you have not challenged?

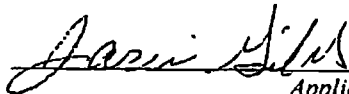
NO

FILED FOR RECORD
2012 MAR 26 AM 9:13
JUDGE MICHAEL
CLERK OF COURT
HERSHAW COUNTY, S.C.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this
20th day of February, 2012.


Notary Public

My Commission Expires

2.21.13

My Commission Expires: _____

FILED FOR RECORD
2012 MAR 26 AM 9:13
JUDICE MEDINA
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

GIBBS Jarvis D -
00255871,

2012CP28317

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 26, 2012, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was true bill indicted at the October 2008 term of the Kershaw Grand Jury for Kidnapping, Use of a Firearm During a Violent Crime and Enter Bank With Intent to Steal (2008-GS-28-15555-6;09-1548).² He was represented by Samuel M Ogburn, Esquire, on the charge(s). Applicant proceeded to jury trial before The Honorable G. Thomas Cooper, Jr., and on November 19, 2009, was found guilty of the charges as indicted. Applicant was sentenced to eighteen (18) years imprisonment each for Kidnapping and Entering a Bank with Intent to Steal, and five (5) years

¹<http://publicindex.sccourts.org/kershaw/publicindex/PICaseDetails.aspx?County=28+&Casenum=2012CP28317&CourtType=G&CaseType=Civil&CourtAgency=28002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00255871>

imprisonment for Possession of a Weapon During the Commission of a Violent Crime, all sentences to run concurrently.

Direct Appeal

A Notice of Appeal was filed and an appeal was perfected on Applicant's behalf by Robert M. Pachak, Esquire, of the South Carolina Commission on Indigent Defense, Appellate Defense Division. After briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Gibbs, 2011-UP-511 (S.C. Ct. App. filed November 28, 2011). The Remittitur was issued December 19, 2011.

The current application for post conviction relief (PCR) was filed March 26, 2012.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

- (a) ineffective of counsel failure to call witnesses on my behalf
- (b) Failure to move to suppress line up identification evidence
- (c) Failure to introduce other witnesses, per trial court records

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) under the Compulsory Process I the defendant
- (b) my lawyer move moved to suppress a line up
- (c) my lawyer never questioned the State witnesses

(A) have the right to the resources of the court. I have the subpoena power to utilize on my behalf to compel the appearance of witnesses before the court. Being that I was deprived this right to exercise the attendance of my witness reasonable and diligently shows the first prong of my claim of ineffective counsel. My lawyer Mr. S. Michael [unclear] did not function as he guaranteed me the defendant under the 6th Amendment. This defendant performance only prejudiced my defense. being my witness would have shown that I was at the barbeque shop during the time of the crime at hand. This I stated in my motion of Discovery in

FILED FOR RECORD
2012 MAR 26 AM 9:12
JOYCE H. COOK, CLERK OF COURT
KENDRICK COUNTY, ILL.

which my lawyer never investigated. Also it was stated that the source of the paid (in which my lawyer never investigated) shows that he made the call about finding the 4 wheeler which was used in the crime. This shows he would have showed that Chad Moore An Detective Lee Beau statements were prejudiced under oath. Because Detective Beau stated the Chad Moore lead them to the 4 wheeler this shows that Chad Moore statements were coherent.

- (3) Identification of object to Melissa Roberts in court identification. She, Melissa Roberts stated that she was never taken to a live up or given a photo picture live up. She stated that she never saw the robber because he had on a mask but still he didn't object to the in-court identification. This also shows that the court's performance was deficient and deprived me the defendant a fair trial. This shows that my counsel's representation fell below an objective standard of reasonableness under prevailing professional norms.

JOYCE HEDGECOCK
CLERK OF COURT
KENTON COUNTY, S.C.
ORIGINAL FILED 12

(c) did he represent me in a per se. My lawyer also never investigated my case. This only denied me a fair trial under the Sixth Amendment. My lawyer had my case be about 4 to 6 months and deprived me of the legal assistance that I need.

19. State clearly the relief you seek in filing this application:

A fair trial conducted by someone who cares about the well-being of the defendant and takes my case seriously.

IV.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. 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).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. **The Respondent requests an evidentiary hearing to fully resolve this issue.** See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Tara D. Shurling, Esquire regarding when the hearing should be set.⁴

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney
General

ROBERT D. CORNEY
Assistant Attorney General

By: RDC
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
rcorney@scag.gov

June 15, 2012

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

GIBBS Jarvis D -
00255871,

2012CP28317

Applicant,

v.

CERTIFICATE OF SERVICE

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 a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

Tara D. Shurling, 3614 Landmark Drive - Suite D , Columbia, SC 29204

DATED June 20, 2012.


Jean R. Indriago
Legal Assistant

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

JARVIS GIBBS, #255871,)
 Applicant,)
 v.)
 THE STATE OF SOUTH CAROLINA,)
 Respondent.)

2012-CP-28-0317

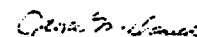
AMENDED APPLICATION FOR
 POST-CONVICTION RELIEF

2013 JUL -3 PM 4:34
 CLERK OF COURT
 KERSHAW COUNTY, S.C.
 RECORDED

The Post-Conviction Relief Application previously filed on March 26, 2012 under docket number 2012-CP-28-0317 is hereby amended to include the following additional allegations:

1. Trial Counsel was ineffective for failing to impeach state witness Chad Moore concerning his own pending charges, his sentencing exposure on his charges, and his motivation to testify against the Applicant in hopes of earning a favorable deal with the State.
2. Trial Counsel provided the Applicant ineffective assistance of counsel in that they failed to seek to exclude the identification testimony of Melissa Roberts from evidence despite facts and circumstances which rendered her identification inherently unreliable.
3. Trial Counsel was ineffective for failing to cross-examine Melissa Roberts concerning her testimony on direct in which she stated, "when I *thought* I saw him prior." Trial tr. p. 131, ll. 12-14 (emphasis added).
4. Trial Counsel was ineffective for failing to point out during closing argument that although Melissa Roberts claimed to be certain of her identification of the Applicant *in a mask* she acknowledged that she "*thought*" she saw him in the bank previously without a mask.

ATTEST True, Correct & Certified
 Copy of Original on File in this
 Court


 Clerk of Court Kershaw County



5. Trial Counsel was ineffective for failing to object the first and every time the State introduced testimony asserting the Applicant's admission to the distribution of crack cocaine. Trial Tr. p. 278, ll. 9-12.
6. Trial Counsel failed to provide the Applicant reasonable professional assistance of counsel when they neglected to request an appropriate curative charge after their request for a mistrial, based upon the introduction of improper testimony concerning drugs, was denied. Trial tr. p. 278, ll. 9-23.
7. Trial Counsel was in ineffective for failing to object to a line of testimony in which a key witness for the prosecution, Arthur Macklin, was allowed to testify that he had been threatened and physically assaulted as a consequence of his cooperation with the Applicant's prosecution thereby improperly bolstering the witnesses' credibility and attacking the Applicant's character where there was not evidence connecting the Applicant to the behavior in question. Trial tr. p. 169 l. 15- p. 173 l. 9.
8. Trial Counsel was ineffective for failing to object to testimony that the three wheeler allegedly used in this robbery was stolen. Trial tr. p. 282, ll. 17-21.
9. Trial Counsel was ineffective for failing to ask the jury to specifically observe multiple tattoos and scars on the Applicant's arms where the eye witness testimony presented at trial made no mention of these obvious physical traits.
10. Trial Counsel was ineffective for neglecting to object to an improper and highly inflammatory closing argument in which the State emphasized threats to witness Macklin where there was no evidence tying the Applicant to any such activity. Trial tr. p. 409, l. 17- p. 410, l. 10.

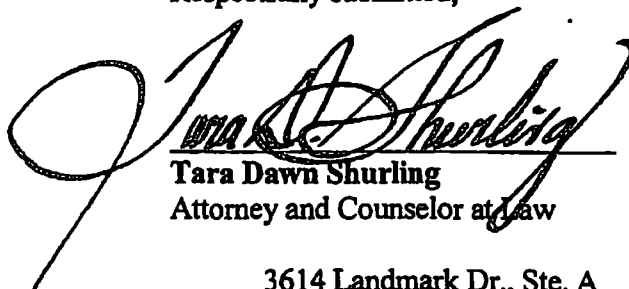


11. Trial Counsel was ineffective for failing to introduce testimony to refute the claim of witness Melissa Roberts that the Applicant and his family had been in a restaurant owned by her in-laws "at times" since she knew the Applicant at school. Trial tr. p. 134, l. 13- p. 135, l. 2.
12. Trial Counsel was ineffective for inaccurately repeating the testimony of Melissa Roberts during his closing argument in a manner which actually bolstered the testimony of this key State witness. Trial tr. p. 385, l. 25 – p. 386, l. 4; Trial tr. p. 134 l. 13- p. 135, l. 2; Trial tr. p. 410, l. 24- p. 411, l. 5.
13. Trial Counsel was ineffective for failing to object to a portion of the State's closing argument in which the prosecutor erroneously claimed that witness Melissa Roberts has testified that the Applicant had been in her branch of the bank "a couple of days earlier" where the record did not support that claim. Trial tr. p. 412, ll. 19-25.
14. Trial Counsel was ineffective for neglecting to object to a portion of the prosecutor's closing argument in which he erroneously claimed that witness Melissa Roberts had said that when she saw the Applicant at the bank, on a different date from the robbery, he was "wearing what ... could have been even the same white shirt." Trial tr. p. 122, ll. 11-15; Trial tr. p. 124, ll. 7-10; Trial tr. p. 412, ll. 19-25.
15. Trial Counsel was ineffective for failing to object to a portion of the State's closing argument in which the prosecution erroneously argued that the Applicant's testimony wasn't credible because he claimed to have heard about the bank robbery before he left the barber shop at 11:00 a.m. when the robbery actually took place at 11:00 a.m. Trial tr. p. 404, l. 21- p. 405, l. 5; Trial tr. p. 322, l. 6-17; Trial tr. p. 325, ll. 15-24.



The Applicant has no further amendments at this time. For the reasons set forth herein, as well as those set forth in his original application, the Applicant asserts that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated in the trial court. Copies of these amendments have been served on opposing counsel, Megan Harrigan, Assistant Attorney General, and Trial Counsel for the Applicant, Samuel M. Ogburn, Esquire.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Ste. A
Columbia, SC 29204
803-738-8622
803-738-1600 (Fax)

ATTORNEY FOR APPLICANT.

This 3rd day of June, 2013.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

JARVIS GIBBS, #255871,)
 Applicant,)

2012-CP-28-0317

v.)

CERTIFICATE OF SERVICE)

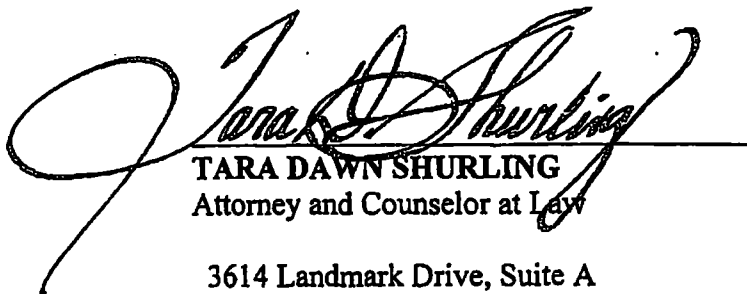
THE STATE OF SOUTH CAROLINA,)
 Respondent.)

CLERK OF COURT
 KERSHAW COUNTY, S.C.

2013 JUN -3 PM 4:34

2013 JUN -3 PM 4:34

The undersigned attorney hereby certifies that one copy of the Applicant's Amended Post-Conviction Relief Application in the above-entitled cause has been served upon, Megan Harrigan, Assistant Attorney General and former trial counsel, Samuel Michael Ogburn, Esquire by email on this the 3rd day of June, 2013.

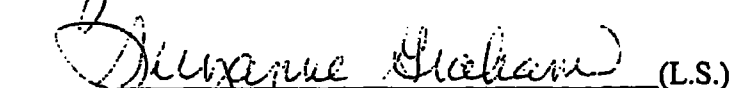

 TARA DAWN SHURLING
 Attorney and Counselor at Law

3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

-SWORN TO BEFORE ME this 3rd day of

June, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 4/28/2023

State of South Carolina

Court of Common Pleas

County of Kershaw

2012-CP-28-00317

Jarvis Gibbs

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

The State of South Carolina

:

June 6, 2013

Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, III, Judge.

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

Tara Dawn Shurling, Esquire
Attorney for the Applicant

Megan Harrigan, Esquire
Attorney for the State

Daphne D. Helms

Circuit Court Reporter

I N D E XWitnessSamuel Michael Obgurn

Direct Examination by Ms. Shurling.....5
Cross-Examination by Ms. Harrigan.....68
Redirect Examination by Ms. Shurling.....99

Jada Gibbs

Direct Examination by Ms. Shurling.....110
Cross-Examination by Ms. Harrigan.....113

Jarvis Gibbs

Direct Examination by Ms. Shurling.....116

E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EV.</u>
P-1	investigative notes		43
P-2	rap sheets on Chad Moore		44
P-3	docket sheets		55
P-4	affidavit of Ronald W. Moak		60
P-5	motion for reduction of sentence in re: Chad Moore		68

1 **The Court:** All right. We are now on the Jarvis Gibbs
2 matter.

3 **Ms. Harrigan:** Yes, Your Honor.

4 **The Court:** All right. Madam Attorney General?

5 **Ms. Harrigan:** May it please the Court?

6 **The Court:** Yes, ma'am.

7 **Ms. Harrigan:** The next matter is Jarvis Gibbs versus
8 The State of South Carolina, docket number 2012-CP-28-0317.
9 The applicant was indicted during the October 2008 term of
10 the Kershaw County grand jury for kidnapping, entering a bank
11 with the intent to steal, and possession of a weapon during
12 the commission of a violent crime.

13 **The Court:** We need to get Ms. Shurling's client.

14 **Ms. Shurling:** Thank you, Your Honor. Your Honor, I
15 have placed on the bench a set of materials that I'll be
16 dealing with. They're all going to be without objection from
17 the respondent, as I understand it.

18 **Ms. Harrigan:** I'd prefer it---

19 **Ms. Shurling:** We'll do it later.

20 **Ms. Harrigan:** Well, actually I'd prefer to do that as
21 we go.

22 **Ms. Shurling:** Oh, certainly. I just -- I wanted---

23 **The Court:** I saw that.

24 **Ms. Shurling:** That's a work copy for you and your
25 clerk. Under the section that says docket sheets, that's the

1 last three that were just handed...

2 **The Court:** All right. Thank you.

3 **Ms. Harrigan:** The applicant was represented by Samuel
4 Michael Ogburn on November 17th through 19, 2009. The
5 applicant proceeded to a jury trial before the Honorable G.
6 Thomas Cooper, Jr., where he was convicted as indicted.
7 Judge Cooper sentenced Mr. Gibbs to an aggregate of 18 years
8 imprisonment. A notice of appeal was filed and the appeal
9 was perfected on his behalf. The Court of Appeals affirmed
10 his convictions and sentence, and the remittitur was sent on
11 November 19th, 2011.

12 Thereafter, Mr. Gibbs filed a timely application for
13 post-conviction relief on March 26th, 2012. The State made
14 its return on June 15, 2012. The applicant, through his
15 appointed counsel, Tara Shurling, amended his application
16 this Monday, June 3rd, to include 15 additional allegations
17 of ineffective assistance of counsel, which is included in
18 Your Honor's packet.

19 **The Court:** All right. Ms. Shurling?

20 **Ms. Shurling:** Thank you, Your Honor. Your Honor, the
21 applicant has alleged generally that he received ineffective
22 assistance of counsel prior to and during his jury trial in
23 violation of his rights under the Sixth and Fourteenth
24 Amendments to the United States Constitution as well as
25 Article 1, Section 14, of the South Carolina Constitution.

1 He has raised several specific allegations in his original
2 pro se application. Those have been amended to include
3 numerous other allegations that were raised in an amended
4 application for post-conviction relief, which has been
5 provided to Your Honor in your packet, I assume.

6 **Ms. Harrigan:** Yes, Your Honor.

7 **Ms. Shurling:** Thank you. Your Honor, at this time I
8 believe we'll start out with trial counsel, Mr. Mike Ogburn.

9 **The Court:** All right. Mr. Ogburn.

10 Samuel Michael Ogburn, after being duly sworn,
11 testified as follows:

12 **The Clerk:** State your name.

13 **The Witness:** Samuel Michael Ogburn.

14 Direct Examination

15 By Ms. Shurling:

16 Q. Mr. Ogburn, I believe you go by Mike?

17 A. That's correct.

18 Q. All right. Well, I'll certainly call you Mr. Ogburn,
19 but I just wanted to clarify for the record. You have been
20 provided with a copy of the amended application for post-
21 conviction relief that was filed on behalf of Mr. Gibbs?

22 A. Yes, I have.

23 Q. And for the record, you were kind enough to meet with me
24 at the Kershaw County courthouse to discuss this case, and
25 you also gave me access to review your file; correct?

1 A. That's correct.

2 Q. Thank you. I assume that you recall representing the
3 applicant back in November of 2009?

4 A. Yes. It was three and a half years ago, so many of my
5 recollections come from the trial transcript.

6 Q. Certainly. Were you a public defender at that time or
7 were you court appointed to represent Mr. Gibbs?

8 A. I was court appointed to represent Mr. Gibbs.

9 Q. And back in 2009, you were in private practice, I
10 presume, from your last answer?

11 A. That's correct.

12 Q. What percentage of your practice would you say was
13 devoted to criminal defense matters?

14 A. Probably 10 to 15 percent.

15 Q. And prior to being in private practice, had you ever
16 served as a solicitor or a public defender?

17 A. Yes, I had served as a solicitor for about 10 or
18 11 years.

19 Q. Okay. And had you been an assistant solicitor? The
20 head solicitor? What was your position?

21 A. Assistant solicitor.

22 Q. Okay. For 10 or 12 years.

23 A. Correct.

24 Q. But you had not been a public defender.

25 A. I was a public defender for about a year and a half and

1 then moved to the prosecutor's office.

2 Q. Oh, okay. Did you review discovery materials with your
3 client, Mr. Gibbs, prior to going to trial?

4 A. Yes, I did.

5 Q. Were there any plea negotiations in this case?

6 A. Yes. The final plea offer was for a 12-year sentence.

7 Q. And do you recall when that offer was made by the State
8 and---

9 A. Yes.

10 Q. ---at what point you were able to provide that offer to
11 your client?

12 A. It was made at the eve of trial. We were getting very
13 close to trying the case and I talked to Solicitor Ron Moak,
14 and basically we were trying to get down to brass tacks and I
15 was trying to say: What's the lowest you would take for a
16 sentence? And he got down to 12 years. He wanted 14, but I
17 I'd gotten him down to 12. Mr. Gibbs was already at the
18 courthouse. He was in a holding cell, and so we had -- I
19 went back and forth to see Mr. Gibbs in the holding cell.

20 Q. Okay. And I take it from the position we're in here
21 today, obviously your client rejected that offer.

22 A. Yes. That's correct.

23 Q. Did he ask that you pursue any counteroffers with the
24 State that were rejected or anything?

25 A. I don't remember any counteroffers, but I do remember

1 again getting with Ron Moak, the prosecutor for the case, and
2 going, "Look, we're at trial. You give me your bottom line
3 that you would accept."

4 Q. Thank you very much.

5 A. And he went and thought about it.

6 Q. Okay. When this case went to trial, how much notice did
7 you have that you had a trial date coming up?

8 A. Let me sort of explain this way. I knew it was on the
9 docket and we were talking about plea negotiations, and again
10 they broke down. So, therefore, I did have a day or two
11 notice, I would say, to get the case ready for trial.

12 Q. Okay. And how long had this case been pending before it
13 eventually went to trial?

14 A. I would say six to eight months.

15 Q. Okay. So it was a fairly quick trial.

16 A. Yes. Mr. Gibbs was incarcerated the entire time, so I
17 had plenty of time to go talk to him.

18 Q. Okay. The lead investigator in this case was Mr. Bowen?

19 A. That's correct.

20 Q. It's Detective Bowen.

21 A. Detective.

22 Q. Did you have an opportunity to meet with him and discuss
23 certain aspects of this case with him?

24 A. Yes, we met several times.

25 Q. And I have -- you have your -- at least the discovery

1 materials portion of your file with you here today at my
2 request?

3 A. Yes, I do.

4 Q. Okay. And in those discovery materials, do you have the
5 investigative notes put in the file by the detective?

6 A. I'm sure they're in here.

7 Q. I believe I left them on top.

8 A. Right. Yes, I do have the police incident report.

9 Q. Okay. We'll be looking at that in a minute. I just
10 want to make sure you had it handy. And you have a copy of
11 the transcript of the trial.

12 A. Yes, I do.

13 Q. Okay. Now, prior to trial had you gotten a witness list
14 from the State? You knew who they were going to call as
15 witnesses in this case?

16 A. Yes, I believe they did provide me with a witness list
17 which I went over with Mr. Gibbs at the detention center that
18 evening.

19 Q. Okay. And did you have the opportunity to interview
20 eyewitness Melissa Roberts prior to the trial?

21 A. I tried. I went to the bank where she worked, and she
22 was given -- or all the tellers were given notice from higher
23 up not to talk to me.

24 Q. Okay. So you made an attempt at least to interview her.

25 A. That's correct.

1 Q. Thank you. And in addition, we had what we like to call
2 a jailhouse snitch in this case, didn't we?

3 A. We did.

4 Q. Mr. Chad Moore?

5 A. Correct.

6 Q. Did -- were you able to ascertain whether or not he was
7 represented by counsel at the time of Mr. Gibbs' trial?

8 A. I don't remember if Mr. Gibbs was represented by
9 counsel.

10 Q. Mr. Moore.

11 A. Mr. Moore. I'm sorry.

12 Q. Okay. And how far before trial did you learn that Chad
13 Moore was going to be a witness for the State?

14 A. Probably maybe two days when I got the witness list, and
15 I did request from the solicitor a criminal record of all
16 non-law-enforcement witnesses.

17 Q. Okay. And had Mr. Moore given a written statement to
18 law enforcement that you had in the discovery?

19 A. I believe he did.

20 Q. Okay. Now, other than the rap sheet that you were
21 provided by the State in the discovery package, did you do
22 any additional investigation into the charges that Mr. Moore
23 had currently pending or any charges that had been recently
24 dismissed since he began cooperating with the State?

25 A. No, I did not go into any further investigation or

1 discuss the case with Mr. Moore.

2 Q. Okay. Let's start somewhat systematically. I'm going
3 to go to number two on the amended application, and we'll
4 start from there and circle back to number one since it's
5 going to take the longest. A moment's indulgence. Mr. Gibbs
6 (sic), have you had a chance to review the trial transcript
7 in preparation for this P.C.R. hearing?

8 A. Yes, I have.

9 Q. And in addition to that, do you have at least some
10 recall of this trial?

11 A. Yes, I do have some recall.

12 Q. Okay. Do you recall that Melissa Roberts claimed to be
13 able to identify Mr. Gibbs as the perpetrator of this bank
14 robbery even though he had on a mask that completely covered
15 his face?

16 A. Yes, I do recall she was basically the only one that
17 would -- was being able to identify this person.

18 Q. And do you also recall that she claimed that she could
19 identify him based on his mannerisms?

20 A. Shape of the head.

21 Q. And the shape of his head.

22 A. Yes, ma'am. I thought that very unusual, too.

23 Q. Okay. And that she had known him 15 years earlier as a
24 classmate in high school.

25 A. I'm not sure if it was 15 years earlier. I believe she

1 had told the solicitor that she had known Jarvis Gibbs from
2 going to middle school with him or him being in the same
3 middle school.

4 Q. And I apologize; you're correct. It wasn't high school;
5 it was middle school. I misspoke. But if the record says
6 that you said that that was approximately 15 years earlier,
7 you don't dispute that.

8 A. I'm not sure how many years ago it was---

9 Q. Okay.

10 A. ---that she and him -- or at least she claims she was in
11 middle school with him.

12 Q. Okay. And she also claimed at one point in her
13 testimony that at a point in time prior to this armed robbery
14 there had been an occasion when she saw Mr. Gibbs in her
15 bank.

16 A. That's correct.

17 Q. And she didn't put a time on that, did she?

18 A. No, she could not put specifics to it.

19 Q. Okay. And do you by any chance recall a portion of her
20 testimony? She testified clearly that at a point in time
21 prior to the armed robbery she had seen him and recognized
22 him as her classmate; correct?

23 A. Again, my recollection is she had told the solicitor
24 that she knew Mr. Gibbs again sometime during a middle school
25 time frame.

1 **Ms. Shurling:** Okay. Your Honor, I'm not going to try
2 to go through the testimony piecemeal; I know you will read
3 it. In -- in Ms. Roberts' testimony, she indicates that she
4 had seen the applicant at a point in time prior to this
5 robbery - she does not date it - and she indicates that she
6 recognized him as a classmate and thought it was odd because
7 he was not a customer at her bank.

8 I'll provide you a page number for that specific
9 testimony in a moment, Your Honor. I have misplaced my note
10 on that.

11 By Ms. Shurling:

12 Q. Okay. Do you recall -- let's look at page 131, line 12
13 through 14. I'm going to backtrack to number 2 in just a
14 second, but if you'd look at page 131, line 12 and 13.
15 During this particular portion of the testimony, she's
16 talking about observing the video surveillance tape of the
17 armed robbery; correct?

18 A. If you could give me a better reference.

19 Q. 131, line 12 through 13. Transcript page 131.

20 A. Right. I'm looking at 131, but it doesn't mention a
21 video.

22 Q. No. You would have to back up a little bit further to
23 see that they're reviewing the video at that point, and on
24 line 12 she says, "As you can see..."

25 A. "He looks back to see if our manager is in the office."

1 Q. Would you keep reading, please?

2 A. "Because when I thought I saw him prior, he was -- she
3 was in her office, but this particular day she was not in her
4 office."

5 Q. Did you attribute any significance to the fact that this
6 witness at that point said that on the prior occasion she
7 thought it was your client?

8 A. I don't recall again actually hitting on the "I
9 thought," but I just remember her saying or her telling --
10 testifying to the solicitor she had seen Mr. Gibbs prior --
11 at a prior time in the bank.

12 Q. I understand, and I'm not trying to give you a hard
13 time, but that is precisely my point. In the other aspects
14 of her testimony, she had indicated with certitude that she
15 had seen your client---

16 A. Prior.

17 Q. ---on an occasion prior to the bank robbery and
18 definitively recognized him as her former middle school
19 classmate.

20 A. Correct.

21 Q. And then in this short portion of the testimony I've
22 just pointed out, she says that other time when I thought I
23 saw him. Okay.

24 A. Right.

25 Q. Did you consider using that testimony to your advantage

1 in formulating or in supporting the defense or cross-
2 examining her concerning that ambiguity in her testimony?

3 A. Not one particular word that struck me, the thought.
4 However, when I did cross-examine her, she even answered,
5 "I'm not 100 percent. I want to say the eighth grade or
6 ninth." I tried to cross-examine her on whether she actually
7 saw him or recognized him from schooldays and again
8 recognized him from a prior appearance in the bank.

9 Q. I understand. And---

10 A. But just the one---

11 Q. That's okay.

12 A. ---word "thought" may not have rung a bell at the --
13 during the middle of a trial.

14 Q. Well -- and since you've just referenced a portion of
15 cross-examination, could you give us a page cite for that?

16 A. Yes. It's page 133, line 1.

17 Q. The portion of her testimony that you quoted, found at
18 line 9 and 10, follows a question at line 8: "What grade was
19 it when you first met Jarvis?" "I'm not 100 percent sure. I
20 want to say the eighth grade, eighth or ninth." So that "I'm
21 not 100 percent sure" wasn't a comment on her certainty about
22 the identification. It was that she wasn't a hundred percent
23 sure when she met him; correct?

24 A. Right, but that still goes to whether she can recognize
25 him or not.

1 Q. Okay.

2 A. Because you can meet someone in the seventh or eighth
3 grade and many years later not recognize them.

4 Q. Okay. Did you consider, in preparing for trial, raising
5 a motion to suppress her in-court identification testimony
6 based on the facts that -- the fact that the facts and
7 circumstances of her supposed identification were such that
8 her identification was inherently unreliable?

9 A. Looking through the record, I did not raise an objection
10 as to her identification, her testimony concerning
11 identification.

12 Q. Okay. My question was -- obviously the record will
13 speak for itself that you didn't. My question is: Did you
14 consider doing that?

15 A. Again, that was three and a half years ago. It's hard
16 to know, you know, if I was thinking of raising that.
17 Obviously it was not raised.

18 Q. Okay. You are, as a defense attorney, familiar with the
19 Neil versus Biggers standard when it comes to the reliability
20 of eyewitness identifications, I assume. Were you concerned
21 prior to trial that the parsity (verbatim) of details in her
22 description and the fact that your client had on a mask and
23 the length of time since she'd seen him would give rise to a
24 challenge that there just wasn't enough there for her to even
25 be allowed to make an identification?

1 A. Yes, that was, but again their main piece of
2 identification was going to be the video, and I didn't think
3 with him coming in in a mask, or any robber coming in with a
4 mask, and the sparsity of the video -- that's all they really
5 had to rely on was that video.

6 Q. I understand. I'll -- I'll move on. She indicated that
7 it hadn't been 15 years since she'd seen Mr. Gibbs, that she
8 had seen him as recently as approximately five years earlier;
9 correct?

10 A. She made it sound less than five years earlier. It was
11 more than -- and if I remember correctly, it was she had seen
12 him or one of the tellers had seen him in the bank within two
13 to three weeks before the robbery.

14 Q. My apology. I'm sorry. I'm not being clear. Other
15 than the incident she refers to as having seen him prior to
16 the robbery at her bank and wondering what he was doing there
17 because he wasn't a customer, other than that incident and
18 the armed robbery itself, she referenced having been able to
19 identify him as Mr. Gibbs who went to middle school with her
20 approximately 15 years earlier.

21 A. Correct.

22 Q. And then when she was asked how recently she had seen
23 him, she also gave testimony that her parents had a store of
24 some sort, a bar or a grill, and that she had seen the
25 applicant and his parents in there doing business at some

1 point and placed that at approximately five years earlier?

2 Do you recall that portion of her testimony?

3 A. I'm looking at it now on the transcript.

4 Q. Okay. And would you care to give us that page cite?

5 A. The page cite would be 134.

6 Q. All right. Since you're there -- this is on your cross.

7 When she's -- you asked, "So you really haven't seen him in

8 15 years." And then she says, "Actually my mother-in-law

9 owns a store at Lake Wateree, and I've seen him and his

10 family in there at times." Okay? That's the portion I was

11 referring to.

12 A. Uh-huh.

13 Q. Okay? Once she made that assertion, did you at an

14 available opportunity - a break or recess or any other chance

15 you had - discuss with your client whether or not he had any

16 recollection of going in a store owned by this woman's

17 family?

18 A. I don't specifically recollect asking him if he had been

19 in that store, but I think -- he was very vocal with me, so

20 I'm sure he told me he had not gone in that store or doesn't

21 know what -- or didn't know what Melissa Roberts was talking

22 about.

23 Q. Did you ask him if he had any family members that were

24 alive and available to testify to refute that assertion?

25 A. I don't remember asking him that, no.

1 Q. Okay. Any particular reason why you didn't?

2 A. No, ma'am. I just -- again, her testimony seemed kind
3 of shaky anyway.

4 Q. Okay. She was, however, the only eyewitness to
5 positively connect Mr. Gibbs to this bank robbery, wasn't
6 she?

7 A. If you're referring to the tellers in the bank, she was
8 the only one that could, in a sense, narrow it down to Mr.
9 Gibbs.

10 Q. And the other witnesses were people that put Mr. Gibbs
11 on a bicycle or near the area where a three-wheeler was found
12 and so forth.

13 A. Correct.

14 Q. But she was the only one that put him in the bank.

15 A. Well, you did have testimony of the other tellers that
16 did say someone came in the bank and robbed it.

17 Q. Well, I mean, obviously it was a bank robbery case.

18 A. Right.

19 Q. But the other tellers didn't say that it was Jarvis
20 Gibbs.

21 A. You're right. They could not specifically identify him
22 as Mr. Gibbs.

23 Q. He was described as tall.

24 A. Correct.

25 Q. Correct? And although your client is tall, he's not

1 Shaquille O'Neal. He's not---

2 A. Right.

3 Q. ---seven feet or anything, is he?

4 A. No.

5 Q. Okay. Prior to trial, there was discussion pretrial
6 about whether or not the State was going to be allowed to
7 introduce evidence from the bicycle owner, that he had been
8 paid for the loan of the bicycle with a piece of crack.

9 A. Correct.

10 Q. And there was other testimony about whether any -- any
11 reference to drug dealings was going to be allowed at trial;
12 correct?

13 A. Correct.

14 Q. And His Honor limited the introduction of evidence
15 concerning drugs to testimony concerning the fact that your
16 client bartered for the use of the bicycle with crack.

17 A. I'm not sure if the judge allowed the crack. He---

18 Q. With drugs.

19 A. Okay. With drugs. Okay. What's your point or
20 question?

21 Q. Okay. I presume -- well, I won't presume. Did you
22 agree with that decision by the judge?

23 A. The judge made the decision. Many times we have to
24 abide by the judge's decision.

25 Q. Of course we do, but if we disagree with a ruling on the

1 law and your client is convicted, what's the next step?

2 A. Well, I remember making a mistrial because the drugs
3 came out, and I asked -- objected and asked for a mistrial,
4 and it was---

5 Q. Well, let's look at page -- I'm sorry. I thought you
6 were through.

7 A. Sure.

8 Q. I apologize. Let's look at 278, lines 9 through 12.

9 Line 9: "Okay. Did he tell you how he borrowed the bike
10 from Arthur Macklin?" Line 11: "Yes, he said he'd give him
11 a \$20 piece of crack to -- for the bike to borrow it."

12 Question: "Did he say he used it for a business transaction
13 after he borrowed it?" "Yes, sir, he said -- he said he
14 wanted to use the bike to go around the area, you know, sell
15 more drugs," and then you object. Correct?

16 A. Okay.

17 Q. So is there any reason why you did not raise an
18 objection after the answer found on lines 11 and 12?

19 A. On page 270---

20 Q. Eight.

21 A. ---on line 18, I said, "Your Honor, I would object.
22 This has gone a little further than..."

23 Q. I understand. Let me back up. Originally we -- we've
24 covered the fact that Judge Cooper had limited them on the
25 introduction of drug evidence to the evidence about him

1 swapping drugs to borrow the bicycle.

