

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Kershaw County

James R. Barber, III, Circuit Court Judge

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S.C. Supreme Court

JARVIS GIBBS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000447

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF KERSHAW) COURT OF GENERAL SESSIONS
08-GS-28-1555-56
09-GS-28-1548

4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Jarvis Dequan Gibbs,)
8 Defendant.)

9 November 17-19, 2009
Camden, South Carolina

12 B E F O R E:

13 THE HONORABLE G. THOMAS COOPER, JUDGE; and a jury.

17 APPEARANCES:

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Official Court Reporter

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NOVEMBER 17, 2009

MR. MOAK: Right now the State is calling State v. Jarvis Gibbs, which is 2008-GS-28-1555 for kidnapping, Kershaw County true-billed for kidnapping; 2008-GS-28-1556, use of firearm during commission of a violent crime -- that is true-billed, Kershaw County true-billed; and 2009-GS-28-1548, which is entry into a bank with intent to steal, which is the state law version of bank robbery, and that is 16-11-380. His attorney is Mike Ogburn.

We are also calling Jarvis -- James Drakeford. I do not have the docket numbers on those because I have got those in my office downstairs. He is also Kershaw County true-billed for bank robbery and conspiracy to commit kidnapping. His attorney is Garryl Deas.

THE COURT: Where is Mr. Deas?

MR. MOAK: I believe the clerk is handing you those two indictments.

THE COURT: Well, I'll ask again, does anybody know where Mr. Deas is?

MR. OGBURN: Your Honor, he was here just a moment ago.

THE COURT: I know he was here. I didn't know

1 if he had --

2 MR. OGBURN: He may have stepped out to get
3 his client.

4 (Pause.)

5 (Mr. Deas enters the courtroom.)

6 THE COURT: Mr. Deas, the Solicitor just
7 called Jarvis Gibbs and James Thomas Drakeford for
8 trial.

9 He announced that the State is going forward
10 on the conspiracy to commit kidnapping, Indictment
11 Number 2008-GS-28-28-1560; and entering a bank with
12 intent to steal is 2008-GS-28-1557.

13 Anything of a pretrial nature before we select
14 the jury?

15 MR. DEAS: Yes, Your Honor. As to the
16 Defendant Drakeford, I would respectfully request a
17 continuance of his trial.

18 The Court is aware on yesterday I was in trial
19 in Sumter County General Sessions Court on an
20 assault and battery with intent to kill case. The
21 case did end up pleading out at about 3:30 on
22 yesterday, but basically took up my whole day.

23 Meantime, I had gotten word from Mr. Moak that
24 this particular case was also being called for
25 trial. But unfortunately, because of my

1 predicament yesterday in Sumter County, I was not
2 really able to address this case until I resolved
3 my General Sessions matter in Sumter County, which
4 as I said didn't get resolved until somewhere
5 between 3:30 and 4:00 o'clock on yesterday.

6 After I resolved my situation in Sumter I did
7 speak with Attorney Butcher, who I believe
8 represents Mr. Drakeford in some unrelated charges,
9 and he had made arrangements to get me some of the
10 discovery materials. He downloaded them on a disk,
11 gave them to Mr. Drakeford, Mr. Drakeford drove to
12 my office yesterday evening. We met about 7:00
13 o'clock. But that was the first time I really had
14 an opportunity to take a look at some of the
15 statements that are on this DVD. And the only way
16 I received it was actually from Mr. Butcher, who
17 does not represent him on these charges. I did not
18 receive this information directly from the State.

19 Essentially -- and my argument, Judge, is that
20 I just haven't had an opportunity because of the
21 predicament I was in yesterday, because of my case
22 in Sumter, and because of the relatively late
23 notice as to this trial, and also because I did not
24 receive discovery materials until late yesterday
25 evening. I just have not had an opportunity to

1 properly prepare. And these are some relatively
2 serious charges, bank robbery and kidnapping. And
3 in order to prepare properly I would need a little
4 more notice than what I was given, particularly
5 since it was well known to the State that I was
6 embroiled in a trial yesterday in Sumter County.

7 So in all fairness to the Defendant, I think a
8 continuance is in order. It would allow me to
9 properly prepare and thoroughly peruse the
10 discovery before I am thrust into a trial.

11 THE COURT: You say you got a DVD was what you
12 got yesterday?

13 MR. DEAS: Yes, sir.

14 THE COURT: That was the discovery material?

15 MR. DEAS: Yes, sir. And as I said, the way I
16 got it was actually not directly from the State,
17 but it came from Attorney Butcher, who represented
18 Mr. Drakeford on some unrelated charges. He said
19 he had to talk to Mr. Drakeford yesterday anyway,
20 so while he was talking to him he was kind enough
21 to download this on a disk and have Mr. Drakeford
22 drive it to me to Sumter yesterday evening. I
23 waited for him until about 7:00 o'clock last night
24 when he finally arrived and brought me the disk.
25 But that was the first time I had an opportunity to

1 really --

2 THE COURT: What is on that disk?

3 MR. DEAS: These are statements from I believe
4 Jarvis Gibbs and several other witnesses that are
5 related to the bank robbery and kidnapping case, as
6 well as I believe a video statement from my client.

7 THE COURT: From your client?

8 MR. DEAS: Yes, sir.

9 THE COURT: All right. And just for the
10 record, are you appointed or retained?

11 MR. DEAS: I'm retained.

12 THE COURT: And when were you retained?

13 MR. DEAS: I was retained back in October, I
14 believe, of 2008. Actually, it was on January 16th
15 of 2009, is when I was retained.

16 THE COURT: And did you file a Rule 5 request
17 at that time?

18 MR. DEAS: There was no Rule 5 and Brady
19 motion filed at that time because his attorney,
20 Mr. Wells, told me he would give me the discovery,
21 so I --

22 THE COURT: Prior attorney?

23 MR. DEAS: His prior attorney. And he did --
24 he gave me what he had at the time. And he just
25 didn't give me this video tape statement because he

1 probably didn't have them at the time.

2 THE COURT: So you never filed a separate Rule
3 5 request?

4 MR. DEAS: That's correct.

5 THE COURT: Because you assumed that Mr. Wells
6 had all the material?

7 MR. DEAS: Had all the information.

8 THE COURT: And has this case not been on the
9 trial roster prior to this week?

10 MR. DEAS: I'm not -- I have never -- I'm not
11 sure that it was. I had never gotten any word from
12 Mr. Moak that it was high on the trial roster.

13 The first word I got about it was on
14 yesterday. But, of course, he, Mr. Moak, in
15 fairness to Mr. Moak, he didn't realize that I was
16 Mr. Drakeford's attorney of record. I think
17 Mr. Moak was operating under the idea that Mr.
18 Drakeford's attorney of record for these charges
19 was Mr. Butcher.

20 But that was -- you know, there was just a
21 mix-up in who was actually representing
22 Mr. Drakeford.

23 THE COURT: Well --

24 MR. DEAS: Quite frankly, Judge, probably what
25 I should have done, and I don't mind saying this,

1 probably what I should have done is when I was
2 retained I probably should have just done an order
3 substituting counsel where I was substituted for
4 Mr. Wells, and that way it would have been filed
5 with the Clerk's Office, Mr. Moak would have had a
6 copy, and that probably would have resolved some of
7 this.

8 And I think that is -- I think they are trying
9 to -- currently they are changing or modifying some
10 of the criminal procedural rules. I think Judge
11 King down in Sumter is instrumental in implementing
12 some of these new rules.

13 And one of them is when a lawyer comes in and
14 takes a case from a Public Defender or appointed
15 counsel, I think you are going to be required now
16 to file some type of order substituting counsel or
17 relieving the prior lawyer. That way everybody is
18 put on proper notice.

19 That just didn't happen in this situation.
20 That probably led to some of the confusion on
21 behalf of Mr. Moak, and that is probably why I
22 didn't know until yesterday that this case was
23 coming up for trial.

24 THE COURT: What I'm primarily concerned about
25 is what is on that video.

1 MR. DEAS: Yes, sir.

2 THE COURT: That you had no -- ostensibly no
3 knowledge of that. What -- Mr. Moak, what is on
4 the video that was supplied? Mr. Deas has it. He
5 has had a chance to look at it, but --

6 MR. MOAK: Assuming Mr. Butcher gave him
7 burned copies of all the videos, there should be a
8 statement by Mr. Gibbs who gives his timeline of
9 where he was at during that day, and denies any
10 involvement of the bank robbery.

11 THE COURT: All right. The statement of
12 Gibbs, does it involve Mr. Drakeford on that
13 statement?

14 MR. MOAK: I believe he is asked on there if
15 he had seen Mr. Drakeford that day, and I think he
16 said no. He denies any contact with Drakeford the
17 day of the robbery.

18 THE COURT: Okay. What else is on there?

19 MR. MOAK: I believe there should be a video
20 of Chad Moore, who was an inmate at the jail that
21 was in the same cell as Jarvis Gibbs. He gave a
22 statement to the Police Department that Gibbs had
23 told him that Drakeford was involved with Gibbs on
24 a 4-wheeler, getting the bicycle, picking him up
25 after the robbery, and disposing of the money and

1 the 4-wheeler, and also meeting up at a barber shop
2 after they had hid the money.

3 THE COURT: It said Gibbs said that?

4 MR. MOAK: Gibbs said that. So of course
5 anything that -- we intend to call Mr. Moore as a
6 witness. We would not be putting that video into
7 evidence, so they could put something in to cross
8 with, I guess. But, you know, I don't see where we
9 have to redact any of that. Basically we just ask
10 Moore to not to testify about what Gibbs said
11 Drakeford did because of the Bruton issue.

12 I believe there is also a videotaped statement
13 of Sylvester Fludd, who was with Arthur Macklin
14 when --

15 THE COURT: Hold it. Sylvester?

16 MR. MOAK: Sylvester Fludd.

17 THE COURT: And he gives a statement?

18 MR. MOAK: That he was with Arthur Macklin
19 when Drakeford rides up on the 4-wheeler with
20 Jarvis Gibbs also on the 4-wheeler, borrows a bike
21 from Macklin.

22 You know, he has some of Drakeford's
23 involvement in that, but, to be quite honest with
24 Your Honor, we have been unable to locate
25 Mr. Fludd. We have Mr. Macklin, but Mr. Fludd, the

1 last we had heard he was residing somewhere in
2 Charleston. We can't locate him. So I don't know
3 see how we can get that statement in anyway.

4 Then there is a 3-hour interview with
5 Mr. Drakeford where I think that he -- I think he
6 says that Gibbs has a white shirt on. I think he
7 says he had some contact with Gibbs that day, but
8 he denies any involvement with the bank robbery.

9 Basically, the statements of both Defendants
10 are such that they are confessions, but they have
11 elements in them that we're going to try to piece
12 together to try to show their guilt.

13 Your Honor, I believe the bank -- they may
14 also have the bank, the actual bank security video
15 in there too, possibly, I'm not sure, which
16 Drakeford was not on that.

17 And I believe there was maybe also another
18 individual named Frank Carroll who gave some
19 information about I guess possibly the motivation
20 of the --

21 THE COURT: Is it on this tape? Is it on the
22 video?

23 MR. MOAK: I mean, I don't know what Butcher
24 gave him, so I'm just reciting what all the videos
25 have on them, Your Honor.

1 Frankie Carroll gave some information about a
2 guy named Earl Warren possibly threatening Gibbs to
3 repay some money that was owed and to go rob a bank
4 if you have to, I don't care.

5 And then I think there might also be some
6 information on there about after the bank robbery
7 how the money was disposed of, I think. Is that
8 correct?

9 LIEUTENANT BOAN: 4-wheeler.

10 MR. MOAK: And also the 4-wheeler.

11 THE COURT: Hum. Have you looked at the
12 video, Mr. Deas?

13 MR. DEAS: I looked at most of it, but some of
14 it -- I did not have a chance to look at the full
15 3-hour interview with my client because, quite
16 frankly, I didn't get this until about 7:00, a
17 little after 7:00 last night. And I did not see
18 anything in there regarding Frank Carroll or the
19 bank security video.

20 What I'm having to rely on is what Mr. Butcher
21 gave me. So whether that is everything that the
22 State had, I'm still not exactly sure about that,
23 because I didn't get it directly from the State,
24 I'm pretty much having to rely on what another
25 attorney gave me who represents Mr. Drakeford on an

1 unrelated case.

2 And, you know, that puts me at a little bit of
3 a disadvantage because I'm not exactly sure if this
4 disk that Butcher gave me is everything they have.

5 And, you know, of course we're here about to
6 go forward with a trial, and I just don't know if I
7 have all the information I need to have in order to
8 be properly prepared.

9 And, again, I think some of that is because of
10 the situation of yesterday with me being in trial
11 in Sumter, and also just because of the
12 representation mix-up.

13 THE COURT: All right. All right, I'm going
14 to grant your motion, Mr. Deas.

15 Now, I don't know what position that puts you
16 in as far as this trial goes and whether or not
17 your client is going to be called one way or the
18 other.

19 MR. DEAS: Yes, sir.

20 THE COURT: But I think based on the discovery
21 confusion, to say the least, it would be unfair to
22 your client to move forward at this time.

23 He is still indicted.

24 MR. DEAS: Yes, sir.

25 THE COURT: He is still -- I assume he is on

1 bond?

2 MR. DEAS: Yes, he is.

3 THE COURT: And --

4 MR. DEAS: It is a \$50,000 surety bond, is my
5 understanding.

6 THE COURT: He still is going to have to
7 answer these charges --

8 MR. DEAS: Yes, sir.

9 THE COURT: -- at some point in time.

10 All right, any other matters?

11 MR. OGBURN: Your Honor, we've got a few --
12 are you finished, Mr. Deas?

13 MR. DEAS: Yes, sir.

14 MR. OGBURN: Okay. Thank you. Your Honor, I
15 would like to renew my motion from yesterday for
16 continuance.

17 My client tells me that he does have some
18 witnesses he would like to gather and bring to
19 court. He has not had the opportunity to do so.

20 And also, Your Honor, again we had short
21 notice on this, less than a week. So we would like
22 to make that motion for a continuance to allow my
23 client to have a proper defense.

24 THE COURT: Well, this crime took place,
25 allegedly took place a year and a half ago. And if

1 your client had witnesses I would assume he would
2 have told you about them by now, or before now.

3 MR. OGBURN: Well, Your Honor, I was the third
4 in line of appointed attorneys.

5 THE COURT: I understand. I understand. And
6 you told me yesterday in chambers. Exactly when
7 did you get the case?

8 MR. OGBURN: It was the latter part of May,
9 first of June.

10 THE COURT: 2009?

11 MR. OGBURN: 2009, correct.

12 THE COURT: And I assume you met with your
13 client since then?

14 MR. OGBURN: Yes, sir.

15 THE COURT: All right. Motion denied. I just
16 think that -- the State is ready to go forward.
17 There has been an adequate amount of time for any
18 attorney to have inquired into the elements of the
19 trial, of the offenses charged in the indictments,
20 and also a sufficient amount of time to garner
21 whatever witnesses.

22 I mean, I've got witnesses, I have heard that
23 before. I mean, the witnesses -- if he's got the
24 witnesses, they can still appear.

25 MR. OGBURN: Yes, sir.

1 THE COURT: We're not preventing your client
2 from calling any witness in his defense. But there
3 has been an adequate amount of time for that to be
4 figured out and witnesses notified.

5 Just because your client doesn't feel he is
6 prepared to go forward is not an adequate reason to
7 continue the trial.

8 MR. OGBURN: Yes, Your Honor. We would also
9 have a motion to not allow the video of Mr. Gibbs'
10 interview with the law enforcement.

11 THE COURT: All right.

12 MR. OGBURN: And the basis of that he does
13 make some statements that are prejudicial in the
14 fact that he did sell crack cocaine. And we would
15 argue that that prejudicial effect outweighs the
16 probative value concerning these charges.

17 THE COURT: Okay. Does your client challenge
18 the voluntariness of the statement?

19 MR. OGBURN: No, Your Honor.

20 THE COURT: Okay. Well, what -- can you
21 identify what he is talking about?

22 MR. MOAK: Your Honor, it is basically two
23 types of statements. He is saying the crack
24 cocaine statements. It is actually -- I would
25 characterize it as two different types. There is a

1 couple of series of statements where he is talking
2 about, you can talk to anyone, I don't steal; I
3 sell crack, I don't -- I sell drugs, I don't steal.
4 That is one issue.

5 But he also specifically, when telling the
6 investigator where he was at during the time frame
7 of the bank robbery, actually says that he was
8 selling crack cocaine as kind of like his alibi,
9 Your Honor. And this is where he says he is at.

10 THE COURT: At that time and place?

11 MR. MOAK: Yes, Your Honor. So, I mean, as to
12 the like --

13 THE COURT: Do you know where that is on the
14 video?

15 MR. MOAK: I believe we can identify it.
16 Lieutenant Boan did have a set of notes where he
17 went through and wrote the times when certain
18 statements were made, Your Honor.

19 THE COURT: I mean, does the tape -- I mean,
20 the video --

21 MR. MOAK: We have got the video here, Your
22 Honor.

23 THE COURT: I know. Somebody chronicled at
24 what time and what he said when? I don't want to
25 sit here and listen to three hours. We have got a

1 jury coming in 30 minutes.

2 MR. MOAK: The one we are talking about is I
3 think about 54 or 55 minutes, I think.

4 LIEUTENANT BOAN: A little over an hour.

5 MR. MOAK: Mr. Boan actually has a list of
6 times the statements are made. Apparently he has
7 it at your office?

8 LIEUTENANT BOAN: Yes.

9 MR. MOAK: How long will it take to get up
10 here?

11 LIEUTENANT BOAN: Ten minutes.

12 MR. MOAK: Ten minutes. We can skip through
13 and show you the statements we're talking about, or
14 we can play the whole --

15 THE COURT: How many statements are there?

16 MR. MOAK: Well, basically it is an hour-long
17 video. And during the interview at points he goes,
18 you know, I don't steal, I sell crack. Those --

19 THE COURT: So there is only one statement?

20 MR. MOAK: Only one full statement.

21 THE COURT: And at some point in time in there
22 he says something about crack cocaine?

23 MR. MOAK: Yes, Your Honor.

24 THE COURT: All right. Can we identify and
25 play just those portions?

1 MR. MOAK: That is what I think -- Lieutenant
2 Boan has his breakdown, but I don't know an easy
3 way to do that, but he says he doesn't have it with
4 him right now.

5 THE COURT: Well, we are ready for trial. I
6 mean, what are we going to do?

7 MR. MOAK: He brought the video.

8 THE COURT: Well, where is the --

9 MR. MOAK: Where is the laptop?

10 (Pause.)

11 MR. MOAK: Your Honor, it sounds like -- and
12 Lieutenant Boan is telling me he did not mark down
13 every time crack was mentioned. We may be better
14 off just watching the thing and seeing which ones
15 Mr. Ogburn is complaining about.

16 THE COURT: What do you want me to do with
17 this jury? I'm not going to let them sit in the
18 hall for three hours.

19 MR. MOAK: I mean, I don't intend to put this
20 video in until tomorrow in the order of witnesses.
21 That's when I'm calling Lieutenant Boan. So, I
22 mean, I think we have got some time to figure this
23 out.

24 THE COURT: Well, once you get started -- you
25 are saying you are not going to offer the video

1 until some time tomorrow?

2 MR. MOAK: Yes, Your Honor.

3 THE COURT: You have got witnesses --

4 MR. MOAK: I've got -- I'm figuring we are
5 supposed to be picking the jury starting at 10:30.
6 I've got my first witness, and he should be outside
7 right now. I figure we will pick the jury and do
8 opening statements, call a witness.

9 THE COURT: Where is your witness list?
10 Without holding you to it, who is your first
11 witness?

12 MR. MOAK: Arthur Macklin.

13 THE COURT: Second witness?

14 MR. MOAK: The second witness is probably
15 Lee -- Leah Bailey.

16 THE COURT: All right.

17 MR. MOAK: Melissa Roberts.

18 THE COURT: Okay.

19 MR. MOAK: Chad Roberts. Melissa Skipper.
20 Jasper Humbert.

21 THE COURT: Humbert?

22 MR. MOAK: Yes. That is the two SLED agents.

23 THE COURT: All right.

24 MR. MOAK: Then Pamela Moore.

25 THE COURT: Okay.

1 MR. MOAK: And I'm guessing that is going
2 to -- I was guessing that would get us through the
3 day.

4 And then tomorrow morning I had Brenda Lou
5 Fannin and Keri Gainey, Chad Moore, and Lee Boan.

6 THE COURT: All right. Okay, well, we will
7 probably be here late tonight looking at it.

8 All right, anything else?

9 MR. OGBURN: Well, Your Honor --

10 THE COURT: I can't rule on it.

11 MR. OGBURN: I understand.

12 THE COURT: Until I see it.

13 MR. OGBURN: One other motion is that the
14 tellers from the bank be sequestered.

15 THE COURT: Okay. Any problem with that?

16 MR. MOAK: I actually told them they probably
17 would be sequestered, Your Honor. As a matter of
18 fact, that is why they are split up into two --
19 like the first two, Roberts and Bailey, work in the
20 the Camden branch, and the other two work in the
21 Pontiac branch. That is kind of why they are
22 split up.

23 THE COURT: All right. Anything else?

24 MR. OGBURN: No, Your Honor.

25 THE COURT: All right. Well, the jury will be

1 here in 20 minutes. We'll qualify the jury and try
2 and get started.

3 But I would -- Mr. Moak, if you'll tell your
4 witness to try to identify -- if he is not going to
5 be involved in the trial today, he could take that
6 video and identify where --

7 MR. MOAK: We're going to try to work on that.
8 We will start working with Lee Boan on that until
9 the jury comes in, if you don't mind.

10 THE COURT: No.

11 MR. MOAK: So I want to get that done sooner
12 than later.

13 THE COURT: All right. We'll stand at ease
14 until the jury arrives.

15 (Break.)

16 THE COURT: Any voir dire from the State?

17 MR. MOAK: None from the State.

18 THE COURT: Any from the Defense?

19 MR. OGBURN: None from the Defense, Your
20 Honor.

21 THE COURT: Good morning, ladies and
22 gentlemen.

23 THE JURY PANEL: Good morning.

24 THE COURT: We're now prepared to go forward
25 with the trial of the case. As I told you

1 yesterday, this will be a criminal case. I'm going
2 to tell you something about it in just a minute,
3 but before I do I need to ask you several questions
4 to see if you know anything about this case, have
5 heard anything about this case, or know anybody
6 that is involved in this case.

7 As you know, any case that is brought before
8 the Court of General Sessions, that is, the
9 criminal court system, the prosecuting entity is
10 the State Solicitor's Office.

11 Now, in some states they call that the
12 District Attorney, some places they call it the
13 State's Attorney, but in South Carolina we -- our
14 prosecutor is the State Solicitor's Office.

15 So I need to know if any member of the jury --
16 and your state elected Solicitor is Mr. Barney
17 Giese. Now, you have not met him this week, but
18 you may have at one time or another voted for him.
19 He is our elected state Solicitor. I need to know
20 if any member of the jury panel is related by blood
21 or connected by marriage or employment or a close
22 personal acquaintance of Mr. Barney Giese? Does
23 anybody know Mr. Giese?

24 MALE JUROR: I know him, but not that well.

25 THE COURT: All right. Let me ask you to do

1 me one favor, ladies and gentlemen. When you
2 respond -- if you respond to any of the questions I
3 ask, if you'll identify yourself by jury number. I
4 have found over the last several years that,
5 particularly in criminal court, jurors feel a
6 little more comfortable being identified by the
7 jury number and not by name. It is just sort of
8 the type of cases that come before us in the
9 criminal court system where some jurors feel
10 uncomfortable being identified by name, so if you
11 will identify yourself by number and then -- and
12 just stand so the lady to my right, Ms. McCurdy,
13 who is taking down everything we have to say or do
14 in this court, can hear exactly what you have to
15 say.

16 (Male juror stands.)

17 THE COURT: Now, so your number, please, sir,
18 on the front row?

19 MALE JUROR: Fifty-six.

20 THE COURT: Mr. 56. And how do you know
21 Mr. Giese?

22 JUROR 56: Through a hunt club.

23 THE COURT: Through a hunt club?

24 JUROR 56: Yes, sir.

25 THE COURT: Do you see him occasionally?

1 JUROR 56: Probably just one time, that I know
2 of.

3 THE COURT: Okay. Would that fact in any way
4 interfere with your ability to give both the State
5 and the Defendant a fair and impartial trial?

6 JUROR 56: No, sir, it would not.

7 THE COURT: Okay. Thank you very much.

8 (Juror 56 seated.)

9 THE COURT: Anybody else?

10 (WHEREUPON, there was no response.)

11 THE COURT: Now, Mr. Giese is not actually
12 going to appear today for the prosecution. The
13 attorneys representing Mr. Giese or representing
14 that office are Mr. Ron Moak and Mr. Lir Derieg.

15 (Mr. Moak and Mr. Derieg stand.)

16 THE COURT: Now, these are the two attorneys,
17 Assistant Solicitors who work in the office of
18 Mr. Giese.

19 (Mr. Moak and Mr. Derieg are seated.)

20 THE COURT: Any members of the jury panel
21 related by blood or connected by marriage or
22 employment or a close personal acquaintance of
23 either Mr. Ron Moak or Mr. Lir Derieg? If so,
24 please stand. Anybody know either of these two
25 attorneys?

1 FEMALE JUROR: 104.

2 THE COURT: Just stand up. 104?

3 (Juror 104 stands.)

4 JUROR 104: Yes, sir.

5 THE COURT: And which of these attorneys,
6 ma'am?

7 JUROR 104: Mr. Moak. He is married to my
8 daughter's -- one of my daughter's best friends
9 from high school.

10 THE COURT: He is married to one of your
11 daughter's best friends?

12 JUROR 104: (Nods affirmatively.)

13 THE COURT: Ms. 104, would that fact in any
14 way interfere with your ability to give both the
15 State and the Defendant a fair and impartial trial?

16 JUROR 104: I don't think so.

17 THE COURT: All right. Thank you very much
18 ma'am.

19 (Juror 104 seated.)

20 THE COURT: Did somebody else raise their
21 hand? Yes, sir.

22 (Male juror stands.)

23 MALE JUROR: 127.

24 THE COURT: 127?

25 JUROR 127: Yes, sir.

1 THE COURT: Yes, sir?

2 JUROR 127: I'm an acquaintance of Mr. Moak's
3 and his wife's family. Coached him in wrestling
4 some, whooped him on a wrestling match. He won't
5 admit to that probably.

6 THE COURT: You expect me to believe that?

7 JUROR 127: If I showed you my leg you'd
8 believe it. Put him under oath and ask him, Judge.

9 THE COURT: Mr. 127, would that fact in any
10 way interfere with your ability to give both the
11 State and the Defendant a fair and impartial trial
12 in this case?

13 JUROR 127: Absolutely not.

14 THE COURT: Thank you very much.

15 (Juror 127 seated.)

16 (Male juror stands.)

17 THE COURT: Yes, sir?

18 MALE JUROR: 137.

19 THE COURT: 137?

20 JUROR 137: Yes.

21 THE COURT: Yes, sir? How do you -- which of
22 these attorneys -- you know Mr. Moak?

23 JUROR 137: Mr. Moak's wife, I'm good friends
24 with her family.

25 THE COURT: With his wife's family?

1 JUROR 137: Yes, sir.

2 THE COURT: All right. Mr. 137, would that
3 fact in any way interfere with your ability to give
4 both the State and the Defendant a fair and
5 impartial trial?

6 JUROR 137: No, sir.

7 THE COURT: All right. Thank you very much.
8 (Juror 137 seated.)

9 (Female juror stands.)

10 THE COURT: Yes, ma'am?

11 FEMALE JUROR: 125.

12 THE COURT: 125? Yes, ma'am?

13 JUROR 125: Mr. Moak was my attorney on a
14 guardian ad litem case.

15 THE COURT: Okay. How long ago?

16 JUROR 125: This year.

17 THE COURT: Okay. Is that matter over now?

18 JUROR 125: Yes, it is over.

19 THE COURT: Okay. Ms. 125, would that fact in
20 any way interfere with your ability to give both
21 the State and the Defendant a fair and impartial
22 trial?

23 JUROR 125: No.

24 THE COURT: Thank you very much.

25 (Juror 125 seated.)

1 THE COURT: Anybody else?

2 (WHEREUPON, there was no response.)

3 THE COURT: All right. Because the State
4 Solicitor's Office works very closely with law
5 enforcement, I do need to know if any member of the
6 jury panel or any member of your family is employed
7 in law enforcement.

8 And that could mean anything from the City of
9 Camden, the Sheriff's Department, the County
10 Sheriff's Department, SLED, the DEA or the FBI or
11 the CI -- I mean, not the CIA, but DEA, any law
12 enforcement agency, including any military law
13 enforcement agency.

14 Any member of the jury panel or any member of
15 your family employed in the law enforcement
16 business?

17 (Several jurors stand.)

18 THE COURT: Yes, ma'am, your name, please? I
19 mean, number.

20 FEMALE JUROR: Number 36.

21 THE COURT: Yes, ma'am?

22 JUROR 36: My son works for the City of Camden
23 Police. My husband is law enforcement with the
24 House of Representatives.

25 THE COURT: Yes, ma'am. Ms. 36, you say your

1 son works for the City?

2 JUROR 36: City Police, yes, sir.

3 THE COURT: All right. And your father-in-law
4 used to be the sheriff, as I recall?

5 JUROR 36: Sheriff, yes.

6 THE COURT: All right, ma'am, would that fact
7 in any way interfere with your ability to give both
8 the State and the Defendant a fair and impartial
9 trial?

10 JUROR 36: Absolutely not.

11 THE COURT: Thank you, ma'am.

12 JUROR 36: Thank you.

13 (Juror 36 seated.)

14 THE COURT: Yes, ma'am?

15 FEMALE JUROR: Number 21.

16 THE COURT: Let me find you on my list.

17 JUROR 21: I have a niece that works for the
18 Richland County Sheriff's Department.

19 THE COURT: All right. In what -- do you know
20 in what field?

21 JUROR 21: Lab.

22 THE COURT: In the lab?

23 JUROR 21: Yes, sir.

24 THE COURT: All right. Ms. 21, would that
25 fact in any way interfere with your ability to give

1 both the State and the Defendant a fair and
2 impartial trial?

3 JUROR 21: Absolutely not.

4 THE COURT: Thank you, ma'am.

5 (Juror 21 seated.)

6 THE COURT: Gentleman on the front row,
7 number, please?

8 MALE JUROR: 97.

9 THE COURT: Yes, sir?

10 JUROR 97: My son-in-law is an officer with
11 the Camden City Police.

12 THE COURT: Son-in-law?

13 JUROR 97: Yes, sir.

14 THE COURT: All right. Mr. 97, would that
15 fact in any way interfere with -- let me get his
16 name. What is his name?

17 JUROR 97: William West.

18 THE COURT: Is Mr. West involved in this case?

19 MR. MOAK: No, Your Honor.

20 THE COURT: Okay. Mr. 97, would that fact in
21 any way interfere with your ability to give both
22 the State and the Defendant a fair and impartial
23 trial?

24 JUROR 97: No, sir.

25 THE COURT: Thank you very much.

1 (Juror 97 seated.)

2 THE COURT: Yes, ma'am, with the white jacket
3 on?

4 FEMALE JUROR: 89. I don't know how this is
5 relevant to what you are talking about, but my
6 husband's cousin is an investigator with the
7 Kershaw County Sheriff's Department, I believe.

8 THE COURT: All right. And what is his name,
9 please?

10 JUROR 89: Dowey.

11 THE COURT: Mr. Dowey?

12 JUROR 89: (Nods affirmatively.)

13 THE COURT: All right. Ms. 89, would that
14 fact in any way interfere with your ability to give
15 both the State and the Defendant a fair and
16 impartial trial?

17 JUROR 89: No, sir.

18 THE COURT: Thank you very much, ma'am.

19 (Juror 89 seated.)

20 THE COURT: Yes, ma'am, with the black sweater
21 on?

22 FEMALE JUROR: 61.

23 THE COURT: 61? Yes, ma'am?

24 JUROR 61: My husband works for the Department
25 of Corrections.

1 THE COURT: Department of Corrections?

2 JUROR 61: (Nods affirmatively.)

3 THE COURT: Would that fact in any way
4 interfere with your ability to give both the State
5 and the Defendant a fair and impartial trial?

6 JUROR 61: No.

7 THE COURT: Thank you very much, ma'am.

8 (Juror 61 seated.)

9 THE COURT: Yes, sir?

10 MALE JUROR: Number 53.

11 THE COURT: 53. All right. Yes, sir?

12 JUROR 53: My nephew is a policeman with the
13 City of Hartsville.

14 THE COURT: Hartsville?

15 JUROR 53: (Nods affirmatively.)

16 THE COURT: All right. Would that fact in any
17 way interfere with your ability to give --

18 JUROR 53: No, sir.

19 THE COURT: -- both the State and the
20 Defendant a fair and impartial trial?

21 JUROR 53: No, sir.

22 THE COURT: Thank you very much, Mr. 53.

23 (Juror 53 seated.)

24 THE COURT: Yes, sir?

25 MALE JUROR: 103.

1 THE COURT: Yes, sir?

2 JUROR 103: I was in state law enforcement
3 years ago.

4 THE COURT: At SLED?

5 JUROR 103: No, sir, with DHEC.

6 THE COURT: With DHEC?

7 JUROR 103: Yes, sir.

8 THE COURT: All right. And how long ago?

9 JUROR 103: A couple of years ago.

10 THE COURT: All right. Would that fact in any
11 way interfere with your ability to give both the
12 State and the Defendant a fair and impartial trial?

13 JUROR 103: No, sir.

14 THE COURT: Thank you very much, Mr. 103.

15 JUROR 103: Yes, sir.

16 (Juror 103 seated.)

17 THE COURT: Yes, ma'am?

18 FEMALE JUROR: Number 62.

19 THE COURT: Yes, ma'am?

20 JUROR 62: I'm not sure if this constitutes
21 law enforcement, but my brother is the elected
22 coroner of Kershaw County.

23 THE COURT: Your brother is?

24 JUROR 62: Yes, sir.

25 THE COURT: Yes, ma'am. That counts. I mean,

1 I think that qualifies. Would that fact in any way
2 interfere with your ability to give both the State
3 and the Defendant a fair and impartial trial?