2 A. Right.

3 Q. A ruling which presumably your client would have wanted
4 to appeal if he was convicted.

5 A. Okay.

6 Q. Okay? Now, what's necessary in order for your client to
7 successfully appeal a ruling on a substantive error of law?

8 A. Well, you have to make a record on the -- or an
9 objection on the record.

10 Q. And unfortunately we're stuck with the rule that you
11 have to object the first and every time the evidence comes
12 in; right?

13 A. That's your statement, but I did do some objecting
14 there.

15 Q. I understand, sir. What I'm asking is: You objected
16 after---

17 **The Court:** The record speaks for itself.

18 By Ms. Shurling:

19 Q. Okay.

20 A. Yeah, the record speaks for itself. If I did not object
21 quickly enough, I do apologize.

22 Q. Okay. Well, let's move on. With regard to the
23 objection you did raise, which was to the answer found on 13
24 and 14 - pardon me - the answer found on 15 through 17, your
25 objection was sustained by the Court, and you followed that

1 with a motion for a mistrial; correct?

2 A. Correct.

3 Q. Once your motion for a mistrial was denied, did you
4 consider asking the Court to give a curative charge?

5 A. I don't remember that, no.

6 Q. Did you consider the possibility that a curative charge
7 would be necessary to instruct the jury to disregard the
8 portion of the testimony that your objection had been
9 sustained on?

10 A. I don't recall thinking that. Again, it's been three
11 and a half years. I don't recall whether I was thinking of a
12 curative charge or whether, if the judge sustained it, he
13 would let the jury know or they're to know not to consider
14 that evidence.

15 Q. Thank you. Let's move to page 169, starting about line
16 15. From that starting point, going over to page 173, line
17 9, witness Arthur Macklin testifies at length about having
18 been assaulted and badly beaten after he talked to the police
19 about this incident; correct?

20 A. I believe so.

21 Q. And actually if you look at 172, lines 15 and 16, he
22 acknowledges that he didn't want to come because he was
23 afraid for his life.

24 A. Uh-huh.

25 Q. Okay?

1 A. Okay.

2 Q. In this portion of the testimony - and if you need time
3 to look over it again, please let us know - but there was no
4 evidence tying your client to any of the bad things that
5 happened to Arthur Macklin, was there?

6 A. No, ma'am.

7 Q. Did you consider -- well, first off, did you know in
8 advance of trial that Arthur Macklin had been beaten---

9 A. I did not.

10 Q. ---and assaulted?

11 A. I did not know he had been beaten and assaulted, no.

12 Q. Once his testimony began -- let's go back to page 169,
13 line 15, when the solicitor says, "Were you worried about
14 something?" And you go on over the top, and at some point,
15 "I'm worried about my life -- is my safety," and then line 6,
16 "I got hurt behind that, after I talked to the detectives. I
17 was knocked out." Do you see that?

18 A. Yes, I do.

19 Q. Okay. At any point in here did you consider objecting
20 on the ground that this testimony was inviting the jury to
21 infer that your client had used physical force to discourage
22 this person from cooperating with law enforcement?

23 A. Could you summarize your question a little...

24 Q. Okay. Did you consider objecting to this line of
25 testimony on -- on the ground that it invited the jury to

1 infer bad acts, therefore bad character and guilt, of your
2 client?

3 A. I don't recall specifically thinking of objecting. Mr.
4 Macklin on the street was known as Crack Head, and he was a
5 well-known user, and everybody thought he was not in his
6 right mind.

7 Q. Well, you're a lawyer.

8 A. Right.

9 Q. And you've have practiced -- at least a portion of your
10 practice is criminal law.

11 A. Correct.

12 Q. You don't know whether the 12 people in the jury box
13 knew that Arthur Macklin was a crack head, do you?

14 A. No, I don't. Of course not.

15 Q. So you don't know whether they took his claims that
16 someone had used physical force sufficient to put him in fear
17 of his life seriously or not.

18 A. Right, but Mr. Macklin could not positively identify the
19 bicycle he loaned Mr. Gibbs.

20 Q. Well, let me rephrase. What possible relevance did this
21 several pages of testimony about him being beaten and being
22 afraid for his life, if he testified, have to this trial?

23 A. You'd have to ask the solicitor on that. He brought him
24 and called him as a witness, but if -- if Mr. Macklin cannot
25 identify the bicycle that my client used or doesn't know, how

1 does he hurt my client's case?

2 Q. Well -- and I'll need a minute to find the page
3 reference, but he did at one point claim he could positively
4 identify the bike, didn't he?

5 A. He said he thought he saw his bike in a police car, but
6 it didn't look like his bike because it had a coil wrapped
7 around it. So I don't know whether Mr. Macklin is saying he
8 saw his bike or he saw -- he wasn't sure himself.

9 Q. By the time he got to trial, his testimony reflects,
10 does it not, that he had decided it was for sure his bike?

11 A. I would have to look, but Mr. Macklin changed his mind
12 several times.

13 Q. Okay. Let's move on. On page 282, lines 17 through 21,
14 specifically line 21, the statement, "it was a stolen
15 four-wheeler" -- do you see that?

16 A. Yes.

17 Q. Did you consider objecting on grounds of relevance and
18 potential further negative inference of other unrelated bad
19 acts to the testimony that the four-wheeler -- or three-
20 wheeler, excuse me, involved in this incident was stolen?

21 A. Well, we're -- I'm trying a bank robbery case. You
22 know, Mr. Gibbs was not charged with the four-wheeler, and if
23 he's not able to be placed at the bank, then what happened
24 prior does not matter.

25 Q. I certainly understand that logic, but would you agree

1 that the more evidence the State can get in in a trial tying
2 your client to criminal activity in general, the more likely
3 they are to believe the State's case that your client
4 committed the crime for which he's on trial in particular?

5 A. Well, you may have a point, but we don't know what's in
6 a juror's mind.

7 Q. Well, is there any particular reason why you didn't
8 object to that?

9 A. I don't see an objection on the record. And, again, I
10 cannot go back to my thoughts three and a half years ago, but
11 evidently it's not on the record. It's not been objected to.

12 Q. Okay. Your client has multiple tattoos - I think the
13 kids call them sleeves - on both arms, doesn't he?

14 A. Okay. Yes, ma'am, he does.

15 Q. And he also has some pretty bad scars as well; correct?

16 A. I remember the tattoos. I don't remember the scars.
17 I'm not saying he doesn't have them, but I just remember the
18 tattoos.

19 Q. Okay. And you, in fact, cross-examined the eyewitness,
20 Melissa Roberts---

21 A. Correct.

22 Q. ---about whether she noticed anything unusual on his
23 arms.

24 A. Right.

25 Q. Okay. Did you ever consider specifically arguing to the

1 jury and asking that they, you know, make note that, you
2 know, the defendant's right here in the courtroom, make note
3 of what's on his arms, and the fact that the defense - pardon
4 me - the prosecution witnesses didn't notice them?

5 A. I considered that, but the tattoos on his arms are
6 very -- they can be explicit. They could be very highly
7 prejudicial to the jury because I remember one that says,
8 "thug life," and a juror could take it as, you know, he buys
9 into that life. He's committed to being a thug and committed
10 to that lifestyle.

11 Q. I understand. Did you consider asking that your client
12 display his arms where he stood at a distance where the jury
13 could not read the tattoos for content but could have an
14 opportunity to observe how heavily tattooed he was?

15 A. Well, on the video they don't show -- I don't believe
16 there were tattoos on the individual on the video, and they
17 could see his arms have marks, even though they wouldn't be
18 able to read them from the jury box. So I was inferring that
19 they would -- when I mentioned the tattoos and cross-examined
20 about the tattoos, they would then bring their attention to
21 his forearms which they could see the tattoos but not read
22 them specifically.

23 Q. Okay. We talked awhile ago about the testimony of
24 Arthur Macklin, being in fear for his life and being beaten.
25 Let's look at page 409, a portion of the prosecution's

1 closing argument. 409, line 17.

2 A. If you'll give me a minute to find that section. Yes,
3 ma'am.

4 Q. Okay. 409, line 17, and go on and look on over to 410,
5 approximately line 10, particularly lines -- 410, lines 1
6 through 3. "He didn't want to be here. He didn't want to
7 get beat up again. He didn't want to get hurt. He didn't
8 want to get killed."

9 A. Uh-huh.

10 Q. Would you agree that the unobjected to testimony of
11 Arthur Macklin afforded the solicitor the opportunity to make
12 this argument?

13 A. That's the opinion of the solicitor.

14 Q. Did you consider objecting to that portion of his
15 closing argument?

16 A. Obviously not, if it's not on the record.

17 Q. Okay. Moving along, I believe I've asked you this so I
18 won't be terribly redundant. You said you didn't consider
19 offering witnesses to refute the claim of Melissa Roberts
20 that the applicant and his family had been in the restaurant
21 owned by her in-laws.

22 A. No, I didn't know of any witnesses that could refute
23 other than Jarvis's family, but it's like: How do you prove
24 a negative?

25 Q. Well, did you consider putting up his immediate family

1 members and asking them if they had ever frequented Ms.

2 Roberts' family's store on Lake Wateree?

3 A. No, I did not.

4 Q. Okay. We're going to look at your closing argument for
5 a moment. Look at page 385, line 25, and going on over to
6 the next page. "So, anyway, after that she even lays it on a
7 little thicker and says, 'My parents owned this restaurant.
8 I believe it was the River Deck Saloon and Grill. And Jarvis
9 and his parents eat there all the time.'"

10 A. Correct. That's what I said.

11 Q. That wasn't her testimony. Are you aware that that was
12 not her testimony?

13 A. It may not have been her testimony, but I was trying to
14 in a sense argue to the jury that she's embellishing her
15 story.

16 Q. Well, if we look at page 134, line 13, through 135, line
17 2...

18 A. I'm sorry. Line -- or page?

19 Q. 134, line 13 -- no, 16. Pardon me. 134, line 16.

20 "Well, actually my husband's mother, my mother-in-law, owns a
21 store at Lake Wateree, and I have seen him and his family in
22 there at times." Do you see that?

23 A. Okay.

24 Q. Okay. And your argument was that my parents -- she had
25 testified that her parents owned a restaurant and that Jarvis

1 and his parents eat there all the time.

2 A. Uh-huh.

3 Q. Okay. Isn't -- what you said would arguably be
4 testimony of a scenario that would give her even more
5 opportunity to observe Mr. Gibbs than what she actually said
6 in her own testimony, wouldn't it?

7 A. I don't believe so.

8 Q. Well, for starters, she said, "At times," and you said,
9 "Ate there all the time." Would that not imply a more
10 frequent opportunity to observe---

11 A. Not necessarily.

12 Q. ---Mr. Gibbs?

13 A. Not necessarily. Again, it was a embellishing story or
14 trying to say that Melissa Roberts has embellished her story.

15 Q. And let's go to page 410, line 24. One moment, please,
16 Your Honor. I'm sorry. I attributed to you - and I
17 apologize for that - an argument that was actually made by
18 the solicitor. Okay? If you take the portion of the trial
19 testimony we just reviewed and the portion of your own
20 closing argument we just looked at and then we look at a
21 portion of Ron Moak's closing argument on page 410, line 24,
22 "This is not what she said. She said the defendant's family
23 does business with her in-laws that own the River Deck Grill.
24 She never said he ate there. She said she saw him because
25 his family does business with her in-laws, her mother and her

1 father." Do you see that?

2 A. I'm sorry. If you could give me a better reference.

3 Q. Okay. Page 410, line 25, about the second half of the
4 last line.

5 A. "This is not what she said. She said that her
6 defendant---"

7 Q. Right. Going over to the first paragraph, lines 1
8 through 5.

9 A. So basically she's saying the River Deck -- or Mr.
10 Moak's argument is that the River Deck is never frequented by
11 Mr. Gibbs, that they have other business with them. Is that
12 correct?

13 Q. I understand, and what I'm saying is that your argument,
14 which inaccurately quoted his witness's testimony, created an
15 opportunity for Mr. Moak to come back and say that you were
16 arguing the record inaccurately, didn't it?

17 A. It must have because he did come back and argue that.

18 Q. All right. Let's look at page 412 of Ron Moak's closing
19 argument, line 19 through 25.

20 A. Okay.

21 Q. "It is not just the shape of his head that helps her
22 identify him. She identified him because he was in there a
23 couple of days earlier with no mask on, wearing what she said
24 could have been even the same white shirt, standing right
25 back there where the manager's office was." Do you see that

1 portion of his testimony?

2 A. Yes. Is that Mr. Moak's argument?

3 Q. It is. Is there anywhere in the testimony of Melissa
4 Roberts where she gave a timeline for the previous occasion
5 when she thought she saw Mr. Gibbs in her bank?

6 A. I don't recall it. I'd have to look through the record.

7 Q. If the record indicates that she did not put a time on
8 it, that she didn't say whether it was a couple of months, a
9 couple of days, weeks -- if she did not say anything that put
10 a time on how recently he had been in the bank or someone she
11 thought was him had been in the bank, would it be proper for
12 Ron Moak to argue that she said he had been in there a few
13 days earlier?

14 A. No, ma'am.

15 Q. And would the argument to the jury that she had an
16 opportunity to observe him without the mask as recently as a
17 few days before the bank robbery have bolstered her claim
18 that she could identify him in the mask?

19 A. Again, that's up to a jury whether it would bolster her
20 testimony.

21 Q. Okay. Would you agree that that tendency -- that
22 testimony would have a tendency to bolster the credibility of
23 her claim?

24 A. Again, that depends on the juror.

25 Q. Is there any particular reason why you didn't object to

1 that since it went outside the evidence in the record?

2 A. No, ma'am, I don't remember -- I don't recall objecting
3 against that testimony, and I could not give you a reason why
4 or why not.

5 Q. Okay. And was there anything, to the best of your
6 recollection, in her testimony to suggest that she thought
7 the white shirt that he had had on the day she originally
8 observed him at that previous incident and the white shirt he
9 had on the day - or someone had on the day - of the armed
10 robbery might have even been the same shirt?

11 A. I don't recall that.

12 Q. Okay. So if Solicitor Moak quotes her as saying that it
13 could have even been the same white shirt...

14 A. Well, it said it could have been, and a white tee shirt
15 is quite a common male apparel.

16 Q. I understand that. I didn't say Ron Moak said it could
17 be -- might have been the same white shirt. He said she
18 testified that she said it even could have been the same
19 white shirt. And she didn't testify to that, did she?

20 A. I don't remember her testifying to that, no, but---

21 Q. Right.

22 A. ---again, she didn't say it was the exact shirt. It
23 could have been, and that opens a lot of possibilities.

24 Q. Did you consider objecting to that as exceeding the
25 evidence on the record -- in the record?

1 A. Evidently, no, ma'am. It's not on the -- on the record.

2 Q. Okay. The next objection - pardon me - allegation
3 basically points out your failure to object to several more
4 portions of the State's closing argument. Let's take a look
5 at page 404, line 21, going over to 405, line 5, where
6 essentially he is saying that your client testified that he
7 left the barbershop around 11:00 and that he claimed he heard
8 about the armed robbery while he was still at the barbershop.
9 And in lines 2 through 5, Solicitor Moak says, "How are you
10 going to leave the barbershop at 11 and hear about a robbery
11 that happens at 11 -- at 5 'til 11 at the barbershop? Okay?
12 Okay?" Do you see that?

13 A. Okay. Right.

14 Q. Okay. Let's go then back and take a look at the actual
15 testimony -- go to 322, lines 6 through 17. Is that right?
16 Hold on just a second. Okay. There we go. 322, lines 6
17 through 17. Line 6: "Yeah, he was just asking me questions
18 at first like what did I -- what I did today and stuff like
19 that. And then like probably about 30 minutes I asked him
20 like: 'Why am I here?' So he was like, 'Did you hear
21 anything about a bank robbery?'" Okay?

22 A. Right.

23 Q. Publish for us what your client testified to lines 12
24 through 17.

25 A. "I was like, yeah, I heard people. I mean, like in the

1 hood, like you can't -- I mean, in the area where I stay at,
2 like you can't help but hear about people talking about it.
3 I was like, yeah, I heard about it. I -- you -- what I'm
4 saying, so I was like, yeah, I heard about it."

5 Q. Okay. So we're not going to go back through it, but
6 there -- in your client's testimony, he had indicated that
7 after he left the barbershop he went around town. I believe
8 he says something about being in a park or something at some
9 point.

10 **Ms. Shurling:** I found it, Your Honor.

11 By Ms. Shurling:

12 Q. Page 318. "What time did you leave?" referring to the
13 barbershop. We'll start at line 12. "You got to the
14 barbershop around 9:30, 9:45." "Yes, sir." "What time did
15 you leave?" "When I left the barbershop, it was probably
16 about 10, about 10 or 11 something." "Did you still have the
17 bike?" "No, sir."

18 Moving on down, "What did you do after you left the
19 barbershop?" "I went down to Boykin Park. Well, I started
20 walking down towards Boykin Park. Then I caught a ride from
21 somebody." "Where is Boykin Park in relation to Dusty Bend?"

22 Anyway, in this portion of the testimony he says he
23 leaves the barbershop and he gets a ride with somebody and he
24 goes to the park; correct?

25 A. Correct.

1 Q. And then in the portion of the testimony we kind of
2 zoomed in on a few minutes ago, he says, sometime after he
3 left the bank just in the hood, so to speak, he heard about
4 the bank being robbed.

5 A. That's the prior -- what we read a few pages ago.

6 Q. Correct.

7 A. Okay.

8 Q. Okay. So when Mr. Moak argued in his closing argument
9 on page 404, going over to 405, lines 2 through 5 -- argues
10 that your client's story is fantastic, unbelievable (verbatim)
11 because he's claiming that he didn't leave the barbershop
12 'til 11 and that he heard about the bank robbery while he was
13 at the barbershop, that's not an accurate reflection of the
14 testimony, is it?

15 A. No. No, ma'am, it's not.

16 Q. Okay. Should you have objected to that?

17 A. Yes, ma'am, that should have been open to objection.

18 Q. Thank you.

19 **Ms. Shurling:** One moment's indulgence, Your Honor.

20 Your Honor, just for further clarification, I have
21 highlighted a portion of the testimony where he discussed
22 going to the park.

23 By Ms. Shurling:

24 Q. If you also look at page 325, lines 15 through 25, Mr.
25 Gibbs makes it clear that he wasn't picked up and taken down

1 to county until much later, that they had me in the station
2 around 4:30. They took me down to the county.

3 A. That's my understanding. It was later in the day.

4 Q. Okay. So there would have been quite a little gap
5 between 11 and 4 something---

6 A. Right.

7 Q. ---when they picked him up to take him to county.

8 A. Uh-huh.

9 Q. Plenty of opportunity for him to hear about the local
10 bank getting robbed.

11 A. I guess so. I don't know how fast the word gets around.

12 Q. Okay. Let's move along. We're going to circle back now
13 to the very first allegation because it's the one that's
14 going to be a little tedious.

15 **Ms. Shurling:** Your Honor, could we take about a
16 ten-minute break before we get into this next line?

17 **The Court:** Why do we need to do that?

18 **Ms. Shurling:** Because I'd like to go to the rest room
19 if possible, please?

20 **The Court:** All right. We'll take a break to allow you
21 to go to the rest room.

22 **Ms. Shurling:** Thank you.

23 **The Court:** We're not taking ten minutes.

24 (Pause in proceedings.)

25 **The Court:** All right. Ms. Shurling, let's proceed.

1 **Ms. Shurling:** Thank you.

2 By Ms. Shurling:

3 Q. Again, I believe right before we left I said we were
4 going to circle back to the first allegation concerning the
5 cooperation testimony of Chad Moore. Okay?

6 A. (Witness nodded head up and down.)

7 Q. Let's go ahead and get to the page cite for Mr. Moore's
8 testimony which begins on page 228 of the record, Your Honor.
9 On page 229, Mr. Chad Moore is asked by Solicitor Moak where
10 he's currently housed and what he's charged with, and he
11 says, "The Lexington County Detention Center and bank
12 robbery." Actually, the First Citizens of Lugoff, and he
13 even gives the date, February 11th, 2008. Do you see that?

14 A. Yes, ma'am.

15 Q. Okay. Solicitor Moak asked him the status of that
16 charge, and his response is still going on -- "Still going to
17 appearances. Nothing is concrete so far." Do you see that?

18 A. Yes, ma'am.

19 Q. And then going over to page 30, he says, "He hasn't pled
20 yet, but he intends to."

21 A. I believe so. It's over on page 30?

22 Q. Correct.

23 A. Okay. Yes, I see that.

24 Q. And then Solicitor Moak briefly reviews the fact that he
25 has prior convictions for criminal sexual conduct, and

1 Solicitor Moak asked him about armed robbery and the witness
2 disputes it and says, "Strong arm." Correct?

3 A. Correct.

4 Q. Okay. And that's basically it. At that point they move
5 on to the meat of his testimony concerning his knowledge of
6 Mr. Gibbs' involvement in the bank robbery before the court.
7 Correct?

8 A. Correct.

9 Q. A moment's indulgence, Your Honor. All right. Mr.
10 Ogburn, it's been a long time, I know, but can you remember
11 -- and if you said this earlier, I'm sorry. It's hard to
12 keep up. You said you knew before trial about Chad Moore?

13 A. We were given a witness list and, again, I remember
14 asking the prosecutor for the -- the criminal record for
15 anyone that was not law enforcement, and I don't believe we
16 got this record until a day or two before trial.

17 Q. Okay.

18 A. If not at trial.

19 Q. And, again, you have your file there with you, I
20 believe.

21 A. Yes, ma'am.

22 **Ms. Shurling:** May I approach, Your Honor? I might can
23 help him.

24 **The Court:** You may.

25 By Ms. Shurling:

1 Q. All the discovery stuff is in a manila folder about that
2 thick, or it was. Okay. Did you...

3 A. And we're showing -- this is for the rap sheet for
4 Jarvis?

5 Q. Look for this first. It's in there. If you can look in
6 the discovery materials in your file and locate a document
7 captioned "Investigative Notes" dated 7/25/08. Mr. Ogburn,
8 do you need assistance finding that document?

9 A. I believe so.

10 **Ms. Shurling:** May I, Your Honor?

11 **The Court:** Sure.

12 **Ms. Shurling:** It's in there, I promise, because I had
13 it on top. Okay.

14 (Pause in proceedings.)

15 **Ms. Shurling:** Thank you, Your Honor.

16 By Ms. Shurling:

17 Q. Have you been able to locate from your file the copy of
18 the investigative notes that were provided to you by the
19 Camden Police Department?

20 A. Yes, dated 7/25/08.

21 Q. If you would look at the bottom of the second page --
22 and, Your Honor, the pages are not numbered, but you can tell
23 their order by the date stamps for each entry because they're
24 entered chronologically. At the bottom of the second page,
25 7/28/2008?

1 A. Chad Moore was transported to the Camden Police
2 Department from the detention center with information on the
3 bank robbery.

4 Q. Okay. Now, moving on down to near very end of -- the
5 very end of that long paragraph, he says, "Moore admitted
6 that he was helping in order to get help on his bank robbery
7 charge."

8 A. Yes, ma'am.

9 Q. Correct?

10 A. Correct.

11 Q. "And I told him that I could not promise him anything."
12 Do you see that?

13 A. Yes, ma'am.

14 Q. Okay. But then he says, "Moore wanted to go back to the
15 same cell with Gibbs to see if he could -- would give up any
16 more information." Do you see that?

17 A. Yes.

18 **Ms. Shurling:** Okay. Now, in addition to these notes
19 which -- Your Honor, I'm going to go ahead and get another
20 copy of this out. This is as organized as I can... Your
21 Honor, I would move to introduce the investigative notes, a
22 copy taken directly from Mr. Ogburn's file, as Applicant's 1,
23 without objection, I understand.

24 **Ms. Harrigan:** No objection from the State, Your Honor.

25 **The Court:** So admitted.

1 (Plaintiff's Exhibit 1 was received in evidence.)

2 By Ms. Shurling:

3 Q. Then, in addition to the investigative notes, you were
4 provided a copy of a rap sheet dated 11/18/2009 for Chad
5 Allen Moore. Do you see that in your discovery materials?

6 A. If you want me to take a look, I know I was provided
7 with a rap sheet.

8 Q. Once again, Your Honor, if I may assist? There it is.
9 You actually, I think, have two copies in there. Your Honor,
10 at this time I would move -- well, let me -- Mr. Ogburn, have
11 you located your copy of the rap sheet I was referencing a
12 moment ago?

13 A. Let me make sure this is in reference to Chad Moore. I
14 was looking for his name. Chad Moore. Okay.

15 Q. Five pages, 5 of 5. There's a three-page one and then a
16 five-page one.

17 A. Yes.

18 Q. A three-page one, a four-page one, and a five-page one
19 all together.

20 A. Okay.

21 Q. Okay?

22 **Ms. Shurling:** Your Honor, this document is actually a
23 series of S.L.E.D. sheets. The top one indicates it's page 1
24 of 3 and it's dated 11/18/09.

25 **The Court:** I saw that.

1 **Ms. Shurling:** Pardon?

2 **The Court:** I saw that.

3 **Ms. Shurling:** Okay. The second one is likewise dated
4 11/18/09 and is a four-page rap sheet dated 11/18/09 and---

5 **The Court:** I see.

6 **Ms. Shurling:** ---then there's a last one provided to
7 the defense in the discovery materials that is a five-page
8 document. It is also dated 11/18/09. It is also for Chad
9 Allen Moore, but it included numerous aliases under which he
10 was known to operate. And I would move at this time to
11 introduce these portions of the discovery materials as
12 Applicant's 2.

13 **Ms. Harrigan:** No objection from the State.

14 **The Court:** So admitted.

15 (Plaintiff's Exhibit 2 was received in evidence.)

16 By Ms. Shurling:

17 Q. Okay. Looking at your copy of the rap sheet we were
18 just discussing, if you could look at page 2 of 3 on the
19 second page of the package we were discussing.

20 A. Uh-huh.

21 Q. The entry actually begins on the first page where it has
22 the date charges are received, Chad Allen Moore, September 8,
23 2007?

24 A. Uh-huh.

25 Q. And references a charge of distribution of crack near a

1 school, first degree burglary, and a criminal sexual conduct
2 first degree. Do you see those charges?

3 A. Yes, I do.

4 Q. And what does the S.L.E.D. record in this case indicate?

5 A. Well, it says on the criminal second -- sexual conduct
6 first degree was nol prossed; the burglary was nol prossed;
7 and the distribution to sell within the distance of a school
8 was also a non-conviction.

9 Q. And the S.L.E.D. records show a court date on the nol
10 pros entry of 10/20/2009, do they not?

11 A. That's correct.

12 Q. Okay. Let's go back for a moment to the investigative
13 notes we were looking at. They indicate, as we discussed,
14 that on 7/28/08 is when Chad Moore was interviewed and gave
15 all this information about your client and said he wanted to
16 testify to try to get help with his bank robbery charge;
17 right?

18 A. Correct.

19 Q. And your client went to trial by a jury in when?

20 A. In -- I believe it was November of '08.

21 Q. November 19th and -- well, going three days
22 thereafter---

23 A. Correct.

24 Q. ---2009. Correct?

25 A. Correct.

1 Q. So approximately one month before this trial, two most
2 serious charges and a drug charge within proximity of a
3 school were all nol prossed.

4 A. Evidently, yes, ma'am.

5 Q. Okay. After his cooperation but before trial. Correct?

6 A. I cannot, you know, speak for law enforcement or why
7 these charges were nol prossed.

8 Q. I understand that. I didn't ask that. We know he
9 cooperated in late July 2009 and that the trial was in
10 November of 2009.

11 A. Correct.

12 Q. And we now know from examining the rap sheet that these
13 serious charges -- most serious and serious charges were
14 dismissed in October 2009.

15 A. Okay.

16 Q. Okay.

17 A. If that's the timeline, yes.

18 Q. Did you look up those charges in the records of the
19 Kershaw County Clerk of Court's Office to see what had
20 happened to them?

21 A. No, ma'am. I remember getting -- I believe the
22 solicitor provided me with an updated rap sheet on the
23 witnesses, and if they're listed as such, then those are not
24 to be counted.

25 Q. Okay. Well, let's start with when you questioned Mr.

1 Moore concerning his testimony. So let's go to your cross-
2 examination on. Page 236, line 20---

3 A. Yes, ma'am.

4 Q. ---you say, "In fact, you're making this testimony in
5 order to get a deal on your case." Right?

6 A. Correct.

7 Q. He says, "I haven't spoken to anybody about a deal in my
8 case." You say, "Nobody has offered you a deal?" "No,
9 nobody has offered me anything." Right?

10 A. Yes, ma'am.

11 Q. Then moving over 237, lines 3 through 7: "You haven't
12 made a deal or told law enforcement that you would get
13 information in order to cut your sentence lighter?" "No, I
14 didn't tell no law enforcement that. No, I didn't." Do you
15 see that on page 237, lines 3 through 7?

16 A. Okay.

17 Q. And then to top it off, line 8, you say, "You asked them
18 to go back in the cell with Jarvis Gibbs to get more
19 information; correct?" "No, I didn't ask to go back in the
20 cell."

21 A. Yes, ma'am.

22 Q. Okay? Now, presumably -- well, you tell me. You asked
23 that question. It sounds as though it's responsive to having
24 read the investigator's notes about that topic; correct?

25 A. Okay.

1 Q. Would that be where that came from?

2 A. I can't say specifically, but, yes, I knew he was a
3 jailhouse snitch and they get deals, and he was -- you know,
4 every time I tried to get him to admit to a deal or talking
5 to law enforcement, he was denying it.

6 Q. Okay.

7 A. So, therefore, after denial, I believe you have to stop
8 that line of questioning or it could be an objectionable
9 question.

10 Q. Okay. But you actually asked him whether or not it was
11 true that he'd asked to go back in the cell to try to gather
12 more intel; right?

13 A. Right.

14 Q. And that's something you wouldn't have had any way of
15 knowing, would you, unless you had read this?

16 A. Well, that's probably correct.

17 Q. Okay. So---

18 A. You can assume that.

19 Q. Did you consider subsequently impeaching this witness on
20 this testimony by questioning the officer that made these
21 entries concerning that prior inconsistent statement?

22 A. I don't remember asking the officer. I may have asked
23 him if he put the bank robber, Chad Moore, in the cell with
24 Jarvis. I can't remember.

25 Q. Okay. But, to the best of your recollection, you didn't

1 consider using testimony from the officer to impeach his
2 claim -- the claims he made when you cross-examined.

3 A. Not to my recollection.

4 Q. Okay.

5 A. In fact, I think the officer may have testified after
6 Mr. Moore.

7 Q. He did indeed, and that was my point. You had an
8 opportunity to question him about that, didn't you?

9 A. Yes, ma'am, the officer, and I don't recall doing that.

10 Q. Okay. Let's go back for a minute to your cross-
11 examination of this gentleman, and we'll back up for a
12 second. We've already agreed that Melissa Roberts was the
13 only eyewitness who claimed to identify your client as being
14 physically inside the bank; right?

15 A. Yes, ma'am. That's the way the record shows.

16 Q. And then you've got Chad Moore on charges of bank
17 robbery himself saying that your client had developed verbal
18 diarrhea and told him all about it in the jail; right?

19 A. Correct.

20 Q. Okay. When you cross-examined him about his motives for
21 testifying, you asked him if he had -- was, in fact,
22 testifying in order to get a deal; right?

23 A. Correct.

24 Q. And he responds that there wasn't a deal, that nobody --
25 nobody had offered him anything. He actually says, "I

1 haven't spoken to anyone about a deal in my case." Okay?

2 That's not entirely accurate in light of the officer's notes
3 in the investigative report, is it?

4 A. No, ma'am, I don't believe so.

5 Q. Okay. Is there any reason why you didn't ask Chad Moore
6 if he was hoping to get help from the State as a result of
7 his cooperation in Mr. Gibbs' case?

8 A. I don't remember using the word "hoping," no.

9 Q. I understand that you asked him if he had a deal---

10 A. Right.

11 Q. ---or if he was testifying to get a deal.

12 A. You're right. I think you're trying to say: Did I ask
13 him if he was expecting something in the future?

14 Q. Correct.

15 A. And I don't recall asking him about future---

16 Q. Okay.

17 A. ---deals.

18 Q. It is actually fairly common, is it not, for prosecutors
19 to refuse to make a deal with a cooperating witness in
20 advance of their testimony?

21 A. That's hard for me to answer you that. You'd have to
22 ask a prosecutor.

23 Q. Well, in your experience---

24 A. Sometimes they do try to hold off.

25 Q. I believe that is a practice that we defense lawyers

1 often refer to as the nod/nod wink/wink deal. We'll see
2 about---

3 **The Court:** We need to move. We don't need---

4 **Ms. Shurling:** I'll get to the question.

5 **The Court:** ---comments.

6 By Ms. Shurling:

7 Q. Is there -- was there any particular reason why, once
8 Chad Moore denied having a deal, that you didn't ask him
9 whether or not he was hoping to get assistance in his case?

10 A. Again, I don't remember asking about the future tense,
11 but he had denied -- talked about -- talking about a deal or
12 making a deal. So, therefore, Mr. Moak could have objected
13 if I continued on that line of questioning.

14 Q. Mr. Moak could have objected if you asked this
15 witness---

16 A. If I kept hammering a deal once Mr. Moore says, "I have
17 not made -- I have made no deals."

18 Q. Okay. But what would have stopped you from questioning
19 Mr. Moore about whether or not he hoped to receive some sort
20 of assistance from the State as a result of having favorably
21 cooperated with the State in their prosecution of Mr. Gibbs?

22 A. Well, again, I don't recall using the word "hope,"
23 "change," or "future."

24 Q. Okay. Did you consider asking him about the first
25 degree criminal sexual conduct, the first degree burglary,

1 and the drug charge that were dismissed about a month after
2 he gave this information to the State and about a month
3 before the trial?

4 A. I did not ask him why those charges were dismissed.

5 Q. You didn't ask him about those charges at all, did you?

6 A. Well, the prosecutor had brought those up under direct.

7 Q. Well, let's go back and look at direct.

8 A. I believe he had done that. In other words, he had
9 already taken the wind out of the sails.

10 Q. Okay. On page 230 Solicitor Moak asked him about
11 charges for which he has previously been convicted back in
12 2001; correct?