4 JUROR 62: No, sir.

5 THE COURT: Thank you, Ms. 62.

6 (Juror 62 seated.)

7 THE COURT: Anybody else?

8 (Male juror stands.)

9 THE COURT: Yes, sir?

10 MALE JUROR: My nephew is a deputy at the
11 Sheriff's Department. Lee Harden is his name.

12 THE COURT: And the number again was?

13 JUROR 56: 56.

14 THE COURT: Mr. 56, would that fact in any way
15 interfere with your ability to give both the State
16 and the Defendant a fair and impartial trial?

17 JUROR 56: No, sir.

18 THE COURT: You could be fair to both parties?

19 JUROR 56: It would not.

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

21 (Juror 56 seated.)

22 THE COURT: Anybody else?

23 (WHEREUPON, there was no response.)

24 THE COURT: All right, I'm going to take that
25 one step further and ask any member of the jury

1 panel if you regularly or even occasionally support
2 groups which have as their primary function the
3 support of law enforcement.

4 And that can mean anything from Mothers
5 Against Drunk Driving or Students Against Drunk
6 Driving or Citizens Against Violence or the
7 Trooper's Association or the Sheriff's Association,
8 any of these groups that you support either
9 financially or as a volunteer.

10 I even include things like Sister Care or
11 people who are concerned about victim's rights. I
12 forget the name of the group that works with
13 prisoners when they come out of prison.

14 But, anyway, any of these groups that you
15 support either financially or as a volunteer? Any
16 member of the jury panel?

17 (Several jurors stand.)

18 THE COURT: Yes, ma'am? And your number,
19 please? Yes?

20 FEMALE JUROR: We contributed to the Sheriff's
21 Association.

22 THE COURT: Your number, please?

23 FEMALE JUROR: 69.

24 THE COURT: 69. Okay. Thank you, ma'am.

25 (Juror 69 seated.)

1 THE COURT: Yes, ma'am? The lady behind you.

2 FEMALE JUROR: 111. I'm assuming that
3 donations count?

4 THE COURT: Yes, that's what I'm talking
5 about.

6 JUROR 111: I support the troopers.

7 THE COURT: Trooper's Association?

8 JUROR 111: (Nods affirmatively.)

9 THE COURT: All right, now, ma'am, I ask this
10 question every time, so stand back up. Trooper's
11 Association?

12 JUROR 111: Yes.

13 THE COURT: Did you get a little sticker to
14 put on the back of your car when you sent the
15 donation in?

16 JUROR 111: Yes, I did.

17 THE COURT: Did you put it on your car?

18 JUROR 111: No.

19 THE COURT: Do you ever get a ticket?

20 JUROR 111: No.

21 THE COURT: You just shot my theory down.

22 Thank you very much, ma'am.

23 (Juror 111 seated.)

24 THE COURT: Lady in the back, yes, ma'am,
25 number?

1 FEMALE JUROR: Number 108.

2 THE COURT: Yes, ma'am?

3 JUROR 108: I also contribute to the Trooper's
4 Association.

5 THE COURT: I'm not going to ask you that
6 question.

7 JUROR 108: Well, I did not put the sticker on
8 my car, but I haven't had a ticket either.

9 THE COURT: All right, good. Thank you very
10 much, Ms. 108.

11 (Juror 108 seated.)

12 THE COURT: Yes, ma'am?

13 FEMALE JUROR: 112. I contributed to the
14 Trooper's Association.

15 THE COURT: All right. Thank you very much,
16 Ms. 112.

17 (Juror 112 seated.)

18 THE COURT: And?

19 FEMALE JUROR: 133. I contribute to the
20 Trooper's Association.

21 THE COURT: Thank you very much, Ms. 133.

22 (Juror 133 seated.)

23 MALE JUROR: 15.

24 THE COURT: Number 15.

25 JUROR 15: Same. No, sir, I did not put the

1 sticker on my car, but I did get a ticket.

2 THE COURT: I wouldn't have told that.

3 (Juror 15 seated.)

4 THE COURT: And now Mr. -- on the front row?

5 JUROR 56: I support the Sheriff's

6 Association.

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

8 (Juror 56 seated.)

9 THE COURT: And yes, Ms. 62?

10 JUROR 62: 62. I supported the Trooper's

11 Association and I supported Sister Care both

12 financial as well as served --

13 THE COURT: As a volunteer?

14 JUROR 62: Yes, sir.

15 THE COURT: All right. Thank you very much,

16 Ms. 62.

17 (Juror 62 seated.)

18 MALE JUROR: 135. I have supported the

19 Sheriff's Association.

20 THE COURT: All right, Mr. 135, thank you very
21 much.

22 (Juror 135 seated.)

23 MALE JUROR: Number 59.

24 THE COURT: Yes, sir?

25 JUROR 59: I supported the sheriff campaign

1 for election.

2 THE COURT: All right.

3 JUROR 59: Financial donation.

4 THE COURT: All right. Thank you very much,
5 Mr. 59.

6 (Juror 59 seated.)

7 THE COURT: Okay. Now, ladies and gentlemen,
8 what I hold in my hand are what is known as
9 indictments. These are the formal documents by
10 which a case is brought into court. They are not
11 evidence of anything, they are simply the charging
12 documents by which brings an individual, a
13 Defendant into court. They are not, as I say, they
14 are not evidence of anything, particularly they are
15 not evidence of the guilt or the innocence of the
16 Defendant.

17 Any individual, any individual in this county
18 and this state and this nation is presumed innocent
19 of the charges that the indictments charge until
20 proven guilty to a jury by terms beyond a
21 reasonable doubt.

22 In other words, these documents are not
23 evidence of guilt or anything. They are just the
24 formal documents by which a case is brought into
25 court, and they charge the Defendant with several

1 different violations of the law.

2 Now, the Defendant in this case today is
3 Mr. Jarvis Gibbs.

4 Mr. Gibbs, would you stand and face the jury,
5 please?

6 (Mr. Gibbs stands.)

7 THE COURT: Any member of the jury panel
8 related by blood, connected by marriage or
9 employment or a close personal acquaintance of
10 Mr. Jarvis Gibbs? If so, please stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: Anybody know Mr. Gibbs?

13 (WHEREUPON, there was no response.)

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

15 (Mr. Gibbs seated.)

16 THE COURT: Mr. Gibbs is represented in this
17 matter today by Mr. Mike Ogburn, an attorney who
18 practices here in Camden and in Columbia.

19 (Mr. Ogburn stands.)

20 THE COURT: Any member of the jury panel
21 related by blood, connected by marriage or
22 employment or a close personal acquaintance of
23 Mr. Mike Ogburn or perhaps have been represented by
24 him presently or at any time in the past? Anybody
25 have any connection with Mr. Ogburn?

1 (WHEREUPON, there was no response.)

2 THE COURT: All right, sir. Thank you very
3 much.

4 (Mr. Ogburn seated.)

5 THE COURT: Now, I'm going to tell you a
6 little bit about these indictments because I need
7 to know if you know anything about it.

8 The Defendant is charged in three separate
9 indictments. And they are as follows.

10 First, Mr. Gibbs is charged with entering a
11 bank with intent to steal, which is our bank
12 robbery statute. That on or about July 25th, 2008,
13 the Defendant did commit the crime of bank robbery
14 by entering the First Palmetto Bank with intent to
15 steal; that is, the Defendant did use threat of
16 force with a deadly weapon by pointing a handgun at
17 the bank tellers in order to permanently deprive
18 the victim of U.S. currency. That is in violation
19 of Section 16-11-380.

20 He is charged in a second indictment with use
21 of a firearm during commission of a violent crime
22 on the same day. He is charged with possessing and
23 visibly displaying a firearm or visibly displaying
24 a knife during the commission or attempted
25 commission of a violent crime; that is, bank

1 robbery.

2 And the third charge is that on or about the
3 same date he did kidnap or hold four bank tellers
4 by the use of some force or threat of force.

5 So, July 25th, 2008. Where did this occur,
6 Mr. Moak? At which --

7 MR. MOAK: First Palmetto branch in Dusty Bend
8 by the railroad tracks.

9 THE COURT: It occurred, allegedly occurred
10 January 25th, 2008, First Palmetto Bank at the
11 Dusty Bend branch.

12 I need to know if any member of the jury panel
13 knows anything about this case, heard anything
14 about it, read anything about it, or talked to
15 anybody about it. Does anybody know something
16 about this case?

17 Now, I'm going to ask you if you do remember
18 something about it, just answer my specific
19 questions, don't volunteer anything.

20 (Female juror stands.)

21 THE COURT: So, Ms. 36?

22 JUROR 36: I work for First Palmetto Savings
23 Bank.

24 THE COURT: All right. You do now work for
25 First --

1 JUROR 36: Yes, sir.

2 THE COURT: And did you work for First
3 Palmetto Bank July 25th, 2008?

4 JUROR 36: I have been there 24 years; yes.

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

6 JUROR 36: You're welcome.

7 THE COURT: I'm going to excuse you from the
8 trial of this case. And you are free to go if you
9 wish to go, ma'am.

10 (Juror 36 excused by the Court.)

11 THE COURT: Did somebody else raise their
12 hand?

13 (Male juror stands.)

14 MALE JUROR: I had a niece working at that
15 bank at the time.

16 THE COURT: You had a niece that worked at
17 that bank at that time?

18 MALE JUROR: Yes, sir.

19 THE COURT: And what was your number again?

20 MALE JUROR: 137.

21 THE COURT: Did you talk to her about it?

22 JUROR 137: Sort of, yes.

23 THE COURT: All right. Mr. 137, I'm going to
24 excuse you from the trial of this case. You are
25 free to go, sir.

1 (Juror 137 excused by the Court.)

2 THE COURT: Anybody else? Anybody else read
3 about it or heard anything else about it? I see a
4 hand back there.

5 (Male juror stands.)

6 THE COURT: Yes, number, please?

7 MALE JUROR: Number 42.

8 THE COURT: 42?

9 JUROR 42: Yes, sir.

10 THE COURT: All right, sir. And --

11 JUROR 42: I read about it.

12 THE COURT: Just read about it?

13 JUROR 42: Yes.

14 THE COURT: Do have any other connection with
15 it one way or the other?

16 JUROR 42: I barely remember anything more
17 than the headlines.

18 THE COURT: All right. Did you, based on
19 those -- just on the headlines, did you form an
20 opinion one way or the other?

21 JUROR 42: No, I did not.

22 THE COURT: Okay. Thank you very much,
23 Mr. 42.

24 (Juror 42 seated.)

25 (Female juror stands.)

1 THE COURT: Yes, ma'am? Your number again?

2 FEMALE JUROR: 104.

3 THE COURT: 104?

4 JUROR 104: I read about it. Two of the
5 tellers -- I'm sorry. I read about and talked
6 about it. Two of the tellers are customers of
7 mine.

8 THE COURT: Okay. So you talked to two of the
9 tellers that were there at that time?

10 JUROR 104: (Nods affirmatively.)

11 THE COURT: All right. And you talked with
12 them shortly after the --

13 JUROR 104: Yes, sir.

14 THE COURT: -- event occurred?

15 JUROR 104: (Nods affirmatively.)

16 THE COURT: All right, Ms. Phillips, I am
17 going to excuse you from the trial of this case.
18 Thank you very much.

19 (Juror 104 excused by the Court.)

20 THE COURT: Anybody else?

21 (WHEREUPON, there was no response.)

22 THE COURT: All right, ladies and gentlemen,
23 let me ask if any member of the jury panel or any
24 member of your family has ever been the victim of a
25 violent crime. Not necessarily like this case, but

1 any other situation that -- of your family where
2 you may -- you or any member of your family may
3 have been the victim of a violent crime. And I'm
4 not going to ask you a lot of details about it
5 because I don't want to embarrass anybody, but if
6 you'll just answer just a couple of specific
7 questions.

8 Yes, sir, your number, please? Just please
9 stand.

10 (Male juror stands.)

11 MALE JUROR: Number 63.

12 THE COURT: Mr. 63, was it you or a member of
13 your family?

14 JUROR 63: My oldest daughter.

15 THE COURT: Your oldest daughter? Was it some
16 sort of attack?

17 JUROR 63: Back in 1982 a young black guy
18 assaulted and robbed her on Main Street in Kershaw.

19 THE COURT: All right. All right.

20 Mr. Hudson -- I'm sorry, Mr. 63, I apologize --
21 would that fact in any way interfere with your
22 ability to give --

23 JUROR 63: I'm going to say no, but --

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

25 (Juror 63 seated.)

1 (Female juror stands.)

2 THE COURT: Yes, ma'am?

3 FEMALE JUROR: Number 58.

4 THE COURT: 58?

5 JUROR 58: Yes.

6 THE COURT: And, Ms. 58, was the violent crime
7 you or a member of your family?

8 JUROR 58: A member of my family. I had a
9 brother to get stabbed and killed in 1983.

10 THE COURT: Excuse me?

11 JUROR 58: I had a brother get stabbed to
12 death in 1983.

13 THE COURT: He was killed?

14 JUROR 58: He was killed.

15 THE COURT: 1983?

16 JUROR 58: Yes. He was 23 years old.

17 THE COURT: Ma'am, would that fact in any way
18 interfere with your ability to give both the State
19 and the Defendant a fair and impartial trial?

20 JUROR 58: No, sir.

21 THE COURT: Thank you very much, ma'am.

22 (Juror 58 seated.)

23 (Female juror stands.)

24 THE COURT: And lady -- yes, ma'am?

25 FEMALE JUROR: Number 79.

1 THE COURT: Number 79? Yes, ma'am?

2 JUROR 79: It was my youngest brother was
3 killed in 2001.

4 THE COURT: Was that here in Kershaw County?

5 JUROR 79: It was in Cassatt.

6 THE COURT: Cassatt? That is in Kershaw
7 County.

8 JUROR 79: Yes.

9 THE COURT: Ma'am, would that fact in any way
10 interfere with your ability to give both the State
11 and the Defendant a fair and impartial trial in
12 this case?

13 JUROR 79: No.

14 THE COURT: You think you can be fair to both
15 parties?

16 JUROR 79: Yes.

17 THE COURT: All right. Thank you very much,
18 ma'am.

19 (Juror 79 seated.)

20 THE COURT: Anybody else?

21 (WHEREUPON, there was no response.)

22 THE COURT: I'll turn that around and ask if
23 any member of your family -- any member of the jury
24 panel or any member of your family has ever been
25 accused of committing a violent crime? And by that

1 I mean not just common ordinary talk, but to the
2 point that they were accused and arrested and
3 prosecuted for committing a violent crime?

4 And, again, I'm not going to ask you to give
5 me too many details, just I do need to know if any
6 member of your family has been accused of
7 committing a violent crime.

8 (Male juror stands.)

9 THE COURT: Yes, sir, and your number, please?

10 MALE JUROR: 136.

11 THE COURT: All right, sir. Was it you or a
12 member of your family?

13 JUROR 136: Member of the family, grandson.
14 He's in Hartsville.

15 THE COURT: How long ago?

16 JUROR 136: This year.

17 THE COURT: Is that matter concluded at this
18 time?

19 JUROR 136: No.

20 THE COURT: It is still pending?

21 JUROR 136: Yes.

22 THE COURT: All right, thank you very much.
23 Let me ask you, Mr. 136, would that fact in any way
24 interfere with your ability to give both the State
25 and the Defendant a fair and impartial trial?

1 JUROR 136: No.

2 THE COURT: Thank you very much.

3 (Juror 136 seated.)

4 THE COURT: Anybody else?

5 (WHEREUPON, there was no response.)

6 THE COURT: Any other member of the jury panel
7 work for First Palmetto Savings Bank or any member
8 of your family work for that bank?

9 (Several jurors stand.)

10 THE COURT: Yes, ma'am, and your number,
11 please?

12 FEMALE JUROR: 89.

13 THE COURT: Yes, ma'am?

14 JUROR 89: My sister-in-law works for First
15 Palmetto.

16 THE COURT: All right. And do you know if she
17 was in any way involved in this incident?

18 JUROR 89: I don't think so.

19 THE COURT: You never talked to her about it?

20 JUROR 89: Huh-uh, no.

21 THE COURT: Okay. Ms. 89, do you feel that
22 you could be fair and impartial to both parties in
23 this case?

24 JUROR 89: Yes, sir.

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

1 (Juror 89 seated.)

2 THE COURT: Yes, sir, with the white shirt on,
3 number?

4 MALE JUROR: 105. My sister works for First
5 Palmetto.

6 THE COURT: Your sister works there?

7 JUROR 105: Yes, sir.

8 THE COURT: Okay. She doesn't work at that
9 branch?

10 JUROR 105: No.

11 THE COURT: Mr. 105, did you ever talk to her
12 about this case?

13 JUROR 105: No, sir.

14 THE COURT: Okay. Would the fact that your
15 sister works for that bank, would that in any way
16 interfere with your ability to give both the State
17 and the Defendant a fair and impartial trial?

18 JUROR 105: No, sir.

19 THE COURT: Thank you very much.

20 (Juror 105 seated.)

21 THE COURT: Anybody else?

22 (WHEREUPON, there was no response.)

23 THE COURT: All right, ladies and gentlemen,
24 I'm going to call out a list of names of potential
25 witnesses.

1 Now, most of these witnesses are not present
2 in the courtroom at this time, but I'm going to ask
3 you if any member of the jury panel is related by
4 blood or connected by marriage or employment of any
5 one of the following.

6 The question is the same as to each one, but
7 if any member of the -- any witness is present in
8 the courtroom, I would ask you to stand so the jury
9 can identify you.

10 Lee Boan, with the Camden Police Department.

11 (Mr. Boan stands.)

12 THE COURT: Does anybody know Mr. Boan?

13 Mr. Boan, I can't see.

14 (Mr. Boan seated.)

15 THE COURT: Yes, ma'am?

16 FEMALE JUROR: 108.

17 THE COURT: 108?

18 JUROR 108: Uh-huh.

19 THE COURT: And how do you know Mr. Boan,
20 ma'am?

21 JUROR 108: His mother and I are good friends.

22 THE COURT: Just friends?

23 JUROR 108: Yes, sir.

24 THE COURT: Do you see him on a fairly regular
25 basis?

1 JUROR 108: Not regular. Couple of times a
2 year.

3 THE COURT: But you don't go to church with
4 him or don't go to meetings with him or that sort
5 of thing?

6 JUROR 108: No, sir.

7 THE COURT: Okay, thank you. Ms. 106, would
8 that fact in any way interfere with your ability to
9 give both the State and the Defendant a fair and
10 impartial trial?

11 JUROR 108: No, sir.

12 THE COURT: Thank you very much.

13 (Juror 108 seated.)

14 THE COURT: Somebody else raised their hand?

15 (Male juror stands.)

16 MALE JUROR: 109.

17 THE COURT: 109? Yes, sir?

18 JUROR 109: We went to school together.

19 THE COURT: Went to school together?

20 JUROR 109: (Nods affirmatively.) Yes, sir.

21 THE COURT: Do you see him out --

22 JUROR 109: Not since school, not since high
23 school.

24 THE COURT: Okay. Would that fact -- Mr. 109,
25 would that fact in any way interfere with your

1 ability to give both the State and the Defendant a
2 fair and impartial trial?

3 JUROR 109: No.

4 THE COURT: Thank you very much.

5 (Juror 109 seated.)

6 THE COURT: Anybody else?

7 (WHEREUPON, there was no response.)

8 THE COURT: Ed Corey, also with the City
9 Police Department.

10 (Witness not present.)

11 (WHEREUPON, there was no response.)

12 THE COURT: Pamela Moore, Camden City Police
13 Department.

14 (Witness not present.)

15 (WHEREUPON, there was no response.)

16 THE COURT: Gayle Pitts, City Police
17 Department.

18 (Witness not present.)

19 (WHEREUPON, there was no response.)

20 THE COURT: Brenda Lou Fannin.

21 (Witness not present.)

22 (WHEREUPON, there was no response.)

23 THE COURT: Melissa Roberts.

24 (Witness not present.)

25 (WHEREUPON, there was no response.)

1 THE COURT: Keri Gainey.
2 (Witness not present.)
3 (WHEREUPON, there was no response.)
4 THE COURT: Leah Bailey.
5 (Witness not present.)
6 (Female juror stands.)
7 THE COURT: Yes, ma'am, your number, please?
8 FEMALE JUROR: 120.
9 THE COURT: Yes, ma'am, how do you know
10 Ms. Bailey?
11 JUROR 120: I go to church with her family.
12 THE COURT: With her family?
13 JUROR 120: Father and mother. I see her at
14 church.
15 THE COURT: All right. Ms. 120, would that
16 fact in any way interfere with your ability to give
17 both the State and the Defendant a fair and
18 impartial trial?
19 JUROR 120: No, sir.
20 THE COURT: Thank you very much, ma'am.
21 (Juror 120 seated.)
22 THE COURT: Arthur Macklin.
23 (Witness not present.)
24 (Female juror stands.)
25 THE COURT: Yes, ma'am? Your number?

1 FEMALE JUROR: 44. And I taught him when he
2 was in middle school.

3 THE COURT: Is that the last time you had --

4 JUROR 44: Yes, sir.

5 THE COURT: -- contact with him basically?

6 JUROR 44: Yes, sir.

7 THE COURT: Would that fact in any way
8 interfere with your ability to give both the State
9 and the Defendant a fair and impartial trial?

10 JUROR 44: No, sir.

11 THE COURT: Thank you very much, ma'am.

12 (Juror 44 seated.)

13 (Male juror stands.)

14 THE COURT: Yes, sir?

15 MALE JUROR: Number 9.

16 THE COURT: Number 9? Yes, sir?

17 JUROR 9: Yes, I know him from school.

18 THE COURT: Know him from school?

19 JUROR 9: Yes, sir.

20 THE COURT: Do you have any other relationship
21 with him, either business or social or church or
22 anything like that?

23 JUROR 9: No, sir.

24 THE COURT: Okay. Mr. 9 -- Number 9, would
25 that fact in any way interfere --

1 JUROR 9: No, sir.

2 THE COURT: -- with your ability to give the
3 State and the Defendant a fair and impartial trial?

4 JUROR 9: No, sir.

5 THE COURT: Thank you very much.

6 (Juror 9 seated.)

7 (Female juror stands.)

8 THE COURT: Yes, ma'am?

9 FEMALE JUROR: Number 95.

10 THE COURT: 95?

11 JUROR 95: Number 95. I know him from school.

12 THE COURT: Did you go to school with him?

13 JUROR 95: I went to school with him.

14 THE COURT: All right. Do you have -- ever
15 had any other contact with him?

16 JUROR 95: No, sir.

17 THE COURT: I mean day-to-day?

18 JUROR 95: No, sir.

19 THE COURT: Okay. Ms. 95, would that fact in
20 any way interfere with your ability to give both
21 the State and the Defendant a fair and impartial
22 trial?

23 JUROR 95: No, sir.

24 THE COURT: Thank you very much, ma'am.

25 (Juror 95 seated.)

1 THE COURT: Sylvester Fludd.
2 (Witness not present.)
3 (WHEREUPON, there was no response.)
4 THE COURT: Maynard Wesley Thiel.
5 (Witness not present.)
6 (WHEREUPON, there was no response.)
7 THE COURT: Chad Roberts.
8 (Witness not present.)
9 (WHEREUPON, there was no response.)
10 THE COURT: James Owens.
11 (Witness not present.)
12 (WHEREUPON, there was no response.)
13 THE COURT: Gene Brown.
14 (Witness not present.)
15 (WHEREUPON, there was no response.)
16 THE COURT: Melissa Skipper.
17 (Witness not present.)
18 (WHEREUPON, there was no response.)
19 THE COURT: She is with SLED. Jasper Humbert,
20 also with SLED.
21 (Witness not present.)
22 (WHEREUPON, there was no response.)
23 THE COURT: John Edward Little.
24 (Witness not present.)
25 (WHEREUPON, there was no response.)

1 THE COURT: Chad Moore.

2 (Witness not present.)

3 (Male juror stands.)

4 MALE JUROR: 109.

5 THE COURT: Yes, sir?

6 JUROR 109: School.

7 THE COURT: Any other contact, present day,
8 business or social or church or anything like that?

9 JUROR 109: No, sir.

10 THE COURT: All right, sir. Again, you'd be
11 fair and impartial to both parties?

12 JUROR 109: Yes, sir.

13 THE COURT: Thank you very much.

14 (Juror 109 seated.)

15 THE COURT: All right. Anything further from
16 the State?

17 MR. MOAK: No other witnesses, Your Honor.

18 THE COURT: From the Defendant?

19 MR. OGBURN: No, Your Honor.

20 THE COURT: All right, ladies and gentlemen,
21 I'm going to ask one further question. Does any
22 member of the jury panel know of any reason
23 whatsoever that you feel that you could not sit and
24 fairly determine this case, listen to the facts,
25 listen to the witnesses, listen to my instructions

1 on the law as it applies to this case and not be
2 fair and impartial and decide this matter without
3 any bias, one way or the other? Does any member of
4 the jury panel feel you could not be -- sit on this
5 case and be fair and impartial?

6 (WHEREUPON, there was no response.)

7 THE COURT: All right. Thank you very much.
8 All right, Madam Clerk.

9 THE CLERK: The strikes are five and five.

10 Pull 30?

11 THE COURT: Approach the bench, counsel.

12 (WHEREUPON, a bench conference was held
13 in the presence of the jury but out of
14 the hearing of the jury.)

15 THE COURT: Approach the bench, counsel, one
16 more time.

17 (WHEREUPON, a bench conference was held
18 in the presence of the jury but out of
19 the hearing of the jury.)

20 THE COURT: All right, Madam Clerk, give us
21 the jury.

22 Ladies and gentlemen, the computer is whizzing
23 away and drawing names, and it is sort of like the
24 lottery, we don't know whose name is going to be
25 drawn.

1 (Male juror stands.)

2 THE COURT: Yes, sir?

3 MALE JUROR: 71.

4 THE COURT: Hold on a minute. Yes, sir, Mr.
5 71?

6 JUROR 71: Approximately five years ago, maybe
7 a little bit more, my son was tried and convicted
8 here, served a year in prison. I'm not sure -- you
9 said a violent offense. I'm not sure whether the
10 offense was violent or not.

11 THE COURT: All right. Well, I appreciate
12 your candor, Mr. 71. Do you think that fact would
13 in any way interfere to give both the State and the
14 Defendant a fair and impartial trial?

15 JUROR 71: Not at all.

16 THE COURT: You still feel comfortable --

17 JUROR 71: Oh, yes.

18 THE COURT: Thank you very much. I appreciate
19 your candor, Mr. 71.

20 (Juror 71 seated.)

21 (Male juror stands.)

22 THE COURT: Yes, sir?

23 MALE JUROR: Just the matter we spoke about
24 yesterday.

25 THE COURT: Number?

1 MALE JUROR: 82.

2 THE COURT: Yes, sir, Mr. 82?

3 JUROR 82: In 2000 I had a misdemeanor assault
4 and battery charge.

5 THE COURT: Right. I think we talked about
6 that yesterday. I think you are still -- you are
7 qualified to sit on this jury.

8 JUROR 82: Okay.

9 THE COURT: Let me ask you this, would that
10 fact in any way interfere with your ability to give
11 both the State and the Defendant in this case a
12 fair and impartial trial?

13 JUROR 82: No, sir.

14 THE COURT: All right. Thank you very much.
15 (Juror 82 seated.)

16 THE COURT: Ladies and gentlemen, we used to
17 have a drum and pull the names out of the drum. It
18 worked perfectly every time. Now we have got a
19 computer, and it is talking back.

20 So I'm going to ask -- if anybody needs a
21 bathroom break, it would be a good time to take it.
22 It is probably going to take us five or ten minutes
23 to get this straightened out, so just relax for a
24 few minutes. Be at ease for about ten minutes.

25 Thank you.

1 (Break.)

2 THE COURT: I ought to ask you to look left
3 and right to make sure your neighbors are in the
4 courtroom and make sure nobody has escaped. Does
5 anybody know of anybody that is not back in the
6 courtroom? Okay, fine.

7 All right, Madam Clerk, give us a jury.

8 THE CLERK: Thank you, Your Honor. As I call
9 your name, please come forward and stand in front
10 of the attorney's table. I'll ask the questions.
11 You do not need to respond. Please bring any
12 personal items that you have with you.

13 Thank you.

14 THE COURT: Did everybody hear that?

15 JURORS: No.

16 THE CLERK: Please follow the instructions
17 that I gave you yesterday as you come forward and
18 stand in front of the attorney's table. Please
19 bring any personal items that you might have with
20 you. And, remember, you do not have to respond to
21 any of the questions.

22 Thank you.

23 Number 8.

24 (Juror 8 approaches.)

25 THE CLERK: What sayeth the State?

1 MR. MOAK: Please present Mr. 8.
2 THE CLERK: What sayeth the Defense?
3 MR. OGBURN: Please seat the juror.
4 THE CLERK: Thank you.
5 (WHEREUPON, Juror 8, a white male, was
6 seated on the jury.)
7 THE CLERK: Number 58.
8 (Juror 58 approaches.)
9 THE CLERK: What sayeth the State?
10 MR. MOAK: Please excuse this juror.
11 THE CLERK: Thank you.
12 (WHEREUPON, Juror 58, a black female,
13 was excused by the State.)
14 THE CLERK: Number 128.
15 (Juror 128 approaches.)
16 THE CLERK: What sayeth the State?
17 MR. MOAK: Please present this juror.
18 THE CLERK: What sayeth the Defense?
19 MR. OGBURN: Please seat the juror.
20 THE CLERK: Thank you.
21 (WHEREUPON, Juror 128, a white female,
22 was seated on the jury.)
23 THE CLERK: Number 111.
24 (Juror 111 approaches.)
25 THE CLERK: What sayeth the State?

1 MR. MOAK: Please present this juror.

2 THE CLERK: What sayeth the Defense?

3 MR. OGBURN: Please excuse the juror from the
4 trial of this case.

5 THE CLERK: Thank you.

6 (WHEREUPON, Juror 111, a white female,
7 was excused by the Defense.)

8 THE CLERK: Number 120.

9 (Juror 120 approaches.)

10 THE CLERK: What sayeth the State?

11 MR. MOAK: Please present Ms. 120.

12 THE COURT: What sayeth the Defense?

13 MR. OGBURN: Please excuse the juror from the
14 trial of this case.

15 THE CLERK: Thank you.

16 (WHEREUPON, Juror 120, a white female,
17 was excused by the Defense.)

18 THE CLERK: Number 105.

19 (Juror 105 approaches.)

20 THE CLERK: What sayeth the State?

21 MR. MOAK: Please present Mr. 105.

22 THE CLERK: What sayeth Defense?

23 MR. OGBURN: Please excuse the juror from the
24 trial of the case.

25 (WHEREUPON, Juror 105, a white male, was

1 excused by the Defense.)
2 THE CLERK: Number 97.
3 (Juror 97 approaches.)
4 THE CLERK: What sayeth the State?
5 MR. MOAK: Please present 97.
6 THE CLERK: What sayeth Defense?
7 MR. OGBURN: Please seat the juror.
8 THE CLERK: Thank you.
9 (WHEREUPON, Juror 97, a white male, was
10 seated on the jury.)
11 THE CLERK: Number 47.
12 (Juror 47 approaches.)
13 THE CLERK: What sayeth the State?
14 MR. MOAK: Please present Ms. 47.
15 THE CLERK: What sayeth the Defense?
16 MR. OGBURN: Please seat the juror.
17 THE CLERK: Thank you.
18 (WHEREUPON, Juror 48, a white female,
19 was seated on the jury.)
20 THE CLERK: Number 25.
21 (Juror 25 approaches.)
22 THE CLERK: What sayeth the State?
23 MR. MOAK: Please present Ms. 25.
24 THE CLERK: What sayeth the Defense?
25 MR. OGBURN: Please seat the juror.

1 THE CLERK: Thank you.
2 (WHEREUPON, Juror 25, a black female,
3 was seated on the jury.)
4 THE CLERK: Number 59.
5 (Juror 59 approaches.)
6 THE CLERK: What sayeth the State?
7 MR. MOAK: Please present Mr. 59.
8 THE CLERK: What sayeth the Defense?
9 MR. OGBURN: Please seat the juror.
10 THE CLERK: Thank you.
11 (WHEREUPON, Juror 59, a white male, was
12 seated on the jury.)
13 THE CLERK: Number 132.
14 (Juror 132 approaches.)
15 THE CLERK: What sayeth the State?
16 MR. MOAK: Please present Mr. 132.
17 THE CLERK: What sayeth the Defense?
18 MR. OGBURN: Please seat the juror.
19 THE CLERK: Thank you.
20 (WHEREUPON, Juror 132, a white male, was
21 seated on the jury.)
22 THE CLERK: Number 130.
23 (Juror 130 approaches.)
24 THE CLERK: What sayeth the State?
25 MR. MOAK: Please present Mr. 130.

1 THE CLERK: What sayeth the Defense?
2 MR. OGBURN: Please seat the juror.
3 THE CLERK: Thank you.
4 (WHEREUPON, Juror 130, a white male, was
5 seated on the jury.)
6 THE CLERK: Number 56.
7 (Juror 56 approaches.)
8 THE CLERK: What sayeth the State?
9 MR. MOAK: Please present Mr. 56.
10 THE CLERK: What sayeth the Defense?
11 MR. OGBURN: Please present the juror.
12 THE CLERK: Thank you.
13 (WHEREUPON, Juror 56, a white male, was
14 seated on the jury.)
15 THE CLERK: Number 15.
16 (Juror 15 approaches.)
17 THE CLERK: What sayeth the State?
18 MR. MOAK: Please present Number 15.
19 THE CLERK: What sayeth Defense?
20 MR. OGBURN: Please seat the juror.
21 THE CLERK: Thank you.
22 (WHEREUPON, Juror 15, a white male, was
23 seated on the jury.)
24 THE CLERK: Number 45.
25 (Juror 45 approaches.)

1 THE CLERK: What sayeth the State?

2 MR. MOAK: Please present Ms. 45.

3 THE CLERK: What sayeth Defense?

4 MR. OGBURN: Please excuse the juror from the
5 trial of this case.

6 THE CLERK: Thank you.

7 (WHEREUPON, Juror 45, a white female,
8 was excused by the Defense.)