13 A. Yes, sir -- yes, ma'am.

14 Q. Okay. He did not question him concerning the charges he
15 got in September of '07, did he?

16 A. No, ma'am. He just said, "Do you have any prior
17 convictions for C.S.C.?" "Yes, sir." "Armed robbery?"
18 "No." "Strong arm robbery?" "Yes." So he did admit to
19 prior bad acts, if that's what you're saying.

20 Q. I understand. But he did not admit to the fact that
21 following his cooperation with Mr. Gibbs' case, giving them
22 the information before trial, that three other very serious
23 charges had been dismissed a month before the trial.

24 A. Yes. If that's what you're asking, those were not
25 brought up evidently on direct examination.

1 Q. And neither were they brought up by you on cross; right?

2 A. That's correct.

3 **Ms. Shurling:** Okay. Let's take a look -- and, Your
4 Honor, just a moment, please. Okay. Let me find the new
5 ones I just got.

6 **The Court:** How much longer do you anticipate with this
7 witness?

8 **Ms. Shurling:** Probably 45 minutes.

9 **The Court:** You're kidding.

10 **Ms. Shurling:** I'll try to make it shorter than that,
11 Your Honor, if I can.

12 **The Court:** Let's just ask a question once.

13 **Ms. Shurling:** Here they are. Okay. May I approach,
14 Your Honor?

15 **The Court:** You sure can.

16 By Ms. Shurling:

17 Q. Are you familiar with the form that's used in the clerk
18 of court's office when a charge is dismissed?

19 A. Yes, ma'am. I believe I've had that happen before, but
20 I couldn't draw any...

21 Q. (Ms. Shurling hands a document to the witness.)

22 **Ms. Shurling:** Your Honor, I have provided---

23 **The Court:** I got it. Keep asking.

24 **Ms. Shurling:** I've also provided copies to the
25 respondent.

1 **The Witness:** I believe it says direct federal custody.

2 **Ms. Shurling:** Okay. Your Honor, these general sessions
3 docket reports show that on August 6th of '09 a charge of
4 armed robbery was nol prossed. On August 6th of '09 a
5 cocaine charge was nol prossed. On August 6th, a weapons
6 possession charge was nol prossed. On August 6th, a criminal
7 conspiracy charge was nol prossed. On August 6th, a robbery
8 slash enter charge was dismissed, and then the last two show
9 that on---

10 **The Court:** I don't have but three of them, so I---

11 **Ms. Shurling:** Your Honor, in the package I gave you --
12 the first five are in the package I gave you.

13 **The Court:** All right.

14 By Ms. Shurling:

15 Q. The last two show that -- the last three, pardon me,
16 show that the distribution and the arrest warrant numbers
17 line up. The distribution near a school charge was nol
18 prossed on October 20th. The criminal sexual conduct first
19 degree was nol prossed on October 20th, and the burglary
20 first was nol prossed on October 20th as well. Do you see
21 those, Mr. Ogburn?

22 A. Yes. I mean, I'll take your word. You showed those to
23 me.

24 Q. All right. Now, under disposition date, right next to
25 it on the right it says, "Disposition type." Can you see the

1 letters that are written out to the right on each of these?

2 N. P. W. L. T. R.? Are you familiar with that acronym?

3 A. No, ma'am.

4 Q. Nol prossed with leave to restore?

5 A. No, ma'am, I'm not familiar with that.

6 Q. What does leave to restore mean?

7 A. So you can bring the charge back.

8 Q. So it's not a dismissal with prejudice.

9 A. Correct.

10 **Ms. Shurling:** Okay. Your Honor, I move to introduce
11 this complete set as Applicant's 3.

12 **Ms. Harrigan:** I'm just making sure I have all five,
13 Your Honor.

14 **Ms. Shurling:** There are actually eight now.

15 **Ms. Harrigan:** Eight.

16 **Ms. Shurling:** There's the five I provided you last
17 night and the three I gave you this morning.

18 **Ms. Harrigan:** No objection, Your Honor.

19 **The Court:** So admitted.

20 (Plaintiff's Exhibit 3 was received in evidence.)

21 **Ms. Shurling:** In my practice, Mr. Ogburn, I have the
22 unfortunate occasion of looking---

23 **The Court:** All right. Ask a question.

24 By Ms. Shurling:

25 Q. Are you familiar with S.C.D.C. records, offender inmate

1 record sheets?

2 A. Somewhat, yes, ma'am.

3 Q. Okay. And are you familiar with the fact that there's a
4 place right there on that form for detainers?

5 A. If I looked at the form, I may recognize it, but I can't
6 off the top of my head.

7 **Ms. Shurling:** A moment's indulgence, Your Honor.

8 (An off-the-record discussion takes place between Ms.
9 Shurling and Ms. Harrigan.)

10 **Ms. Shurling:** Your Honor, I would ask the Court to take
11 judicial notice of the fact that the S.C.D.C. records
12 provided in every---

13 **The Court:** I know nothing about it, so I...

14 **Ms. Shurling:** Well---

15 **The Court:** I can't take judicial notice that...

16 **Ms. Shurling:** There again, I would just ask the Court
17 to take judicial notice of the fact that the S.C.D.C. records
18 provided to Your Honor for every inmate this term of court --
19 on the form, there's a place for detainers to be noted.

20 **The Court:** I know nothing about that. Look, proceed.

21 **Ms. Shurling:** Okay.

22 By Ms. Shurling:

23 Q. On these same forms that we've just been discussing, it
24 indicates that the charges were dismissed because defendant
25 in (verbatim) federal custody; right?

1 A. Okay. Are we talking about -- who are we talking about
2 again?

3 Q. On Chad Moore.

4 A. Okay. I don't recall seeing the detention records.

5 Q. Okay. On the docket sheets that you and I were looking
6 at just a moment ago---

7 A. Right.

8 Q. ---on each of them it indicates "defendant in federal
9 custody."

10 A. Yes, ma'am.

11 Q. And that's on the line that's the type or explanation;
12 correct?

13 A. Correct.

14 Q. Well, at trial when you cross-examined Mr. Moore --
15 well, let me start -- back up for a second. When the State
16 questioned Mr. Moore about his record and what he had
17 pending, they mentioned his armed robbery charge and the fact
18 that it was -- the status was that it was pending; right? We
19 talked about that a few minutes ago?

20 A. Yes, ma'am, but I almost want to say that they said he
21 had a conviction of that---

22 Q. Well, let's look at the bottom---

23 A. ---for Chad Moore.

24 Q. ---of page 229, line 22 through 25.

25 A. Okay. It's saying it's not concrete, his charges on the

1 back.

2 Q. And over on the top of page 30.

3 A. "Pled guilty?" "No." "Are you intending to plead
4 guilty?" "Yes, sir."

5 Q. Okay. Now, when you began to cross-examine Mr. Moore
6 concerning this charge -- look at page 236, line 12 through
7 14.

8 A. Okay. Yes, ma'am.

9 Q. You say at line 12 and 13, "And the F.B.I. is handling
10 your bank robbery case; is that correct?" "Yes, sir."

11 A. Uh-huh.

12 Q. What reason did you have for bringing out in front of
13 the jury that the feds were handling this bank robbery?

14 A. You know, I can't recall that long, but I did hear that
15 the F.B.I. was handling Chad Roberts' (sic) bank robbery
16 case.

17 Q. Okay.

18 A. I believe he had an AK-47, and while he was exiting the
19 bank or in the woods he shot himself in the foot.

20 Q. Okay. Now, once again you acknowledge that you didn't
21 ask Mr. Moore if he had any hope of getting help---

22 **Ms. Harrigan:** We've been over this several times---

23 **The Witness:** Yes, Your Honor.

24 **The Court:** That's the fourth time---

25 **The Witness:** I realize I didn't ask in the future.

1 **Ms. Shurling:** Never mind.

2 **The Court:** Mr. Ogburn, when I'm talking---

3 **The Witness:** Sorry.

4 **The Court:** ---you don't.

5 **The Witness:** Yes, sir. I apologize.

6 **Ms. Shurling:** Your Honor, at this time I would offer an
7 affidavit from Ronald W. Moak who was the solicitor in this
8 case. I have discussed this matter with the respondent. Mr.
9 Moak was on---

10 **The Court:** All right. Any objection to the affidavit?

11 **Ms. Harrigan:** No, but I don't believe we have
12 foundation for what---

13 **The Court:** All right. So there is an objection to the
14 affidavit.

15 **Ms. Shurling:** Here is my copy.

16 **Ms. Harrigan:** That's fine. No objection.

17 **Ms. Shurling:** Pardon?

18 **Ms. Harrigan:** That's fine. No objection.

19 **Ms. Shurling:** No objection.

20 **The Court:** All right. So admitted without objection.

21 **Ms. Shurling:** I think I gave you a copy, but I can't
22 swear to it. If you could take a look at this, please---

23 **Court Reporter:** Do you want me to mark it? Do you want
24 me to mark it first?

25 **Ms. Shurling:** Hold on a second. I think we're up to

1 number 4? That's a good time to do it. Your Honor, I would
2 offer -- this is applicant's -- I think we're up to number 4?

3 **Court Reporter:** Yes.

4 (Plaintiff's Exhibit 4 was received in evidence. The
5 witness reads the affidavit.)

6 By Ms. Shurling:

7 Q. Very briefly, Mr. Ogburn, would you acknowledge that
8 this document indicates that after the trial -- I'm not
9 suggesting you knew this ahead of time but that after the
10 trial Ron Moak did, in fact, provide documentation or
11 information to the federal authorities to assist Chad Moore
12 in getting help with his sentencing guidelines?

13 A. Yes, that's what the paper says and it has been
14 notarized.

15 Q. Okay. On the docket sheets that we discussed earlier --
16 may I see these? On the very top one that shows the nol
17 prossing of the armed robbery charge, do you see the arrest
18 date on there?

19 A. Yes. It's showing February 18th of '08.

20 Q. If you'd look at the rap sheet that we've been looking
21 at for Mr. Moore for the bank robbery charge---

22 A. If I recall correctly, that was in August.

23 Q. For the armed robbery charge, pardon me, page...

24 A. Right. February 18th of '08.

25 Q. Okay. And under that entry for the armed robbery, what

1 does it have listed as the offense date?

2 A. February the 11th, 2008.

3 Q. And do you recall a moment ago that we went over the
4 fact that the testimony of Chad Moore gave February 11th of
5 '08 as the date for that First Citizens Bank robbery?

6 A. I'm sorry. Would you repeat that a little?

7 Q. Do you recall going over with us a little while ago the
8 fact that in Chad Moore's testimony he actually gave
9 February 11th, '08, as the date for his bank robbery?

10 A. I believe so, yes.

11 Q. Okay. Are you familiar, as a practicing criminal
12 defense lawyer, with the statutory provisions of our
13 so-called strike law?

14 A. Yes, ma'am.

15 Q. Okay. Well, for starters are you aware, going back for
16 a second, of what the maximum penalty for armed robbery is or
17 what it was in 2008?

18 A. I believe it was 30 years---

19 Q. Okay.

20 A. ---if I remember correctly.

21 Q. And -- well, it was actually -- that's dating it to the
22 offense date. Okay. And backing up to where I was before I
23 asked that question, you're familiar with the strike law---

24 A. Yes, ma'am.

25 Q. ---in South Carolina. Okay?

1 A. Uh-huh.

2 Q. If you would look -- well, Your Honor, if I may publish
3 at 17-25-45 the code. It says, "Notwithstanding any
4 provision -- other provision of law, except in cases where
5 the death penalty is imposed, upon a conviction for a most
6 serious offense, as defined by this section, a person must be
7 sentenced to a term of life imprisonment for life without the
8 possibility of parole if that person has one or more prior
9 convictions for a most serious offense, number one. Number
10 two, a federal or out-of-state conviction for an offense that
11 would be classified as a most serious offense under this
12 section." Are you familiar with that?

13 A. Yes.

14 Q. Okay. And are you familiar with the fact that under
15 subsection C, armed robbery is, of course, listed as a most
16 serious offense?

17 A. Correct.

18 Q. Okay. So would you agree that if Mr. Moore were
19 prosecuted in federal court, as it says under subsection 2,
20 of a bank robbery, an armed bank robbery, that that would
21 qualify as a most serious strike or that the argument
22 certainly could be made that it did?

23 A. Yes, provided a conviction was rendered.

24 Q. Okay.

25 A. Okay.

1 Q. And are you aware of what penalty Mr. Moore ultimately
2 received for the bank robbery in the federal court?

3 A. No, ma'am, I do not know what his outcome was.

4 Q. A moment's indulgence, Your Honor. My paperwork has
5 gotten too shuffled.

6 **The Court:** What is the point here, Ms. Shurling?

7 **Ms. Shurling:** Your Honor, I'll make it abundantly
8 clear.

9 **The Court:** Quickly make it. I don't need you to
10 shuffle your paperwork. What is the point?

11 By Ms. Shurling:

12 Q. After -- at some point Mr. Moore served his penalty for
13 the federal bank robbery case.

14 A. Okay.

15 Q. The State, under the documents we've examined together,
16 still has leave to restore---

17 **The Court:** That's always the case in a nol pros.

18 **Ms. Shurling:** Pardon?

19 **The Court:** That's always the case in a nol pros.

20 **Ms. Shurling:** I understand. I'm asking him---

21 **The Court:** What is the issue?

22 By Ms. Shurling:

23 Q. Would you agree that the State could still bring back
24 first degree criminal sexual conduct, first degree burglary,
25 a P.W.I.D. near a school?

1 A. Yes, based on some of the initials they had on the
2 papers.

3 Q. Okay.

4 A. But, again, we were -- I was representing Mr. Gibbs.

5 Q. I understand. But if -- if after completing -- Mr.
6 Moore testified he was going to plead guilty---

7 A. Right.

8 Q. ---to bank robbery in federal court. I mean, he didn't
9 say in federal court, but he said he was going to plead
10 guilty.

11 A. Going to in the future.

12 Q. Okay.

13 **The Court:** What is the point of all this?

14 **Ms. Shurling:** The point, Your Honor---

15 **The Court:** I thought the point was to show that he
16 inadequately cross-examined this witness to show whatever
17 benefit he may be receiving which would make him testify
18 maybe in a manner that wasn't truthful.

19 **Ms. Shurling:** Absolutely.

20 **The Court:** How much do you need to convince me of all
21 that?

22 **Ms. Shurling:** I'll -- if you give me---

23 **The Court:** I mean, you go through it and through it and
24 through it.

25 **Ms. Shurling:** Your Honor, I'm trying to build the steps

1 I need to show prejudice. I only have a few more questions
2 on this point.

3 **The Court:** I hope you only have a few more questions,
4 period.

5 **Ms. Shurling:** This is my last issue.

6 **The Court:** Let's go.

7 **Ms. Shurling:** Okay.

8 By Ms. Shurling:

9 Q. We've agreed these charges can be restored and we've
10 agreed the charges are first degree criminal sexual conduct,
11 burglary, and distribution near a school.

12 A. Correct.

13 Q. At least two of those are most serious strikes; correct?

14 A. Correct.

15 Q. So if the State restored either of those indictments and
16 prosecuted him, he would be looking at a potential life
17 without parole -- mandatory life-without-parole sentence
18 under subsection 1 of the strike law we've reviewed.

19 A. Correct.

20 Q. Did you consider questioning him concerning his
21 potential exposure on state charges that the State could
22 bring back up if they decided to?

23 A. No, I did not question him about that because, again, we
24 didn't know whether those charges would be brought back or
25 not.

1 Q. Depending on the whim of the solicitor; correct?

2 A. That's correct.

3 Q. Who may or may not be happy with---

4 **Ms. Harrigan:** Asked and answered.

5 **The Court:** That is not correct.

6 **Ms. Shurling:** Who decides whether or not charges are
7 restored or not?

8 **The Court:** It's not based on the whim of the solicitor.
9 I can assure you if some deal was made based on some promise,
10 they couldn't do it. Let's move forward, Ms. Shurling. I
11 understand this.

12 **Ms. Shurling:** Yes, sir.

13 **The Court:** I don't want to hear any more about this.
14 Nothing. Go to your next point.

15 By Ms. Shurling:

16 Q. Why didn't you question him about the maximum penalty he
17 would have been facing for that armed robbery charge if it
18 had stayed in state court?

19 A. Again, if -- we did not know -- it was, again, dismissed
20 on the record that day. That day of trial they were not
21 proessed.

22 **The Court:** All right. We've asked -- we've asked every
23 question on that.

24 By Ms. Shurling:

25 Q. Last question: Why didn't you question him as to

1 whether or not -- what the circumstances were of it being
2 changed from state to federal prosecution?

3 A. He may -- the defendant may not have known whether it
4 was going to be prosecuted by state or federal.

5 **Ms. Shurling:** No further questions, Your Honor.

6 **Ms. Harrigan:** Your Honor, if we may have a brief break.
7 I didn't know Ms. Shurling was going to go on for two hours,
8 and I need to use the rest room before I start my examination
9 which will be very brief.

10 **The Court:** All right. We'll take it.

11 **Ms. Shurling:** Your Honor, before---

12 **The Court:** What other witnesses do you have?

13 **Ms. Shurling:** Just my client.

14 **The Court:** Well---

15 **Ms. Shurling:** And he will not be long.

16 **The Court:** Nothing is "just."

17 **Ms. Shurling:** Sir?

18 **The Court:** How long do you think your client will be?
19 Two hours?

20 **Ms. Shurling:** Oh, no, sir, maybe 15 minutes.

21 **The Court:** We'll take about a five-minute break.

22 **Ms. Harrigan:** Thank you, Your Honor.

23 (Whereupon, a short break was taken.)

24 **The Court:** All right. Are we ready?

25 **Ms. Harrigan:** Yes, Your Honor.

1 **The Court:** Proceed.

2 **Ms. Shurling:** Your Honor, before the State commences,
3 there was a document that I wanted to introduce that verifies
4 the amount of time that Chad Moore got in federal court, and
5 she has no objection to it.

6 **Ms. Harrigan:** No objection.

7 **The Court:** All right. So admitted.

8 (Plaintiff's Exhibit 5 was received in evidence.)

9 Cross-Examination

10 By Ms. Harrigan:

11 Q. Good afternoon, Mr. Ogburn. I'm going to just move
12 right into Ms. Shurling's 15 allegations. I think you've
13 heard enough about the trial overall. Do you have a copy of
14 Ms. Shurling's amendment in front of you?

15 A. Yes. Give me a second and I'll have it in front of me.

16 Q. And for the ease of the Court and the witness, I had
17 planned to go in order of her allegations.

18 A. Okay.

19 Q. Her first allegation is you were ineffective for failing
20 to impeach the State's witness, Mr. Moore. We've heard quite
21 a deal on that one. If you'll turn to your cross-examination
22 of Mr. Moore -- I believe if you turn to page 236, that's
23 where it starts. Do you have a copy of the first portion?

24 A. I'm working on finding that first portion. Okay.

25 Q. If you'll briefly look over page 236 and 237. Read them

1 to yourself, please.

2 A. (The witness complies.)

3 Q. Are you finished reading those?

4 A. Yes.

5 Q. Based on your review, do you believe you were able to
6 effectively cross-examine Mr. Moore on his hopes in receiving
7 a more lenient sentence in working with the State?

8 A. Yes. I felt like I asked the questions. He may have
9 answered them in the negative, but I was trying to get out
10 the fact that he was in Jarvis's cell and that he was also
11 charged with bank robbery and he was going to get some type
12 of deal.

13 Q. Do you believe you were able to effectively convey this
14 to the jury through your cross?

15 A. Yes, I do.

16 Q. If you'll turn to your closing - it's in the other
17 portion of the transcript - page 288, please. Or, I'm sorry,
18 not 288, but 388. In particular, it's going to be lines 23
19 through line 12 on the next page.

20 A. Okay. Yes, ma'am.

21 Q. And if you would please publish that, line 23 to line 12
22 on the next page, please.

23 A. Okay. "And then they wanted to make a big deal about
24 Chad Moore. You remember Chad Moore; Chad was the jailhouse
25 snitch. And the case was going pretty bad when you have to

1 bring a jailhouse snitch in to prove your case. The
2 attorneys before me talked about credibility. Look at his
3 credibility. He's been convicted of criminal sexual conduct,
4 convicted of burglary, and been convicted of strong arm
5 robbery and currently arrested for bank robbery."

6 Q. Okay. And if you'll turn to the next page, 390.

7 A. Uh-huh.

8 Q. If you'd please read for the record lines 5 through 8.

9 A. "Again, I submit that Chad -- Chad Moore is just totally
10 uncredible or has no credibility, because of his prior record
11 and because of the fact he is trying to get a deal." Do you
12 want me to read further?

13 Q. No. That's enough. Do you believe in your closing you
14 were able to highlight again to the jury Mr. Moore's reasons
15 for testifying and his reasons for possibly bolstering his
16 claims?

17 A. Yes.

18 Q. And was that your strategy in dealing with Mr. Moore as
19 a witness?

20 A. Yes, that was strategy.

21 Q. Okay. If we could move on to allegation number 2 in Ms.
22 Shurling's amendments, that you were ineffective for failing
23 to exclude the testimony of Melissa Roberts.

24 A. Correct.

25 Q. Okay. If you could turn to the cross-examination of Ms.

1 Roberts which I believe begins -- Court's indulgence. Your
2 cross-examination starts on page 132.

3 A. Correct.

4 Q. If you could briefly review that to yourself. I know
5 you've read portions of that in -- during Ms. Shurling's
6 direct examination.

7 A. (The witness complies.) Okay. Whenever you're ready.

8 Q. Have you had a chance to review your cross?

9 A. Most of it, yes.

10 Q. In your cross-examination, do you ask Ms. Roberts about
11 the actual shortness of the bank robbery, the small amount of
12 time she observed the individual who robbed the bank?

13 A. I believe I did.

14 Q. Do you also have an opportunity to discuss her hazy
15 memory as to when she met Mr. Gibbs in high school or middle
16 school?

17 A. Yes. Back then that school happened to be both a middle
18 and a high school combined, and I don't think she could
19 recall what grade Jarvis was in. She couldn't remember if
20 she had any classes with him.

21 Q. And I believe you bring out that she's actually younger
22 than Mr. Gibbs; correct? That might be during his testimony
23 but... Did you also highlight to the jury the length of time
24 it had been since high school when she'd seen him?

25 A. Correct. That would have been over 15 years since she

1 had seen him in high school.

2 Q. Particularly at page 134 you asked her, "How old are you
3 now?" "Twenty-nine." "So that was over 15 years ago?"

4 "Yes, sir." "So you haven't really seen him in 15 years."

5 Correct?

6 A. Correct.

7 Q. And then she goes into the River Deck Bar and Grill line
8 of questioning; correct?

9 A. That's correct.

10 Q. And in that River Bar and Deck testimony, do you
11 question her on specifics at seeing him at this bar and
12 grill?

13 A. Yes. She said it was probably five years or longer.

14 Q. What was your overall strategy for cross-examining this
15 witness?

16 A. That -- that amount of time, you forget what people look
17 like. People also can change within 15 years, or even five
18 years, and she only saw this robber who had a mask on for two
19 to three minutes or less.

20 Q. Did you highlight to the jury that not only did he have
21 a mask on but that her claims that she recognized him based
22 upon his mannerisms were from 15 years ago? Do you feel like
23 you were able to effectively show the jury how unlikely that
24 is?

25 A. Right, and I believe he had a beard at the time. And

1 even though the mouth was cut out, no one recalled any facial
2 hair around the mouth area of the mask.

3 Q. In regards to no one recalling his facial area, during
4 his booking -- Court's indulgence. Do you recall Pamela
5 Moore testifying?

6 A. You'd have to refresh my memory a little more.

7 Q. A sergeant with the Camden Police Department. Her
8 testimony starts on page 187.

9 A. Yes, ma'am. I believe she had nothing to say other than
10 she set up a perimeter.

11 Q. Do you recall her testifying that, to the best of her
12 recollection, Mr. Gibbs had tattoos on both arms as well as
13 gold teeth?

14 A. Correct.

15 Q. Did any of the tellers or other witnesses who were
16 present for the robbery testify that he had tattoos or gold
17 teeth?

18 A. No.

19 Q. Okay. In regards to Ms. Shurling's third allegation,
20 that you were ineffective for failing to cross-examine her
21 concerning her testimony focusing on the word "thought," when
22 I thought I saw him prior, if you would please turn to page
23 131.

24 A. All right. Okay.

25 Q. And if you'll please read for the record lines 12

1 through 15 again.

2 A. "She can see he looks back to see if our manager is in
3 her office because when I thought that I saw him prior, he
4 was in -- she was in her office, but this particular day she
5 was not in her office."

6 Q. How do you interpret that word "thought"? Do you think
7 it's in reference to thinking he had previously seen Mr.
8 Gibbs or thinking that her manager was in the office that
9 day?

10 A. It seems to reference that she thought she may have seen
11 him in the bank prior.

12 Q. She -- if you'll turn to page 120, the direct
13 examination, and if you'll review lines 16 through 24.

14 A. "Previous to that day, had you seen Jarvis Gibbs in that
15 -- in that branch?" "Yes, I did." "Can you tell us about
16 that?" "Yes, sir. I remember the day -- the day was very,
17 very busy. I remember looking toward my branch manager's
18 office and notice -- noticing that he was in there and
19 wondering why he was in there because he had no banking
20 relation with us -- relationship with us."

21 Q. In this portion of the testimony, she's certain she saw
22 Mr. Gibbs that day; correct?

23 A. It appears that way.

24 Q. If you'll look at lines 21 -- or on the next page, 121,
25 lines 24, continuing on to the next page through line 15. If

1 you'll read that into the record, please.

2 A. "So 5 'til 11, do you remember what happened?" "Five
3 'til 11 I heard the front door open and there was a gun drawn
4 and a very---"

5 Q. I'm sorry.

6 A. Whoops.

7 Q. I believe I may have given you the wrong portion. Page
8 121, lines 24 continuing on to line 15 of the next page.

9 A. Okay. "Okay. I got this drawn up here like this is the
10 door. You come in the branch, and that is the two teller
11 stations and there's two officers back there---"

12 Q. Excuse me. May I approach? I believe we're looking at
13 different portions and I may...

14 A. Okay.

15 Q. 121?

16 A. 121.

17 Q. Line 24.

18 A. Oh, line 24. I'm sorry.

19 Q. Yes. If you'll read that portion through 15 on the next
20 page.

21 A. Okay. "Okay. So he comes in and he's right there.
22 Now, did you recognize him?" "I did recognize him, and like
23 I said, we were very busy that day and I didn't understand
24 why exactly he was in there. I don't believe anyone ever
25 waited on him. I did see him." "Did you see him come up to

1 any -- to cash any checks or anything?" "No, sir, I did
2 not." "What did he do?" "I don't -- I never saw him after
3 that." "He was just standing there?" "He was just standing
4 there. And when they were so busy that I noticed he was gone
5 after awhile." "And do you remember what he was wearing?"
6 "He was wearing a white tee shirt or something of that
7 nature." Do I need to go further?

8 Q. No, that's all. So, again, in this portion of her
9 testimony on direct, she is certain that Mr. Gibbs was in her
10 branch that day.

11 A. The way she talks, she appears that she was certain.

12 Q. So twice prior before this "thought" comment, she
13 testifies to the jury she's certain she saw Mr. Gibbs in her
14 branch. And I believe you testified before that your cross-
15 examination focused on her prior limited interactions with
16 him in high school and middle school that were 15 years ago.
17 Correct?

18 A. Correct.

19 Q. And you also questioned her on her claim to sighting at
20 the River Deck Bar and Grill; correct?

21 A. Correct.

22 Q. And if you recall, her memory was a little hazy as to
23 when she'd seen him and that it was about five years ago;
24 correct?

25 A. That's correct.

1 Q. Moving on to allegation number 4, that you were
2 ineffective for failing to point out during closing arguments
3 that Melissa Roberts claimed to be certain of her
4 identification even though he was in a mask and she thought
5 she saw him. If we could turn to your closing, page 383,
6 lines 21 through 5 -- through 5 of the next page, I believe.
7 Let me get there.

8 **Ms. Shurling:** I'm sorry. Could you repeat that?

9 **Ms. Harrigan:** Page 383, lines 21 through 5 of the next
10 page.

11 **Ms. Shurling:** Thank you.

12 By Ms. Harrigan:

13 Q. If you'll read that into the record, please.

14 A. I'm sorry. Which -- 383---

15 Q. 383, line 21, starting with even -- "And even Ms.
16 Melissa Roberts," that through 5 of the next page.

17 A. "And even Ms. Melissa Roberts, she was a little bit of
18 an exception. She even testified she didn't see his face.
19 She never saw the robber without the mask. But then we
20 learned that she has got this special talent evidently. She
21 said that she could identify people by the shape of their
22 heads. I would say there's a lot of doubt there. I don't
23 know a lot of people that identify people by the shape of
24 their head. The face is an important part; it is important."

25 Q. Do you believe you were able to highlight in your

1 closing to the jury how discreditable (verbatim) her
2 identification was?

3 A. I think that was -- I said it.

4 Q. If you'll also look on the next page, 385, lines 15
5 through 13 of the next page?

6 A. "She testified that she had not seen Jarvis Gibbs for
7 five years, that all of a sudden on a Friday morning somebody
8 comes in wearing a mask, wielding a gun, and he is there for
9 less than two minutes. You can even time the video. I think
10 it's only a minute and a few seconds. Is her ability that
11 good to determine someone's identity by the shape of their
12 head in less than two minutes and them also wearing a mask?
13 I don't think so. I think a lot -- I think there's a lot of
14 reasonable doubt there. So, anyway, after that she even lays
15 it on a little thicker and says, oh, my parents own this
16 restaurant - and I believe it was the River Deck Saloon and
17 Grill - and Jarvis and his parents eat there all the time.
18 Jarvis gets up and testified they've never eaten at that
19 restaurant. He also testified that he dropped out of school
20 in the eighth grade." Do you want me to continue?

21 Q. Just on to 13, that next paragraph, if you would.

22 A. "And it's a little hard to establish a connection there
23 when she didn't meet him until eighth grade and then he drops
24 out in the ninth. So I would submit I don't think her
25 evidence is credible as far as identity. She hasn't seen him

1 in five years, yet she would recognize him with a mask on."

2 Q. Again, this portion of your closing, do you believe it
3 highlights the flaws in her identification of your client,
4 Mr. Gibbs?

5 A. Yes.

6 Q. And was that your overall strategy for dealing with Ms.
7 Roberts as a witness in this case?

8 A. Yes, it was to...

9 Q. Moving to allegation number 5, that you were ineffective
10 for failing to object to the first and every time the State
11 introduced testimony asserting applicant's admission to the
12 distribution of crack cocaine. You made a motion to suppress
13 this videotape; correct?

14 A. That's correct.

15 Q. Okay. And if you'll turn to page 19 for the record --
16 of the record, please. If you'll just briefly look at 19
17 through 23 to yourself. I'm not going to ask you to read any
18 portions in, but if you'll review it.

19 A. (The witness complies.) Okay. Go ahead.

20 Q. And I know this trial was three and a half years ago,
21 but if you would please describe to the Court: What was in
22 this videotape?

23 A. He may have been talking about the videotape that he did
24 of Jarvis's interview. There was a videotape of the -- from
25 the bank of the person that came in. If he's talking about

1 the video of Jarvis making the statement, I think Jarvis was
2 making the statement that, yeah, that's what he does is he
3 goes and he sells drugs daily to get a little bit of money to
4 eat or to borrow a bicycle. Whatever he wants to do that
5 day, he'll go sell a little drugs.

6 Q. Was he using that as an excuse for why he didn't need to
7 rob a bank, based on your recollection?

8 A. Yeah, basically. In other words, he didn't need all
9 those thousand dollars or...

10 Q. And the Court didn't make a ruling on the admissibility
11 of the videotape at that time, did it?

12 A. No.

13 Q. If you'll turn to page 120 -- 199, excuse me, 199 to
14 205. In this portion of the transcript, does the Court
15 revisit its motion to suppress this videotape?

16 A. I apologize. What was your question again?

17 Q. Does the Court revisit your motion at this time?

18 A. I believe they did resubmit my motion to...

19 Q. Okay. What was the Court's ultimate rule? Well, excuse
20 me. If I may strike that. What was your reasoning for
21 making such a motion? Why did you not want this videotape to
22 come in?

23 A. Because of the mention of the crack cocaine and the...

24 Q. And your client wasn't charged with any drug offenses;
25 correct?

1 A. Correct.

2 Q. Okay. What was the Court's ultimate ruling?

3 A. I believe they let portions of it in.

4 Q. Do you recall whether they redacted -- well, the
5 videotape ended up not coming in; correct?

6 A. I believe so.

7 Q. Was it because the State was unable to redact all of the
8 references your client made in regards to crack cocaine?

9 A. I believe that was correct.

10 Q. But a statement he made was able to come in; correct?

11 A. Right, the statement saying he didn't -- he denied
12 robbing the bank.

13 Q. And do you recall a statement coming in where he
14 acknowledged that he loaned Arthur Macklin -- Arthur Macklin
15 loaned him his bike in exchange for a \$20 crack rock?

16 A. Yes.

17 Q. Okay. If you'll turn to page 270, please, and if you'll
18 read lines 2 through 5 on 270.

19 A. "Okay. Did he say how he borrowed the bicycle?" And I
20 objected. "This is getting into exactly what we've been
21 discussing in chambers." And the judge asked, "What was the
22 question again? And did he say how he borrowed the bike?"

23 Q. At that time the jury is excused, based on the
24 transcript. Correct?

25 A. Yes, sir, (sic) I believe so. We had a bench conference

1 very shortly after that, so maybe the jury may have been in
2 the courtroom, but we went to the bench to have a conference.

3 Q. Okay. And if you'll turn to page 275.

4 A. Okay.

5 Q. And if you'll read lines 6 through 23 into the record
6 please.

7 A. "Yes, Your Honor. For the record, we object to any
8 testimony that refers to any type of drug or crack use by the
9 defendant." And the judge said, "Well, he didn't say he used
10 any. He said he gave \$20 for the use of the bicycle." "Yes,
11 Your Honor, but that would constitute distribution of crack
12 cocaine, which is a crime, and again we are not here on a
13 drug case." Do you want me to continue?

14 Q. If you'd keep reading down to 23, please.

15 A. "Well, if your client said it, I can't help it. I mean,
16 I think it is probative to this case that is how the bicycle
17 got from Mr. Macklin to your client, if that is what
18 happened, but that is a jury question." "Yes, Your Honor,
19 but again, Mr. Macklin testified to that yesterday." And the
20 judge overruled the objection.