9 THE CLERK: Counsel, the strikes are the State
10 has one and the Defense has four.

11 Thank you.

12 Number 103.

13 (Juror 103 approaches.)

14 THE CLERK: What sayeth the State?

15 MR. MOAK: Please present Mr. 103.

16 THE CLERK: What sayeth the Defense?

17 MR. OGBURN: Please seat the juror.

18 THE CLERK: Thank you.

19 (WHEREUPON, Juror 103, a white male, was
20 seated on the jury.)

21 THE CLERK: Number 11.

22 (Juror 11 approaches.)

23 THE CLERK: What sayeth the State?

24 MR. MOAK: Please present Number 11.

25 THE CLERK: What sayeth Defense?

1 MR. OGBURN: Please seat the juror.

2 THE CLERK: Thank you.

3 (WHEREUPON, Juror 11, a black female,
4 was seated on the jury.)

5 THE CLERK: One alternate?

6 THE COURT: Do two.

7 THE CLERK: For our alternate, Number 109.
8 (Juror 109 approaches.)

9 THE CLERK: What sayeth the State?

10 MR. MOAK: Please present Mr. 109.

11 THE CLERK: What sayeth the Defense?

12 MR. OGBURN: Please seat the juror.

13 THE CLERK: Thank you.

14 (WHEREUPON, Juror 109, a black male, was
15 seated as the first alternate.)

16 THE CLERK: Number 60.

17 (Juror 60 approaches.)

18 THE CLERK: What sayeth the State?

19 MR. MOAK: Please present Mr. 60.

20 THE CLERK: What sayeth the Defense?

21 MR. OGBURN: Please seat the juror.

22 THE CLERK: Thank you.

23 (WHEREUPON, Juror 60, a white male, was
24 seated as the second alternate.)

25 THE COURT: All right, any objection to the

1 jury selection process from the State?

2 MR. MOAK: None from the State, Your Honor.

3 THE COURT: From the Defense?

4 MR. OGBURN: None from the Defense, Your
5 Honor.

6 THE COURT: All right, remaining members of
7 the jury panel, I want to thank you very much for
8 coming. Obviously you were not selected to sit on
9 this jury, but we do have other cases that we might
10 need your assistance on later in the week.

11 Let's see, it is not likely -- well, I don't
12 know. I mean, I just never know what is going to
13 happen in the next ten minutes, let alone what is
14 going to happen tomorrow.

15 So I'm going to ask you to call in after 6:00
16 o'clock today and get further instructions from the
17 Clerk of Court as to whether we will need you
18 tomorrow or any other day this week.

19 Now, before you leave, I do want to thank you
20 on behalf of myself and these attorneys and tell
21 you that your presence here means a lot to us.

22 This system, as I tell jurors all the time,
23 can do without me, it can do without these
24 attorneys, but it can't do without you.

25 You're such an essential part of the judicial

1 system, not only of this county, but of this state
2 and this nation, that your role in our judicial
3 system was written into the constitution of the
4 United States many, many, many years ago. That is
5 how important your service is, citizens who will
6 come and help us resolve these matters in our
7 system. So I do want to thank you.

8 You are free to go now. Good luck to all of
9 you. If I don't see you later in the week, good
10 luck to you.

11 Thank you very much.

12 (WHEREUPON, the remaining jurors were
13 excused.)

14 THE COURT: All right, Madam Clerk, please
15 swear the jury.

16 THE CLERK: Ladies and gentlemen of the jury,
17 would you please stand and raise your right hand to
18 be sworn.

19 (Jury complies.)

20 THE CLERK: You shall well and truly try and
21 true deliverance make between the State of South
22 Carolina and the prisoner at the bar whom you shall
23 have in charge and a true verdict give according to
24 the evidence and the law, so help you God?

25 Please signify by saying, I do.

1 THE JURY: I do.

2 THE CLERK: Thank you. Please be seated.

3 (Jury complies.)

4 THE COURT: All right, ladies and gentlemen,
5 you have received your oath as jurors in this case.
6 We are now ready to begin the trial. But before we
7 do, I want to take a few minutes and explain the
8 process of the trial to you so you will know up
9 front what is expected of you, what your role is,
10 and what my role is, and what the role of these
11 attorneys is.

12 My purpose in doing so is to put you at ease
13 in what may be an unfamiliar setting to most if not
14 all of you.

15 In this court a criminal law violation is
16 presented in a legal document known as an
17 indictment, which I explained earlier.

18 There are three indictments in this case.
19 Please remember again that an indictment is not
20 evidence. The indictment is merely the document
21 containing the specific charge against a particular
22 individual.

23 The Defendant has pled not guilty to these
24 indictments, and the State therefore has the burden
25 of proving each of the elements of the indictments

1 beyond a reasonable doubt. And it will be your
2 duty to decide whether the State has met that
3 burden.

4 Now, please do not infer from anything that I
5 might say or do as to what your verdict should be.
6 You are to determine the innocence or guilt of the
7 Defendant based on the evidence that will be
8 introduced in the course of the trial in this case.

9 Now, ladies and gentlemen, I have no opinion
10 about the facts of this case which I may share with
11 you. In fact, the constitution of the State of
12 South Carolina provides that a trial judge shall
13 make no comment or statement to a jury about the
14 facts of the case.

15 Consequently, do not infer from anything that
16 I might say or do during my instructions to you in
17 this case or anything that I might say during the
18 course of the trial in ruling on the admissibility
19 of evidence or otherwise that I have any opinion
20 about the facts in the case.

21 You, and you alone, are to determine the facts
22 in this case. You are the sole and exclusive fact
23 finders.

24 While you determine the facts in this case
25 from the evidence, I am the judge of the law in

1 this case and you are required to accept and apply
2 the law precisely as I state it to you.

3 Now, let me talk about two legal principles.
4 First is the legal yardstick that you will use in
5 judging or measuring the evidence in this case.
6 That legal yardstick is known as the burden of
7 proof.

8 And in this case the burden of proving the
9 case to you is on the State to prove guilt beyond a
10 reasonable doubt.

11 Should the State fail to meet that burden of
12 proof, it would be your duty to find the Defendant
13 not guilty.

14 There is absolutely no burden whatsoever on
15 the Defendant to prove or disprove anything. There
16 is no burden on the Defendant to testify or present
17 any evidence in this case, because the burden, as I
18 said, is and remains on the State of South Carolina
19 to prove guilt beyond a reasonable doubt.

20 Secondly, I wish to -- you would recall my
21 earlier comment to the entire jury panel concerning
22 presumption of innocence. This is a cardinal and
23 fundamental rule of law that a Defendant will
24 always be presumed innocent of the crime or crimes
25 charged for which he is indicted.

1 The presumption of innocence, in other words,
2 is not just a simple legal theory or a simple legal
3 phrase, it is a substantial right to which any
4 accused, including this Defendant, is entitled.

5 Now, as we begin the trial, your role lies
6 essentially in the oath you just took, part of
7 which requires you to well and truly try this case.
8 Your oath requires you to find facts, to find the
9 truth from the evidence presented during the course
10 of the trial.

11 You are not to consider anything you may have
12 read, heard or seen about this case either before
13 or during the trial.

14 I doubt that there will be any media coverage
15 during the trial, but you must make your
16 determination as to the facts of this case based
17 only on the evidence presented to you during the
18 course of the trial.

19 Well, what is evidence? In South Carolina
20 evidence comes from three sources. The most common
21 example of evidence is the testimony of a witness.
22 The witness will testify from this witness stand.
23 You will see and hear and observe the witness,
24 including the demeanor of the witness, as you
25 determine the credibility of each witness.

1 The second source of evidence known to the law
2 is what is called an exhibit. That exhibit may be
3 a photograph or a chart or a diagram. An exhibit
4 is a tangible document with an exhibit label
5 attached to it. And at the end of the case, when
6 you retire to the jury room to make your
7 deliberations, begin your deliberations, all of the
8 exhibits that are received during the course of the
9 trial will go with you to the jury room.

10 And the third source of evidence is what the
11 law calls a stipulation. A stipulation is simply
12 an agreement between the parties as to the
13 existence of some certain fact.

14 If there is such a stipulation, you'd be
15 required to accept that stipulation as conclusively
16 determined for purposes of the trial.

17 So, ladies and gentlemen, that is what
18 evidence is: Testimony, exhibits, and any
19 stipulations.

20 As the trial judge, I will preside over the
21 trial of the case, rule on the admissibility of
22 evidence, and at the end of the case explain to you
23 the law as it applies to this case.

24 Please understand that what I tell you is not
25 evidence and, by the same token, what these

1 attorneys tell you is not evidence. The attorneys
2 may make opening statements and closing statements.
3 But these statements are not evidence. The
4 attorneys ask questions of the witnesses. But the
5 questions are not evidence. It is the responses of
6 the witnesses to those questions which constitute
7 evidence.

8 Now, you and I, ladies and gentlemen, do not
9 ask questions of the witnesses. We do not offer
10 any exhibits. Your duty is to listen openly and
11 honestly to the evidence, keep an open mind. Do
12 not form any conclusions or judgments until you
13 have received and considered all of the evidence,
14 the arguments of the attorneys, and my final
15 instructions to you on the law as it applies to
16 this case.

17 Consistent with your oath, I'm going to ask
18 you not to discuss this case with your fellow
19 jurors or with anyone else until you retire to the
20 jury room for your deliberations. I trust you will
21 honor my instructions and your oath in that regard.

22 Now, let's look briefly at the trial process.
23 Each side may make an opening statement to you.
24 After the opening statements, we'll begin the
25 receipt of evidence. The State goes first and

1 presents evidence. The State goes first because
2 the State brought these charges and has the burden
3 of proof, as I have explained. After we have heard
4 and received evidence from the State, the same
5 opportunity is given to the Defendant, bearing in
6 mind, however, there is absolutely no burden on the
7 Defendant to present any evidence at all.

8 Once we have received all the evidence in the
9 case, each side is permitted to make a final
10 argument to you or a summation to you, after which
11 I will instruct you on the law as it applies to
12 this case.

13 It will be at that point at the end of the
14 trial when you will be permitted to begin your
15 deliberations.

16 I will close with just a couple of
17 housekeeping matters. We generally run court for
18 about an hour to an hour and a half, or perhaps two
19 hours between breaks. But things happen frequently
20 during the course of the trial which require us
21 sometimes to deviate from that normal schedule.

22 For example, if you need a break, we will take
23 a break whenever you need a break. If you will
24 just raise your hand or get the attention of one of
25 the bailiffs, we will take a break at that time.

1 Also some legal questions come up from time to
2 time which may require me to send you back to the
3 jury room more frequently than I would like.

4 Also from time to time you may hear one of the
5 attorneys say something like, I object, for some
6 reason. The attorneys are not trying to hide
7 anything from you. They are merely following what
8 are known as the Rules of Evidence. These are
9 basically the rules of the road that govern all
10 trials and they are asking the Court to rule on
11 whether or not one side has violated one of these
12 rules.

13 If you cannot hear a particular witness,
14 myself or one of the attorneys, please let us know
15 so we can speak up more clearly. If your view of
16 an exhibit is obstructed for any reason, please let
17 me know so we can correct it. If you need to bring
18 something to my attention during the course of the
19 trial, please notify one of the bailiffs. If you
20 do need to contact me, it may be necessary for the
21 bailiff to require that you put such question or
22 concern in writing so that we may have a record of
23 it. I will respond to you as quickly as I can to
24 the extent that the law permits me to do so.

25 Now, ladies and gentlemen of the jury -- do

1 they have those postcards?

2 THE CLERK: Yes, sir.

3 THE COURT: Everybody got a postcard order,
4 actually it is an order of the Supreme Court which
5 was passed just earlier this year, and it orders
6 not only myself but the clerk to advise all jurors
7 that they are only to decide the case based on the
8 evidence presented in the court.

9 In other words, I'm going to order you not to
10 use a computer or try to do any investigation on
11 your own. I know sometimes that gets to be
12 tempting. I know, for example, jurors, I think
13 anyway, in automobile accident cases always like to
14 ride by the intersection where the accident
15 occurred so they can try to figure it out for
16 themselves. But -- and this case did -- apparently
17 had some publicity, I think some of the jurors
18 indicated that, back a year or so ago when the
19 event allegedly took place. But I'm going to ask
20 you just to confine your investigation to what goes
21 on in this courtroom and not try to go outside the
22 courtroom, primarily on the internet, and try to
23 find out something about this case, because that
24 would be improper. The case has to be decided on
25 the evidence presented in this court and you are

1 not to. I hope you will honor my order and request
2 in this case that you not do any independent
3 investigation of the case. The entire case will be
4 presented to you here.

5 And I always tell jurors about reading
6 something in the newspaper, what you are -- it is
7 second-hand information. You actually sit in the
8 courtroom and listen to it. And what a reporter
9 might think about what goes on in the courtroom may
10 be completely different from what you heard. So I
11 hope -- I trust you will follow my instructions in
12 that regard.

13 Now, we are going to begin with the opening
14 statements. I trust you will give the same kind
15 attention you give to me to these attorneys at this
16 time.

17 Mr. Moak, you may begin with your opening
18 remarks.

19 OPENING STATEMENT

20 MR. MOAK: Good afternoon. I am not going to
21 be up here too long. I'm Ron Moak, an Assistant
22 Solicitor here in the Fifth Circuit, which is
23 Kershaw County. The Solicitor is Barney Giese for
24 this circuit. I work for him. I live here in
25 Camden. I went to high school in Elgin. You know,

1 I'm from Kershaw County, so I'm glad to be here in
2 Kershaw County.

3 Also with me is Lir Derieg in our office, who
4 is also going to be assisting me in this case.

5 Basically my job -- our job is to present the
6 facts to you, the jury, so that y'all can make a
7 decision whether -- of what happened.

8 The idea of the jury trial is, you know, we
9 present you with the facts. Your job is to take
10 those facts, the testimony from the stand, the
11 evidence, which will be pictures, videos, whatever
12 form we present you, take those and put them
13 together and use your normal everyday experience.

14 We use jurors in the United States because
15 there is no foolproof lie detector. So what we
16 have developed over the centuries is we use jurors.

17 And, you know, like if you are a parent, you
18 have children, you know, you hear something hit the
19 floor. You go ask them, you know, who did it.
20 And, you know, you listen to the stories. You make
21 a decision of who is telling the truth, who is not.

22 If you go buy a car from a used car salesman,
23 you try to pick out from what he is telling you
24 what is true and what is not.

25 Those are examples of everyday circumstances

1 which train you as jurors to come here and do your
2 job as jurors today.

3 As a matter of fact, when I went to law
4 school, that wasn't but three years, but each one
5 of y'all, when you look at the experience of life
6 to know when somebody is telling the truth and who
7 is not and figuring out what is going on, each one
8 of y'all your entire life has been your experience
9 to train to do this job, so y'all have a lot more
10 experience from what y'all are doing than what I
11 have. And I have been doing this for ten years.

12 So that is what we are asking you to do.
13 We're going to ask you to listen to the testimony,
14 look at the evidence, put it through the filter of
15 your own truth lie detector in your mind of who is
16 credible, who is not, what you believe, what didn't
17 happen, put those pieces of the puzzle together.
18 And once you do that, you'll have a picture of what
19 happened.

20 Once you have that picture, you are going to
21 be asked by the judge -- he is going to tell you
22 what the law is -- you have got that picture and
23 you are going to apply the law to it and decide
24 whether or not it fits into what the law says the
25 offenses are.

1 He is charged with entering into a bank with
2 intent to steal. That is the state level version
3 of bank robbery. The best way to put it is an
4 armed robbery in a bank. That is what that charge
5 is. Okay?

6 Kidnapping, you know, here we are talking
7 about a with a pistol confining somebody,
8 restricting their movement, and making them do
9 things they don't want to do, like move and do
10 things. That is what he is charged with. You
11 know, he makes all the tellers, making them move,
12 making them go open up their drawers, empty the
13 money out, he would not let them leave, not let
14 them call for help, all of that is an example of
15 restricting movement and forcing them to do things
16 they don't want to do, all of that fits under
17 kidnapping.

18 And, of course, possession of firearm during
19 the commission of a violent crime, I believe
20 both -- I know kidnapping is what is considered a
21 violent crime. I believe the bank robbery charge
22 is as well, is if you use a firearm during the
23 commission of those crimes, you are guilty of that.

24 So basically once you get the picture of what
25 you believe happened, you are going to apply those

1 elements of the crime you believe beyond a
2 reasonable doubt that happened and he did it, you
3 are going to find him guilty.

4 And the idea of this is you are going to
5 render a verdict in this whole process. Verdict
6 comes from Latin, veredicto, which is a true
7 saying. And that is really what we're asking y'all
8 to do in this entire process is to render a verdict
9 of what you believe truly happened, and that is
10 what we're asking you to do.

11 The standard is beyond a reasonable doubt.
12 But you have to remember, a true saying, and a jury
13 trial is not a search for doubt, it is a search for
14 truth. Okay? So in -- the idea is not to look for
15 doubt, the idea is to look for what truly happened,
16 and that is what we are doing here.

17 Now, how are we going to do this? I'm going
18 to start calling some witnesses. You're going to
19 hear from the witness stand that at five to 11:00
20 o'clock in the morning on July 25th, 2008, which
21 was a Friday, there were four bank tellers working
22 in Dusty Bend at the First Palmetto, which is kind
23 of across from Walgreen's in Dusty Bend: Melissa
24 Roberts, Keri Gainey, Brenda Lou Fannin and Leah
25 Bailey.

1 Melissa Roberts was waiting on her husband to
2 get there because she wanted to go to lunch, and as
3 strange as it sounds, he was bringing her money
4 to -- he was going to the bank to bring her money
5 so she could go to lunch. So she is waiting on
6 him.

7 Five to 11:00 an individual comes in the bank.
8 He has got a mask, he's got blue gloves, and he has
9 got a gun, and he has got a big black bag.

10 He comes in. Melissa Roberts sees him first.
11 She yells. She gets down. The other three tellers
12 look, see him, they all get down.

13 He is yelling, get up, get up, give me the
14 money. He throws the bag over the first teller's
15 station, which is where Leah Bailey is at, has the
16 gun in her face. And he is yelling to give the
17 money to him.

18 Leah Bailey is so traumatized that she can't
19 even get -- apparently her drawer was locked, she
20 has problems getting it unlocked. And he is
21 yelling at her waving the gun in her face for
22 taking so long. Okay?

23 Once he gets the money, he takes the bag and
24 goes out the door. The tellers lock the front
25 door. Brenda Fannin, she is now at the Pontiac

1 branch of First Palmetto, she looks out the
2 drive-through window. And, actually, in that
3 branch you have got two teller stations. Melissa
4 Roberts was at one and Leah Bailey is the other.
5 Keri Gainey and Brenda Lou Fannin were at the
6 drive-through window.

7 After he leaves, Brenda Lou Fannin looks
8 through the window, the drive-through window, sees
9 the Defendant riding a bicycle away from the bank
10 towards the railroad tracks area of Dusty Bend.

11 Of course, the cops are called. Before the
12 cops get there, Melissa Roberts' husband Chad
13 actually gets there -- at the end of the bank video
14 you actually see Melissa letting him in -- and he
15 is told what happened. He actually goes out and
16 tries to see if he can find the guy, was
17 unsuccessful.

18 The police get there. Lee Boan, he is a
19 detective with the City of Camden Police
20 Department. He hears about the bicycle going that
21 direction. He actually rides over there. And
22 you'll see the aerial overlay of the picture of
23 where the bike was found. He finds the bike. He
24 also finds 4-wheeler tracks going away from the
25 bike. And he actually sees Chad Roberts and some

1 other individuals that are riding around trying to
2 find the guy. So he sees that and finds the bike.

3 While he is there, an individual named Arthur
4 Macklin, who will testify, he actually goes by the
5 scene, sees the bike, his bike in possession of the
6 Police Department. He gives a statement to the
7 Police Department that this man right here, Jarvis
8 Gibbs, had borrowed the bike from him shortly
9 before he started hearing sirens and sees police
10 cars all in the neighborhood.

11 And in addition to Arthur stating that he had
12 the bike, one of the bank tellers, Melissa Roberts,
13 went to school with this individual and she also
14 identified him. Okay?

15 So that is a basic run-down of what you're
16 going to hear. You're also going to find that the
17 4-wheeler tracks, they recovered a stolen 4-wheeler
18 that was in a pond down in the area as well. They
19 believe that is the 4-wheeler that was involved in
20 this situation too. There is some testimony that
21 he may have been picked up from where the bike was
22 abandoned by an individual on a 4-wheeler to get
23 away.

24 And that is in a nutshell what our case is.
25 We have a bank teller ID'ing him. We've got him on

1 the bike leaving the scene. We've got the bike.
2 And we've got an individual identifying him as the
3 one who had the bike. And in a nutshell, that is
4 the case.

5 We also have an inmate at the jail --

6 MR. OGBURN: Your Honor, I would object to him
7 testifying. This is opening statement.

8 THE COURT: Just hold on. It is not evidence.
9 Go ahead, Mr. Moak.

10 MR. MOAK: -- who was saying that after the
11 robbery he spoke with Jarvis Gibbs, who is the
12 Defendant, and you're going to hear from him
13 tomorrow, where Jarvis admitted that he is the one
14 that did the robbery. He tells Chad Moore how he
15 got picked up and who picked him up from Dusty Bend
16 on the 4-wheeler, where they took the money at, and
17 how this robbery was committed.

18 That is what we are going to present to you.
19 You are going to hear that from the witness stand.
20 There is going to be a bunch of pictures of showing
21 like, you know, this is the bank, things like that,
22 you'll see those. There is a bank video where the
23 robbery happened, you are going to see that. And
24 we've got a map of the area which we'll show you
25 where the bike was supposedly borrowed from, where

1 it ended at, where the bank is at, you will see all
2 that in relation. That is what we are going to
3 present to you.

4 Once you hear all the evidence, all the
5 testimony and see all the evidence, the State
6 submits that you are going to apply your filter of
7 your own everyday experience, apply that to it, you
8 are going to find that Jarvis Gibbs is guilty
9 beyond a reasonable doubt of entering a bank with
10 intent to steal, kidnapping, and possession of a
11 firearm during commission of a violent crime. That
12 is what you're going to find.

13 When you find that, you are going to find him
14 guilty, you are going to return a verdict of that,
15 and you will have done your job.

16 That is our position. We welcome the burden
17 beyond a reasonable doubt. We believe we'll go
18 above and beyond that. We believe that you will
19 find him guilty.

20 At this time I will ask you to listen to Mr.
21 Ogburn. He is going to give you a few remarks.
22 And then I believe we are either going to start
23 with our first witness or lunch break or we'll hear
24 from the judge and we'll start from there. Okay?

25 THE COURT: Mr. Ogburn?

1 MR. OGBURN: May it please the Court, Your
2 Honor?

3 THE COURT: Yes, sir.

4 OPENING STATEMENT

5 MR. OGBURN: Ladies and gentlemen, my name is
6 Mike Ogburn, and I'm representing Jarvis Gibbs here
7 today.

8 And I know the judge has told you a lot about
9 reasonable doubt and the criminal principles and
10 procedures we use. And Mr. Moak has come and
11 basically summarized the case, I think a little
12 prematurely. Because as they say, there is two
13 sides to every story. And we have yet to hear one
14 witness testify.

15 And just as the judge says, it is not about
16 what I say, it is not about what Mr. Moak says, it
17 is what comes from the witness stand.

18 And he did tell you that, yes, there was a
19 bank robbery that day in Dusty Bend at the Palmetto
20 Federal, I believe it was. We're not contesting
21 the fact that a robbery happened. And it is
22 terrible. Robbery is a terrible crime. I'm sure
23 the tellers were very traumatized, and I'm sorry
24 they were.

25 But, the other side is they have to identify

1 who did it. Our story is that Jarvis Gibbs is not
2 the one who did this. And the State cannot prove
3 that.

4 Again, their burden of proof is beyond a
5 reasonable doubt, and that is a very heavy burden.
6 It is not maybe he did it, it is not he could have
7 did it, it is not even he probably did it. It is
8 beyond a reasonable doubt. It is further than
9 that.

10 What I'd like for you to do when they
11 introduce the witnesses, especially the ones from
12 the bank, is to listen very carefully to the ID
13 testimony.

14 As Mr. Moak told you, a robber came in wearing
15 a ski mask. And I would submit to you that nobody
16 saw that person without that mask on. And when you
17 can't see someone's face, it is almost impossible
18 to identify him.

19 So please listen very carefully to the other
20 evidence they have to back up identity, such as
21 fingerprints, DNA, other evidence they may have.

22 When the policeman first responded, the first
23 ID of the robber that was given was a tall black
24 male wearing a white T-shirt, black pants. And
25 Jarvis was arrested just for that reason, being a

1 tall black male.

2 Again, please listen to -- carefully to all
3 the testimony. Please don't make up your mind,
4 come to any conclusions until all the testimony has
5 been given, until after the judge tells you to
6 deliberate.

7 Thank you.

8 THE COURT: All right, ladies and gentlemen of
9 the jury, it is almost 12:30, and I think the first
10 witness will be fairly lengthy. So I think the
11 most efficient use of our time would be go ahead
12 and take our lunch break at this time.

13 I'll ask you to be back in the jury room --
14 now, the bailiffs are going to show you where your
15 jury room is, so don't come back into the
16 courtroom, but come back to the jury room where the
17 bailiffs are going to show you.

18 We will be prepared to begin the testimony --
19 let's just say 2:00 o'clock. I was trying to get
20 an hour to an hour and 15 minutes, but let's just
21 say 2:00 o'clock, at which time we'll begin the
22 testimony.

23 Now, a couple of things I'm going to ask you
24 to do. First off, I am going to ask you not to
25 discuss the case when you return to the jury room

1 or with anyone else over the lunch break. You
2 never know, particularly in a case like this, maybe
3 somebody that you run into at lunch or on the
4 street would say, oh, yeah, I know all about that
5 case or something. You never know what somebody
6 else knows or might know or say they know about the
7 case, so it would be unwise for you to start
8 discussing the case with somebody over lunch.

9 So I'm going to ask you not to. Just go about
10 your normal business during your lunch hour and not
11 reveal or talk to anybody about being involved in
12 the trial of this case.

13 The second thing I'm going to ask you to do is
14 when you return to the jury room I need you to
15 select one of your members, it doesn't matter who
16 it is, it cannot be one of the last two gentlemen
17 that were seated because they are going to be our
18 alternates in case somebody has a problem during
19 the course of the trial, they are here to fill in,
20 but I need one person to act as foreperson of the
21 jury. That person will take the seat where the
22 lady with the black jacket is seated here on the
23 front row and will maintain that seat throughout
24 the trial. The rest of the seats don't have any
25 names on them.

1 So if you would feel more comfortable sitting
2 closer to the front, if you have a hearing problem,
3 maybe you would want to sit closer to the witness
4 stand. There is a microphone here, you shouldn't
5 have any problem hearing anything, but if you'd
6 rather do that, just take a seat wherever you are
7 most comfortable.

8 The foreperson of the jury, the purpose of
9 having a foreperson is so that that person can
10 write the verdict at the end of the trial if that
11 becomes necessary. That is the primary function of
12 the foreperson, other than presiding in the jury
13 room when the deliberations are taking place.

14 So if you'll do that and let the bailiff know
15 who you selected to be the foreman -- or
16 foreperson, forelady, it doesn't matter. The
17 foreperson doesn't get paid any more than anybody
18 else. I do need somebody to take that chair and
19 take that responsibility.

20 And the third thing I'm going to ask you to do
21 is just have a pleasant lunch. We will see you at
22 2:00 o'clock. Thank you very much.

23 (WHEREUPON, the jury is excused for
24 lunch at 12:23 p.m.)

25 THE COURT: All right, counsel, we will stand

1 at ease until 2:00 o'clock.

2 (Lunch break.)

3 THE COURT: Juror 103 is your foreperson. Is
4 the State ready?

5 MR. MOAK: Yes, Your Honor.

6 THE COURT: Is the Defense ready?

7 MR. OGBURN: Yes, Your Honor.

8 (WHEREUPON, the jury came into open
9 court at approximately 2:06 p.m.)

10 THE COURT: 103?

11 THE FOREPERSON: Yes, sir.

12 THE COURT: You have got to get used to being
13 known by a number.

14 THE FOREPERSON: Yes, sir.

15 THE COURT: I appreciate your willingness to
16 serve as foreperson of the jury.

17 THE FOREPERSON: Yes, sir.

18 THE COURT: All right, Mr. Moak, you can call
19 your first witness.

20 MR. MOAK: We call Leah Bailey.

21 (Witness enters courtroom.)

22 THE COURT: Come over to the lady with the red
23 jacket on.

24 THE CLERK: Place your left hand on the Bible,
25 and raise your right hand, please.

LEAH BAILEY -- DIRECT BY MR. MOAK

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1 (Witness complies.)

2 THE CLERK: Do you swear or affirm the
3 evidence you will give in this case will be the
4 truth, the whole truth, and nothing but the truth,
5 so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Please be seated in the witness
8 chair, and state your full name for the record.
9 Right this way please, ma'am.

10 (Witness seated.)

11 LEAH BAILEY,
12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MOAK:

15 Q Ms. Bailey, are you happy to be here today?

16 A Not really.

17 Q Talk a bit louder so they can hear you.

18 A Sorry. Not really.

19 Q Where do you work at?

20 A First Palmetto Savings Bank.

21 Q And which branch are you working at now?

22 A The Dusty Bend branch.

23 Q Okay. Is that at the intersection of Lyttleton
24 Street and 521 in Camden?

25 A It is.

LEAH BAILEY -- DIRECT BY MR. MOAK

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- 1 Q And that's in Kershaw County, correct?
- 2 A Correct.
- 3 Q Okay. How long have you been working there?
- 4 A About a year and six months.
- 5 Q Year and six months? So when would you have
- 6 started working there?
- 7 A May 19th, 2008.
- 8 Q And have you been working there the whole time you
- 9 have been working at First Palmetto?
- 10 A I have.
- 11 Q So in July of 2008 you were working there, right?
- 12 A I was.
- 13 Q On July 25th, 2008, do you remember who was working
- 14 at the bank?
- 15 A I do. It was myself and Melissa and Brenda and
- 16 Keri.
- 17 Q Okay. And is that Brenda Fannin?
- 18 A Brenda Fannin, yes.
- 19 Q Keri Gainey?
- 20 A Uh-huh.
- 21 Q And Melissa Roberts?
- 22 A Right.
- 23 Q And you work there every day, do you not?
- 24 A I do.
- 25 Q I am going to show you some pictures. I think

LEAH BAILEY -- DIRECT BY MR. MOAK

104

1 these are marked State's 2 through 19 that we have
2 already shown to the Defense attorney. Can you
3 tell me what these are?

4 Well, first, have you seen these pictures
5 before?

6 A I have.

7 Q And what are they?

8 A They are pictures of my branch.

9 Q Okay. And if you -- can you like look through them
10 and see if they are all accurate depictions of your
11 bank branch?

12 (Pause.)

13 A They are.

14 Q They are? So these are all accurate depictions of
15 what your bank branch looks like?

16 A Yes, sir.

17 MR. MOAK: Your Honor, I would like to move
18 State's 2 through 19 into evidence.

19 MR. OGBURN: Without objection, Your Honor.

20 THE COURT: Without objection.

21 MR. MOAK: Okay.

22 (WHEREUPON, State's Exhibit Nos. 2
23 through 19 were marked for
24 identification and received into
25 evidence.)

LEAH BAILEY -- DIRECT BY MR. MOAK

105

- 1 Q Okay. Is this the sign for your branch?
- 2 A It is.
- 3 Q And y'all are a bank?
- 4 A We are.
- 5 Q Are y'all federally insured?
- 6 A Yes, sir.
- 7 Q And y'all take deposits and have savings accounts
- 8 and everything?
- 9 A Yes, sir.
- 10 Q Okay. I'll publish that.
- 11 (Photographs published to jury.)
- 12 Q Are these pictures of the outside of your branch?
- 13 A Yes, sir.
- 14 Q Is that the door where you go in?
- 15 A Yes, sir.
- 16 Q Is that Lyttleton Street on that side?
- 17 A Yes, sir.
- 18 Q And is this a closer up picture of that same angle?
- 19 A Yes, sir.
- 20 Q That same door right there?
- 21 A Yes, sir.
- 22 Q Is that the door --
- 23 (Photographs published to jury.)
- 24 Q Is that the door the individual came in that day?
- 25 A It was.

1 Q Okay. These pictures right here, are they pictures
2 of the inside of that door?

3 A It is.

4 Q Now, do y'all have some kind of marking on there to
5 try to see what anybody's like height is or
6 anything?

7 A We do. The black marks on the side of the door.

8 Q And what height are those set at?

9 A Six foot.

10 Q Okay. So if they are taller than that they are
11 over six foot tall?

12 A Right.

13 Q What is this a picture of?

14 A The window at the teller line going into the
15 office.

16 Q Okay. So is that office when you come in to your
17 left?

18 A It is.

19 Q And then the teller line is right there?

20 A Uh-huh, right after it.

21 Q Okay. So the room you can look into is to your
22 immediate left when you come in the building?

23 A Correct.

24 Q Okay.

25 (Photographs published to jury.)

LEAH BAILEY -- DIRECT BY MR. MOAK

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- 1 Q And is this the counter where you would go up to?
- 2 A It is.
- 3 Q So if you come up to -- if you do business at the
- 4 bank, this is where you come up to?
- 5 A Right.
- 6 Q Now, on this picture are there two teller stations?
- 7 A There is. One there and one right there.
- 8 Q You can tell by the name plates there?
- 9 A Uh-huh.
- 10 Q And which one were you at?
- 11 A The first one right here.
- 12 Q And where was Melissa at?
- 13 A This one right here.
- 14 Q So you and Melissa were on the front teller line?
- 15 A Yes, sir.
- 16 (Photographs published to jury.)
- 17 Q And these three, what are these of?
- 18 A The drive-through teller.
- 19 Q Okay. These three pictures of 3, 16 and 17 are all
- 20 of the drive-through area?
- 21 A They are.
- 22 Q And who was at the drive-through area?
- 23 A Keri and Brenda.
- 24 Q Okay. And these pictures right here, what are all
- 25 these of?