21 Q. After he overruled the objection, did you consider this
22 issue preserved for appeal?

23 A. Yes, ma'am.

24 Q. And would it have been smart, in your experience of
25 practicing law, to continue to argue with the judge over the

1 admissibility of this issue?

2 A. No, it would not.

3 Q. If you'll turn to page 278 and if you'll read lines 9
4 through 23, please.

5 A. "Okay. Did he tell you how he borrowed the bike from
6 Arthur Macklin?" "Yes, he said he gave me a \$20 piece of
7 crack for the bike to borrow it." "Did he say he used it for
8 a business transaction after he borrowed it?" "Yes, sir. He
9 said he was -- well, he wanted to use the bike to go around
10 the area, you know, and sell more drugs." "Your Honor, I
11 would object. This is going a little further than" -- and
12 the judge sustained the objection. And I said, "I would ask
13 for a mistrial at this point," and the Court said,
14 "Overruled. Go ahead."

15 Q. So you did object to preserve the record---

16 A. Correct.

17 Q. ---on appeal. And you also moved for a mistrial;
18 correct?

19 A. Correct.

20 Q. And the judge overruled that; correct?

21 A. Correct.

22 Q. Moving to allegation number 6, which is related to
23 allegation number 5, that you failed to move for a curative
24 instruction in regards to this portion that you've previously
25 read into the record, why didn't you move for a curative

1 instruction?

2 A. Again, I don't remember back that far ago.

3 Q. Could it have been a strategic decision not to highlight
4 to the jury again the testimony regarding your client's
5 either use of crack or distribution of crack?

6 A. Yes, ma'am, that could have very well been a strategic
7 move not to mention his crack use or his distribution of
8 crack.

9 Q. Because, again, your client wasn't charged with any drug
10 charges.

11 A. Drug charges, that's correct.

12 Q. Moving to allegation number 7, that you were ineffective
13 for failing to object to the line of testimony regarding
14 Arthur Macklin that he was threatened, if you'll turn to your
15 cross-examination -- or do you recall your cross-examination
16 of Mr. Macklin? I know we touched it---

17 A. Yes, to some extent.

18 Q. ---in Ms. Shurling's direct. Turn to line -- page 184
19 and if you'll publish lines 13 -- 13 through 15.

20 A. "Okay. And has Jarvis Gibbs ever threatened to hurt you
21 in any way?" "No way at all."

22 Q. Okay.

23 A. "So you're sure that it is the bike you got back from
24 the police?" "I never got it back."

25 Q. That's enough. Just 13 through 15. That's all that was

1 necessary. And if you'll turn to the next page, 186, and
2 this is your recross examination.

3 A. Okay.

4 Q. If you'll read 13 through 18, please.

5 A. "Have you seen Mr. Gibbs after the robbery or after this
6 occurred?" "Yes, sir." "And has he said anything to you?"

7 "Not one thing." "All right. No further questions."

8 Q. Based on your cross-examination and your recross, do you
9 believe you were able to highlight to the jury that Mr. Gibbs
10 was in no way involved with these threats?

11 A. Yes.

12 Q. Do you have a strategic reason for not objecting to this
13 testimony regarding him being threatened?

14 A. Well, Mr. Macklin was sort of a loose cannon as in he
15 was known to -- he was known by Crack Head, and he didn't
16 know anything. If you look or read the first part of his
17 testimony, even under the State, he did not know what bike he
18 had. He said his brothers has bikes there and he didn't know
19 if -- which bike was taken or even if it was one of their
20 bikes.

21 Q. The bike was actually brought into the courtroom;
22 correct?

23 A. No, I don't believe it was.

24 Q. Okay.

25 A. You know, he claims to see his bike in the back of the

1 police car, but he said he -- in the same breath he said he
2 didn't know if that was his or not. So he was just totally
3 unreliable I believe from the beginning.

4 Q. And testimony came out through Officer Bowen that he had
5 loaned his bike in exchange for a \$20 rock of crack cocaine;
6 correct?

7 A. Correct.

8 Q. In regards to allegation number 8 that you were
9 ineffective for failing to object to testimony that a
10 four-wheeler was used in this robbery, your defense was that
11 Mr. Gibbs wasn't the assailant; correct?

12 A. Correct.

13 Q. It wasn't that the bank robbery never occurred.

14 A. Right.

15 Q. It wasn't that a four-wheeler wasn't used in the armed
16 robbery; correct?

17 A. Correct. There was no four-wheeler used.

18 Q. Do you believe it was prejudicial to your client to
19 allow this testimony that the four-wheeler was stolen?

20 A. No.

21 Q. Irrelevant to your defense; correct?

22 A. Correct, because that's a separate crime, stealing a
23 four-wheeler.

24 Q. And, again, your overall defense strategy was to
25 highlight that -- not that a bank robbery didn't happen but

1 that the State had the wrong guy.

2 A. Correct.

3 Q. Moving to allegation number 9, that you were ineffective
4 for failing to ask the jury to specifically observe his
5 multiple tattoos and scars...

6 A. Right.

7 Q. On direct examination you stated that he has some
8 tattoos that, I believe, say "thug life" and other explicit
9 content---

10 A. Yes.

11 Q. Correct? You asked virtually all the bank tellers if
12 they had observed any tattoos or scars; correct?

13 A. Correct.

14 Q. And their testimony was all no---

15 A. None.

16 Q. ---in unison; correct?

17 A. Correct.

18 Q. The video of the -- from the surveillance from the bank
19 also showed no visible tattoos or scars on his arms; correct?

20 A. That's correct.

21 Q. And the assailant in the videotape was wearing a short-
22 sleeved white tee shirt; correct?

23 A. Correct.

24 Q. We discussed Pamela Moore's testimony before, but I
25 believe she testified that he had -- you elicited in

1 cross-examination that he had tattoos on both of his arms;
2 correct? If you'll look at -- I believe your cross starts on
3 194?

4 A. Oh, Pam -- I was just trying to refresh my memory as to
5 who Pamela Moore was. I believe she said she was one of the
6 responding officers, but she didn't go to the bank. She just
7 cordoned off the area.

8 Q. Yes. She's a sergeant with the Camden Police Department
9 and she did have some interaction with your client, I
10 believe. If you'll look at page 194, it's where your cross
11 starts.

12 A. Yes, I did ask her I believe about the gold two front
13 teeth and tattoos on both arms.

14 Q. And if you'll read lines 6 through 8, please.

15 A. "Did you actually see the tattoos on Jarvis Gibbs'
16 arms?" "I didn't see them that day, sir." "So you didn't
17 see them that day, so someone just gave you that
18 information?" "Yes, sir." "Do you know who gave you that
19 information?" "No, sir, it was based on written statements."

20 Q. You don't need to read any further of that---

21 A. Okay.

22 Q. Just that direct portion. Thank you. I believe you
23 testified during Ms. Shurling's direct that your client's
24 arms were visible to the jury during the trial; correct?

25 A. Correct.

1 Q. Do you believe they were able to see his scars and
2 tattoos?

3 A. I believe they were.

4 Q. And, again, you testified on direct that you thought it
5 might have harmed your client, not benefitted them seeing a
6 thug life tattoo; correct?

7 A. Correct.

8 Q. What inference do you think the jury would have
9 discerned from seeing a thug life tattoo on his arm?

10 A. He was committed to living the thug life and, in fact,
11 was a thug.

12 Q. And bank robbers commit thug (verbatim).

13 A. Is -- are---

14 Q. Bank robbers are thugs.

15 A. Yeah, you can consider a thug being a bank robber.

16 Q. Moving to allegation number 10, that you were
17 ineffective for neglecting to object to an improper and
18 highly inflammatory closing argument where the State
19 emphasizes threats to Mr. Macklin... If you'll look at that
20 portion, 409 and 410.

21 A. I'm on page 409, if you'll direct me to...

22 Q. I believe it's 17 through 10 on the next page.

23 A. Okay. Would you like me to publish it?

24 Q. No. If you'll just review that to yourself, please. I
25 believe you already published it on Ms. Shurling's direct.

1 A. (The witness complies.)

2 **Ms. Shurling:** I apologize, but would you repeat that
3 number again? I'm having---

4 **Ms. Harrigan:** It's number 10 of your amendments, lines
5 17 through 10 on the next page, 409.

6 By Ms. Harrigan:

7 Q. I believe you testified on direct that you previously
8 were an assistant solicitor; correct?

9 A. Correct.

10 Q. Have you tried many criminal cases before?

11 A. Yes.

12 Q. Okay. Both for the State and for the defense; correct?

13 A. Mainly for the State.

14 Q. Would you agree that the State and defense have a wide
15 latitude in their closing arguments?

16 A. Yes.

17 Q. And they can make inferences from the facts as presented
18 during the trial?

19 A. Yes.

20 Q. Do you have a strategic reason for not objecting to this
21 portion?

22 A. No, ma'am, I don't remember. I don't remember why I did
23 not object.

24 Q. Do you think these comments were unduly prejudicial to
25 your client?

1 A. Again, three and a half years ago, probably not. If I
2 did, I'm sure I would have objected.

3 Q. Is it your common practice to object during the State's
4 closing or the defense's closing if you were a solicitor?

5 A. If you, you know, hear something that shouldn't be
6 published to the jury.

7 Q. And, again, you elicited testimony on your cross and
8 recross of Arthur Macklin that Mr. Gibbs had never harassed
9 him; correct?

10 A. Correct.

11 Q. So this -- this is irrelevant that he was harassed by
12 someone else, according to your treatment of Mr. Macklin
13 during cross. Correct?

14 A. Correct.

15 Q. Moving to allegation number 11, that you were
16 ineffective for failing to introduce testimony to refute the
17 claims of Melissa Roberts regarding the River Deck Bar and
18 Grill that her parents owned and that she'd seen Jarvis
19 there...

20 A. Again, all it was was her statement that she had seen
21 Jarvis there but could not give any dates, any times, and she
22 couldn't say if she saw him there or the parents saw him
23 there, so...

24 Q. Did you ask Mr. Gibbs about whether he'd gone to this
25 restaurant before during his direct examination?

1 A. Yes, I did, and he said he had never been to that
2 restaurant.

3 Q. Okay. In fact, he testified that he'd never seen Ms.
4 Roberts before; correct?

5 A. That's correct.

6 Q. He had no knowledge of remembering her from high
7 school---

8 A. From school or anything.

9 Q. ---or middle school or... Testified to the jury that he
10 had no idea who this woman was; correct?

11 A. Right.

12 Q. Seeing her in court for the first time was the first
13 time he'd ever laid eyes on her; correct?

14 A. Correct.

15 Q. And you highlighted the inconsistencies in her
16 identification during her cross-examination; correct?

17 A. Correct.

18 Q. And I believe you've already read this portion into the
19 record, but during your closing on page 385 through 386, do
20 you again discuss the River Bar and Grill? If you'll turn to
21 page 385, particularly lines 25 of 385 through lines 4 --
22 actually through line 7.

23 A. Okay.

24 Q. Do you highlight here that her identification of him is
25 shaky at best?

1 A. Right. I asked her if she ever met Jarvis Gibbs in
2 school, and she could not say that they hung out together or
3 they were friends or anything.

4 Q. So you were able to highlight again to the jury during
5 your closing argument the unlikelihood of Ms. Roberts'
6 identification of your client; correct?

7 A. Correct.

8 Q. And that Mr. Gibbs testified he'd never seen her before,
9 never been to that restaurant, and that he dropped out of
10 school in eighth grade; correct?

11 A. Correct.

12 Q. Moving to allegation number 12, that you were
13 ineffective for inaccurately repeating the testimony of
14 Melissa Roberts during your closing. I believe you testified
15 before that this was given in a sarcastic tone, doubting her
16 credibility; correct?

17 A. Correct.

18 Q. Could you describe your strategy behind that?

19 A. Describe the strategy. Basically that she was
20 embellishing things too much. The other tellers basically
21 got up and they were what I would call factual witnesses.
22 When they were asked questions, they would give facts, and
23 she seemed to want to be the drama queen and give every --
24 you know, be the State's star witness. So she was giving all
25 kind of details that I don't believe were, you know, in

1 there.

2 Q. Was this your strategy in---

3 A. Yes.

4 Q. ---embellishing in your closing argument---

5 A. Exactly.

6 Q. ---correct? To make her seem less believable---

7 A. Correct.

8 Q. ---to the jury. Okay. Number 13 in Ms. Shurling's
9 amended application, that you were ineffective for failing to
10 object to a portion of the State's closing argument regarding
11 Melissa Roberts' testimony that he'd been in a couple of days
12 earlier. Ms. Roberts did testify that she had seen Mr. Gibbs
13 in the bank previously; correct?

14 A. Correct.

15 Q. She didn't give a time limit when she'd seen him prior,
16 did she?

17 A. No, ma'am, she did not.

18 Q. Based on her testimony -- she didn't testify it was
19 months before, did she?

20 A. No, ma'am.

21 Q. Court's indulgence. If you'll flip to page 412, in the
22 smaller portion of the transcript. If you'll just review to
23 yourself 19 through 25.

24 A. (The witness complies.) Okay.

25 Q. I believe you testified earlier that both prosecution

1 and defense have wide latitude in their closing arguments;
2 correct?

3 A. Correct.

4 Q. And the State's allowed to make reasonable inferences
5 based on the testimony presented?

6 A. Yes.

7 Q. Based on Ms. Roberts' testimony, do you believe it's a
8 reasonable inference that Mr. Gibbs had been in the bank a
9 few days before?

10 A. You mean an inference by the solicitor in his argument?

11 Q. He states in his argument that he'd been -- that Mr.
12 Gibbs had been in the bank a couple of days earlier with no
13 mask on. Her testimony didn't specifically give a date, did
14 it?

15 A. No, it did not.

16 Q. But it wasn't that it had been months prior or a
17 significant length of time; correct?

18 A. Correct.

19 Q. And she was forthcoming during her cross-examination
20 with you that it had been 15 years prior and five years
21 prior; correct?

22 A. Right.

23 Q. So she didn't try to hold back that actually Mr. Gibbs
24 -- I saw him yesterday.

25 A. Right.

1 Q. She was forthright that it had been quite awhile;
2 correct?

3 A. Correct.

4 Q. And she didn't give any timeline for how long he'd --
5 how long prior he'd been in the bank; correct?

6 A. Correct.

7 Q. Moving on to allegation number 14, that you were failing
8 to -- you were ineffective for failing to object to portions
9 regarding -- to State's closing argument regarding that he
10 could have been wearing the same shirt. Ms. Roberts
11 testified when she saw him in the bank earlier he was -- when
12 she claimed to see him in the bank earlier he was in a white
13 shirt; correct?

14 A. Correct.

15 Q. And the assailant was in a white shirt; correct?

16 A. Correct.

17 Q. And that was based on video surveillance that was
18 published to the jury; correct?

19 A. Correct.

20 Q. Do you recall if he was arrested wearing a short-sleeved
21 white shirt?

22 A. I don't recall what clothes he was arrested in.

23 Q. But there was clear testimony that when she saw him
24 earlier in the bank it was in a short-sleeved white shirt.
25 Correct?

1 A. That's what she said. That's what her testimony was.

2 Q. That was what her testimony was. And the video
3 surveillance showed him in a short-sleeved white shirt;
4 correct?

5 A. Correct.

6 Q. Did other tellers testify he was in a short-sleeved
7 white shirt during the robbery?

8 A. Yes, especially short-sleeved.

9 Q. Okay. Do you believe this is a reasonable inference to
10 say that it could possibly have been the same shirt?

11 A. Personally, no, because, again, a short-sleeved shirt --
12 short-sleeved white shirt, they are very, very common.

13 Q. Do you find this comment objectionable?

14 A. I may have should have objected to that.

15 Q. Do you believe your client was prejudiced by not
16 objecting to that comment?

17 A. No, I don't.

18 Q. And why not?

19 A. Well, again, the white shirt appears everywhere. Again,
20 I'm sure in any given day at the bank there's four or five
21 people who walk in with white tee shirts on.

22 Q. Court's indulgence. In regards to allegation number 15,
23 that you were ineffective for failing to object to the
24 State's closing regarding the timing your client left the
25 barbershop, if you'll turn to page 277, please.

1 A. Yes, ma'am.

2 Q. And if you'll read lines 2 through 8.

3 A. "Do you remember if he told you what time he got to the
4 barbershop?" "He said 1:00" - excuse me, "11:00, 12:30,
5 1:30. He wasn't real sure about the time." "Okay. One of
6 those times was 11:30?" "I got wrote down 11, 12:30, 1:30,
7 just kind of wasn't real sure."

8 Q. Okay. Based on this testimony, there was some
9 ambiguity, to say the least, as to what time your client left
10 the barbershop; correct?

11 A. Correct.

12 **Ms. Harrigan:** No further questions, Your Honor.

13 **The Court:** All right. We're going to break for lunch
14 and come back and -- with any redirect or whatever else we
15 got. We'll come back here at 20 after 2 to give everybody an
16 hour.

17 **Ms. Harrigan:** Thank you, Your Honor.

18 **Ms. Shurling:** Thank you, Your Honor.

19 **The Court:** Mr. Ogburn, don't discuss your testimony
20 with anybody while we're on break.

21 **The Witness:** Yes, sir.

22 **The Court:** Thank you.

23 (Whereupon, a lunch break was taken.)

24 **The Court:** All right. Thank you. Y'all be seated, if
25 you would. Where is Mr. Ogburn? Would you come back up

1 here, please, sir?

2 **Ms. Shurling:** And we've located the exhibit. It was in
3 Mr. Ogburn's file.

4 **Ms. Harrigan:** Okay. Wonderful.

5 **The Court:** All right. Ms. Shurling, are you ready to
6 proceed on redirect?

7 **Ms. Shurling:** I am, Your Honor.

8 Redirect Examination

9 By Ms. Shurling:

10 Q. Mr. Ogburn, before lunch when you were testifying, the
11 respondent had you take a look at a couple of sections of
12 trial testimony that tended to indicate that Ms. Roberts did
13 positively identify your client as someone that she had seen
14 come into the bank sometime prior to the day of the armed
15 robbery.

16 A. According to her testimony, she did.

17 Q. Okay. And, of course, this morning you and I have gone
18 over the one reference on page 131, line 12 through 15, where
19 she said, "When I thought I saw him."

20 A. Correct.

21 Q. Okay. I believe that you have agreed that there's no
22 specific reference in the record to how long an interval
23 there was between when she said she thought she saw him in
24 the bank and when the robbery occurred.

25 A. That's correct.

1 Q. Okay. I asked you earlier about whether or not the
2 solicitor's claim that it was within a few days would have
3 helped bolster the strength of her identification, and we
4 covered that this morning.

5 A. Yes.

6 Q. Did you also consider the fact that the claim being put
7 forth that he had been in there within a few days could be
8 taken by the jury -- that they might infer from that that he
9 was casing the joint, casing the bank?

10 A. Yes, I did consider that.

11 Q. Okay.

12 A. But, again, we had no positive identification. He was
13 the one she claims she saw earlier, you know, whatever
14 timeframe than the robbery.

15 Q. Okay. Given the significance of the possible inference
16 that he was in there casing the bank, you didn't think it was
17 important to note that she showed some equivocation on
18 whether she was certain that it was he that had previously
19 been in the bank?

20 A. Yes, and I'm not sure if I on final argument covered --
21 I tried to cover the fact she was not sure with the
22 identification.

23 Q. Okay. With regard to the River Deck Saloon and Grill
24 issue, you stated on cross that you -- or agreed with
25 respondent that you'd been able to bring out that she hadn't

1 seen him in -- that it had been 15 years approximately since
2 she'd been in school with him and it had been about five
3 years since she had seen him.

4 A. Correct.

5 Q. And your testimony a few moments ago was that she
6 testified that she had seen somebody that you didn't think
7 she was even able to say for sure whether it was him or just
8 his family at the business. Do you recall testifying to
9 that?

10 A. Well, I recall that there was testimony in the record on
11 that where Ms. Roberts said that his family ate there.

12 Q. Okay.

13 A. And I don't recall if she said she saw him there.

14 Q. Okay. Could you take a look at page 134 of the trial
15 transcript, line 18?

16 A. 134?

17 Q. 134, line 18.

18 A. Okay. She did say that he was -- she had seen him and
19 his family there.

20 Q. Okay. And, again, I believe you said you didn't
21 consider introducing any testimony to refute that?

22 A. That's correct. I did not -- other than Mr. Gibbs'
23 testimony, I don't think there was any other testimony
24 refuting that.

25 Q. Okay.

1 A. He had testified he had never -- he and his family had
2 never gone there.

3 Q. Thank you. And you've said, I believe in response to
4 questions from the respondent, that a lot of people wear
5 white shirts?

6 A. Correct.

7 Q. Would the -- if the solicitor was able to successfully
8 convince the jury that the eyewitness had actually said it
9 might have been that very same -- you know, same white shirt,
10 would that have also gone -- been beneficial to the State in
11 terms of arguing that he'd been in there recently casing the
12 joint?

13 A. It would have been beneficial to the State, but, again,
14 how do you prove the same white shirt was worn on two
15 different occasions?

16 Q. Okay. The issue is that she had not said that she
17 thought it might be the very same shirt.

18 A. Okay. Mr. Moak, I believe, said that.

19 Q. Quoted her as saying that. Okay. Do you understand my
20 point?

21 A. I understand your point.

22 Q. Okay. Let's back -- I want to finish this up quickly.
23 Let's go back to the Chad Moore issue.

24 A. Okay.

25 Q. Okay? You did not question Chad Moore concerning what

1 his sentencing exposure was on the bank robbery charge, did
2 you?

3 A. No, I did not.

4 Q. What the minimums and maximums he was looking at would
5 be.

6 A. No, ma'am, I did not question him on that.

7 Q. And although you got him to state affirmatively that he
8 did not have a deal with the State, you did not question him
9 as to whether or not he was hoping that his cooperation with
10 the State in Mr. Gibbs' case would result in some benefit to
11 him on his own charges.

12 **Ms. Harrigan:** Your Honor, asked and answered. We went
13 over this for at least 45 minutes on direct.

14 **The Court:** Overruled. I'm going to let her ask one
15 more time.

16 **Ms. Shurling:** Your Honor, the respondent asked this
17 witness---

18 **The Court:** You don't need to explain it. You can
19 question his answer -- I mean, you need to answer her
20 question.

21 **The Witness:** Yes, Your Honor. No, on the record or
22 based on the record I did not ask Mr. -- the jailhouse snitch
23 what he was hoping to get out of this.

24 By Ms. Shurling:

25 Q. Nor did you ask him anything about the charges that had

1 been dismissed shortly before this trial where he testified.

2 A. Correct. I did not ask about cases that had been
3 dismissed.

4 Q. Nor did you ask him whether he understood that they were
5 subject to being restored.

6 A. I did not know at the time they were subject to be
7 restored.

8 Q. Had you researched that point?

9 A. I may not have, ma'am, but if I had gone into charges
10 that had been dismissed, I don't think the judge would have
11 allowed me to go into parts of the prior record that had been
12 dismissed.

13 Q. If you had done the research and discovered that they
14 had only been nol prossed but with leave to restore, you
15 would have known that you could question Mr. Chad Moore
16 concerning the fact that those charges could still be brought
17 back up; correct?

18 A. Correct, but, again, I did not go into that detail with
19 the solicitor. He showed me a current record and they showed
20 those charges were dismissed.

21 Q. Okay.

22 A. A current S.L.E.D. record. So I went off the S.L.E.D.
23 record.

24 Q. And nor did you question Mr. Chad Moore concerning
25 whether or not if, after he'd finished his federal sentence,

1 if he were brought back into State court, if those charges
2 were restored, what kind of peril he would be in in terms of
3 sentencing exposure on those charges.

4 A. No, ma'am, I did not talk to Mr. Moore about what would
5 happen after he served his potential time, charges that --
6 where he was charged with.

7 Q. I understand. I'm simply asking---

8 A. Because they may not wind up in convictions.

9 Q. Okay. And when a charge is dismissed with leave to
10 restore, whose decision is it, in your understanding, whether
11 or not to restore the charges at some later date?

12 A. It could possibly be -- the prosecutor would be my best
13 guess, but, again, I did not have that inside knowledge where
14 they had put a code on there where they were looking to
15 restore that.

16 Q. And, again, you didn't look up the docketing sheets, but
17 you've seen them here today.

18 A. I think I've seen them here today, ma'am, but I did
19 represent Mr. Gibbs, not the other person.

20 Q. I understand. But had you seen those sheets, you would
21 have seen that each and every one of those charges were, in
22 fact, dismissed by Assistant Solicitor Ron Moak, the same
23 solicitor that was using Mr. Chad Moore as a witness in Mr.
24 Gibbs' case; correct?

25 A. Right. But, again, I did not know Mr. Moak's mind,

1 whether he would have left them as dismissed or whether he
2 would have brought them back later.

3 Q. With regard to the questioning about the drug bartering
4 for the bicycle---

5 A. Yes, ma'am.

6 Q. ---did you consider arguing that the testimony could be
7 limited to the fact that your client allegedly paid to borrow
8 the bicycle or your client even admitted paying to borrow the
9 bicycle without introducing the nature of the tender used for
10 paying?

11 A. Well, we were trying to get no drugs mentioned at the
12 trial.

13 Q. Okay.

14 A. So we were trying to keep that to a minimum so that
15 would not prejudice the jury.

16 Q. I certainly understand. And my question is: But once
17 the judge has ruled he was going to let that -- at least that
18 little bit, the \$20 piece to borrow the bicycle in, did you
19 not realize that you had to object to that testimony when it
20 came in in order to preserve that issue for appeal?

21 A. I'm not sure if I objected. Again, I'd have to look at
22 the record, but there was an earlier objection made and even
23 a request for a mistrial because of the mention of drugs
24 earlier in the trial. And that was ruled against---

25 Q. Okay.

1 A. ---by the judge.

2 Q. And if the record reflects that that objection and
3 motion for a mistrial were actually after the testimony was
4 initially introduced concerning the drugs for the bicycle,
5 would you acknowledge that you should have objected---

6 A. Yes.

7 Q. ---the first time?

8 A. I should have objected.

9 Q. And one last thing -- and by the way, you said that you,
10 you know, were reluctant to make an objection because you
11 felt like the judge had heard enough and you were getting
12 kind of beat up about it?

13 A. Well, no. It was more like -- again, this was three and
14 a half years ago, but I remember that issue of whether drugs
15 were going to come in to testimony were objected to earlier
16 -- early in the trial.

17 Q. I understand.

18 A. And a mistrial was made.

19 Q. Last thing. We've talked about the tattoos and the
20 scars. You've emphasized and did a good job of emphasizing
21 at trial the fact that she was claiming to have this skill
22 about, you know, the shape of---

23 A. Ms. Roberts?

24 Q. Identifying somebody by the shape of their heads.

25 A. Yes. Ms. Roberts are you referring to?

1 Q. Yes. Was your client's hair approximately the same
2 length and style that it is now at the time of his trial?

3 A. Ma'am, that was three years ago; I can't remember. I
4 think his hair was a little longer than today.

5 Q. Okay. Did you in the course of your representation of
6 Mr. Gibbs ever notice -- I may have said Mr. Roberts awhile
7 ago; I'm sorry. I may have misspoken. But did you ever
8 notice anything about the shape of Mr. Gibbs' head that's
9 particularly unique?

10 A. Personally, I did not.

11 Q. Did you consider arguing that to the jury?

12 A. Well, I feel like I did. I felt like I did in final
13 argument in a way sarcastically to say that Ms. Roberts has
14 this unique ability to look at someone's head and know who
15 they are.

16 Q. Okay. My question was: Did you consider arguing that
17 there was nothing unique about the particular shape of his
18 head, that it wasn't elongated or huge or didn't have a great
19 big scar on the side or anything that would make it something
20 that would stand out in somebody's memory?

21 A. I don't believe I argued that affirmatively.

22 **Ms. Shurling:** Okay. Thank you. Your Honor, one
23 moment's indulgence.

24 (Ms. Shurling talks off the record with Mr. Gibbs.)

25 **Ms. Shurling:** No further questions, Your Honor.

1 **The Court:** Anything?

2 **Ms. Harrigan:** No, Your Honor.

3 **The Court:** All right. Thank you, Mr. Ogburn. You may
4 step down.

5 **Ms. Shurling:** Your Honor, I misspoke earlier. I do
6 have one other witness before the applicant, but she will be
7 very short.

8 **The Court:** All right. Do y'all have any objection to
9 Mr. Ogburn being excused?

10 **Ms. Shurling:** I have none.

11 **The Witness:** Thank you, Your Honor.

12 **Ms. Harrigan:** No, Your Honor.

13 **The Court:** All right. Thank you, sir.

14 **The Witness:** Thank you.

15 **Ms. Shurling:** And thank you for finding that exhibit.

16 **The Court:** All right. Do you want to call your next
17 witness?

18 **Ms. Shurling:** Jada Gibbs, please.

19 Jada Gibbs, after being duly sworn, testified as
20 follows:

21 **The Court:** If you'll have a seat and tell us your full
22 name, please, ma'am.

23 **Court Reporter:** And spell your first name, please.

24 **The Witness:** I'm Jada, J-A-D-A, Gibbs.
25

Direct Examination

By Ms. Shurling:

Q. Ms. Gibbs, what's your relationship to the applicant?

A. I'm his sister.

Q. Do y'all have other siblings, brothers and sisters?

A. Not together.

Q. Okay. Just the two of y'all?

A. Yes, ma'am.

Q. Are your parents still living?

A. No, ma'am.

Q. Were they living at the time of your brother's trial?

A. Yes, ma'am.

Q. Okay. Are your grandparents living?

A. Our grandmother is.

Q. Is your grandfather still living?

A. No, ma'am.

Q. Was he living at the time of your brother's trial?

A. Yes, ma'am.

Q. What is your mother's current health -- I mean, your grandmother's current health situation?

A. She has Alzheimer's.

Q. And based on your day-to-day experience with her in her current mental status, would you feel that she can currently -- could currently give testimony in court?

A. No, ma'am.

1 Q. All right. Going back to November of 2009, was her
2 condition better than it is today?

3 A. Yes, ma'am, a little, kind of, sort of, yes.

4 Q. Pardon?

5 A. She still has Alzheimer's but -- she gets things mixed
6 up, but she's worser (verbatim) now.

7 Q. Okay. When did your father pass?

8 A. In 2010? '09? '10?

9 Q. I'll rephrase that. Both your mother and father have
10 died since your brother's trial.

11 A. Yes. Well, we have different fathers, I guess.

12 Q. Pardon?

13 A. We have different fathers, so my father has been dead
14 before that.

15 Q. Okay. His father has died---

16 A. Yes.

17 Q. ---since the time of his trial?

18 A. Yes.

19 Q. Okay. And his mother has also died since the time of
20 the trial?

21 A. Yes.

22 Q. Okay. And that's your mother.

23 A. Yes.

24 Q. Okay. You've heard talk in here about a place they call
25 the River Deck Saloon and Grill at Lake Wateree?

1 A. Yes, ma'am.

2 Q. To your knowledge, has -- have you ever frequented that
3 establishment?

4 A. No, ma'am.

5 Q. To your knowledge, has anyone else in your family, your
6 parents or your grandparents, ever frequented that store?

7 A. No, ma'am.

8 Q. Do you have reason to believe that they have not ever
9 frequented that store?

10 A. Yes, ma'am, because we know people that have been there,
11 and the reason we never went there is because they have a
12 sign in their store that says "whites only." The people that
13 have that we know that went there told us this, so we've
14 never been there.

15 Q. And is it a new sign?

16 A. It's like an older sign, but it's right there like in
17 the open that you can see it.

18 Q. Okay. And your family was aware of that?

19 A. Yes, ma'am.

20 Q. And you think based -- based on that, you know that your
21 family---

22 A. Would not go there.

23 Q. ---would not frequent that establishment.

24 A. Yes, ma'am.

25 Q. Okay. Were you around at the time of your brother's

1 trial?

2 A. Yes, ma'am.

3 Q. Did you attend part of his trial?

4 A. Part of it.

5 Q. Okay. After the testimony was offered about your
6 brother and his family members having gone at times to the
7 River Deck Saloon and Grill, did defense counsel, Mr. Ogburn,
8 ever talk with you or anyone in your family, to your
9 knowledge, about whether or not you had ever frequented that
10 establishment?

11 A. No, ma'am.

12 Q. Would you have been willing to testify concerning your
13 family's lack of a history with that business, if you had
14 been asked to?

15 A. Yes, ma'am.

16 Q. As far as you know, your parents would have been, but
17 they're not with us anymore, are they?

18 A. Yes, ma'am.

19 **Ms. Shurling:** Okay. No further questions.

20 **Ms. Harrigan:** Just briefly, Your Honor.

21 Cross-Examination

22 By Ms. Harrigan:

23 Q. How large is your family, immediate family, that you
24 refer to as family living in the area?

25 A. How big? I'll say three.

1 Q. The only three members of your family---

2 A. That we---

3 Q. ---that are living around the Lake Wateree area around
4 this restaurant?

5 A. There's other family, but we only -- but my immediate
6 family that I be with, there's only three of us.

7 Q. Your extended family, how many members of your extended
8 live in that area?

9 A. I'd say about ten.

10 Q. Ten?

11 A. Yes.

12 Q. Do you constantly know the whereabouts of your family
13 members, where they like to eat and dine?

14 A. Yes.

15 Q. You do?

16 A. Yes.

17 Q. Okay. Do you know where your -- what other members of
18 your family live around here?

19 A. My uncle, my aunt.

20 Q. Where did your uncle eat for dinner last night?

21 A. At his house.

22 Q. You know that for certain.

23 A. Yes. I talked to my cousin because she stays there with
24 them.

25 Q. Okay. Are you -- you testified you were present for

1 your brother's trial; correct?

2 A. Yes.

3 Q. And you heard his testimony that himself and no members
4 of your family had ever been at the River Bar and Grill;
5 correct?

6 A. Yes.

7 Q. And did you hear his attorney highlight that during his
8 closing argument?

9 A. No. I wasn't there for closing arguments.

10 Q. You were only there for portions of the trial.

11 A. Yes.

12 Q. What portions of the trial were you there for?

13 A. Like the first day. I wasn't there for all of it
14 because I had school.

15 **Ms. Harrigan:** No further questions, Your Honor.

16 **The Court:** All right. Thank you. You can step down.

17 **Ms. Shurling:** Your Honor, I'd call the applicant,
18 Jarvis Gibbs.

19 Jarvis Gibbs, after being duly sworn, testified as
20 follows:

21 **The Court:** All right. Tell us your full name, if you
22 would, please, sir.

23 **The Witness:** I'm Jarvis Gibbs.
24
25

Direct Examination

By Ms. Shurling:

Q. Mr. Gibbs?

A. Yes, ma'am.

Q. I want to do this as quickly as possible, but it's important to get it on the record. I've been to see you at your correctional institution to discuss your case with you in detail?

A. Yes, ma'am.

Q. And among the details we talked about were the sentences to which you could have been sentenced on each of your crimes; correct?

A. Yes, ma'am.

Q. You and I, in fact, looked at the statutory provisions for each of the crimes you were charged with and we went over the minimums and maximums where they applied on each of those crimes. Right?

A. Yes, ma'am.

Q. So you understand that at the time of your trial you were looking at, if the judge had sentenced you consecutively, somewhere in the ballpark of 95 years?

A. Yes, ma'am.

Q. Have I explained to you that if we were to be blessed with a favorable ruling by His Honor, that the prize, if you will, is not these charges just going away? You understand

1 that.

2 A. Yes, ma'am.

3 Q. What do we win, if we win?

4 A. If I win -- talking about the whole situation?

5 Q. No. If you win the P.C.R., what do you get?

6 A. I can get a new trial.

7 Q. Okay. And I have explained to you that that new trial
8 would be on all the original charges.

9 A. Yes, ma'am.

10 Q. And that if you were convicted following a jury trial,
11 that the judge who sentenced you, unless it was the same
12 judge that tried you the first time---

13 A. Yes, ma'am.

14 Q. ---would have absolutely no limitation on what sentence
15 he could give you as long as it was within the statutory
16 minimums and maximums?

17 A. Yes, ma'am.

18 Q. He could sentence you to the maximum if he wanted to,
19 and there's no guarantee that he would make them concurrent.
20 He might make them consecutive. You understand that.

21 A. Yes, ma'am.

22 Q. And I also explained to you that if G. Thomas Cooper
23 were to retry the case that the only restraint on him
24 resentencing you would be that if he decided to give you a
25 higher penalty than he gave you originally, he would have to

1 put on the record some reason why he felt the enhanced
2 sentence was appropriate in order to verify for the record
3 that it was not a vindictive measure in response to your
4 succeeding and winning a new trial on appeal. I explained
5 all that to you, didn't I?

6 A. Yes, ma'am.

7 Q. Okay. Now, I also explained to you that, based on my
8 34 years experience, that although I have to tell you that
9 you can get more time that I wasn't telling you you would get
10 more time but that it was my job to explain to you that you
11 could. Correct?

12 A. Yes, ma'am.

13 Q. This is very, very important. Once you win a new trial
14 and you're back -- you know, you're going back to a new
15 trial, it's too late. Once your old judgments and sentences
16 have been overturned and a new trial has been granted, at
17 that point it's too late to change your mind, so I've got to
18 be very sure you understand this. There is no constitutional
19 right to a plea bargain. Do you understand that?

20 A. Yes, ma'am.

21 Q. You understand that if you won a new trial and the case
22 went back on remand, the solicitor's office might be willing
23 to negotiate with you when the case was remanded; they might
24 not. They might say, "No, we're going back to trial." So
25 there's no guarantee that the State would even be willing --

1 the prosecutor's office would even be willing to entertain
2 plea negotiations with you. You understand that.

3 A. Yes, ma'am.

4 Q. So your only choice might be a jury trial at which you
5 were facing the original charges which are very serious.

6 A. Yes, ma'am.

7 Q. Okay. Taking all that into account, are you certain you
8 want to go forward with this post-conviction relief case?

9 A. Yes, ma'am.

10 Q. And you're certain that you want to ask Judge Barber to
11 vacate your judgments and sentences based on a finding that
12 you didn't receive ineffec -- you didn't receive effective
13 assistance of counsel and grant you new trials on all your
14 charges.

15 A. Yes, ma'am.

16 Q. Okay. Did you get to go over your discovery materials
17 with Mr. Ogburn before your trial?

18 A. Not -- I talked to him before my trial, but I didn't go
19 over my discovery material. We just -- he had came -- when
20 he had came to the county to see me, that was on a Saturday
21 and they had me scheduled to go to court Monday. He had just
22 got notice Friday.

23 Q. Okay. Had he been to see you prior to that on previous
24 occasions?

25 A. I seen him once at the -- because after I bond out on

1 the trial, I got to see him. I seen him once after I bond
2 out.

3 Q. Okay. And then you saw him Saturday before the trial
4 started on Monday?

5 A. Yes, ma'am.

6 Q. When he came to the jail, did he bring discovery
7 materials with him to review with you?

8 A. No, ma'am. He just gave me the -- just the jury list.

9 Q. The jury list.

10 A. Yes, ma'am.

11 Q. Okay.

12 A. I got a copy of the jury list.

13 Q. Sometime after you were tried and convicted, did you
14 write him and ask for a copy of your discovery materials?

15 A. Yes, ma'am.

16 Q. And did he send them to you?

17 A. No, ma'am.

18 Q. Okay.

19 A. I even sent somebody by there for me.

20 Q. By his office?

21 A. Yes, ma'am.

22 Q. Okay. So you've never been given a complete copy of
23 your discovery materials.

24 A. No, ma'am. I -- well, he was my third lawyer that was
25 appointed to me.

1 Q. Okay.

2 A. They appointed three lawyers to my case.

3 Q. Okay.

4 A. Because it was a federal case. Then the federal dropped
5 the case---

6 Q. Okay.

7 A. ---and they gave it back to the State. So he wind up
8 being my third lawyer to get the case.

9 Q. But he was the lawyer that took you to trial.

10 A. Yes, ma'am.

11 Q. Okay. Had your -- had either of your two previous
12 lawyers given you copies of your discovery materials?

13 A. No, ma'am.

14 Q. Okay. Some of the discovery materials that I have
15 shared with you throughout this process for preparing for
16 this hearing and things I've shown you today, had you ever
17 seen them before?

18 A. I never got none of that.

19 Q. Okay. So you had never seen them before.

20 A. No, ma'am.

21 Q. Okay. You and I went over this privately, but I just
22 want to get it clear on the record. I've explained to you
23 that the way the system works: You usually only get one
24 P.C.R. Do you understand that?

25 A. Yes, ma'am.

1 Q. Barring some pretty unusual circumstances -- and there
2 are some. There are some real unusual circumstances that
3 might would give you a chance somewhere down the line at
4 another P.C.R., but it is not likely to happen; it's very
5 rare.

6 A. Yes, ma'am.

7 Q. So chances are this is your only P.C.R.

8 A. Yes, ma'am.

9 Q. Okay. My pride's not going to be hurt. If I have left
10 something out that you think is important about your case
11 that you want his honor to take into consideration, it's
12 important that you tell him about it now.

13 A. No.

14 Q. Because, otherwise, he's going to go solely on the
15 record that I've built.

16 A. Yes, ma'am. I mean, I don't got nothing else. I just
17 hope he take all my issues into consideration because, I
18 mean, I have a lot of issues, I mean, but I'm happy with the
19 issues that you've presented for me.

20 Q. Thank you.

21 A. Thank you.

22 Q. I can assure you this judge will take all your issues
23 into consideration.

24 A. Yes, ma'am.

25 Q. I've explained to you that I was court-appointed to

1 represent you in the post-conviction relief case only?

2 A. Yes, ma'am.

3 Q. And you understand that in the event we lose and you
4 want to do an appeal to the Supreme Court, you'll be
5 appointed another lawyer.

6 A. Yes, ma'am.

7 Q. And you understand if we win and counsel for the
8 respondent decides to appeal it, that's not something I would
9 be doing either.

10 A. Yes, ma'am.

11 Q. Okay. And, likewise, if we were to win and the State
12 did not appeal or if we won and they appealed and you won the
13 appeal, eventually it would go back to trial.

14 A. Yes, ma'am.

15 Q. You are clear on the fact that I would not be your
16 court-appointed lawyer for that retrial.

17 A. Yes, ma'am.

18 Q. When the prosecutor made the comment about -- pardon me.
19 When the witness for the prosecution made the comment about
20 you and your family visiting the business owned by her
21 in-laws at times---

22 A. Yes, ma'am.

23 Q. ---your lawyer questioned you about whether or not you'd
24 ever been in that establishment at trial, didn't he?

25 A. Yes, ma'am.

1 Q. Before you took the stand, did he ask you if any of your
2 family members were available to be questioned as possible
3 witnesses to refute that assertion that had been made by that
4 witness?

5 A. I had gave him a list of my witness (verbatim) for that.
6 I mean, I had gave him a list of my witnesses and he had
7 them.

8 Q. Okay. But did he specifically talk with you about who,
9 if any, of your family might be available to refute the
10 assertion that your family had frequented that witness's
11 family's place of business?

12 A. No, ma'am.

13 Q. If he had asked you, would you have been able to give
14 him the names of some of your immediate family members or
15 some of your other family members---

16 A. Yes, ma'am.

17 Q. ---that could have testified on that point?

18 A. Yes, ma'am.

19 Q. Okay. How tall are you, Jarvis?

20 A. 6'2" and a half, about 6'3".

21 Q. Okay. At the time of your trial -- well, let's even go
22 better. At the time of your arrest, were you wearing your
23 hair exactly the way you're wearing it now?

24 A. Yes, ma'am.

25 Q. Was it a little longer? A little shorter? How---

1 A. Maybe a little shorter.

2 Q. A little shorter?

3 A. Yes, ma'am.

4 Q. Okay. Can you stand for me, please?

5 A. (The witness complies.)

6 Q. Show His Honor your arms.

7 A. (The witness complies.)

8 Q. The scars that you were referring to, where are the
9 scars on your arms?

10 A. Right here (indicating).

11 Q. Those hash marks?

12 A. Yes, ma'am.

13 Q. Okay. Turn around. Let him see your head.

14 A. (The witness complies.)

15 Q. You can have a seat.

16 **Ms. Shurling:** Your Honor, I don't have any further
17 questions.

18 **The Court:** All right.

19 **Ms. Harrigan:** No questions from the State.

20 **The Court:** All right. Thank you. You may step down.

21 **Ms. Shurling:** Your Honor, given the lateness of the
22 hour, I'm due to do a plea in general sessions in front of
23 Judge Benjamin at 3:00. Might it be possible for us to
24 submit proposed orders to Your Honor summarizing our
25 positions on these issues?

1 **The Court:** I think I know your positions.

2 **Ms. Shurling:** Okay.

3 **The Court:** Ms. Benjamin will wait; don't worry about
4 her. You're here and that's not going to take priority over
5 anything else.

6 **Ms. Shurling:** Thank you, Your Honor.

7 **The Court:** If you weren't here, she might have
8 priority. All right. I've got a couple of questions I want
9 to ask---

10 **Ms. Shurling:** Yes, sir.

11 **The Court:** ---on the identification issue.

12 **Ms. Shurling:** Yes, sir.

13 **The Court:** You mentioned in questioning the witness
14 about a Neil v. Biggers, but you don't allege that that was
15 -- that there was a deficiency because a Neil v. Biggers
16 hearing was not held.

17 **Ms. Shurling:** Yes, sir, I do. There's an allegation
18 that he was ineffective for failing to raise a challenge --
19 trial counsel provided ineffective assistance and he failed
20 to seek---

21 **The Court:** But you don't -- you don't---

22 **Ms. Shurling:** ---the exclusion of her testimony.

23 **The Court:** Pardon me?

24 **Ms. Shurling:** Number 2.

25 **The Court:** You said that they didn't attempt to exclude

1 the testimony on it.

2 **Ms. Shurling:** Correct.

3 **The Court:** But you didn't -- you don't allege that
4 through Neil v. Biggers that that was an issue. I mean,
5 maybe you do and I just didn't read it. Tell me how a Neil
6 v. Biggers -- a Neil v. Biggers is a hearing that relates to
7 a potential misidentification---

8 **Ms. Shurling:** Correct, Your Honor.

9 **The Court:** And it generally involves things like: How
10 long did you have to observe this individual? What was the
11 lighting that you had to observe the individual? Obviously
12 this fellow had a mask on, whoever it was, and that is going
13 to hinder somebody's ability to make an identification.

14 **Ms. Shurling:** Yes, sir, Your Honor.

15 **The Court:** But that -- I don't know how that's -- I
16 mean, doesn't that then become a factual issue? I mean,
17 nobody is contesting that this person wasn't there long
18 enough for an identification. This woman said she recognized
19 him, she knows him from prior experiences with him, and he
20 had an unusual back of the head. Well, I don't know how that
21 translates into a Neil v. Biggers hearing.

22 **Ms. Shurling:** Are you ready for me to respond?

23 **The Court:** To me, that seems to be just an issue of
24 believability and credibility of the witness. Is the jury
25 going to believe somebody is going to come in here, and using

1 your facts, this woman alleges: I went to school with him
2 15 years ago. I saw him five years ago, and maybe he was in
3 the bank a short period of time prior to this incident
4 occurring. Tell me about why you think a Neil v. Biggers is
5 the---

6 **Ms. Shurling:** Certainly, Your Honor. Your Honor, under
7 Neil versus Biggers analysis, what we do is not terribly
8 different from the Fourth Amendment analysis on a search
9 issue. It's somewhat different from a Fifth or Sixth
10 Amendment challenge, but if you raise a challenge to the
11 inherent unreliability of an eyewitness identification and an
12 in camera hearing is held, the judge hears all the testimony,
13 and as you know, you've done it a thousand times---

14 **The Court:** What is the -- what is the unreliability?
15 The mask?

16 **Ms. Shurling:** Well, you've also got the duration of the
17 opportunity to -- to observe the gentleman because it was
18 alleged to have happened within seconds, the fact that the
19 vast---

20 **The Court:** I didn't hear seconds. I heard several
21 minutes.

22 **Ms. Shurling:** Minutes. In any event, a very brief
23 incident during which the vast majority of his facial
24 features were completely covered.

25 **The Court:** I understand the mask part of it. I mean,

1 that---

2 **Ms. Shurling:** The answer, Your Honor, is that under
3 existing case law, there's a certain threshold of reliability
4 that has to be met. If a judge finds that the circumstances
5 under which an identification is made are so inherently given
6 to potential for misidentification because of lack of
7 opportunity to adequately -- adequately observe enough facial
8 features or whatever to make the eyewitness identification---

9 **The Court:** Are you saying---

10 **Ms. Shurling:** ---then the judge can make the ruling
11 that the identification is inherently unreliable and not
12 allow it to be made.

13 **The Court:** Are you saying in every instance where there
14 would be a mask that you couldn't have an identification?

15 **Ms. Shurling:** I think, Your Honor, that I can -- I can
16 play law school and I can envision---

17 **The Court:** I'm asking: Are you saying, based on your
18 understanding of the law, in every instance where there's a
19 mask you couldn't have an identification?

20 **Ms. Shurling:** No, sir, but I can make a sound argument
21 for the fact that it could be inherently unreliable in this
22 case.

23 **The Court:** Well, I don't know how this case would be
24 any different than any other case if, in fact, there's a
25 mask.

1 **Ms. Shurling:** Well, for example, if she had said that
2 he had on a type of mask that was skintight and that he had a
3 cave-in in the side of his skull from some -- you know, I
4 went to school with him. This guy had surgery and he had a
5 great big crater on the side of his head, and when he came
6 in, he had on a ski mask that was fitting so tight I could
7 see that crater, and it was the same size and shape and
8 location as the one the guy had in school. I think that
9 might come closer to passing muster. But where you have
10 just, "It's a ski mask..."

11 **The Court:** Well, I mean, so the best you can figure out
12 is it might come close to passing muster, but it's not going
13 to, so---

14 **Ms. Shurling:** No, I don't think this one comes close to
15 passing muster.

16 **The Court:** No, you didn't use this one as your example.
17 The one you used as an example, which you have different
18 characteristics of what occurred, you're saying that might
19 come closer.

20 **Ms. Shurling:** Oh, yes, sir, that one might.

21 **The Court:** But you're basically saying it still doesn't
22 pass master. So in every instance you'd have to -- it would
23 be a potential -- I mean, there would be misidentification,
24 the potential would be greater than... All right. Well, I
25 understand that.

1 **Ms. Shurling:** I think it's a case-by-case analysis.

2 **The Court:** What does the State about a Neil v. Biggers?

3 **Ms. Harrigan:** I don't think a Neil v. Biggers hearing
4 was necessary here. I think it's a credibility issue for the
5 finder of fact, the jury, and several times throughout cross-
6 examination, other testimony of witnesses, and highlighted
7 through the closing arguments the weak credibility and how
8 unbelievable it was for Ms. Rogers (sic) to even assert that
9 she knew who this was based on the mask, based on the short
10 period of time, based on the length since she had since seen
11 him in school, if ever. I think he did a wonderful job of
12 pulling those things out. I think it made her look
13 unbelievable (verbatim). It made the State's case look
14 unbelievable (verbatim).

15 **The Court:** Well, I'm talking about the hearing itself.
16 The pretrial hearing on the determination -- the Court makes
17 a determination as to the likelihood of a misidentification,
18 that there's a great likelihood of misidentification, so I'm
19 going to exclude the identification. I mean, on a -- if the
20 Court had said, "There's not; it's a factual issue," then it
21 still becomes an issue for the jury. They have to find by
22 the -- beyond a reasonable doubt that -- that that's the
23 individual---

24 **Ms. Harrigan:** Yes, Your Honor.

25 **The Court:** ---and the identification is good, so...

1 **Ms. Harrigan:** I don't think a Neil v. Biggers was
2 necessary here based on this wasn't a show-up lineup; it
3 wasn't a picture lineup. This was just where she was going
4 to testify anyway as to him being in the bank, and I think
5 counsel did a competent job of pointing out -- I think he
6 used it to his own advantage that you can't really believe
7 anything this teller is telling you because she's claiming
8 she knows him. She's claiming she can I.D. him.

9 **The Court:** That's obviously the position he's taking to
10 try and convince the jury as to what they should find, but
11 we're talking about the pretrial -- the technical aspect of
12 it at this point in time which I think she's alleged---

13 **Ms. Harrigan:** Yes, but going to the prejudice prong of
14 not having a hearing, I think he used it to his advantage
15 that she was able to testify as to identity, and he
16 highlighted to the jury several times that it was ridiculous
17 that she could make an identification.

18 **The Court:** All right. Ms. Shurling, would you
19 acknowledge -- I'm not discounting completely your -- all
20 your allegations of deficiencies as you set out in your
21 amended application, but your two primary ones are the
22 identification issue and, secondly, the -- attacking the
23 credibility of the witnesses relating to -- especially Mr.
24 Moore. Isn't that his name?

25 **Ms. Shurling:** Yes, Your Honor.

1 **The Court:** In that while you acknowledge that there was
2 some -- they delved into the situation a little bit. They
3 did not develop it sufficiently enough to give the jury a
4 full flavor of what this guy was seeking, how he would
5 benefit, what his record was in the past. I mean, I'm not
6 too impressed with your argument about the State could have
7 reopened the case at any time. Any time it's nol prossed,
8 it's never dismissed with finality, never can be called
9 again. If this was a -- in my opinion, if this was a part of
10 a deal that they made, the State couldn't recall it, but the
11 Court would have the ability to see to it that that was an
12 agreement and they would be stuck with it.

13 If they just nol prossed it for whatever reason, then
14 really it wouldn't be of a -- I mean, while it would benefit
15 to him, it wouldn't have been a benefit that they had offered
16 to him in order to get his testimony, so...

17 **Ms. Shurling:** May I respond?

18 **The Court:** But -- well, you disagree on it, but -- are
19 those your two primary issues?

20 **Ms. Shurling:** They are, Your Honor, with one caveat.
21 On the identification issue you have---

22 **The Court:** Well, I understand that.

23 **Ms. Shurling:** There are several issues that relate to
24 identification. It is---

25 **The Court:** Oh, I understand, but identification -- I

1 mean---

2 **Ms. Shurling:** Identification---

3 **The Court:** ---you can attack it from a number of ways.

4 **Ms. Shurling:** Identification, as it is reflected in
5 numerous allegations, is a primary issue, and failure to
6 adequately impeach the credibility of Chad Moore would
7 certainly be the other major prong.

8 **The Court:** Okay. I'm not saying your other ones don't
9 have merit---

10 **Ms. Shurling:** I understand, Your Honor.

11 **The Court:** All right. Anything else y'all want to tell
12 me?

13 **Ms. Shurling:** Just, Your Honor, with regard to the
14 issue about the State -- about the exposure issue on Chad
15 Moore, I would point out that counsel questioned the
16 gentleman about whether or not he had a deal, but he did not
17 question him about his---

18 **The Court:** Well, I clearly understand---

19 **Ms. Shurling:** Okay. You don't want me to cover---

20 **The Court:** No, I mean, I understand that -- the
21 question. I mean---

22 **Ms. Shurling:** With regard to---

23 **The Court:** ---then what do you want? What is it you're
24 expecting?

25 **Ms. Shurling:** Exactly.

1 **The Court:** Why are you here? Are you here only for the
2 sake of doing justice for the world or are you here because
3 you're trying to make Mr. Moore some sort of a beneficiary
4 out of this whole deal and you're prepared to say whatever it
5 takes to get that out of him?

6 **Ms. Shurling:** Yes, sir.

7 **The Court:** I understand that.

8 **Ms. Shurling:** And as with identification, there are
9 some collateral allegations with regard to failure to use
10 available information in discovery to impeach him concerning
11 certain claims that he denied on cross and so forth. With
12 regard to the issue about the dismissed claims, I want to --
13 I'm going to say this as simply as I can because I'm afraid
14 I've been misunderstood.

15 My point on that is: This guy had charges that came up
16 in 2007, some in August and some in October, immediately
17 before this trial in November. They were all nol prossed. I
18 gladly concede that it says because the defendant is in
19 federal custody, but it also says nol prossed with leave to
20 restore, which I agree is usually the case.

21 **The Court:** It's always the case. They nol prossed
22 this. They've just declined to prosecute. They've not --
23 the charges are never adjudicated. There's no final
24 determination of what those charges are as to guilt or not
25 guilt.

1 **Ms. Shurling:** Yes, sir, Your Honor. My point being
2 that this gentleman was not questioned concerning what kind
3 of sentencing exposure he was looking at---

4 **The Court:** I understand that.

5 **Ms. Shurling:** ---and all that. With regard to the
6 charges that were dismissed, if I may, it won't take but a
7 minute, the issue is this: Not only was he not questioned
8 about his sentencing exposure on the charge that was still
9 pending---

10 **The Court:** I understand that.

11 **Ms. Shurling:** ---he wasn't questioned as to whether or
12 not he had some really important need to please the
13 solicitor's office because he knew he had all these other
14 charges that had been nol prossed without prejudice. When he
15 finished doing his time in federal court, he could be brought
16 back into state court. So he had a powerful reason --
17 incentive---

18 **The Court:** Well, they could have -- even if he'd gone
19 and said whatever they wanted him to say, they could have
20 brought the charges back up if that's what they wanted to do.
21 They're not---

22 **Ms. Shurling:** Certainly.

23 **The Court:** That's not the way it works. So, I mean, in
24 the real world that's just not how it's handled. I don't --
25 that just doesn't impress me. I understand about the other

1 things and I understand about maybe this lawyer should have
2 done more than what he did---

3 **Ms. Shurling:** Yes, Your Honor.

4 **The Court:** ---with respect to everything else that
5 would have allowed him to attack the credibility of this Mr.
6 Moore, so...

7 **Ms. Shurling:** Okay. Again, we have demonstrated
8 that -- that the investigator's notes say he was hoping for
9 help with his charge. We've also demonstrated that in the
10 end he got help with his charge.

11 **The Court:** I have no doubt that every snitch that comes
12 out of a jail is doing it for his or her own benefit and not
13 for the benefit of anybody else, so---

14 **Ms. Shurling:** And -- but the issue, as Your Honor
15 knows, is not whether or not you knew and understand that but
16 whether or not the jury, who is deciding his credibility,
17 knew and understood that. Thank you.

18 **The Court:** All right. Anything else?

19 **Ms. Harrigan:** No, Your Honor.

20 **The Court:** I mean, if y'all want to do proposed orders
21 -- I don't know that I need proposed orders at this point in
22 time. I wouldn't mind having a short memo on the Neil v.
23 Biggers issue. Can y'all limit it to about four pages?

24 **Ms. Harrigan:** Yes, Your Honor.

25 **The Court:** Or less.

1 **Ms. Shurling:** Your Honor---

2 **The Court:** And I emphasize less.

3 **Ms. Shurling:** If we're going to do memos, may we
4 address all the issues?

5 **The Court:** You can address anything you want to
6 address. I will not throw anything out that comes in.

7 **Ms. Shurling:** Thank you.

8 **The Court:** These are -- these are the issues that I'm
9 primarily concerned about.

10 **Ms. Shurling:** I understand: Anything relating to
11 identity and Chad Moore.

12 **The Court:** Well, what I want to know is just off -- on
13 the face of it, the fact that -- I mean, that's the question
14 I have. Just because they didn't have a Neil v. Biggers
15 hearing, is that in and of itself enough to - if it was
16 required - to set aside this case and grant him a new trial?

17 **Ms. Shurling:** And, of course, my argument would be---

18 **The Court:** I understand what your argument is and I
19 understand what hers is. That's why I want something short
20 that you can---

21 **Ms. Harrigan:** Does Your Honor have a timeline? Would
22 you like that in the next ten days or...

23 **The Court:** I don't care. When do y'all want to do it?

24 **Ms. Harrigan:** The next ten days would be fine for the
25 State.

1 **Ms. Shurling:** Your Honor, unfortunately I'm starting a
2 civil trial Monday.

3 **The Court:** Just give me a date.

4 **Ms. Shurling:** Thirty days?

5 **The Court:** Thirty days is fine.

6 **Ms. Shurling:** Thank you.

7 **The Court:** You need to have -- we need to have
8 everything done by February 4th, 2024 (verbatim). Everything
9 has to be done by then.

10 **Ms. Shurling:** Thank you.

11 **Ms. Harrigan:** Thank you, Your Honor.

12 **The Court:** Isn't that your max-out date?

13 **Mr. Gibbs:** Yeah, I know. That's why I was looking at
14 you.

15 **The Court:** All right.

16 **Ms. Shurling:** I think my client might get a tad bit
17 unhappy with me at that.'

18 **The Court:** Well, I appreciate it. Y'all have a nice
19 afternoon.

20 **Ms. Shurling:** Thank you.

21 (Whereupon, the proceedings were concluded.)
22
23
24
25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Kershaw County, South Carolina, on the 6th of June, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 6, 2014

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter

659 PLAINTIFF'S
EXHIBIT

Officer Code: 1170

7/25/2008 @ 10:55 AM = I RESPONDED TO THE SCENE FROM THE CPD. I ARRIVED AT THE FRONT OF THE BANK AND WAS TOLD BY A PASSING UPS MAN THAT PEOPLE IN A WHITE TRUCK AND A RED JEEP WERE CHASING THE ROBBER ON LYTTLETON STREET. I DROVE DOWN LYTTLETON STREET TO GREENE STREET AND DID NOT SEE ANYONE MATCHING THAT DESCRIPTION. I TURNED AROUND TO GO BACK TO THE BANK AND THEN SEEN THE TWO VEHICLES RIDING BESIDE THE RAILROAD TRACKS. THEY DID NOT SEE SUBJECT BUT WERE TOLD THAT HE JUST RAN THAT AWAY. A BICYCLE WAS OBSERVED DROPPED IN FRONT OF A RESIDENCE ON RAILROAD AVENUE. I RECEIVED INFORMATION THAT A WITNESS AT THE BANK SAW SUBJECT LEAVE THE SCENE IN A BICYCLE. KCSO BLOODHOUNDS AND SLED HELICOPTER WERE CALLED TO ASSIST. THE BLOODHOUND TEAM AND HELICOPTER TEAM ARRIVED AND SEARCHED THE AREA WITH NEGATIVE RESULTS. I TOOK THE BICYCLE INTO EVIDENCE AND PHOTOGRAPHED THE AREA AROUND WHERE THE BICYCLE WAS LOCATED.

7/25/2008 @ 2:00 PM = DET ED COREY AND I MET AT WILLIAM TETTERTON'S OFFICE TO INTERVIEW THE OWNER OF THE RECOVERED BICYCLE, AUTHUR MACKLIN JR (AKA: JUNIOR). HE STATED THAT JARVIS GIBBS AND JAMES DRAKEFORD CAME TO HIS HOUSE LOOKING FOR HIS BROTHER. JUNIOR'S BROTHER WAS NOT HOME. JARVIS THEN ASKED SYLVESTER FLOOD (WHO WAS ALSO PRESENT WITH JUNIOR) IF HE HAD A BIKE THAT JARVIS COULD BORROW. SYLVESTER SAID NO AND JUNIOR TOLD THEM THAT HE HAD A BIKE. JARVIS ASK TO BORROW IT FOR A LITTLE WHILE. JARVIS HAD A BEARD AND WAS WEARING A SMALL BLACK BACK PACK. JUNIOR COULD NOT REMEMBER WHAT ELSE JARVIS WAS WEARING. JAMES DRAKEFORD WAS DRIVING A BLUE 4-WHEELER WHICH HE HAS BEEN RIDING AROUND KIRKWOOD LATELY. JARVIS GOT ON THE BIKE AND PUT HIS HAND ON DRAKEFORD'S 4-WHEELER'S SEAT TO BE PULLED AWAY. AFTER ABOUT 10-15 MINUTES JUNIOR SAW A MARKED JEEP PATROL.

7/25/2008 @ 5:00 PM = SGT PAM MOORE SAW JARVIS GIBBS NEAR BOYKIN PARK. MOORE CALLED ME BY NEXTEL AND I MET HER THERE WITH LT MICHAEL STONE AND SGT KEVIN LYNCH. I APPROACHED JARVIS GIBBS WHO WAS SITTING ON THE FRONT PORCH OF [REDACTED]. I ASKED HIM IF HE WOULD COME TO THE CPD TO TALK WITH ME. HE AGREED AND GOT INTO THE PASSENGER SEAT OF MY CAR. GIBBS SAT IN THE CPD INTERVIEW ROOM AND I STARTED THE VIDEO RECORDER. GIBBS WAS READ HIS MIRANDA RIGHTS AND AGREED TO TALK WITH ME. HE STATED THAT HE SPENT LAST NIGHT AT THE RESIDENCE THAT I FOUND HIM AT ([REDACTED]) WITH A MAN HE ONLY KNEW AS "CHARLES". HE WOKE UP THIS MORNING AROUND 10:00-10:30 AM, TOOK A SHOWER, GOT DRESSED, AND WALKED AROUND THE TRACKS AREA. HE THEN WALKED TO THE KIRKWOOD AREA. GIBBS BORROWED A BIKE FROM JUNIOR AT ABOUT 11:00-11:30. GIBBS STATED THAT HE TRADED JUNIOR A \$20 PIECE OF CRACK FOR THE USE OF HIS BIKE. HE DESCRIBED JUNIOR AS A CRACK HEAD RELATED TO FRANK WARREN. GIBBS STATED THAT HE THEN USED THE BIKE TO GO SELL CRACK. HE SPOKE TO A FEMALE HE ONLY KNEW AS "POOKIE". HE RETURNED THE BIKE TO THE RESIDENCE THAT HE GOT IT FROM AND LAID IT DOWN IN THE FRONT NEAR THE FENCE. HE DID NOT GIVE IT BACK TO JUNIOR. GIBBS THEN WENT TO THE BARBER SHOP IN DUSTY BEND (NEAR THE TIRE SHOP) FOR A HAIR CUT AT ABOUT 12:30-1:30 PM. HE STATED THAT HE HAD TO WAIT THERE A LONG TIME FOR HIS HAIR CUT. A MAN HE IDENTIFIED AS "JB" CUT HIS HAIR. GIBBS THEN ALLOWED ME TO TAKE SEVERAL PHOTOGRAPHS OF HIS HANDS AND ARMS. HE WAS THEN TRANSPORTED TO THE KCDC WHERE A HOLD WAS PLACED ON HIM FOR PENDING CHARGES. HIS SHOES WERE TAKEN INTO EVIDENCE BY PTL TYRELL CATO.

7/25/2008 @ 6:30 PM = LT HERBIE FRASIER AND I WENT TO THE CUSTOM CUTS BARBER SHOP IN DUSTY BEND. I INTERVIEWED JB (JOHN LITTLETON [REDACTED]). JB STATED THAT GIBBS DID COME INTO THE BARBER SHOP AND DID GET HIS HAIR AND BEARD CUT. THE SHOP WAS VERY CROWD (LONG WAITING TIME FOR CUSTOMERS) AND JB WAS NOT REAL SURE WHEN GIBBS CAME IN OR LEFT. HE THOUGHT THAT IT WAS SOMETIME BETWEEN 12:00 PM AND 3:00 PM. AFTER THINKING ABOUT IT MORE, JB SAID THAT HE BELIEVES GIBBS WAS IN THERE AROUND THE TIME OF THE BANK ROBBERY. JB WAS NOT POSITIVE IF GIBBS WAS THERE BEFORE OR AFTER THE ROBBERY. JB COULD NOT REMEMBER WHAT GIBBS WAS WEARING AND WAS UNSURE IF HE CAME IN ALONE OR NOT. ANOTHER BARBER CAME TO THE SHOP WHILE I WAS TALKING WITH JB. HE TOLD LT FRASIER AND SGT COREY THAT JAVIS GIBBS WAS IN THERE EARLIER AND NEVER COMES TO THAT SHOP FOR A HAIR CUT.

7/25/2008 @ 6:55 PM = LT FRASIER, SGT COREY, DET COLEMAN, AND I WENT TO

INVESTIGATIVE NOTES

Case Number: 2008-1263

Date: 07/25/2008

Officer Code: 1170

WE MET WITH CHARLES BENSON (50 YOA) WHO WAS THE ONLY PERSON AT THE RESIDENCE. CHARLES STATED THAT HE STAYED HOME LAST NIGHT WITH A FEMALE FRIEND AND NO ONE ELSE. CHARLES STATED THAT GIBBS JUST CAME UP TO HIS PORCH AND SAT DOWN MOMENTS BEFORE I PICKED GIBBS UP TO GO TO THE CPD. BEFORE THIS HE HAD NOT SEEN GIBBS SINCE TUESDAY. CHARLES ALSO STATED THAT HE DID NOT HAVE ELECTRICITY OR RUNNING WATER IN HIS HOUSE. HE ALLOWED ME TO ENTER HIS HOUSE TO LOOK AROUND. I OBSERVED THAT HE HAD NO ELECTRICITY NOR RUNNING WATER. THERE WERE SPIDER WEBS AND DUST IN THE BATH TUB.