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1 A That is the view of Lyttleton Street out of the
2 drive-through window.

3 Q So these are pictures taken from inside the bank
4 looking out the drive-through window?

5 A Yes, sir.

6 Q Okay.

7 (Photographs published to jury.)

8 Q Now, on July 25th, 2008, I think you said that you
9 were at the first teller station, Melissa is the
10 second, and Keri and Brenda are behind?

11 A Yes, sir.

12 Q If I can have you step off the stand. You can come
13 over here.

14 (Witness steps down.)

15 Q Here is a piece of chalk. Okay. You say the door
16 is right here?

17 A Yes, sir.

18 Q Okay. And there is an office like right here?

19 A Uh-huh.

20 Q And that is where that window is in that picture?

21 A (Nods affirmatively.)

22 Q And y'all have a teller line here with two stations
23 and a drive-through window there; is that the basic
24 layout?

25 A Right.

LEAH BAILEY -- DIRECT BY MR. MOAK

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- 1 Q And do y'all have like a lobby area?
- 2 A We do.
- 3 Q And if you go all the way straight to the wall --
- 4 A (Nods affirmatively.)
- 5 Q -- is there an office back here somewhere?
- 6 A There is the one here and one here.
- 7 Q Okay. So there is two offices back here. Okay.
- 8 And can you point at where you -- put a mark where
- 9 you were at?
- 10 A Right here(indicates).
- 11 Q Where was Melissa at?
- 12 A Here(indicates).
- 13 Q Where was Brenda at?
- 14 A Right there(indicates).
- 15 Q And Keri?
- 16 A Here(indicates.)
- 17 Q Okay. July 25th, 2008, do you remember what
- 18 happened around five to 11:00?
- 19 A Yes.
- 20 Q What happened?
- 21 A Melissa was getting ready to go to lunch.
- 22 Q Uh-huh.
- 23 A And she was closing up all of her stuff. And
- 24 someone came in with a mask on, with a gun pointed,
- 25 and threw a book bag over the counter at my station

- 1 and ordered everybody --
- 2 Q So he threw a book bag over the counter at your
- 3 station?
- 4 A Yes.
- 5 Q Did he yell anything?
- 6 A Give me your money.
- 7 Q Okay. Did he get the attention of all four of you?
- 8 A He did.
- 9 Q And what did y'all do?
- 10 A Gave him some money he wanted.
- 11 Q Did you have a problem with your drawer?
- 12 A I did. It was -- the lock was jammed and I
- 13 couldn't unlock it at first.
- 14 Q Where did he have the gun pointed?
- 15 A Right at me at that point.
- 16 Q Okay. Did you get a good look at him?
- 17 A Not -- I mean, no physical features, just height
- 18 and everything.
- 19 Q You described it as like he had a mask on or
- 20 something?
- 21 A He did have a mask on and like surgical blue
- 22 gloves.
- 23 Q Okay. And do you remember about how tall he was?
- 24 A Very tall.
- 25 Q And how tall is that counter?

LEAH BAILEY -- DIRECT BY MR. MOAK

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- 1 A It is about 4'6".
- 2 Q And he threw the bag over?
- 3 A Yes. He like cleared the counter. He was a lot
- 4 taller than the counter.
- 5 Q Yes. And what do you mean like clear, not just
- 6 height, but like --
- 7 A Like when his arm went over, nothing touched the
- 8 counter.
- 9 Q Okay. So not only could he reach over, he reached
- 10 beyond the counter?
- 11 A Yes, sir.
- 12 Q Okay. And did you see how tall he was on the dots
- 13 layout?
- 14 A I didn't see him when he went out.
- 15 Q Do you remember what he was wearing?
- 16 A I saw a white shirt, and that is all I paid
- 17 attention to.
- 18 Q Okay. Now, had you seen anyone in there previously
- 19 that was suspicious?
- 20 A I did.
- 21 Q And who would have been -- and describe that
- 22 incident.
- 23 A We were very busy that day. I didn't know this
- 24 person. We had a lot of people in the lobby. And
- 25 there was somebody who stood to the back of the

1 lobby and just stood there and never completed a
2 transaction. He just came in and stood there and
3 left.

4 Q And where was he standing in the lobby?

5 A In front of this office back here.

6 Q Okay. And was that the same day of the robbery or
7 a different day?

8 A It was a different day.

9 Q Do you remember about what day that was?

10 A I was thinking it was the beginning of that week.

11 Q Before the robbery?

12 A It was before the robbery.

13 Q And do you remember what that individual was
14 wearing?

15 A I believe I remember him wearing a white shirt
16 also.

17 Q Was it similar to the robber?

18 A It was.

19 Q And did you know this individual?

20 A I did not.

21 Q Do you remember any features of that individual?

22 A I really don't.

23 Q Was it the same branch as the robbery?

24 A It was.

25 Q Any height similarities?

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- 1 A I really didn't pay that much attention to him. I
2 just remember someone being there.
- 3 Q But you remember that earlier in the week?
- 4 A I do.
- 5 Q Okay.
- 6 (Witness returns to witness stand.)
- 7 Q Now, the morning of the robbery, did the police
8 come and talk to you?
- 9 A After the robbery, yes, sir.
- 10 Q Okay. And did you give a statement?
- 11 A I did.
- 12 Q And when you gave the statement, was it a written
13 statement?
- 14 A It was.
- 15 Q Have you seen this written statement?
- 16 A I think I have one other time since then.
- 17 Q Okay. And that is your statement of what happened
18 that morning?
- 19 A Yes, sir.
- 20 Q Okay. And I think you said you didn't get a good
21 look at the robber or didn't look at him?
- 22 A No, sir.
- 23 Q Would you recognize him today?
- 24 A Probably not.
- 25 Q Okay.

LEAH BAILEY -- CROSS BY MR. OGBURN

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1 A Because I didn't see his face.

2 Q But the robber did get money, correct?

3 A Yes.

4 Q And he ordered y'all -- did -- was there something
5 about, get up, or anything?

6 A Yes. Because we all got down when he came in, and
7 he told us to get up and give him the money.

8 Q So he made y'all get off the floor?

9 A Right.

10 Q Okay.

11 MR. MOAK: No further questions of this
12 witness.

13 THE COURT: Mr. Ogburn?

14 MR. OGBURN: Thank you.

15 CROSS-EXAMINATION

16 BY MR. OGBURN:

17 Q Ms. Bailey, first of all, before I get started with
18 the questions, I just want to say I'm sorry that
19 you had to go through such a traumatic experience.
20 I know it was horrible.

21 A Thank you.

22 Q How long was the bank robber in the bank?

23 A It seems like forever, but it was only a few
24 minutes.

25 Q Would you say --

LEAH BAILEY -- CROSS BY MR. OGBURN

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- 1 A Couple of minutes.
- 2 Q -- less than two?
- 3 A Probably. Well, two is probably about the right
- 4 time.
- 5 Q Okay. And then how close did the robber get to
- 6 you?
- 7 A Very close. He came right up to my station.
- 8 Q Okay. If I start walking, could you just stop me
- 9 whenever he's -- I'm as close as the robber was?
- 10 A About that close.
- 11 Q So about three, four feet?
- 12 A Yes.
- 13 Q Okay. What was he wearing?
- 14 A A white shirt and a ski mask it looked like and
- 15 blue surgical gloves.
- 16 Q And you said that he had a bag with him?
- 17 A Yes.
- 18 Q Could you describe the bag?
- 19 A It was a black -- it looked like a back -- a book
- 20 bag.
- 21 Q A book bag? Which is that more like a backpack or
- 22 is it a bag with two handles like an overnight bag?
- 23 A It looked like a backpack.
- 24 Q Backpack. Did you see the straps or anything?
- 25 A No.

1 Q Okay. And did he reach over your station and get
2 money?

3 A He reached over to put the bag on my counter and
4 then when we put the money in there, then he
5 reached over and grabbed the bag.

6 Q Okay. So were you able to see his arms?

7 A Yes.

8 Q Did he have any scars, tattoos, birthmarks on his
9 arms that you noticed?

10 A Not that I noticed.

11 Q Okay. And with the ski mask, what parts of his
12 face were exposed or what parts could you see?

13 A His -- the eyes were cut out, and that is the only
14 thing I noticed.

15 Q Uh-huh. Did you notice the mouth being cut out?

16 A I didn't. I really didn't look much at his face.

17 Q Right.

18 A Because all I saw was the gun when he came in.

19 Q Sure. And did you ever get to see his face without
20 the mask?

21 A No.

22 Q Okay. And you can't say for sure that the person
23 who came in earlier that week was the same person
24 as the person that robbed it?

25 A No, sir.

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- 1 Q Okay. Did you ever -- were you ever shown a photo
2 line-up?
- 3 A No.
- 4 Q Okay. Did they ever bring a physical -- or take
5 you to a physical line-up to identify the person?
- 6 A No.
- 7 Q Okay. Did they ever do a sketch artist or have you
8 work with a sketch artist to try to get a sketch of
9 the person's facial features?
- 10 A No, sir.
- 11 Q Okay. Did you see the robber leave the bank?
- 12 A I just saw when he -- when he turned around to walk
13 out.
- 14 Q Okay. Did you see him leave out the door?
- 15 A I didn't.
- 16 Q Okay. So you didn't see him after he left the
17 door?
- 18 A Right.
- 19 Q Okay. And the height indicator that the bank has
20 by the door --
- 21 A Uh-huh.
- 22 Q -- it only goes to six feet?
- 23 A I'm pretty sure the top one is six foot.
- 24 Q Six foot. So if someone is more than six feet or
25 under six feet, it is hard to gauge someone's

1 height exactly, is that correct?

2 A Right.

3 Q It is just a general indicator?

4 A Yes, sir.

5 Q Okay.

6 MR. OGBURN: No further questions.

7 THE COURT: Any redirect?

8 MR. MOAK: No further questions of this
9 witness.

10 THE COURT: All right, you may come down,
11 ma'am. Thank you very much.

12 (Witness steps down.)

13 THE COURT: May this witness be excused?
14 Without objection? You are free to go. Thank you
15 very much.

16 (Witness excused.)

17 MR. MOAK: Next we would like to call Melissa
18 Roberts.

19 (Witness enters courtroom.)

20 THE CLERK: Place your left hand on the Bible,
21 and raise your right hand, please.

22 (Witness complies.)

23 THE CLERK: Do you swear or affirm the
24 evidence you will give in this case will be the
25 truth, the whole truth, and nothing but the truth,

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1 so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated in the witness
4 chair, and please state your full name for the
5 record. Right this way, please, ma'am.

6 (Witness seated.)

7 THE WITNESS: My name is Melissa Roberts.

8 MELISSA ROBERTS,

9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MOAK:

12 Q Ms. Roberts, where do you work?

13 A First Palmetto Savings Bank.

14 Q How long have you worked there?

15 A Ten and a half years.

16 Q How many years?

17 A Ten and a half.

18 Q Ten and a half years?

19 A (Nods affirmatively.)

20 Q Which branch do you work at?

21 A The Dusty Bend branch.

22 Q How long have you been at that branch?

23 A I have been at that branch for five years.

24 Q Okay. In July 2008 were you working at that
25 branch?

1 A Yes, sir.

2 Q What school did you -- what high school did you go
3 to?

4 A North Central High School.

5 Q And what grades was North Central when you were
6 there?

7 A Seven through 12.

8 Q And do you remember going to school with an
9 individual named Jarvis Gibbs?

10 A Yes, sir, I do.

11 Q Is that him over there?

12 A Yes, sir, it is.

13 Q Okay. In July -- on July 25th, 2008, were you
14 working?

15 A Yes, sir.

16 Q Previous to that day, had you seen Jarvis Gibbs in
17 that branch?

18 A Yes, sir, I did.

19 Q And can you tell us about that?

20 A Yes, sir. I remember the day was very, very busy.
21 I remember looking up towards my branch manager's
22 office and noticing that he was in there and
23 wondering why he was in there because he had no
24 banking relationship with us.

25 Q Okay. I have kind of got this drawn up here. Like

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- 1 this is the door you come in the branch, and that
2 is the two teller stations, and there is two
3 offices back here. Which one of these is your
4 manager's?
- 5 A The first one closest to the door.
- 6 Q That one?
- 7 A Yes, sir.
- 8 Q And he was standing?
- 9 A Right in there.
- 10 Q Right there?
- 11 A Right, yes, sir.
- 12 Q Is there like a potted plant or something right
13 here?
- 14 A There is a potted plant there.
- 15 Q Okay. Can you see the door to that office right
16 there on the far left?
- 17 A You can.
- 18 Q And is that the potted plant you are talking about?
- 19 A Yes, sir.
- 20 Q So where was he standing at?
- 21 A Right there.
- 22 Q Okay. And this is State's 18?
- 23 A Uh-huh.
- 24 Q Okay. So he comes in and he is right there. Now,
25 did you recognize him?

1 A I did recognize him. And, like I said, we were
2 very busy that day, and I didn't understand why
3 exactly he was in there, and I don't believe
4 anybody ever waited on him, and I did see him.

5 Q Did you see him come up to cash any checks or
6 anything?

7 A No, sir, I did not.

8 Q What did he do?

9 A I don't -- I never saw him after that.

10 Q He was just standing there?

11 A He was just standing there. And then we were so
12 busy that I noticed he was gone after a while.

13 Q Okay. And do you remember what he was wearing?

14 A He was wearing a white T-shirt or something of that
15 nature.

16 Q Okay. On the morning of the 25th, shortly before
17 11:00, what were you getting ready to do?

18 A I was fixing to go to lunch.

19 Q And were you waiting on someone?

20 A I was waiting on my husband to bring me money so I
21 could go to lunch.

22 Q And where was he on the way to?

23 A He was on the way to the lake to meet one of our
24 buddies.

25 Q Okay. So five to 11:00, do you remember what

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1 happened?

2 A Five till 11:00 I heard the front door open. And
3 there was a gun drawn and a very large black male
4 walked into the branch -- ran into the branch --
5 and he -- I said a bad word and hit the floor, and
6 got down. And it was like a domino effect,
7 everybody -- all the other tellers did the same
8 thing.

9 Q Okay. Did he yell anything?

10 A He told us to get up. And he said, give us all our
11 money -- give us all our money.

12 Q Did he have a bag or anything?

13 A He did. He had a big black bag and he slung it
14 over the counter. Obviously he was very big
15 because he did not hit the counter with his arms or
16 anything. And our counter is 4'6". So he had to
17 clear the counter in order to put the bag over it.

18 Q Uh-huh. And I'm talking about, not just clear, but
19 like -- not height-wise, but distance-wise as well?

20 A Right.

21 Q Did y'all give him money?

22 A We did.

23 Q Okay.

24 A We all gave him money.

25 Q Now, did he have something in his hand that he was

- 1 waving around?
- 2 A A gun.
- 3 Q Okay. There was a gun?
- 4 A Yes, sir.
- 5 Q It was clearly a gun?
- 6 A Yes, sir, it was clearly a gun.
- 7 Q Do you remember what he was wearing?
- 8 A I remember he was wearing a white T-shirt and blue
- 9 surgical looking gloves. And when he was leaving I
- 10 noticed he had on black pants.
- 11 Q Okay. And did you follow him out of the bank?
- 12 A Yes, sir, I did.
- 13 Q And you kind of followed -- are you going to lock
- 14 the door?
- 15 A I was running to lock the door.
- 16 Q Now, I guess in the same -- this picture here, what
- 17 are these marks right here for?
- 18 A That is height markers.
- 19 Q And do you know what the -- it looks like there is
- 20 three of them on each side.
- 21 A Right. It is five, five and a half, and six feet.
- 22 Q So the top one is six feet?
- 23 A Yes, sir.
- 24 Q Okay. And do you remember looking to see how tall
- 25 he was in relation to those markers?

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- 1 A Yes, sir. He reached -- he was a little past the
2 top marker.
- 3 Q So he was taller than the top marker?
- 4 A Right.
- 5 Q Do you have any indication of how much taller than
6 that?
- 7 A A few inches.
- 8 Q How many?
- 9 A A couple of inches.
- 10 Q A couple of inches. Okay. And you locked the
11 door?
- 12 A Yes, sir.
- 13 Q And did your husband show up?
- 14 A Yes, sir, he did.
- 15 Q Did you let him in?
- 16 A Yes, sir, I did.
- 17 Q And what did he do?
- 18 A He checked on us to make sure we were okay.
- 19 Q And did he leave at some point?
- 20 A He did leave, yes, sir. He left out of the bank to
21 see if him and our buddies who work across the
22 street could follow him to see which direction he
23 was going.
- 24 Q Okay. Now, right after this happened, did the
25 police show up?

- 1 A Yes, sir, they did.
- 2 Q Did you fill out a written statement?
- 3 A Yes, sir.
- 4 Q And were you calm or excited or -- what was your
5 demeanor when you did the statement?
- 6 A Rather excited.
- 7 Q And have you seen your written statement?
- 8 A I have seen it once.
- 9 Q Okay. Is this it?
- 10 A Yes, sir.
- 11 Q And other than Chad showing up, is that pretty much
12 what your statement was then?
- 13 A Yes, sir, it is.
- 14 Q Did you think about this incident after it
15 happened?
- 16 A I did.
- 17 Q And what was your -- what did you think about?
- 18 A My first thought was seeing Jarvis in there prior
19 to the incident happening.
- 20 Q And did you review the video tape?
- 21 A I did.
- 22 Q And do you feel that you could identify him from
23 the video tape?
- 24 A I do feel that regarding his mannerisms and the
25 shape of his head that that is him.