7/28/2008 @ 8:50 AM = SGT COREY AND I WENT TO FIRST PALMETTO BANK. WE TALKED WITH BETH PEAKE AND LEE HUTCHINS. WE CHECKED THE TIME ON THE VIDEO SYSTEM BECAUSE THE VIDEO WAS ABOUT 10 MINUTES SLOWER THAN DISPATCH'S TIMES; THE CAMERA SYSTEM WAS ABOUT 10 MINUTES SLOWER THAN THE CURRENT TIME (DISPATCH TIMES WERE CORRECT). I REQUESTED THE INFORMATION FOR THE CAMERA COMPANY THEY USE FOR A POSSIBLE ENHANCEMENT ON THE VIDEO AND I REQUESTED A VIDEO FOR THE ENTIRE MORNING OF THE INCIDENT. HUTCHINS STATED THAT HE WOULD TALK WITH STEVE WILLIAMS (REDACTED) ABOUT THE VIDEO. SGT COREY MEASURED THE BANK DOOR MARKINGS. IT WAS 75" FROM THE FLOOR TO THE TOP MARK WHERE IT APPEARED THAT THE SUBJECT WAS LEVEL WITH. I ASKED HUTCHINS WHAT WAS THE TOTAL AMOUNT OF MONEY TAKEN AND WHETHER OR NOT BAIT MONEY WAS GIVEN. HE STATED THAT THE SUBJECT GOT A LITTLE MORE THAN \$7400 AND THAT NO BAIT MONEY WAS GIVEN. HE STATED THAT HE WAS TOLD THAT THE ROBBER TOLD THEM NOT TO GIVE HIM ANY FUNNY MONEY. I TALKED WITH ONE OF THE TELLERS, MELISSA ROBERTS. SHE STATED THAT SHE THOUGHT ABOUT THE ROBBERY OVER THE WEEKEND AND THE ONLY PERSON WHO SHE SUSPECTED WAS JARVIS GIBBS. ROBERTS WENT TO SCHOOL WITH GIBBS AND HAS KNOWN HIM FOR A LONG TIME. SHE SUSPECTED GIBBS BEFORE SHE FOUND OUT HE WAS ARRESTED. THE REASON SHE SUSPECTED GIBBS WAS BECAUSE THE ROBBER FIT HIS PHYSICAL DESCRIPTION AND BECAUSE GIBBS WAS IN THE BANK EARLIER THAT WEEK (TUESDAY OR WEDNESDAY) FOR NO KNOWN REASON. GIBBS DOES NOT HAVE AN ACCOUNT THERE AND HE SEEMED TO JUST BE STANDING AROUND INSIDE NEAR THE FRONT DOOR WHILE THEY WERE TAKING CARE OF OTHER CUSTOMERS. SHE DID NOT REMEMBER WHO HE MAY HAVE BEEN IN THERE WITH. I REQUESTED THE BANK'S VIDEO FOR TUESDAY AND WEDNESDAY ALSO.

7/28/2008 @ 9:30 AM = SGT COREY AND I WENT TO REEL GUN AND PAWN AND TALKED WITH BRIAN NAPPER. WE SHOWED HIM PICTURES OF THE ROBBER WITH THE GUN. NAPPER STATED THAT IT LOOKS LIKE A .45 CALIBER, 1911 STYLE, SINGLE ACTION, PISTOL WITH TARGET SIGHTS. GIBBS DID NOT LOOK FAMILIAR TO NAPPER. NAPPER CHECKED HIS RECORDS AND DETERMINED THAT THEY HAVE NOT SOLD A PISTOL LIKE THIS RECENTLY.

7/28/2008 @ 10:25 AM = SGT COREY AND I WENT TO (REDACTED) (GIBBS'S LAST KNOWN ADDRESS). NO ONE WAS HOME. WE LEFT SGT COREY'S BUSINESS CARD ON THE DOOR.

7/28/2008 @ 11:00 AM = I WENT TO CVS TO CHECK IF THEY SOLD BLUE LATEX GLOVES LIKE THE GLOVES THE ROBBER WORE. THEY DO NOT SELL BLUE LATEX GLOVES.

7/28/2008 @ 11:10 AM = I WENT TO WALGREEN. THEY SELL 100 COUNT BOXES OF LIGHT BLUE GLOVES BUT THEY HAVE NOT SOLD ANY IN THE LAST TWO WEEKS.

7/28/2008 @ 11:20 AM = I WENT TO HAWTHORN PHARMACY. THEY DO NOT SELL BLUE LATEX GLOVES AND THEY DO NOT HAVE ANY CAMDEN CUSTOMERS WITH THE LAST NAME OF GIBBS.

7/28/2008 @ 11:25 AM = I WENT TO DOLLAR GENERAL & ROSES - THEY DO NOT SELL BLUE LATEX GLOVES.

7/28/2008 @ 11:40 AM = I WENT TO DUSTY BEND DISCOUNT BEVERAGE. I TALKED WITH THE MANAGER WHO STATED THAT GIBBS DOES COME INTO HER STORE BUT SHE WAS NOT SURE IF HE CAME IN ON THE DAY OF THE ROBBERY. I GAVE HER A PICTURE OF GIBBS AND MY BUSINESS CARD. SHE STATED THAT SHE WILL REVIEW THE STORE'S VIDEO AND CALL ME BACK.

7/28/2008 @ = CHAD MOORE WAS TRANSPORTED TO THE CPD FROM THE KCDC WITH INFORMATION ON

INVESTIGATIVE NOTES

Case Number: 2008-1263

Date: 07/25/2008

Officer Code: 1170

THE BANK ROBBERY. CHAD MOORE IS CURRENTLY IN KCDC FOR A FIRST CITIZENS BANK ROBBERY IN LUGOFF IN FEBRUARY OF THIS YEAR. I VIDEO TAPED THIS INTERVIEW. MOORE STATED THAT HE IS CELL MATES WITH JARVIS GIBBS AND THAT GIBBS HAS BEEN TALKING TO HIM ABOUT THE FIRST PALMETTO BANK ROBBERY. GIBBS TOLD MOORE THAT HE WORE A SKULL CAP WITH EYES CUT OUT AND A WHITE T-SHIRT. GIBBS CARRIED A 9MM AND A BIG BLACK BAG INSIDE THE BANK. HE OBSERVED 4 FEMALE TELLERS INSIDE AND TOOK MONEY FROM ALL 4 OF THEM. GIBBS THEN LEFT ON A BICYCLE THAT HE BORROWED FROM A CRACK HEAD AND MET UP WITH HIS PARTNER (JAMES DRAKEFORD) WHO WAS WAITING NEAR THE BANK ON A 4-WHEELER. GIBBS HAD COMMUNICATIONS WITH DRAKEFORD BY CELL PHONES. GIBBS AND DRAKEFORD THEN TOOK THE MONEY SOMEWHERE AND LIFTED IT INTO A TREE WITH A ROPE SO THE TRACKING DOGS WOULD NOT FIND IT. GIBBS CHANGED HIS T-SHIRT FROM THE WHITE ONE THAT HE WORE INTO THE BANK TO A BLACK ONE. THE 4-WHEELER WAS GIVEN BACK TO THE OWNER. GIBBS AND DRAKEFORD THEN SPLIT UP AND MET BACK AT A BARBER SHOP WHERE THEY BOTH GOT HAIR CUTS. MOORE THEN STATED THAT ON 7/27/2008 AT AROUND 7:30-8:00 PM GIBBS TALKED TO SOMEONE ON THE PHONE. WHATEVER WAS SAID CONVINCED GIBBS THAT DRAKEFORD HAD TAKEN THE MONEY. MOORE ADMITTED THAT HE WAS HELPING IN ORDER TO GET HELP ON HIS BANK ROBBERY CHARGE. I TOLD HIM THAT I COULD NOT PROMISE HIM ANYTHING. MOORE WANTED TO GO BACK TO THE SAME CELL WITH GIBBS TO SEE IF HE WOULD GIVE UP ANY MORE INFORMATION. I ADVISED MOORE THAT I CAN NOT ASK HIM TO ASK GIBBS ANY MORE QUESTIONS BECAUSE MOORE IS NOW COOPERATING WITH THE CAMDEN POLICE DEPARTMENT. MOORE SAID THAT HE WOULD JUST LISTEN TO GIBBS FROM NOW ON.

7/28/2008 @ 7:15 PM = I WENT TO FOOD LION IN DUSTY BEND. THEY DO NOT SELL BLUE LATEX GLOVES.

7/29/2008 @ 9:30 AM = SGT COREY AND I WENT TO DALE THIEL STABLES ON FIRETOWER ROAD DUE TO A BLUE KAWASAKI SPORT 4-WHEELER (VIN: JKAEF8B181B503512) BEING RECOVERED IN THEIR POND NEAR THE OLD POLICE SHOOTING RANGE. MAYNARD THIEL STATED THAT HE NOTICED TWO OF A 4-WHEELER'S TIRES STICKING UP FROM THE POND NEAR THE DAM WHILE HE WAS RIDING HIS HORSE. HE NOTICED TRACKS AND ASSUMED THAT IT WAS PUT THERE SOMETIME ON SUNDAY. ONE OF THEIR EMPLOYEES HAD ALREADY PULLED THE 4-WHEELER OUT OF THE POND BEFORE WE ARRIVED. SGT COREY AND I WENT TO THE LOCATION OF WHERE THE 4-WHEELER WAS RECOVERED AND I TOOK SOME PICTURES OF THE TRACKS MADE FROM PULLING IT OUT THE POND. THE 4-WHEELER WAS REPORTED STOLEN FROM ALCOLU, SC (CLARENDON CTY SHERIFF'S OFFICE) ON 9/6/2001. IT WAS TAKEN TO THE CITY LOT FOR STORAGE.

7/29/2008 @ 12:30 PM = FRANKIE CARROL CAME TO THE CPD TO TALK ABOUT THE INFORMATION HE HAS BEEN HEARING ON THE BANK ROBBERY. I RECORDED THE INTERVIEW ON VIDEO. HE STATED THAT JARVIS OWED LITTLE EARL (EARL WARREN, JR) MONEY FOR DRUGS. LITTLE EARL TOLD GIBBS THAT HE NEEDED TO PAY THE MONEY SOON AND HE DIDN'T CARE HOW HE GETS THE MONEY. JAMES DRAKEFORD GOT A 4-WHEELER FROM A FENCED IN BRICK HOUSE WITH A GOLD CAR (NO TAGS) PARKED IN THE YARD ON THOMAS STREET. HE STATED THAT DRAKEFORD LATER TOOK THE 4-WHEELER OFF AND GOT RID OF IT AFTER PEOPLE STARTED TELLING HIM THE POLICE WAS LOOKING FOR IT. CARROLL PICKED JAMES DRAKEFORD AND EARL WARREN JR OUT OF A PHOTO LINE-UP. CARROLL WAS GIVEN \$30 FOR HIS INFORMATION.

7/30/2008 @ 10:00 AM = I QUESTIONED EARL WARREN JR ABOUT THE BANK ROBBERY WHILE HE WAS IN THE CAMDEN MUNICIPAL COURT ROOM. HE DENIED KNOWING ANYTHING OTHER THAN STREET TALK ABOUT THE BANK ROBBERY. I NOTICED THAT EARL HAD A NEW SET OF GOLD FRONT TEETH. I ASKED HIM ABOUT THEM AND HE CLAIMED THAT HE HAS HAD THEM FOR A LONG TIME.

7/30/2008 @ 1:45 PM = SGT COREY GOT A CURRENT ADDRESS AND CELL NUMBER ON JAMES DRAKEFORD FROM THE SOLICITOR'S OFFICE. DRAKEFORD HAD JUST DONE A CHANGE OF ADDRESS FORM WITH THE SOLICITOR'S OFFICE THIS PAST MONDAY. HIS NEW ADDRESS WAS REPORTED AS [REDACTED] WITH A PHONE NUMBER OF [REDACTED]. WE WERE UNABLE TO LOCATE THE ADDRESS ON CARTER STREET. I THEN CALLED THE PHONE NUMBER AND GOT JAMES DRAKEFORD. I ADVISED HIM THAT I NEEDED HIM TO TURN HIMSELF IN FOR THE BANK ROBBERY. HE ACTED LIKE HE WAS SURPRISED AND DENIED KNOWING ANYTHING ABOUT THE ROBBERY. HE AGREED TO COME TO THE CPD AND MET WITH ME AS SOON AS HE GOT A RIDE. I OFFERED HIM A RIDE AND HE REFUSED.

INVESTIGATIVE NOTES

Case Number: 2008-1263

Date: 07/25/2008

Officer Code: 1170

7/30/2008 @ 2:45 PM = JAMES DRAKEFORD CAME TO THE CPD. LT FRASIER AND I INTERVIEWED DRAKEFORD ON VIDEO. HE ADMITTED TO DRIVING THE BLUE 4-WHEELER ON THE MORNING OF THE BANK ROBBERY. DRAKEFORD STATED THAT THE 4-WHEELER BELONGS TO LITTLE EARL (EARL WARREN JR) WHO WAS OUT OF TOWN. DRAKEFORD STATED THAT HE SAW JARVIS GIBBS THAT MORNING NEAR KIRKWOOD PARK BEFORE THE ROBBERY WEARING A WHITE T-SHIRT. GIBBS ASKED DRAKEFORD FOR A RIDE TO SOMEONE'S HOUSE. A LITTLE LATER ON GIBBS TOLD DRAKEFORD THAT LITTLE EARL SAID HE COULD USE THE 4-WHEELER. DRAKEFORD SAID THAT SINCE LITTLE EARL AND GIBBS HUNG OUT TOGETHER A LOT HE ASSUMED GIBBS WAS TELLING THE TRUTH. HE GAVE GIBBS THE 4-WHEELER. DRAKEFORD STATED THAT HE WENT TO THE BARBER SHOP AND WAITED A LITTLE WHILE FOR A HAIR CUT FROM JB. HE LEFT BEFORE GETTING THE HAIR CUT BECAUSE IT WAS TOO CROWDED. HE THEN WENT TO THE TRACKS. DRAKEFORD DID NOT SEE GIBBS UNTIL LATER THAT SAME DAY WEARING A BLACK T-SHIRT. DRAKEFORD WOULD NOT ADMIT TO ANY INVOLVEMENT IN THE BANK ROBBERY.

7/31/2008 = SGT ED COREY WENT TO THE BANK AND SWABBED THE BANK COUNTERTOP WHERE THE VIDEO SHOWED THE ROBBER PLACING HIS ARM. THE BANK EMPLOYEES STATED TO COREY THAT THE COUNTERTOP HAD NOT BEEN CLEANED SINCE THE ROBBERY AND THAT NOT MANY PEOPLE TOUCH THE AREA THAT THE ROBBER TOUCHED. COREY NOTICED THAT THE COUNTERTOP WAS FAIRLY DIRTY FROM BEING UNCLEANED.

7/31/2008 = CHAD MOORE WAS INTERVIEWED AGAIN AT THE CPD. HE STATED THAT GIBBS HAS NOT SAID ANYTHING SINCE THE LAST TIME WE TALKED. GIBBS JUST FOUND OUT THAT DRAKEFORD WAS IN THE JAIL AND THEY HAVE STARTED PASSING NOTES TO EACH OTHER.

8/6/2008 = GAYLE PITTS AND I TOOK ALL EVIDENCE FOR THIS CASE TO SLED.

8/12/2008 = CHAD MOORE'S MOM CALLED ME AND ASKED ME TO BRING CHAD FROM THE JAIL TO THE CPD. CHAD WAS TRANSPORTED TO THE CPD. CHAD STATED THAT TERRANCE HALL HAS THE GUN USED IN THIS ROBBERY AND THAT HE HAS SEVERAL MORE GUNS WHERE EVER HE IS STAYING AT. JAMES DRAKEFORD GAVE THE GUN TO JARVIS GIBBS BEFORE THE ROBBERY. GIBBS HAS NEVER TOUCHED THE GUN WITHOUT GLOVES ON AND DRAKEFORD'S PRINTS ARE ON THE GUN. DRAKEFORD GOT MAD AT GIBBS THIS WEEK AND BEGAN YELLING FOR HIM TO CONFESS TO THE POLICE THAT HE ROBBED THE BANK BECAUSE DRAKEFORD HAS A BABY ON THE WAY AND DOES NOT WANT TO BE IN JAIL FOR SOMETHING GIBBS DID. CHAD SAID THAT DRAKEFORD WAS YELLING EVERYTHING OUT LOUD AND THAT EVERYONE IN THE BOARDING CELLS COULD HEAR HIM. CHAD FURTHER STATED THAT EARL WARREN HAS BEEN VISITING GIBBS AT THE JAIL AND HAS OFFERED TO GET HIM OUT. WARREN SHOULD BE IN THE VISITOR'S LOG BOOK.

8/27/2008 = DET COLEMAN AND I TRANSPORTED JARVIS GIBBS TO THE RICHLAND COUNTY DETENTION CENTER FOR SAFE KEEPING. CHAD MOORE WAS TRANSPORTED TO THE CPD WHERE I ADVISED HIM IT WAS TIME FOR US TO NOTIFY GIBBS AND DRAKEFORD OF THE INFORMATION THAT MOORE HAD BEEN GIVING US. MOORE REQUESTED THAT WE ALSO MOVE DRAKEFORD OUT OF KCDC. LT FRASIER MADE CONTACT WITH SUMTER COUNTY DETENTION CENTER (CPT LEE) AND WAS ADVISED THAT THEY WOULD HOUSE DRAKEFORD FOR THE CPD.

CASE CLOSED BY DET LEE BOAN

Print LEMS. Web Message ICHR 003F7DF5C2 from SCCH

Page 1 of 3



ICHR 003F7DF5C2 from SCCH

KERSO101

.ICHR.003F7DF5C2.SCCH.20091118 09:43:05

TO: KERSO101-30000 20091118 09:43:05 003F7DF5C2
FROM: SCCH-8254914 20091118 09:43:05

PAGE-03 DATE-11/18/2009 TIME-09:42:38
REQ ORI-SC0280001 KERSHAW CNTY SO
SID-SC00717181 FBI- 28520LA9

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

CIT-16-11-325 FELONY;
DOC-01GS4003874 WARR F645970

COURT CHARGE 02-COMMON LAW
ROBBERY, STRONG ARM ROBBER
Y
COURT DISP-CONVICTED; JAIL 8
YRS CREDIT F/JAIL TIME
~~187 DAYS CONCURRENT SENTEN~~
CE
COURT DATE-11/01/2001

CIT-16-11-311
DOC-01GS4003875 WARR-F645971

COURT CHARGE 03-BURGLARY -
FIRST DEGREE
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-11/01/2001

SC040015C SC DEPT CORRECTIONS 11/06/2001 CUSTODY STATUS-RECEIVED
CASE-279633 START DATE-11/06/2001
CIT-16-3-652-FELONY

COURT CHARGE 01-CRIMINAL
SEXUAL CONDUCT - FIRST
DEGREE
COURT DISP-CONVICTED; 8YRS CC
ATN-

CIT-16-11-330(A)-FELONY

COURT CHARGE 02-ARMED ROBBERY
, ROBBERY ARMED WITH DEADLY
WEAPON
COURT DISP-CONVICTED; 8YRS CC

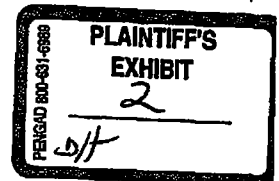
CIT-C/L-UNCLASSIFIED

COURT CHARGE 03-ASSAULT OF A
HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED; 8YRS CC

MOORE, CHAD ALAN
SC0280000 KERSHAW CNTY SO
CASE-20073794
ATN-990000336690
WARR-K251386
CIT-44-53-375(A)-MISDEMEANOR

09/08/2007

ARREST CHARGE 01-FOSS < 1GRAM
OF METH OR COCAINE BASE



Print LEMS. Web Message ICHR 003F7DF5C2 from SCCH

Page 2 of 3

WARR-K143696
CIT-16-3-652-FELONY

1ST
OFFENSE DATE-09/08/2007
PHOTOGRAPH AVAILABLE

WARR-K143697
CIT-16-11-311-FELONY

ARREST CHARGE 02-CRIMINAL
SEXUAL CONDUCT - FIRST
DEGREE
OFFENSE DATE-09/08/2007

WARR-K143697
CIT-16-11-311-FELONY

ARREST CHARGE 03-BURGLARY -
FIRST DEGREE
OFFENSE DATE-09/08/2007

CIT-16-3-652-FELONY
DOC-07GS2801597 WARR-K143696

ARREST CHARGE 04-BURGLARY -
FIRST DEGREE
OFFENSE DATE-09/08/2007

CIT-16-11-311-FELONY
DOC-07GS2801598 WARR-K143697

COURT CHARGE 01-CRIMINAL
SEXUAL CONDUCT - FIRST
DEGREE
COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED
COURT DATE-10/20/2009
ATN-990000336690

CIT-44-53-445(B)(2)-FELONY
DOC-00GS28 WARR-K251386

COURT CHARGE 02-BURGLARY -
FIRST DEGREE
COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED
COURT DATE-10/20/2009

COURT CHARGE 03-DIST, SELL, ETC
, CRACK COCAINE, OR PWID,
NR SCHOOL
COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED
COURT DATE-10/20/2009

MOORE, CHAD ALAN
SC02B0000 KERSHAW CNTY SO
CASE-080200559
ATN-990000373914
WARR-K143968
CIT-16-11-330(A)-FELONY

02/18/2008

WARR-K252858
CIT-44-53-370(B)(1)-FELONY

ARREST CHARGE 01-ARMED ROBBER
Y, ROBBERY ARMED WITH DEADL
Y WEAPON
OFFENSE DATE-02/11/2008
PHOTOGRAPH AVAILABLE

ARREST CHARGE 02-MDP, DRUGS
SCH I B, C, LSD AND SCH
II, COCAINE-1ST
OFFENSE DATE-02/11/2008

* - WARRANT OCCURS IN MORE THAN ONE ARREST CYCLE UNDER THIS SID NUMBER

Print LEMS Web Message ICHR 003F7DF5C2 from SCCH

Page 3 of 3

BASED ON SEARCH OF SLED CJIS CCH FILE USING FBI/ 28520LA9
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SLED CJIS RECORD INDICATES SUBJECT HAS OUT OF STATE ARREST INFORMATION
REQUEST FORWARDED TO NCIC FOR OUT-OF-STATE INFORMATION
INFORMATION FROM OTHER STATES TO FOLLOW THRU NLETS VIA YOUR TERMINAL

INQUIRY WILL BE FORWARDED TO: NCIC WANTED PERSONS

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
(C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18 USC 922(G)).

** S C CJIS END OF RECORD **

Print LEMS Web Message ICHR 003F7DF5C1 from SCCH

Page 1 of 4



ICHR 003F7DF5C1 from SCCH

KERSO101

ICHR.003F7DF5C1.SCCH.20091118 09:43:03

TO: KERSO101-29999 20091118 09:43:03 003F7DF5C1
FROM: SCCH-8254913 20091118 09:43:03

PAGE-02 DATE-11/18/2009 TIME-09:42:38
REQ ORI-SC0280001 KERSHAW CNTY SO
SID-SC00717181 FBI- 28520LA9

CONTRIBUTOR/SUBJECT DOA/RCVD CHARGE/DISPOSITION/ETC

WARR-08767AM

COURT CHARGE 03-FAIL TO TRANS
FER OWNERSHIP
COURT DISP-CONVICTED;\$152 OR
20 DAYS
COURT DATE-02/01/1996

MOORE, CHAD
SC0280000 KERSHAW CNTY SO
CASE-951010556
WARR-E618839

10/20/1995

ARREST CHARGE 01-DISTRIBUTION
OF MARIJUANA
OFFENSE DATE-10/20/1995
PHOTOGRAPH AVAILABLE

WARR-E618840

ARREST CHARGE 02-DISTRIBUTION
W/I PROXIMITY OF A SCHOOL
OFFENSE DATE-10/20/1995

CIT-44-53-370(B)(2) FELONY
DOC-96GS2802423 WARR-E618839

COURT CHARGE 01-MANUFT, POSSES
S OTHER SUB SCH I, II, III
WITD-1ST
COURT DISP-CONVICTED; ST DEPT
CORR 5 YRS AND 5000.00
FINE SUSP UPON 4 YRS PROBA
TION
COURT DATE-04/04/1996

CIT-44-53-445(B)(1) FELONY
DOC-96GS2802424 WARR-E618840

COURT CHARGE 02-DIST, SELL, ETC
, DRUG O/THAN CRACK, COCAINE
NR SCH
COURT DISP-CONVICTED; ST DEPT
CORR 4 YRS AND 4000.00
FINE SUSP UPON 4 YRS PROBA
TION
COURT DATE-04/04/1996

MOORE, CHAD
SC0280100 CAMDEN PD
CASE-96000461
WARR-E428356

02/01/1996

ARREST CHARGE 01-RESISTING

Print LEMS. Web Message ICHR 003F7DF5C1 from SCCH

Page 2 of 4

WARR-E428335	ARREST OFFENSE DATE-01/12/1996
WARR-E428336	ARREST CHARGE 02-ASSAULT AND BATTERY OFFENSE DATE-01/12/1996
DOC-00GS2800000 WARR-E428356	ARREST CHARGE 03-MALICIOUS INJURY TO PERSONAL PROPERT Y OFFENSE DATE-01/12/1996 COURT CHARGE 01-RESIST ARREST LAW ENFORCE OFFICER SERVE NOTICE COURT DISP-NON-CONVICTION; NOLLE PROSSED COURT DATE-04/04/1996 COURT CHARGE 02-MALICIOUS INJURY TO PERSONAL PROPERT Y COURT DISP-NON-CONVICTION; NOT GUILTY COURT DATE-02/28/1996 COURT CHARGE 03-ASSAULT AND BATTERY COURT DISP-NON-CONVICTION; NOT GUILTY COURT DATE-02/28/1996
WARR-E428336	
WARR-E428335	
MOORE, CHAD SC0280000 KERSHAW CNLY SO CASE-951211373 WARR-E621922	----- 02/09/1996 ARREST CHARGE 01-CONSPIRACY TO DISTRIBUTE CRACK COCAIN E OFFENSE DATE-02/09/1996 PHOTOGRAPH AVAILABLE COURT CHARGE 01-ATTEMPT AND CONSPIRACY, PROVISIONS OF DRUG LAW COURT DISP-NON-CONVICTION; NOLLE PROSSED COURT DATE-04/04/1996
CIT-44-53-420 DOC-00GS28 WARR-E621922	
MOORE, CHAD SC0400100 COLUMBIA PD CASE-961470 WARR-F251458	----- 08/09/1996 ARREST CHARGE 01-KIDNAPPING OFFENSE DATE-08/09/1996 PHOTOGRAPH AVAILABLE ARREST CHARGE 02-GRAND LARCEN Y OFFENSE DATE-08/09/1996 COURT CHARGE 01-KIDNAPPING COURT DISP-NON-CONVICTION;
WARR-F251459	
CIT-16-3-910 FELONY DOC-00GS40 WARR-F251459	

Print LEMS. Web Message ICHR 003F7DF5C1 from SCCH

Page 3 of 4

CIT-16-13-30(B)(1) FELONY
DOC-97GS4015609 WARR-F251459

NOLLE PROSSED
COURT DATE-04/02/1997

COURT CHARGE 02-GRAND LARCENY
, VALUE >\$1,000 BUT <\$5,000
COURT DISP-CONVICTED; JAIL 5
YRS
COURT DATE-04/01/1997

SC040055C R & E CENTER COLA
CASE-241522
CIT-44-53-370(B)(1) FELONY

04/03/1997 CUSTODY STATUS-RECEIVED
START DATE-04/03/1997

COURT CHARGE 01-MARIJUANA
DIST 2 COUNTS
COURT DISP-CONVICTED; 5Y EACH
COUNT, CONCURRENT

CIT-16-13-30 MISDEMEANOR

COURT CHARGE 02-LARCENY GRAND
COURT DISP-CONVICTED; 5Y CONCU
RRENT

CIT-C/L,

COURT CHARGE 03-ASSAULT/BATTE
RY OF HIGH AND AGGRAVATED
NATURE
COURT DISP-CONVICTED; 5Y CONCU
RRENT

MOORE, CHAD A
SC0280000 KERSHAW CNTY SO
CASE-99-06-02927
ATN-
WARR-G144454

01/26/2000

ARREST CHARGE 01-ASSAULT AND
BATTERY
OFFENSE DATE-07/01/1999

MOORE, CHAD ALLAN
SC0280000 KERSHAW CNTY SO
ATN-
WARR-X653375

03/25/2000

ARREST CHARGE 01-DRIVING
UNDER SUSPENSION 3RD
OFFENSE DATE-03/25/2000

CIT-56-1-460 MISDEMEANOR
DOC-00GS2831590 WARR-X653375

COURT CHARGE 01-DRIVING UNDER
SUSP(LICENSE NOT SUSP
DUI)-2ND
COURT DISP-CONVICTED; KCDC 60
DAYS AND 500 FINE SUSP
UPON SER 30 DAYS OR PAYMT
250 FINE 1 YR PROBATION
COURT DATE-05/16/2000

ATN-

MOORE, CHAD ALLAN
SC0400000 RICHLAND CNTY SO
ATN-
WARR-G436193

08/07/2000

ARREST CHARGE 01-CRIMINAL
SEXUAL CONDUCT 2ND

Print LEMS. Web Message ICHR 003F7DF5C1 from SCCH

Page 4 of 4

CIT-16-3-654 FELONY
DOC-01GS4054836 WARR-G436193

OFFENSE DATE-08/07/2000
PHOTOGRAPH AVAILABLE

COURT CHARGE 01-CRIMINAL
SEXUAL CONDUCT - THIRD
DEGREE
COURT DISP-CONVICTED; JAIL 8
YRS CREDIT F/JAIL TIME
187 DAYS CONCURRENT SENTEN
CE
COURT DATE-11/01/2001

ATN-

MOORE, CHAD ALLEN
SCSHPO100 SC HIWAY LGPT DIST 1
ATN-

12/26/2000

ARREST CHARGE 01-SPEEDING
OFFENSE DATE-12/26/2000
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE
ARREST CHARGE 02-DRIVING
UNDER SUSPENSION
OFFENSE DATE-12/26/2000

MOORE, CHAD ALLEN
SC0400000 RICHLAND CNTY SO
ATN-
WARR-F645969

05/03/2001

ARREST CHARGE 01-CRIMINAL
SEXUAL CONDUCT 1ST DEGREE
OFFENSE DATE-05/03/2001
PHOTOGRAPH AVAILABLE

WARR-F645971

ARREST CHARGE 02-BURGLARY 1
DEGREE
OFFENSE DATE-05/03/2001

WARR-F645970

ARREST CHARGE 03-ARMED ROBBER
Y
OFFENSE DATE-05/03/2001

CIT-C/L, MISDEMEANOR
DOC-01GS4003873 WARR-F645969

COURT CHARGE 01-ASSAULT/BATTE
RY OF HIGH AND AGGRAVATED
NATURE
COURT DISP-CONVICTED; JAIL 8
YRS CREDIT F/JAIL TIME
187 DAYS CONCURRENT SENTEN
CE
COURT DATE-11/01/2001

ATN-

END OF PAGE

02 - PAGE 03 TO FOLLOW

Print LEMS. Web Message ICHR 003F7DF5BF from SCCH

Page 1 of 5



ICHR 003F7DF5BF from SCCH

KERSO101

.ICHR.003F7DF5BF.SCCH.20091118 09:43:02

TO: KERSO101-29998 20091118 09:43:02 003F7DF5BF
FROM: SCCH-8254571 20091118 09:43:02

ICHR REQUEST FOR RAP SHEET

ORI-SC0280001 FBI- 28520LA9 PUR-C

ATN-LIR

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS. BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-11/18/2009 TIME-09:42:38

REQ ORI-SC0280001 KERSHAW CNTY SO

SID-SC00717181 FBI- 28520LA9

NAME-WILSON, CHAD

SEX-M RACE-B

HEIGHT-510 WEIGHT-130 EYES-BRO HAIR-BLK SKIN- BORN-NJ

FPC-DOTT04081519TT111006

HENRY- 4 0 1 T II 15

L 17 T OI

PHOTOGRAPH AVAILABLE

PALM PRINTS AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

* DNA - TAKEN

DATE RECORD ENTERED--12/13/1989

DATE OF LAST UPDATE--11/02/2009

ADDITIONAL IDENTIFIERS

NAME

BIRTH

DATES

MARKS

SOC SEC

MISC NUM

MOORE, CHAD ALLAN

MOORE, CHAD WILSON

MOORE, CHAD

MOORE, CHAD ALLEN

MOORE, CHAD A

MOORE, CHAD ALAN

WILSON, CHAD

CONTRIBUTOR/SUBJECT

DOA/RCVD CHARGE/DISPOSITION/ETC

WILSON, CHAD

11/25/1989

SC0280000 KERSHAW CNTY SO

CASE-3146989

WARR-C585530

WARR-C585530

ARREST CHARGE 01-TRESPASSING

OFFENSE DATE-11/25/1989

COURT CHARGE 01-TRESPASSING

COURT DISP-COVICTED;\$237

FINE

COURT DATE-12/11/1989

MOORE, CHAD WILSON

11/26/1990

SC0280000 KERSHAW CNTY SO

Print LEMS. Web Message ICHR 003F7DF5BF from SCCH

Page 2 of 5

CASE-34686
WARR-C782740ARREST CHARGE 01-BURGLARY 2ND
OFFENSE DATE-11/26/1990

WARR-C782741

ARREST CHARGE 02-MALICIOUS
INJURY PERSONAL PROPERTY
MORE \$200SC0400156 CENTRAL F, P
WARR-C782740COURT CHARGE 01-BURGLARY 3RD
COURT DISP-CONVICTED; 5Y SUSP;
3Y PROB; TIME SERVED
COURT DATE-06/06/1991

DOC-91GS2800192 WARR-C782741

COURT CHARGE 02-MALICIOUS
INJURY TO PERSONAL PROPERT
YCOURT DISP-NON-CONVICTION;
DISMISSED
COURT DATE-06/07/1991MOORE, CHAD WILSON
SC0280000 KERSHAW CNTY SO
CASE-35976
WARR-C002209-----
04/01/1991ARREST CHARGE 01-ASSAULT AND
BATTERY WITH INTENT TO
KILL
OFFENSE DATE-04/01/1991
COURT CHARGE 01-ASSAULT AND
BATTERY W/I TO KILL
COURT DISP-CONTINUED W/O
FINDING; DISMISSED WITH
LEAVE RESTORE
COURT DATE-06/07/1991

DOC-91GS2800741 WARR-D002209

MOORE, CHAD WILSON
SC0280100 CAMDEN PD
CASE-9100961I
WARR-D118552-----
08/18/1991ARREST CHARGE 01-POINTING
AND PRESENTING FIREARM
OFFENSE DATE-08/18/1991
PHOTOGRAPH AVAILABLECIT-16-23-410 FELONY
DOC-91GS2801123 WARR-D118552COURT CHARGE 01-POINTING A
FIREARM
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-05/20/1994MOORE, CHAD
SC0280060 KERSHAW CNTY SO-----
02/03/1994ARREST CHARGE 01-VIOLATION
OF PROBATION
OFFENSE DATE-02/03/1994MOORE, CHAD ALLEN
SC0230000 GREENVILLE CNTY SO
WARR-E207616-----
03/03/1995ARREST CHARGE 01-ASSAULT AND
BATTERY

672

06/03/2013 14:38 FAX 803 738 1600

LAW OFFICE TARA SHURLING

011/013

Print LEMS. Web Message ICHR 003F7DF5BF from SCCH

Page 3 of 5

CIT-N/A
DOC-R84 WARR-E207616

OFFENSE DATE-03/03/1995
PHOTOGRAPH AVAILABLE

COURT CHARGE 01-SIMPLE ASSAULT
AND BATTERY
COURT DISP-NON-CONVICTION;
DISMISSED
COURT DATE-05/08/1995

MOORE, CHAD
SC0280000 KERSHAW CNTY SO
WARR-D172502

03/16/1995

ARREST CHARGE 01-USING VEHICLE
WITHOUT CONSENT
OFFENSE DATE-03/16/1995
PHOTOGRAPH AVAILABLE

WARR-E129032

ARREST CHARGE 02-ASSAULT AND
BATTERY
OFFENSE DATE-03/16/1995

WARR-E319228

ARREST CHARGE 03-ASSAULT AND
BATTERY
OFFENSE DATE-03/16/1995
COURT CHARGE 01-ASSAULT AND
BATTERY
COURT DISP-NON-CONVICTION;
DISMISSED

WARR-E129032

CIT-17-15-30
DOC-R84 WARR-D172502

COURT CHARGE 02-COURT CHARGE
NOT SUBMITTED
COURT DISP-NON-CONVICTION;
DISMISSED
COURT DATE-04/03/1995

MOORE, CHAD
SC0280000 KERSHAW CNTY SO
WARR-E129028 *

03/30/1995

ARREST CHARGE 01-ASSAULT
COMMON LAW
OFFENSE DATE-03/30/1995

MOORE, CHAD A
SC0400000 RICHLAND CNTY SO
WARR-E129028 *

04/04/1995

ARREST CHARGE 01-ASSAULT
PHOTOGRAPH AVAILABLE

MOORE, CHAD A
SC0280000 KERSHAW CNTY SO
CASE-95068328
WARR-018592Y

06/17/1995

ARREST CHARGE 01-DRIVING
UNDER SUSPENSION
OFFENSE DATE-06/17/1995

MOORE, CHAD
SC0280000 KERSHAW CNTY SO
CASE-95078750
WARR-E544733

07/10/1995

Print LEMS. Web Message ICHR 003F7DF5BF from SCCH

Page 4 of 5

CIT-N/A
DOC-R84 WARR-E544733ARREST CHARGE 01-ASSAULT AND
BATTERY
OFFENSE DATE-07/10/1995
PHOTOGRAPH AVAILABLECOURT CHARGE 01-SIMPLE ASSAULT
AND BATTERY
COURT DISP-NON-CONVICTION;
DISMISSED
COURT DATE-07/31/1995MOORE, CHAD A
SC0280100 CAMDEN PD
CASE-9501034I
WARR-08882AM-----
09/29/1995ARREST CHARGE 01-DRIVING
UNDER SUSPENSION 2ND
OFFENSE DATE-09/29/1995
PHOTOGRAPH AVAILABLE

WARR-08883AM

WARR-08883AM

ARREST CHARGE 02-RESISTING
MUNICIPAL OFFICER
OFFENSE DATE-09/29/1995
COURT CHARGE 01-RESISTING
MUNICIPAL OFFICER
COURT DISP-CONVICTED;\$255 OR
10D
COURT DATE-10/18/1995CIT-56-1-460 MISDEMEANOR
DOC-00GS28 WARR-08882AMCOURT CHARGE 02-DRIVING UNDER
SUSP(LICENSE NOT SUSP
DUI)-2ND
COURT DISP-NON-CONVICTION;
NOLLE PROSSED
COURT DATE-04/04/1996MOORE, CHAD
SC0280100 CAMDEN PD
CASE-9501052I
WARR-08766AM-----
10/06/1995ARREST CHARGE 01-DRIVING
UNDER SUSPENSION 3RD
OFFENSE DATE-10/06/1995
PHOTOGRAPH AVAILABLE

WARR-08767AM

WARR-08768PM

ARREST CHARGE 02-FAILURE TO
TRANSFER OWNERSHIP
OFFENSE DATE-10/06/1995ARREST CHARGE 03-OPERATING
UNINSURED VEHICLE
OFFENSE DATE-10/06/1995CIT-56-1-460 MISDEMEANOR
DOC-95GS2802422 WARR-08766AMCOURT CHARGE 01-DRIVING UNDER
SUSP(LICENSE NOT SUSP
DUI)-2ND
COURT DISP-CONVICTED;ST DEPT
CORR TIME SERVID
COURT DATE-04/04/1996
COURT CHARGE 02-DRIVING UNISU

WARR-08768AM

674

06/03/2013 14:38 FAX 803 738 1600

LAW OFFICE TARA SHURLING

013/013

Print LEMS, Web Message ICHR 003F7DF5BF from SCCH

Page 5 of 5

RED
COURT DISP-CONVICTED;\$152 OR
20 DAYS
COURT DATE-02/01/1996

END OF PAGE

01 - PAGE 02 TO FOLLOW

GENERAL SESSIONS DOCKET REPORT FOR KERSHAW COUNTY

REPORT RUN DATE - 02/21/2008

2009

INDICTMENT NUMBER: 2008GS28 - 394

DEFENDANT NAME: MOORE, CHAD A

AKA:

ADDRESS: [REDACTED] CITY: LUGOFF STATE: SC ZIP 29078

SOCIAL SECURITY NUMBER: [REDACTED] SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: [REDACTED] DRIVERS LICENSE STATE / NO.: SC / [REDACTED]

MARITAL STATUS:

WARRANT OR TICKET NUMBER: K143968 COUNTS: 01 OFFENSE CODE: 0139

NO WARRANT? 0 NAME OF OFFENSE: ROBBERY / ARMED

DATE OF ARREST: 02/18/2008 DATE RECD BY CLERK: 02/20/2008 SUMMARY JUDGE:

DISP DATE: 00/00/2000 DISP TYPE: NPLHTR

DISP TYPE EXPLANATION: P in Federal Custody

JUDGE CODE/NAME:

COURT REPORTER:

CONVICTION: CTS: 00 OFFENSE: 0000

SENTENCE:

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:

[Handwritten signature]

ATTEST True, Correct & Certified
Copy of Original on File in this
Court
[Signature]
Clerk of Court Kershaw County



GENERAL SESSIONS DOCKET REPORT FOR KERSHAW COUNTY

REPORT RUN DATE - 02/21/2008

2009
INDICTMENT NUMBER: 2008GS28 - 395

DEFENDANT NAME: MOORE, CHAD

AKA:

ADDRESS: [REDACTED] CITY: LUGOFF STATE: SC ZIP 29078

SOCIAL SECURITY NUMBER: [REDACTED] SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: [REDACTED] DRIVERS LICENSE STATE / NO.: SC / [REDACTED]

MARITAL STATUS:

WARRANT OR TICKET NUMBER: K252858 COUNTS: 01 OFFENSE CODE: 3011

NO WARRANT? 0 NAME OF OFFENSE: COCAINE 1ST

DATE OF ARREST: 02/19/2008 DATE RECD BY CLERK: 02/20/2008 SUMMARY JUDGE:

DISP DATE: 00/00/2000 DISP TYPE: NCHLR

DISP TYPE EXPLANATION: In federal custody

JUDGE CODE/NAME:

COURT REPORTER:

CONVICTION: CTS:00 OFFENSE:0000

SENTENCE:

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:

*Boz 2 Ana*ATTEST True, Correct & Certified
Copy of Original on File in this
Court*Oliver S. Howell*
Clerk of Court
Kershaw County

GENERAL SESSIONS DOCKET REPORT FOR KERSHAW COUNTY

REPORT RUN DATE - 02/21/2008

2009

INDICTMENT NUMBER: 2008GS28 - 396

DEFENDANT NAME: MOORE, CHAD A

AKA:

ADDRESS: [REDACTED] CITY: LUGOFF STATE: SC ZIP 29078

SOCIAL SECURITY NUMBER: [REDACTED] SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: [REDACTED] DRIVERS LICENSE STATE / NO.: SC / [REDACTED]

MARITAL STATUS:

WARRANT OR TICKET NUMBER: K252864 COUNTS: 01 OFFENSE CODE: 0549

NO WARRANT? 0 NAME OF OFFENSE: WEAPONS / POSS.

DATE OF ARREST: 02/19/2008 DATE RECD BY CLERK: 02/20/2008 SUMMARY JUDGE:

8/6/02
DISP DATE: 00/00/2000 DISP TYPE: NLR

DISP TYPE EXPLANATION: Dis Federal Court

JUDGE CODE/NAME:

COURT REPORTER:

CONVICTION: CTS: 00 OFFENSE: 0000

SENTENCE:

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:
[Signature]

ATTEST True, Correct & Certified
Copy of Original on File in this
Court
[Signature]
Clerk of Court
Kershaw County

GENERAL SESSIONS DOCKET REPORT FOR KERSHAW COUNTY

REPORT RUN DATE - 02/21/2008

2009

INDICTMENT NUMBER: 2008GS28 - 397

DEFENDANT NAME: MOORE, CHAD A

AKA:

ADDRESS: [REDACTED] CITY: LUGOFF STATE: SC ZIP 29078

SOCIAL SECURITY NUMBER: [REDACTED] SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: [REDACTED] DRIVERS LICENSE STATE / NO.: SC / [REDACTED]

MARITAL STATUS:

WARRANT OR TICKET NUMBER: K252866 COUNTS: 01 OFFENSE CODE: 0049

NO WARRANT? 0 NAME OF OFFENSE: CONSPIRACY / CR

DATE OF ARREST: 02/19/2008 DATE RECD BY CLERK: 02/20/2008 SUMMARY JUDGE:

8/6/08
DISP DATE: 00/00/2000 DISP TYPE: NPHLJR

DISP TYPE EXPLANATION: D in Federal custody

JUDGE CODE/NAME:

COURT REPORTER:

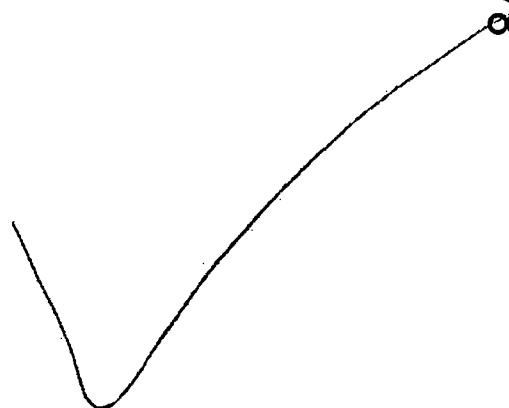
CONVICTION: CTS:00 OFFENSE:0000

SENTENCE:

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:

[Signature]

678

ATTEST True, Correct & Certified
Copy of Original on File in this
Court
[Signature]
Clerk of Court
Kershaw County

GENERAL SESSIONS DOCKET REPORT FOR KERSHAW COUNTY

REPORT RUN DATE - 02/21/2008

2009

INDICTMENT NUMBER: 2008GS28 - 398

DEFENDANT NAME: MOORE, CHAD A

AKA:

ADDRESS: [REDACTED] CITY: LUGOFF STATE: SC ZIP 29078

SOCIAL SECURITY NUMBER: [REDACTED] SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: [REDACTED] DRIVERS LICENSE STATE / NO.: SC / 0 [REDACTED]

MARITAL STATUS:

WARRANT OR TICKET NUMBER: K252868 COUNTS: 01 OFFENSE CODE: 0257

NO WARRANT? 0 NAME OF OFFENSE: ROBBERY / ENTER

DATE OF ARREST: 02/19/2008 DATE RECD BY CLERK: 02/20/2008 SUMMARY JUDGE:

DISP DATE: 8/6/02 00/00/2000 DISP TYPE: MILETA

DISP TYPE EXPLANATION: Dir Fwded Certaly

JUDGE CODE/NAME:

COURT REPORTER:

CONVICTION: CTS: 00 OFFENSE: 0000

SENTENCE:

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:

[Handwritten Signature]

ATTEST True, Correct & Certified
Copy of Original on File in this
Court
[Signature]
Clerk of Court Kershaw County

P. 1

No. 4758

INDICTMENT NUMBER: 2007GS28

GENERAL SESSIONS DOCKET REPORT FOR KERSHAW COUNTY

REPORT RUN DATE - 09/18/2007

DEFENDANT NAME: MOORE, CHAD ALAN

AKA:

ADDRESS: [REDACTED] CITY: LUGOFF STATE: SC ZIP 29078

SOCIAL SECURITY NUMBER: [REDACTED] SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: [REDACTED] DRIVERS LICENSE STATE / NO.: SC / 999999999

MARITAL STATUS:

WARRANT OR TICKET NUMBER: K251386 COUNTS: 01 OFFENSE CODE: 0108

NO WARRANT? 0 NAME OF OFFENSE: DRUGS / DISTRIB

DATE OF ARREST: 09/09/2007 DATE RECD BY CLERK: 09/17/2007 SUMMARY JUDGE:

DISP DATE: 00/00/2000 DISP TYPE: *10/06/09*DISP TYPE EXPLANATION: *MALE*

JUDGE CODE/NAME:

COURT REPORTER:

CONVICTION: CTS: 00 OFFENSE: 0000

SENTENCE:

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY: *M. L. M.*

Jun. 6. 2013 9:51AM

GENERAL SESSIONS DOCKET REPORT FOR KERSHAW COUNTY

REPORT RUN DATE - 09/19/2007

No. IDICTMENT NUMBER: 2007GS28 - 1597

DEFENDANT NAME: MOORE, CHAD A

AKA:

ADDRESS: [REDACTED] CITY: LUGOFF STATE: SC ZIP 29078

SOCIAL SECURITY NUMBER: [REDACTED] SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: [REDACTED] DRIVERS LICENSE STATE / NO.: SC / [REDACTED]

MARITAL STATUS:

WARRANT OR TICKET NUMBER: K143696 COUNTS: 01 OFFENSE CODE: 0160

NO WARRANT? 0 NAME OF OFFENSE: SEX / CRIMINAL

DATE OF ARREST: 09/10/2007 DATE RECD BY CLERK: 09/19/2007 SUMMARY JUDGE:

DISP DATE: 00/00/2000 DISP TYPE:

NHLA

DISP TYPE EXPLANATION:

Case sent for

JUDGE CODE/NAME:

COURT REPORTER:

CONVICTION: CTS: 00 OFFENSE: 0000

SENTENCE:

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:



GENERAL SESSIONS DOCKET REPORT FOR KERSHAW COUNTY

REPORT RUN DATE - 09/19/2007

INDICTMENT NUMBER: 2007GS28 - 1598

DEFENDANT NAME: MOORE, CHAD A

AKA:

ADDRESS: [REDACTED] CITY: LUGOFF STATE: SC ZIP 29078

SOCIAL SECURITY NUMBER: [REDACTED] SEX: 1 MALE RACE: 2 BLACK

DATE OF BIRTH: [REDACTED] DRIVERS LICENSE STATE / NO.: SC / [REDACTED]

MARITAL STATUS:

WARRANT OR TICKET NUMBER: K143697 COUNTS: 01 OFFENSE CODE: 0079

NO WARRANT? 0 NAME OF OFFENSE: BURGLARY / BURG

DATE OF ARREST: 09/10/2007 DATE RECD BY CLERK: 09/19/2007 SUMMARY JUDGE:

DISP DATE: 00/00/2000 DISP TYPE: *10/26/06* *NP 26.79*

DISP TYPE EXPLANATION:

core but for

JUDGE CODE/NAME:

COURT REPORTER:

CONVICTION: CTS: 00 OFFENSE: 0000

SENTENCE:

DEFENSE ATTORNEY:

PROSECUTING ATTORNEY:

Boyd

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Jarvis Gibbs,

Plaintiff,

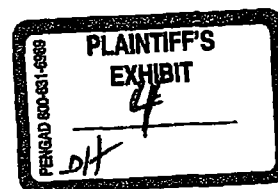
v.

The State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS FOR
THE
FIFTH JUDICIAL CIRCUIT
Case No.: 2012-CP-28-317

AFIDAVIT OF RONALD W. MOAK

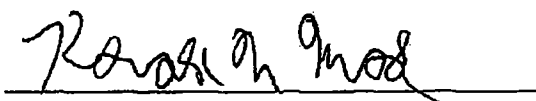


PERSONALLY APPEARED before me Ronald W. Moak who, being duly sworn, deposes and says the following:

My name is Ronald W. Moak. In 2009, I was an Assistant Solicitor for the Fifth Judicial Circuit assigned primarily to Kershaw County. That year, I prosecuted Mr. Gibbs for the armed robbery of a bank. One of the witnesses that was called in the State's Case in Chief was an individual named Chad Moore. Mr. Moore had been charged with the robbery of another bank. At the time of trial, Mr. Moore was in Federal Custody and I secured a Writ signed by Judge G. Thomas Cooper to make Mr. Moore available to be a witness in the case against Mr. Gibbs. After the Gibbs trial was over, I was asked to send a communication- I dot recall if it was a letter or e-mail to inform the Federal Probation Office that Mr. Moore had substantially assisted in our

R h m

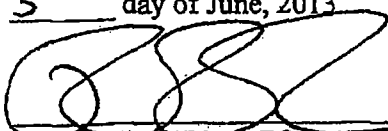
prosecution. I believe that Mr. Moore ultimately benefited from that, but the actual benefit he received was not under the control of either I or the Office I represented as we were not the prosecutors of that case.



Ronald W. Moak

SWORN TO and subscribed before me this

5 day of June, 2013



NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires July 4, 2013

IN THE DISTRICT COURT OF THE UNITED STATES
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA) CRIMINAL NO: 3:09-708

vs.)

CHAD A. MOORE)



UNITED STATES MOTION FOR REDUCTION OF SENTENCE

NOW COMES the United States, by and through its undersigned counsel, and pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, moves this Court for a reduction of the defendant's sentence imposed on May 10, 2010. The defendant was sentenced to a term of Imprisonment of one hundred ninety-five (195) months followed by five (5) years of supervised release and a special assessment of one hundred (\$100) dollars. The Government is prepared to show that the defendant has provided unrewarded substantial assistance to the Government which conforms to the guidelines and policy statements issued by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994.

As a basis for such motion, the Government would show that following his sentencing, the defendant continued to cooperate with the Government. The defendant had been housed in the same cell block with persons who were charged in a drug related murder case. The defendant overheard conversations between these persons and relayed this information to the Government. The defendant, thereafter, was called as a witness in the trial of the persons

charged in the drug related murder. The defendant's testimony was beneficial in convicting these persons in the drug related murder.

Wherefore, the Government moves that this Honorable Court consider this motion for reduction of sentence pursuant to Rule 35(b) as herein requested in the case of CHAD A. MOORE. The Government would, respectfully, suggest a reduction of six (6) levels from the original offense level 31 criminal history category VI, yielding a new guideline range of 110-137 months and the Government recommends a new sentence at the lower end of the new guideline range.

Respectfully submitted,

WILLIAM N. NETTLES
UNITED STATES ATTORNEY

By: s/ William K. Witherspoon
William K. Witherspoon (FID #5945)
Assistant United States Attorney
1441 Main Street, Suite 500
Columbia, South Carolina 29201
(803) 929-3000

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT

Jarvis Gibbs, #255871,

) Case No. 2012-CP-28-0317

) Applicant,

) Respondent's Memorandum of Law

) v.

) State of South Carolina,

) Respondent.
)

This matter comes before the Court by way of an application for post-conviction relief filed March 26, 2012 and amended on June 3, 2013. An evidentiary hearing into the matter was held on June 6, 2013 at the Richland County Courthouse, the Honorable James R. Barber, III, presiding. Applicant was present at the hearing and represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan. At the conclusion of the hearing, the Court asked both parties to submit a memorandum of law to address whether trial counsel was ineffective for failing to request a Neil v. Biggers¹ hearing.

PROCEDURAL HISTORY

Applicant was indicted during the October 2008 term of the Kershaw County Grand Jury for Kidnapping, Entering a Bank with Intent to Steal, and Possession of a Weapon during the Commission of a Violent Crime. Applicant was represented by Samuel Ogburn, Esquire (herein "Counsel"). On November 17-19, 2009, Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr., where he was convicted as indicted. Judge Cooper sentenced Applicant to an aggregate of eighteen years imprisonment.

A notice of appeal was filed and an appeal was perfected on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v.

¹ 409 U.S. 188 (1972).

Gibbs, 2011-UP-511 (S.C. Ct. App. filed Nov. 28, 2011). The Remittitur was sent on December 19, 2011.

Counsel was not ineffective for failing to request a Neil v. Biggers hearing

Applicant contends that Counsel was ineffective for failing to request a Neil v. Biggers hearing regarding witness Melissa Roberts's in-court identification of Applicant. Respondent submits that Counsel's performance was not deficient, as a Neil v. Biggers hearing was unnecessary because there was no lineup for the trial court to consider. In Neil v. Biggers, 409 U.S. 188 (1972), the United States Supreme Court addressed whether a show-up identification was so suggestive that it violated the defendant's right to due process. *Id.* at 196–201, 93 S.Ct. 375. In State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004), our supreme court noted “[t]he United States Supreme Court has developed a two-prong inquiry to determine the admissibility of an *out-of-court identification*.” *Id.* at 81, 600 S.E.2d at 526 (citing Biggers) (emphasis added). Our courts now consistently recognize the general rule that a trial court must, when identification of a defendant is an issue, hold an in camera hearing “when the State offers a witness whose testimony identifies the defendant as the person who committed the crime, and *the defendant challenges the in-court identification as being tainted by a previous, illegal identification or confrontation*.” State v. Miller, 359 S.C. 589, 596, 598 S.E.2d 297, 301 (Ct.App.2004) (emphasis added), *aff'd*, 367 S.C. 329, 626 S.E.2d 328 (2006).

In the present case, the identification in question was from State's witness Melissa Roberts, a teller at the bank. Roberts, nor any other witness, was ever shown a lineup. Roberts testified at trial that she knew Applicant from junior high school and occasionally seeing him at a local restaurant and that she identified Applicant on her own. She testified at trial that she could identify him by “his mannerisms and the shape of his head.” (Tr. pp. 126 ln. 24-25). She

testified during cross-examination that she was never shown a photo lineup or “a physical line up with physical people there.” (Tr. pp. 136 ln. 21 – pp. 137 ln. 1). She elaborated that she thought about the robbery for a few days, then voluntarily approached police and gave a statement identifying Applicant as the perpetrator. (Tr. pp. 138-39). As there was no lineup and the identification came from a witness with prior knowledge of the suspect, a Neil v. Biggers hearing was unnecessary because there was absolutely no risk of “*taint by a previous, illegal identification or confrontation*.” Miller, 359 S.C. 589, 596, 598 S.E.2d 297, 301. Counsel cannot be found deficient for failing to request a Neil v. Biggers hearing when such a hearing was unnecessary.

Additionally, Applicant cannot show prejudice from Counsel’s alleged deficiency in failing to request a Neil v. Biggers hearing. Counsel was able to vigorously cross examine the witness in question, Melissa Roberts, regarding the unreliability and incredibility of her identification. Additionally, Counsel was able to highlight to the jury during his closing argument that Roberts’ testimony and identification of Applicant was undependable at best. At the post-conviction relief hearing, Counsel testified that it was his trial strategy to show the jury how wholly unbelievable Roberts’ identification was and that it could not be relied upon, much like the State’s case as a whole. Where counsel articulates valid reasons for employing a certain strategy, counsel’s choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Therefore, Respondent submits that Applicant cannot establish prejudice in regards to this allegation.

In conclusion, Respondent submits that Counsel cannot be found deficient for failure to request a Neil v. Biggers hearing, as such a hearing was unnecessary given the facts of the case.

Furthermore, the Applicant cannot establish prejudice from counsel's alleged deficiency.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 12, 2013

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Jarvis Gibbs, #255871,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2012-CP-28-0317

ORDER OF DISMISSAL

FILED FOR RECORD
2014 JAN 17 PM 12:00
JOYCE McNEAL
CLERK OF COURT
KERSHAW COUNTY, S.C.

PROCEDURAL HISTORY

This matter comes before this Court by way of an application for post-conviction relief filed March 26, 2012 and amended on June 3, 2013. An evidentiary hearing into the matter was held on June 6, 2013 at the Richland County Courthouse, the Honorable James R. Barber, III, presiding. Applicant was present at the hearing and represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. The Applicant was indicted by the Kershaw County Grand Jury during the October 2008 term for Kidnapping (2008-GS-28-01555), Use of a Firearm during a Violent Crime (2008-GS-28-01556) and during the November 2009 term for Entering a bank with Intent to Steal (2009-GS-28-1548). Samuel Ogburn, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr., where he was found guilty as indicted. On November 18, 2009, Judge Cooper sentenced him to eighteen years imprisonment for both Kidnapping and Entering a Bank with Intent to Steal and five years imprisonment for Use of a Firearm during a Violent Crime; all sentences were order to be served concurrently.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court.

[Signature]
Clerk of Court Kershaw County

A notice of appeal was filed and an appeal perfected. The conviction and sentence were affirmed after briefing. State v. Jarvis Gibbs, Op. No. 2011-UP-511 (S.C. Ct. App. filed December 19, 2011). The Remittitur was sent on December 19, 2011.

In Applicant's post-conviction relief application, he alleged that he is being held in custody unlawfully based on the following claims:

1. "Ineffective Assistance of Counsel – failure to call witnesses own [sic] my behalf";
2. "Failure to move to suppress line up identification evidence";
3. "Failure to question State witness, pro-trail [sic], and investigate"; and
4. "Under the compulsory process I the defendant my lawyer never moved to suppress a line up my lawyer never questioned the State witness"

In his amendment, filed by counsel, Applicant added the following grounds for relief:

1. Trial Counsel was ineffective for failing to impeach state witness Chad Moore concerning his own pending charges, his sentencing exposure on his charges, and his motivation to testify against the Applicant in hopes of earning a favorable deal with the State;
2. Trial Counsel provided the Applicant ineffective assistance of counsel in that they failed to seek to exclude the identification testimony of Melissa Roberts from evidence despite facts and circumstances which rendered her identification inherently unreliable;
3. Trial Counsel was ineffective for failing to cross-examine Melissa Roberts concerning her testimony on direct in which she stated, "when I *thought* I saw him prior";
4. Trial Counsel was ineffective for failing to point out during closing argument that although Melissa Roberts claimed to be certain of her identification of the Applicant *in a mask* she acknowledged that she "thought" she saw him in the bank previously without a mask;
5. Trial Counsel was ineffective for failing to object the first and every time the State introduced testimony asserting the Applicant's admission to the distribution of crack cocaine;
6. Trial Counsel failed to provide the Applicant reasonable professional assistance of counsel when they neglected to request an appropriate curative charge after their request for a mistrial, based upon the introduction of improper testimony concerning drugs, was denied;
7. Trial Counsel was ineffective [sic] for failing to object to a line of testimony in which a key witness for the prosecution, Arthur Macklin, was allowed to testify that he had been threatened and physically assaulted as a consequence of his cooperation with eh Applicant's prosecution thereby improperly bolstering the witnesses' credibility and attacking the Applicant's character where there was not evidence connection he Applicant to the behavior in question;
8. Trial Counsel was ineffective for failing to object to testimony that the three wheeler allegedly used in this robbery was stolen;

9. Trial Counsel was ineffective for failing to ask the jury to specifically observe multiple tattoos and scars [sic] on the Applicant's arms where the eye witness testimony presented at trial made no mention of these obvious physical traits;
10. Trial Counsel was ineffective for neglecting to object to an improper and highly inflammatory closing argument in which the State emphasized threats to witness Macklin where there was no evidence tying the Applicant to any such activity;
11. Trial Counsel was ineffective for failing to introduce testimony to refute the claim of witness Melissa Roberts that the Applicant and his family had been in a restaurant owned by her in-laws "at times" since she knew the Applicant at school;
12. Trial Counsel was ineffective for inaccurately repeating the testimony of Melissa Roberts during his closing argument in a manner [sic] which actually bolstered the testimony of this key State witness;
13. Trial Counsel was ineffective for failing to object to a portion of the State's closing argument in which the prosecutor erroneously claimed that the witness Melissa Roberts has testified that the Applicant had been in her branch of the bank "a couple of days earlier" where the record did not support that claim;
14. Trial Counsel was ineffective for neglecting to object to a portion of the prosecutor's closing argument in which he erroneously claimed that witness Melissa Roberts had said that when she saw the Applicant at the bank, on a different date from the robbery, he was wearing what . . . could have been even the same white shirt";
15. Trial Counsel was ineffective for failing to object to a portion of the State's closing argument in which the prosecution erroneously argued that the Applicant's testimony wasn't credible because he claimed to have heard about the bank robbery before he left the barber shop at 11:00 a.m. when the robbery actually took place at 11:00 a.m.

At the evidentiary hearing, Applicant proceeded forward on the grounds raised in his amended application. Applicant testified on his own behalf, as well as presented testimony from trial counsel, Samuel Ogburn, Esquire (herein "Counsel") and his half-sister, Jada Gibbs. Applicant also presented an Affidavit from Ronald W. Moak, the former Assistant Solicitor who prosecuted this case. This Court also had before it a copy of the Applicant's trial transcript, the records of the Kershaw County Clerk of Court, and Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to

observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, an applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, an 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.

After careful review based on the standard discussed above, Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is credible while Applicant's testimony is not credible. Applicant has failed to prove that Counsel was ineffective in his representation of the Applicant and that he was prejudiced by any of Counsel's alleged deficiencies. Below are the following findings of this Court regarding Applicant's specific allegations of ineffective assistance of counsel¹:

"Trial Counsel was ineffective for failing to impeach state witness Chad Moore concerning his own pending charges, his sentencing exposure on his charges, and his motivation to testify against the Applicant in hopes of earning a favorable deal with the State"

Applicant alleged that Counsel was ineffective for failing to impeach State's witness Chad Moore (herein "Moore") regarding possible benefits derived from his testimony against Applicant. Specifically, Applicant alleges that Counsel was ineffective for failing to cross-examine Moore regarding the possible minimum and maximum sentences he faced and how his testimony against Applicant would favorably affect his sentence. In support of this allegation, Applicant presented this Court with an Affidavit of prosecuting Assistant Solicitor Ronald W. Moak² stating that Moak informed the Federal Probation Office handling Moore's federal bank robbery charges that Moore had provided "substantial assist[ance]" to the State.

At the evidentiary hearing, Counsel testified that Moore was a "jailhouse snitch" who testified at Applicant's trial. He testified he learned that Moore would be testifying a few days before Applicant's trial and he requested Moore's "rap sheet" with his prior convictions. Counsel testified that he was aware that Moore gave a statement to law enforcement regarding Applicant's involvement in the crime based on a discussion that Applicant allegedly had with

¹ Applicant raised fifteen specific allegations of ineffective assistance of counsel in his amended application; however, many of these allegations deal with the same general deficiency and have been grouped together accordingly in this Order.

² Ronald W. Moak is no longer employed by the Fifth Circuit Solicitor's Office.

Moore while a pre-trial detainee. Counsel testified that his strategy during his cross-examination of Moore was to show the jury Moore's motivation in testifying was purely self-interest, with the hope he would receive a more lenient sentence. Counsel testified that during his closing argument, he highlighted to the jury that Moore was not a credible witness and was merely implicating Applicant for his own benefit. He testified that he did not cross-examine Moore specifically regarding the maximum and minimum sentences for Armed Robbery because the charge had been dismissed at the time of trial and he did not think it was necessary to do so. Counsel testified that he believes he was able to convey to the jury the substantial benefits Moore was receiving in exchange for his testimony against Applicant, and that any failure to cross-examine Moore specifically regarding sentencing range for a dismissed charge had no impact on Applicant's case.

This Court finds that Applicant has failed to carry his requisite burden in regards to this allegation. The record shows that Counsel cross-examined Moore regarding likely benefits he would receive in exchange for his testimony and his self-interested motivation. See Tr. pp. 236-237. Additionally, the record reflects that Counsel highlighted this motivation to the jury during his closing argument. See Tr. pp. 388-390. This Court finds that Counsel's performance was reasonable and effective. Therefore, this allegation must be denied and dismissed with prejudice.

*Trial Counsel's alleged deficiencies regarding the testimony of
State's Witness Melissa Roberts*

Applicant made several allegations regarding Counsel's alleged deficient performance regarding the testimony of State's witness Melissa Roberts (hereafter "Roberts"). See Amended Application for post-Conviction Relief Allegations No. 2, 3, 4, 12, 13, and 14. Specifically, Applicant alleges that Counsel was ineffective for: failing to seek to exclude the identification

testimony of Roberts; failing to adequately cross-examine Roberts; failing to adequately highlight inconsistencies in Roberts' testimony and for inaccurately repeating her testimony during his closing argument; and failing to object the State's closing argument regarding Roberts. This Court finds that Applicant has failed to satisfy his necessary burden of deficiency regarding Counsel's performance involving State's witness Roberts.

Applicant contends that Counsel was ineffective for failing to request a Neil v. Biggers hearing regarding Roberts's in-court identification of Applicant. However, this Court finds that Counsel's performance was not deficient, as a Neil v. Biggers hearing was unnecessary because there was no lineup for the trial court to consider. In Neil v. Biggers, 409 U.S. 188 (1972), the United States Supreme Court addressed whether a show-up identification was so suggestive that it violated the defendant's right to due process. *Id.* at 196–201, 93 S.Ct. 375. In State v. Traylor, 360 S.C. 74, 600 S.E.2d 523 (2004), our supreme court noted “[t]he United States Supreme Court has developed a two-prong inquiry to determine the admissibility of an *out-of-court identification*.” *Id.* at 81, 600 S.E.2d at 526 (citing Biggers) (emphasis added). Our courts now consistently recognize the general rule that a trial court must, when identification of a defendant is an issue, hold an in camera hearing “when the State offers a witness whose testimony identifies the defendant as the person who committed the crime, and *the defendant challenges the in-court identification as being tainted by a previous, illegal identification or confrontation*.” State v. Miller, 359 S.C. 589, 596, 598 S.E.2d 297, 301 (Ct.App.2004) (emphasis added), *aff'd*, 367 S.C. 329, 626 S.E.2d 328 (2006).

In the present case, the identification in question was from State's witness Melissa Roberts, a teller at the bank. Roberts, nor any other witness, was ever shown a lineup. Roberts testified at trial that she knew Applicant from junior high school and occasionally seeing him at a

local restaurant and that she identified Applicant on her own. She testified at trial that she could identify him by "his mannerisms and the shape of his head." (Tr. pp. 126 ln. 24-25). She testified during cross-examination that she was never shown a photo lineup or "a physical line up with physical people there." (Tr. pp. 136 ln. 21 – pp. 137 ln. 1). She elaborated that she thought about the robbery for a few days, then voluntarily approached police and gave a statement identifying Applicant as the perpetrator. (Tr. pp. 138-39). As there was no lineup and the identification came from a witness with prior knowledge of the suspect, a Neil v. Biggers hearing was unnecessary because there was absolutely no risk of "*taint by a previous, illegal identification or confrontation.*" Miller, 359 S.C. 589, 596, 598 S.E.2d 297, 301. Counsel cannot be found deficient for failing to request a Neil v. Biggers hearing when such a hearing was unnecessary.

Additionally, Applicant cannot show prejudice from Counsel's alleged deficiency in failing to request a Neil v. Biggers hearing. Counsel was able to vigorously cross-examine Roberts regarding the unreliability and incredibility of her identification. Additionally, Counsel was able to highlight to the jury during his closing argument that Roberts' testimony and identification of Applicant was undependable at best. At the post-conviction relief hearing, Counsel testified that it was his trial strategy to show the jury how wholly unbelievable Roberts' identification was and that it could not be relied upon, much like the State's case as a whole. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). Therefore, this Court finds that Applicant cannot establish prejudice in regards to Counsel's handling of Roberts.

As discussed above, this Court also finds that Applicant has failed to establish any deficiency regarding Counsel's cross-examination of Roberts. Counsel was able to point out inconsistencies in Roberts' testimony and how highly unlikely it was that Roberts would remember Applicant based on extremely limited interaction more than fifteen years ago. See e.g., Tr. pp. 120-122; p. 131. Counsel was also able to highlight this to the jury during his closing argument. See e.g., p. 383; pp. 385-386. Additionally, Counsel testified that the tone he used during his closing argument was sarcastic and almost mocking of Roberts, exemplifying to the jury how incredulous it was multiple times. Therefore, this Court finds these allegations must be denied and dismissed with prejudice.

Trial Counsel's alleged deficiencies regarding Applicant's use and sale of drugs

Applicant alleges that Counsel was ineffective for failing to object when the State introduced testimony regarding Applicant's admission to the distribution of crack cocaine and for failing to request a curative instruction based on the introduction of this evidence. Counsel testified he moved to suppress evidence in the form a videotaped admission of Applicant where Applicant references distributing crack cocaine. Counsel elaborated that during this videotaped interview with law enforcement, Applicant stated several times that he did not need to rob a bank because he made his money selling crack cocaine. Additionally, Counsel testified the videotape references Applicant borrowing a bicycle from a witness, Arthur Macklin, in exchange for a \$20 piece of crack cocaine. Counsel testified that he moved to suppress this videotape and any reference to Applicant's distribution of crack cocaine, arguing to the trial court that these statements are more prejudicial than probative. See Tr. pp. 19-23; pp. 199-205. Counsel testified, and the record confirms, that the trial court granted Counsel's motion, but did allow the

State to reference Applicant borrowing Arthur Macklin's bicycle for a \$20 piece of crack cocaine. Counsel again objected when the State sought to introduce this testimony during the trial. See Tr. pp. 270-276; p. 278. Additionally, Counsel moved for a mistrial, which was denied by the trial court. See Tr. pp. 278. Counsel testified that after his objections and motion for a mistrial were overruled, he made a strategic decision not to move for a curative instruction because he did not want to highlight Applicant's drug involvement to the jury yet again, particularly so close to deliberations.

This Court finds that Counsel appropriately moved to suppress any reference to Applicant's distribution of crack cocaine, correctly objected and moved for a mistrial when such evidence was admitted, and when these objections and motions were overruled, he made a valid strategic decision not to move for a curative instruction. See Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011) ("[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, we must be wary of second-guessing trial counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992)). This Court finds that counsels' performance went well beyond the standard of reasonableness according to professional norms, and therefore, Applicant has failed to establish any deficiency regarding this allegation. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

*Trial Counsel's alleged deficiencies regarding threats to State's
witness Arthur Macklin*

Applicant alleges that Counsel was ineffective for failing to object when State's witness Arthur Macklin (hereafter "Macklin") testified he had been threatened and physically assaulted for cooperating with law enforcement and for failing to object when such comments were made during the State's closing. This Court finds that Applicant has not satisfied his burden in regards to these allegations. Counsel testified that Macklin had a reputation as unreliable and was well-known as a significant drug user, which was easily conveyed to the jury by Macklin's disposition while on the witness stand. Counsel testified that Macklin's comments were completely irrelevant to Applicant's case and did not harm Applicant whatsoever. Additionally, Counsel testified that during his cross-examination of Macklin, he highlighted to the jury that Applicant had never hurt or attempted to hurt him and that Applicant was not related to his current harassment. See Tr. p. 184 lns. 13-15; p. 186 lns. 13-18. Counsel testified that he did not object to the State's closing argument comments on this because he did not find the comments objectionable. He elaborated that the State's comments were innocuous to Applicant's case, as Macklin readily admitted during cross-examination that Applicant had never harassed him in any manner and was not responsible for the current harassment. This Court finds that Counsel's performance was reasonable and effective. Counsel appropriately cross-examined Macklin, who freely admitted that Applicant was in no way responsible for any harassment. Additionally, this Court finds Counsel's decision not to object to the State's closing comments to be reasonable. See Humphries v. State, 351 S.C. 362, 570 S.E.2d (2002) (The relevant question in determining whether counsel was deficient for failing to object to the State's closing argument is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a

denial of due process). Therefore, these allegations must be denied and dismissed with prejudice.

Trial Counsel's alleged deficiency regarding testimony that a stolen four-wheeler was used to commit the robbery

Applicant alleges that Counsel was ineffective for failing to object to testimony that the four-wheeler allegedly used to leave the bank following the robbery was stolen. See Tr. 282 lns. 17-21. Counsel testified that his theory of the case and defense presented was not that a robbery did not occur, but that Applicant was not the assailant. He testified that the defense centered on Applicant's alibi and that he was in no way involved with the robbery. He testified that whether or not the four-wheeler used to commit the crime was completely irrelevant to Applicant's defense and therefore he did not find the comment objectionable. A review of the record in its entirety supports Counsel's testimony. This Court finds Counsel's decision not to object to this comment to be reasonable, as it was completely irrelevant and harmless to Applicant's defense. Therefore, this allegation must be denied and dismissed with prejudice.

Trial Counsel's alleged deficiency for failing to ask the jury to observe the multiple tattoos and scars on Applicant's arms

Applicant alleges that Counsel was ineffective for failing to ask the jury to observe the multiple tattoos and scars on Applicant's arm, as these tattoos and scars are readily visible and were not mentioned by eyewitnesses from the bank. This Court finds that this allegation must be denied and dismissed with prejudice. The record reveals that Counsel questioned Pamela Moore, one of the State's witnesses and a Sargent with the City of Camden Police Department, regarding the inconsistencies in the suspect's description, most notably that eyewitnesses observed "tattoos on both arms;" however, no witnesses testified regarding these visible markings. Tr. p. 194 ln. 19- p. 195 ln. 11. Additionally, Counsel highlighted this to the jury during his closing argument,

citing that no bank teller or other eyewitness from the bank noticed tattoos on the assailant wearing a short-sleeved shirt, despite Applicant having visibly noticeable tattoos. Counsel testified that he made a strategic decision not to show Applicant's tattoos to the jury, as the tattoos were extremely vulgar and included phrases like "thug life." He testified that Applicant's tattoos were visible to the jury from a distance during the trial, so that the jury could see that Applicant had tattoos without viewing the "very explicit" nature of the tattoos. Counsel testified that any probative value to possibly be gained by asking the jury to closely view the tattoos would be outweighed by the significant prejudice of observing tattoos with such widely-known negative connotations, which he feared the jury would interpret as "thug equals guilty." This Court finds that Counsel has articulated a valid strategic reasoning for not presenting such tattoos closely for the jury's review, which was more than reasonable and prudent based on the circumstances. See Edwards, supra. Therefore, this allegation must be denied and dismissed with prejudice.

Trial Counsel's alleged deficiency for failing introduce testimony to refute claim of Roberts that Applicant and his family frequented a restaurant owned by her in-laws "at times."

Applicant alleges that Counsel was ineffective for failing to introduce testimony to refute Roberts' claim that she recognized Applicant from him and his family visiting her in-laws' restaurant "at times" since high school. In support of this allegation, Applicant and his half-sister, Jada Gibbs, testified that their family has never been to this restaurant. Applicant's sister elaborated that this restaurant is widely known to be "racist" with confederate flags and other like memorabilia throughout, and because of this, her family would not patronize such a business. However, Applicant testified during the trial that he had never been to this restaurant. Tr. p. 319 lns. 14-20. Additionally, Counsel testified that he did not believe such additional

citing that no bank teller or other eyewitness from the bank noticed tattoos on the assailant wearing a short-sleeved shirt, despite Applicant having visibly noticeable tattoos. Counsel testified that he made a strategic decision not to show Applicant's tattoos to the jury, as the tattoos were extremely vulgar and included phrases like "thug life." He testified that Applicant's tattoos were visible to the jury from a distance during the trial, so that the jury could see that Applicant had tattoos without viewing the "very explicit" nature of the tattoos. Counsel testified that any probative value to possibly be gained by asking the jury to closely view the tattoos would be outweighed by the significant prejudice of observing tattoos with such widely-known negative connotations, which he feared the jury would interpret as "thug equals guilty." This Court finds that Counsel has articulated a valid strategic reasoning for not presenting such tattoos closely for the jury's review, which was more than reasonable and prudent based on the circumstances. See Edwards, supra. Therefore, this allegation must be denied and dismissed with prejudice.

Trial Counsel's alleged deficiency for failing introduce testimony to refute claim of Roberts that Applicant and his family frequented a restaurant owned by her in-laws "at times."

Applicant alleges that Counsel was ineffective for failing to introduce testimony to refute Roberts' claim that she recognized Applicant from him and his family visiting her in-laws' restaurant "at times" since high school. In support of this allegation, Applicant and his half-sister, Jada Gibbs, testified that their family has never been to this restaurant. Applicant's sister elaborated that this restaurant is widely known to be "racist" with confederate flags and other like memorabilia throughout, and because of this, her family would not patronize such a business. However, Applicant testified during the trial that he had never been to this restaurant. Tr. p. 319 lns. 14-20. Additionally, Counsel testified that he did not believe such additional

testimony was necessary, as Applicant himself testified not only that he had never been to this restaurant, but that he had never seen Roberts in his life. Counsel testified that he highlighted this several times to the jury during his closing argument, once again showing the jury that Roberts' entire story was incredible, embellished and that, ultimately, Roberts was not a credible and reliable witness. This Court finds that Counsel's performance was reasonable based on professional standards. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Therefore, this allegation must be denied and dismissed with prejudice.

*Trial Counsel's alleged deficiency for failing to object to
comments during the State's closing argument regarding time he
left the barber shop*

Applicant alleges that Counsel was ineffective for failing to object to a portion of the State's closing argument in which the prosecution argued that Applicant's testimony was not credible because Applicant claimed to have heard about the bank robbery before he left the barber shop at 11:00 a.m. when the robbery took place at 11:00 a.m. Counsel testified that Applicant never provided him or law enforcement a clear timeline of his whereabouts on the day of the robbery. This is supported by the record. See Tr. p. 277 lns. 2-8. Counsel testified that because Applicant had given differing times for his arrival to and departure from the barber shop, he did not think the solicitor's closing argument comments were objectionable. This Court finds Counsel's decision not to object to the State's closing comments to be reasonable. See Humphries v. State, 351 S.C. 362, 570 S.E.2d (2002) (The relevant question in determining whether counsel was deficient for failing to object to the State's closing argument is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process). Therefore, this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 14th day of JANUARY, 2014.



JAMES R. BARBER, III
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
2012-CP-28-0317

JARVIS GIBBS, #255871,

Applicant.

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

RULE 59(e) SCRCP, MOTION TO
ALTER OR AMEND

FILED FOR RECORD
2014 FEB -3 AM 10:48
CLERK OF COURT
KERSHAW COUNTY, S.C.

NOW COMES the Applicant in the above-captioned case, acting by, and through undersigned counsel, respectfully moving this Court pursuant to Rule 59(e), SCRCP, to alter or amend its Order of Dismissal filed January 17, 2014 and received by Counsel for the Applicant on January 20, 2014. The Application for Post-Conviction Relief in this matter was filed on March 26, 2012 and was amended on June 3, 2013. The State filed its Return on June 20, 2012. An evidentiary hearing was convened on June 6, 2013 at the Richland County Courthouse. The Respondent was represented at that proceeding by Assistant Attorney General, Megan E. Harrigan and the Applicant was represented by Tara Dawn Shurling, Esquire. In support of this motion, the Applicant would address the portions of the Order which he submits need to be altered or amended under the same subject heading they appear under in the Order of Dismissal.

**Trial Counsel's alleged deficiencies regarding the testimony of
State's Witness Melissa Roberts**

While this section of the Order of Dismissal expressly acknowledges the Applicant's Amended Allegations No. 2, 3, 4, 12 and 14, it fails to specifically address the factual basis for a number of these allegations and fails to make findings with regard to some of the Applicant's express allegations. This Order states " *Specifically, Applicant alleges that*

Counsel was ineffective for : failing to seek to exclude the identification testimony of Roberts; failing to adequately cross-examine Roberts; failing to adequately highlight inconsistencies in Roberts' testimony and for inaccurately repeating her testimony during his closing argument; and failing to object the State's closing argument regarding Roberts". This finding fails to directly address Counsel's failure to cross-examine Roberts concerning her claim of a more recent viewing of the Applicant at her bank some time before the date of the robbery for which the Applicant was charged. *See*, Amended Allegation No. 3, which alleged that, "Trial Counsel was ineffective for failing to cross-examine Melissa Roberts concerning her testimony on direct in which she stated, "when I *thought* I saw him prior". *See*, Trial Tr. p. 131, ll. 12-15.

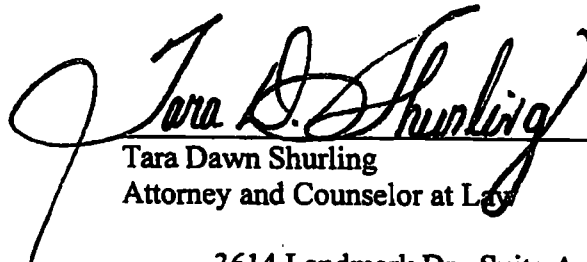
While the Order of Dismissal references Amended Allegation No. 4, the order does not address the substance of the Applicant's claim that, "Trial Counsel was ineffective for failing to point out during closing argument that although Melissa Roberts claimed to be certain of her identification of the Applicant *in a mask* she acknowledged that she "thought" she saw him in the bank previously without a mask."

Likewise, although the Order of Dismissal references the Applicant's claim that Trial Counsel failed to object to the State's closing argument, it fails to specifically address the portions of the State's argument in question. *See, Amended Allegations, No. 13 and 14.* These allegations both addressed prejudicial closing arguments made by the State which were not supported by the testimony evidence admitted during the Applicant's trial. Amended Allegation No. 13 specifically referenced the State's claim during closing arguments that Melissa Roberts had testified to the Applicant being in her bank branch "*a couple of days earlier*" when the testimony of Melissa Roberts provided no factual basis for that assertion. *See, Trial tr. p. 412, ll. 19-25.* Similarly, the Applicant's Amended Allegation 14 pointed to Trial Counsel's failure to

object to the State's unsupported claim that this same witness had testified that when she previously saw the Applicant at her bank he was "wearing what...could have been even the same white shirt" when the trial record did not support that assertion.

For all the above reasons, the Applicant now prays that this Court might amend its Order pursuant to Rule 59(e), SCRCP, grant relief and remand the Applicant's case to the Kershaw County Court of General Sessions for a new trial. In the alternative, the Applicant would respectfully request that the Court issue an Amended Order of Dismissal including the omitted allegations and arguments presented above. The Applicant would assert that his request for an Amended Order is necessary in order to preserve these claims for appellate review.

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 (fax)
tdslaw@shurlinglaw.com

ATTORNEY FOR THE APPLICANT

This 30th day of January, 2014.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

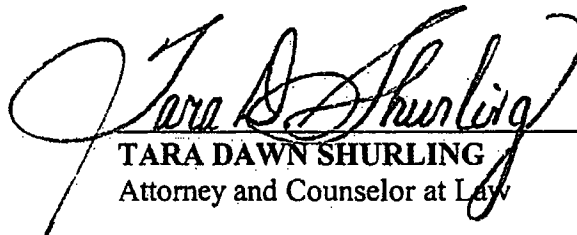
JARVIS GIBBS, #255871,)
 Applicant,)
)
 v.)
)
 THE STATE OF SOUTH CAROLINA,)
 Respondent.)

2012-CP-28-0317

CERTIFICATE OF SERVICE

FILED
 CLERK OF COURT
 KERSHAW COUNTY, S.C.
 2014 FEB -3 AM 10:18
 RECORDED

The undersigned attorney hereby certifies that one copy of the Rule 59(e) SCRCF, Motion to Alter or Amend in the above-entitled cause has been served upon, the Honorable James R. Barber, III, Circuit Court Judge for the Fifth Judicial Circuit, by email on this the 30th day of January, 2014.


 TARA DAWN SHURLING
 Attorney and Counselor at Law

3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 30th day of
January, 2014.

 (L.S.)
 Notary Public for South Carolina
 My Commission Expires: 2/28/24

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

JARVIS GIBBS, #255871,)
 Applicant,)

2012-CP-28-0317

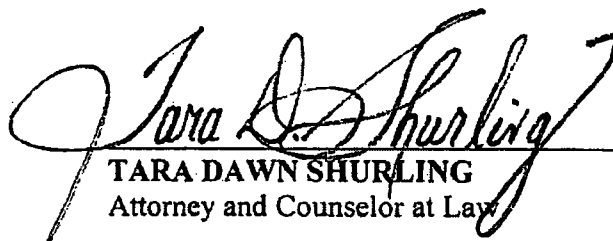
v.)

CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

FILED FOR RECORD
 2014 FEB -3 AM 10:18
 JUDGE DONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

The undersigned attorney hereby certifies that one copy of the Rule 59(e) SCRPC, Motion to Alter or Amend in the above-entitled cause has been served upon, Megan Harrigan, Assistant Attorney General by email on this the 30th day of January, 2014.

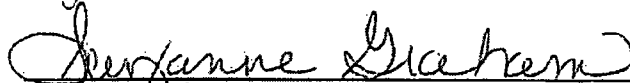

 TARA DAWN SHURLING
 Attorney and Counselor at Law

3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 30th day of

January, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 2/28/2024

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Jarvis Gibbs, #255871,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2012-CP-28-0317

RETURN TO APPLICANT'S
"RULE 59(e) SCRCF, MOTION
TO ALTER OR AMEND"

Respondent, by and through undersigned counsel, making its Return to "Rule 59(e) SCRCF, Motion to Alter or Amend" would respectfully show unto this Court:

I.

Applicant was indicted by the Kershaw County Grand Jury during the October 2008 term for Kidnapping (2008-GS-28-01555), Use of a Firearm during a Violent Crime (2008-GS-28-01556) and during the November 2009 term for Entering a bank with Intent to Steal (2009-GS-28-1548). Samuel Ogburn, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr., where he was found guilty as indicted. On November 18, 2009, Judge Cooper sentenced him to eighteen years imprisonment for both Kidnapping and Entering a Bank with Intent to Steal and five years imprisonment for Use of a Firearm during a Violent Crime, with all sentences to be served concurrently.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence after briefing. State v. Jarvis Gibbs, Op. No. 2011-UP-511 (S.C. Ct. App. filed December 19, 2011). The Remittitur was sent on December 19, 2011.

II.

Applicant filed an application for post-conviction relief on March 26, 2012, alleging that four grounds of ineffective assistance of counsel. Respondent made its Return on June 20, 2012, requesting an evidentiary hearing be held. Thereafter, Applicant, through his counsel, filed an amended application on June 3, 2013, alleging fifteen additional grounds of ineffective assistance of counsel. An evidentiary hearing into the matter was convened on June 6, 2013, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. By written order signed on January 14, 2014 and filed on January 17, 2014, the Court denied and dismissed Applicant's post-conviction relief application with prejudice. A copy of this Order was served on Applicant's counsel of record, Tara D. Shurling, by the Kershaw County Clerk of Court as well as Respondent.

On January 30, 2014, Applicant served an electronic copy of his "Rule 59 SCRCP, Motion to Alter or Amend" on Respondent and the Court.

III.

In his motion to alter or amend the Court's Order pursuant to Rule 59(e) SCRCP, Applicant asserts that several of his allegations regarding the testimony of State's witness Melissa Roberts are not addressed sufficiently. Respondent submits that this Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits that this Court properly ruled on all issues presented

at the post-conviction relief hearing and Applicant's "Rule 59 SCRPC, Motion to Alter or Amend" should be denied.

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

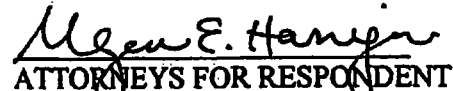
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

January 31, 2014

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

JARVIS D. GIBBS, #255871

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

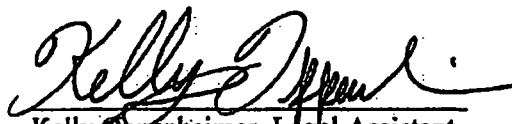
2013-CP-28-0317

AFFIDAVIT OF SERVICE BY MAIL

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 to Applicant's "Rule 59(e) SCRCF, Motion to Alter or Amend" in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tara D. Shurling, Esquire
 Law Office of Tara Dawn Shurling, PA
 3614 Landmark Drive, Suite A
 Columbia, South Carolina 29204

DATED this 31st day of January, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Jarvis Gibbs, #255871,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2012-CP-28-0317

**ORDER DENYING APPLICANT'S
"RULE 59(e) SCRPC, MOTION
TO ALTER OR AMEND"**

FILED FOR RECORD
2014 FEB 11 AM 11:49
JOHN J. DONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter comes before this Court by way of Applicant's "Rule 59(e) SCRPC, Motion to Alter or Amend," asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

I.

The records before this Court show that Applicant was indicted by the Kershaw County Grand Jury during the October 2008 term for Kidnapping (2008-GS-28-01555), Use of a Firearm during a Violent Crime (2008-GS-28-01556) and during the November 2009 term for Entering a bank with Intent to Steal (2009-GS-28-1548). Samuel Ogburn, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable G. Thomas Cooper, Jr., where he was found guilty as indicted. On November 18, 2009, Judge Cooper sentenced him to eighteen years imprisonment for both Kidnapping and Entering a Bank with Intent to Steal and five years imprisonment for Use of a Firearm during a Violent Crime, with all sentences to be served concurrently.

A notice of appeal was filed and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence after briefing. State v. Jarvis Gibbs, Op. No. 2011-UP-511 (S.C. Ct. App. filed December 19, 2011). The Remittitur was sent on December 19, 2011.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

John J. Donald
Clerk of Court Kershaw County

II.

Applicant filed an application for post-conviction relief on March 26, 2012, alleging that four grounds of ineffective assistance of counsel. Respondent made its Return on June 20, 2012, requesting an evidentiary hearing be held. Thereafter, Applicant, through his counsel, filed an amended application on June 3, 2013, alleging fifteen additional grounds of ineffective assistance of counsel. An evidentiary hearing into the matter was convened on June 6, 2013, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. By written order signed on January 14, 2014 and filed on January 17, 2014, the Court denied and dismissed Applicant's post-conviction relief application with prejudice. A copy of this Order was served on Applicant's counsel of record, Tara D. Shurling, by the Kershaw County Clerk of Court as well as Respondent.

On January 30, 2014, Applicant served an electronic copy of his "Rule 59 SCRPC, Motion to Alter or Amend" on Respondent and the Court. Respondent made its Return to Applicant's motion on January 31, 2014.

III.

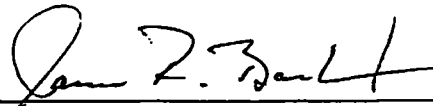
This Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds that no basis for altering or amending is prior ruling.¹ Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order

¹ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRPC.

of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 6th day of February, 2014



JAMES R. BARBER, III
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

WITNESSES

FILED FOR RECORD

Boan, CPD

2008 OCT -8 PM 12: 57

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

DOCKET NO. 2008-GS-28- 1555

The State of South Carolina

County of Kershaw

COURT OF GENERAL SESSIONS

October TERM 2008

ARREST WARRANT NUMBER

1133611

ACTION OF GRAND JURY

THE STATE
vs.

Jarvis Dequan Gibbs

TRUE BILL

Foreperson of Grand Jury
Date:

OCT 08 2008

VERDICT

Indictment for

KIDNAPPING

SC Code: 16-3-910
CDR Code:0095
Class FEL/A(V)

Foreperson of Petit Jury
Date:

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Joyce McDonald
Clerk of Court Kershaw County

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

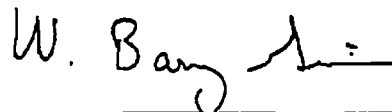
INDICTMENT

KIDNAPPING

At a Court of General Sessions, convened on October 8, 2008, the Grand Jurors of Kershaw County present upon their oath:

That Jarvis Dequan Gibbs did in Kershaw County on July 25, 2008, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, four bank tellers, by any means whatsoever without authority of law. All in violation of § 16-3-910, 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.



Warren B. Giese, SOLICITOR

WITNESSES

Boan, CPD

FILED FOR RECORD

2008 OCT -8 PM 12:57 The State of South Carolina

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

County of Kershaw

COURT OF GENERAL SESSIONS

October TERM 2008

ARREST WARRANT NUMBER

1133613

ACTION OF GRAND JURY

Jarvis Dequan Gibbs

THE STATE
vs.

VERDICT

Indictment for

**USE OF A FIREARM DURING
COMMISSION OF A VIOLENT CRIME**

SC Code: 16-23-0490

CDR Code: 0549

Class FEL/F

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.

Foreperson of Grand Jury
Date:

OCT 08 2008

Foreperson of Petit Jury
Date:

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Joyce McDonald
Clerk of Court Kershaw County

721

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

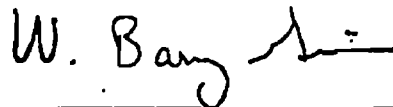
INDICTMENT

At a Court of General Sessions, convened on October 8, 2008, the Grand Jurors of Kershaw County present upon their oath:

USE OF A FIREARM DURING COMMISSION OF A VIOLENT CRIME

That Jarvis Dequan Gibbs did in Kershaw County on or about July 25, 2008, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to wit: Bank Robbery, in violation of Code 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.



WARREN B. GIESE, SOLICITOR

WITNESSES

Boan, CAPD

ARREST WARRANT NUMBER

1133603

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

NOV 11 2009

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-28-1548

The State of South Carolina

County of Kershaw

COURT OF GENERAL SESSIONS

November TERM 2009

THE STATE

vs.

Jarvis Dequan Gibbs

Indictment for

ENTER BANK WITH INTENT TO STEAL

(Bank Robbery)

SC Code: 16-11-380

CDR Code:257

Class FEL/A

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.

JOYCE HODGKINS
CLERK OF COURT
KERSHAW COUNTY, S.C.

09 NOV 11 PM 12:28

ATTEST True, Correct & Entire
Copy of Original on File in this

[Signature]
Clerk of Court Kershaw County

723

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

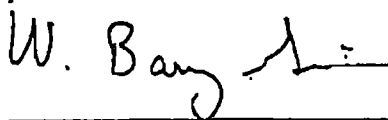
INDICTMENT

At a Court of General Sessions, convened on November 11, 2009, the Grand Jurors of Kershaw County present upon their oath:

ENTER BANK WITH INTENT TO STEAL (BANK ROBBERY)

That Jarvis Dequan Gibbs did in Kershaw County on or about July 25, 2008, the defendant did commit the crime by entering the First Palmetto Bank with intent to steal, to wit: the defendant did use a threat of force with deadly weapon by pointing a handgun at the bank tellers, in order to permanently deprive the victim of U.S. Currency. All in violation of §16-11-380 of the South Carolina Code of Laws:

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF KERSHAW
STATE

VS.

INDICTMENT/CASE#: 2008-GS-28-01555

Jarvis Dequan Gibbs

A/W#: 1133611

AKA:

Date of Offense: 07/25/2008

Race: B

Sex: M

Age: 31

S.C. Code §: 16-03-0910

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 0095

Address: [REDACTED]

City, State, Zip Camden, SC 29020

DL# [REDACTED] SID# [REDACTED]

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: KidnappingIn violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0948☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC 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:

[Signature]
Solicitor[Signature]
SC Bar #

Defendant

[Signature]
Attorney for Defendant[Signature]
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 18 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:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corps. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine
 §14-1-206 (Assessments 107.5%)
 §14-1-211(A)(1) (Conv. Surcharge) \$100
 §14-1-211(A)(2) (DUI Surcharge) \$100
 §56-5-2995 (DUI Assessment) \$12
 §56-1-286 (DUI Breath Test) \$25
 §47.12 (Public Def/Prob) \$500
 §14-1-212 (Law Enforce. Funding) \$25
 §14-1-213 (Drug Court Surcharge) \$100
 §50-21-114(BUI Breath Test Fee) \$50
 §56-5-2942(J) (Vehicle Assessment) \$40/ea
 §90.7 (SCCJA Surcharge) \$5
 3% to County (if paid in installments)
 TOTAL \$133.90

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly pmts. Of \$ _____ Beginning _____
 \$ _____ paid to Public Defender Fund

Other: THIS CONVICTION DID NOT INVOLVE ANYTHING OF A SEXUAL NATURE.
NO SEXUAL OFFENDER REGISTRY

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation

Clerk of Court/ Deputy Clerk: [Signature]
 Court Reporter: [Signature]

Presiding Judge: [Signature]
 Judge Code: [Signature]
 Sentence Date: [Signature]

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF KERSHAW
STATE

VS.

INDICTMENT/CASE#: 2008-GS-28-01556

Jarvis Gibbs

AKA:

Race: B

Sex: M

Age: 31

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip Camden, SC 29020

DL#

SID#

*CDL Yes ☐ No ☐ CMV yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ~~CONVICTED OF~~ or ~~PLEADS~~
TO: Possession of weapon during commission of violent crimeViolation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0546☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC 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

SC Bar # 68481

Defendant

Attorney for Defendant

SC Bar # 7942

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: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corps. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$100

\$14-1-211(A)(2) (DUI Surcharge)

\$100

\$56-5-2995 (DUI Assessment)

\$12

\$56-1-286 (DUI Breath Test)

\$25

\$47.12 (Public Def/Prob)

\$500

\$14-1-212 (Law Enforce. Funding)

\$25

\$14-1-213 (Drug Court Surcharge)

\$100

\$50-21-114(BUI Breath Test Fee)

\$50

\$56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$90.7 (SCCJA Surcharge)

\$5

3% to County (if paid in installments)

TOTAL

\$ _____
\$ _____
\$ 107.90
\$ _____
\$ _____
\$ _____
\$ 25.00
\$ _____
\$ _____
\$ _____
\$ 5.00
\$ 50.00
\$ 133.90

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. Of \$ _____ Beginning _____

\$ _____

ATTEST True, Correct & Valid
Copy of Original on File in this Court

Other: _____

[Signature]

Clerk of Court

Kershaw County

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: [Signature]

Court Reporter: [Signature]

Presiding Judge: [Signature]

Judge Code: 2126

Sentence Date: 11/19/09

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF KERSHAW
STATE

VS.

INDICTMENT/CASE#: 2009-GS-28-01548

Jarvis Dequan Gibbs

A/W#: 1133603

AKA:

Date of Offense: 07/25/2008

Race: B

Sex: M

Age: 31

S.C. Code §: 16-11-0380

DOB: [REDACTED]

SS#: [REDACTED]

CDR Code #: 0257

Address: [REDACTED]

City, State, Zip Camden, SC 29020

DL#

SID#

*CDL Yes ☐ No ☐ CMV yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Entering Bank with Intent to StealIn violation of § 16-11-0380 of the S.C. Code of Laws, bearing CDR Code # 0257☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45

(CSC 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

68461

SC Bar #

Defendant

Attorney for Defendant

7942

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 18 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:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corps. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine

§14-1-206 (Assessments 107.5%)		\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$	
§56-5-2995 (DUI Assessment)	\$12	\$	
§56-1-286 (DUI Breath Test)	\$25	\$	
§47.12 (Public Def/Prob)	\$500	\$	
§14-1-212 (Law Enforce. Funding)	\$25	\$	25.00
§14-1-213 (Drug Court Surcharge)	\$100	\$	
§50-21-114(BUI Breath Test Fee)	\$50	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
§90.7 (SCCJA Surcharge)	\$5	\$	5.00
3% to County (if paid in installments)		\$	3.90
TOTAL		\$	133.90

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly pmts. Of \$ _____ Beginning _____
 \$ _____ paid to Public Defender Fund

ATTEST True, Correct & Certified
 Copy of Original on File in this Court

Clerk of Court

☐ Appointed PD or appointed over Counsel,
 \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk:
 Court Reporter:

Presiding Judge:
 Judge Code: 2136
 Sentence Date: 11/19/09