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- 1 Q You have viewed the video tape?
- 2 A Yes, sir.
- 3 Q I'm going to show you what is marked State's 20.
- 4 It is a CD.
- 5 A Uh-huh.
- 6 Q What is it labeled?
- 7 A Video of robbery and photos.
- 8 Q So have you seen this DVD?
- 9 A Yes, sir.
- 10 Q And is that the video of the robbery?
- 11 A Yes, sir.
- 12 Q The same one that you reviewed at the bank?
- 13 A Yes, sir.
- 14 MR. MOAK: Your Honor, at this time I move
- 15 State's 20 in evidence.
- 16 MR. OGBURN: Without objection, Your Honor.
- 17 (WHEREUPON, State's Exhibit No. 20 was
- 18 marked for identification and received
- 19 into evidence.)
- 20 THE COURT: It is in.
- 21 MR. MOAK: Assuming we can get the laptop
- 22 going, I would like to publish it to the jury.
- 23 THE COURT: All right.
- 24 MR. MOAK: Your Honor, if the witness can
- 25 leave the stand?

1 THE COURT: Ma'am, you can go down.

2 (Witness steps down.)

3 (CD being played for the jury.)

4 Q Now, this video has different like cameras on here?

5 A Yes, sir.

6 THE COURT: Mr. Moak, you have to do it so the
7 jury can see it. And you might use the pointer so
8 she can point it out.

9 THE COURT REPORTER: And I need her to get on
10 the other side so I can see her.

11 Q These are multiple cameras on here?

12 A Yes, sir.

13 Q Now, focus on this camera right here.

14 THE COURT: Hold on a minute. Mr. Moak, if
15 the jury is going to see this, they want to see it.
16 Let's make arrangements -- why don't y'all move
17 some of those chairs and put them up on the front
18 row. Just grab a few of those chairs. Put it down
19 here on the floor. And the lady on the back row,
20 if you want to move up front. Now, can everybody
21 see?

22 JUROR: No.

23 THE COURT: No. It is just the screen is so
24 small. I can't help you there. Sometimes they
25 have a projector and they put it on the screen.

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1 Let me just say this, ladies and gentlemen,
2 you will be able to take it back to the jury room
3 with you at the conclusion of the testimony. So
4 that is about as good as I can do.

5 Q Now, which angle is this right here?

6 A That is an angle of our manager's office.

7 THE COURT REPORTER: I'm sorry, I can't --

8 A I'm sorry.

9 THE COURT REPORTER: I can't hear her.

10 A Our manager's office is right here. And this is
11 just the empty office where I keep my head teller
12 stuff. And this is Leah Bailey's station.

13 Q Okay. So this will be that first teller station?

14 A Exactly.

15 Q And is the door outside where the --

16 A The door is on this side.

17 Q Okay. So that is how he came in from?

18 A Right. This is Leah's back.

19 Q Okay.

20 A The front door is right here. That is my manager's
21 office, manager at the time.

22 Q Where are you at?

23 A I'm at this station on this far end.

24 Q Okay.

25 A And he comes in with the gun drawn --

1 THE COURT REPORTER: I'm sorry, Mr. Moak.

2 THE COURT: Mr. Moak, you are blocking the
3 court reporter.

4 Q Prior to --

5 THE COURT: Mr. Moak, the court reporter
6 cannot hear what she is saying. You are going to
7 have to get over. How about over here on this
8 corner somewhere?

9 A Okay. He comes in with the gun drawn and he goes
10 to Leah's station. He throws the bag. Clearly you
11 can see that the bag is thrown over and his arm --
12 he is tall enough, these markers right here say
13 4'6". That is the marker height on that. And you
14 can see he is very tall and cleared that counter
15 whenever he threw that bag over.

16 He told us to put all of our money in the bag,
17 so that is what we do. And then he runs out the
18 door. You can see a bicycle right there. And it
19 was over just that quick. But very terrifying.

20 I then run to the door. I went to lock it.
21 My husband was there. Then he -- my husband
22 actually came in and checked on us and then --

23 Q There?

24 A Right, there he is. He checked on us and then --

25 Q Let me see if I can switch the angle on this.

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- 1 A There he is. As you can tell when he comes in, the
2 height markers, that he is very tall. But also
3 throughout this, if you look at the video, you can
4 also tell that he kind of hunches over a lot.
- 5 Q Did you see something back there?
- 6 A You just see the bicycle.
- 7 Q Are those the two best angles of that?
- 8 A There is one more I wanted to point out, at this
9 angle here, if we can click on that picture. That
10 one.
- 11 Q Is this it?
- 12 A As you can see, he looks back to see if our manager
13 is in her office because when I thought that I saw
14 him prior, she was in her office, but this
15 particular day she was not in her office.
- 16 Q Okay. Go back to the stand.
- 17 (Witness returns to witness stand.)
- 18 (CD concluded.)
- 19 Q So you went to school with Jarvis Gibbs, did you
20 not?
- 21 A Yes, sir.
- 22 Q And you saw him before this happened?
- 23 A Yes, sir.
- 24 Q And you reviewed the bank video?
- 25 A Yes, sir.
- 

1 Q And what conclusion did you come up with as to who
2 actually robbed the bank?

3 A Jarvis Gibbs.

4 Q Now, did you come to this conclusion before or
5 after the police gave y'all a suspect?

6 A Before.

7 Q So before the police -- to your knowledge, the
8 police had a suspect?

9 A Yes, sir.

10 Q Do you have any doubt in your mind whether or not
11 Jarvis Gibbs was the one that robbed you that day?

12 A No, sir, I don't.

13 Q And why is it you are so sure that he is the one
14 that robbed you that day?

15 A Because him coming in prior, and after reviewing
16 the video and seeing the mannerisms and the shape
17 of his body and everything, it just -- it seemed to
18 fit together.

19 Q Okay. And you did know him by name and sight?

20 A Yes, sir.

21 MR. MOAK: No further questions.

22 THE COURT: Mr. Ogburn?

23 MR. OGBURN: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. OGBURN:

MELISSA ROBERTS -- CROSS BY MR. OGBURN

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- 1 Q Ms. Roberts, first, before we get started, let me
2 say -- I want to say I'm sorry that you had to go
3 through such a traumatic experience.
- 4 A (Nods affirmatively.)
- 5 Q So you went to school with Jarvis Gibbs, is that
6 correct?
- 7 A Yes, sir.
- 8 Q What grade was it when you first met Jarvis?
- 9 A I'm not 100 percent sure, I want to say the eighth
10 grade, eighth or ninth.
- 11 Q Is Jarvis older than you?
- 12 A If he is, it is only by a year.
- 13 Q Okay. And at the time, North Central was both a
14 middle and high school combined, correct?
- 15 A Correct.
- 16 Q Did you have any classes with him?
- 17 A I believe I may have. I'm not 100 percent sure.
- 18 Q Okay. And you graduated from North Central, is
19 that correct?
- 20 A Yes, sir, I did.
- 21 Q So if you met him in eighth grade, about how old
22 were you?
- 23 A If I met him in the eighth grade, 13.
- 24 Q Thirteen?
- 25 A Thirteen or 14.

- 1 Q Are you aware that Jarvis dropped out in the ninth
2 grade?
- 3 A I assumed -- I knew he was no longer going there.
- 4 Q You knew he was no longer going there?
- 5 A Right.
- 6 Q So the longest you could have known him could have
7 been for a year?
- 8 A For a year or two.
- 9 Q And that was back when you were 13?
- 10 A Yes, sir.
- 11 Q And how old are you now?
- 12 A I'm 29.
- 13 Q Okay. So that was over 15 years ago?
- 14 A Yes, sir.
- 15 Q So you really haven't seen him in 15 years?
- 16 A Well, actually my husband's mother, my
17 mother-in-law, owns a store at the Lake Wateree,
18 and I have seen him and his family in there at
19 times.
- 20 Q Okay. What is the name of that store?
- 21 A The River Deck Bar and Grill.
- 22 Q I'm sorry, River --
- 23 A The River Deck.
- 24 Q And before you say you saw him at the bank, how
25 long ago was it since you had seen him at the River

MELISSA ROBERTS -- CROSS BY MR. OGBURN

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1 Deck?

2 A Probably five years.

3 Q Five years. And how long was the robber in the
4 store -- or in the bank?

5 A In the bank? The robber was in the bank not long
6 at all. Very short time.

7 Q Could you give me an estimate?

8 A Probably five minutes. Not even five minutes,
9 probably two or three minutes.

10 Q Okay. Around two or three minutes. And how close
11 did the robber get to you physically?

12 A Just to the -- five or six feet at the most. I
13 mean, just the length of our teller station.

14 Q Okay. Did he ever put his hands over your teller
15 station?

16 A No, sir.

17 Q Okay. Did you see him put his hands over
18 another --

19 A Yes, sir.

20 Q -- teller station?

21 A I did.

22 Q Was he wearing gloves?

23 A Yes, sir, he was.

24 Q Did you see anything unusual on his arms, like
25 marks --

- 1 A No, sir.
- 2 Q -- birthmarks, tattoos?
- 3 A No, sir.
- 4 Q Nothing? Okay. Did you ever see his mouth or his
- 5 mouth opening?
- 6 A No, sir.
- 7 Q Okay. So you can't say anything about the mouth
- 8 opening?
- 9 A No, sir.
- 10 Q Or anything about his teeth?
- 11 A No, sir.
- 12 Q Or about any facial hair?
- 13 A No, sir.
- 14 Q You just don't remember any?
- 15 A Well, I couldn't see, he had a mask on.
- 16 Q Right. But did the mouth have an opening for
- 17 the --
- 18 A No, sir.
- 19 Q -- for the mouth?
- 20 A Well, I can't remember that.
- 21 Q Can't remember. Okay. Were you ever shown a photo
- 22 line-up?
- 23 A No, sir.
- 24 Q Okay. Did they ever bring you to a physical
- 25 line-up with physical people there, live people?

MELISSA ROBERTS -- CROSS BY MR. OGBURN

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- 1 A No, sir.
- 2 Q Okay. And did you ever see him without the mask?
- 3 A Did I ever see him without the mask?
- 4 Q The robber that came in on that Friday, did you
- 5 ever see him take the mask off?
- 6 A No, sir.
- 7 Q So you never saw the robber without the mask?
- 8 A No, sir.
- 9 Q Did you see him leave the bank?
- 10 A I did see him leave the bank.
- 11 Q How did he leave the bank?
- 12 A He left on a bicycle.
- 13 Q Okay. Can you describe the bicycle?
- 14 A I cannot.
- 15 Q So it is just a bicycle. Can you give the color of
- 16 the bicycle?
- 17 A I believe it was blue. I'm not 100 percent sure.
- 18 Q Okay. And Detective Boan was there at the bank
- 19 Friday afternoon, correct?
- 20 A Correct.
- 21 Q And he talked to you?
- 22 A Correct.
- 23 Q And did you give a statement that day to Detective
- 24 Boan?
- 25 A Correct.

- 1 Q Did you give a written statement?
- 2 A Are you talking about this or --
- 3 Q Yes. Did you give a written statement that Friday?
- 4 A Yes, sir, I did.
- 5 Q What date is on that statement?
- 6 A July 25th, 2008.
- 7 Q Is it on there?
- 8 A It is right there on the paper.
- 9 Q Okay. And was that statement witnessed by anybody?
- 10 A Was it witnessed by anybody?
- 11 Q Right. This is a line for a witness.
- 12 A No, sir, just my witness.
- 13 Q Just your signature?
- 14 A Right.
- 15 Q And you thought about this situation over the
- 16 weekend, correct?
- 17 A I did.
- 18 Q And you talked to Detective Boan again Monday?
- 19 A I did.
- 20 Q And were you aware that Jarvis Gibbs was arrested
- 21 by Monday?
- 22 A Yes, sir, I was aware by then.
- 23 Q And you told Detective Boan on Monday that you
- 24 thought it was Jarvis Gibbs?
- 25 A Right.

MELISSA ROBERTS -- REDIRECT BY MR. MOAK

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1 Q And you said you based that on his physical
2 appearance?

3 A Right. Mannerisms.

4 Q And is that the weight, height --

5 A Weight, height, mannerisms after I viewed the
6 video.

7 Q After you viewed the video?

8 A Right.

9 Q Okay. And you didn't tell him you suspected that
10 on Friday after the robbery, did you?

11 A No, sir, I didn't.

12 Q Did you see the video that Friday?

13 A No, sir, I did not.

14 Q Okay.

15 MR. OGBURN: One minute, Your Honor.

16 (Pause.)

17 Q And, ma'am, what is your current age?

18 A Twenty-nine.

19 Q Twenty-nine. All right, thank you.

20 MR. OGBURN: No further questions.

21 REDIRECT EXAMINATION

22 BY MR. MOAK:

23 Q Did anybody ask you to review that video?

24 A Did anybody ask me to view the video?

25 Q Yes.

- 1 A The robber video?
- 2 Q The bank video?
- 3 A The bank video? Just the bank personnel.
- 4 Q So y'all watched the video?
- 5 A I did.
- 6 Q Okay. Did the police ask you to review the video?
- 7 A No, sir, they did not.
- 8 Q Okay. Now, that video has got a time stamp on it.
- 9 A Right.
- 10 Q Is that a -- is that correct or not?
- 11 A No, sir, it is off by a little bit.
- 12 Q About how far is it off?
- 13 A About ten, fifteen minutes.
- 14 Q And Mr. Ogburn was asking you about knowing Jarvis.
- 15 You said Jarvis dropped out of ninth grade?
- 16 A Yes, sir.
- 17 Q Is that how you remember that happening?
- 18 A It is possible.
- 19 Q Okay. And, again, is the guy that robbed you on
- 20 July 25th, 2008, is he in the courtroom?
- 21 A Yes, sir, I believe he is.
- 22 Q Can you point him out?
- 23 A (Witness complies.)
- 24 Q Is that him at the end of the table?
- 25 A Yes, sir.

MELISSA ROBERTS -- REDIRECT BY MR. MOAK

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1 Q Do you have any doubt in your mind that that is who
2 robbed you?

3 A No, sir, I don't.

4 MR. MOAK: Your Honor, let the record reflect
5 she identified Mr. Gibbs.

6 THE COURT: The witness identified the
7 Defendant.

8 MR. MOAK: No further questions.

9 MR. OGBURN: No further questions, Your Honor.

10 THE COURT: You may come down. Thank you very
11 much.

12 (Witness steps down.)

13 THE COURT: Can this witness be excused,
14 without objection? You may be excused.

15 (Witness excused.)

16 MR. MOAK: Your Honor, the State now calls
17 Melissa Skipper.

18 (Witness enters courtroom.)

19 THE CLERK: Place your left hand on the Bible,
20 and raise your right hand, please.

21 (Witness complies.)

22 THE CLERK: Do you swear or affirm the
23 evidence you will give in this case will be the
24 truth, the whole truth, and nothing but the truth,
25 so help you God?

MELISSA L. SKIPPER -- DIRECT BY MR. MOAK

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1 THE WITNESS: I do.

2 THE CLERK: Please be seated in the witness
3 chair, and please state your full name for the
4 record. Right this way, please, ma'am.

5 (Witness seated.)

6 THE WITNESS: My name is Melissa L. Skipper.

7 MELISSA L. SKIPPER,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MOAK:

11 Q Ms. Skipper, where are you employed right now?

12 A I am employed by the South Carolina Law Enforcement
13 Division, commonly referred to as SLED.

14 Q And what kind of educational background do you
15 have?

16 A I have a bachelor of science degree in mathematics
17 from the University of South Carolina.

18 I have been a certified police officer in
19 South Carolina for eight years.

20 I have also successfully completed footwear
21 evidence collection and examination.

22 I have also successfully completed the SLED
23 latent print Crime Scene Department's two-year
24 in-house training program under court-qualified
25 senior examiners.

MELISSA L. SKIPPER -- DIRECT BY MR. MOAK

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- 1 Q Okay. Where did you work before you got to SLED?
- 2 A I was a police officer with the City of Rock Hill.
- 3 Q So you were a police officer and moved up to SLED?
- 4 A Yes, that's correct.
- 5 Q How long were you an officer before you came to
- 6 SLED?
- 7 A Four years.
- 8 Q And, again, you -- what specialized training do you
- 9 have in footwear analysis?
- 10 A As I stated, I have successfully completed a 40-
- 11 hour course in the collection and examination of
- 12 footwear evidence. And I have also successfully
- 13 completed the SLED latent print Crime Scene
- 14 Department's two year in-house training program
- 15 under court-qualified senior examiners.
- 16 Q And are you certified based upon that to testify as
- 17 to footwear?
- 18 A I have successfully completed the training, yes. I
- 19 have a certificate from our department.
- 20 Q And is that part of your job description right now?
- 21 A That's correct, yes.
- 22 Q Do you know how many sets of footwear you have
- 23 analyzed since you have completed the training?
- 24 A Several hundred, at least.
- 25 Q And have you issued reports on all of those?

MELISSA L. SKIPPER -- DIRECT BY MR. MOAK

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1 A Yes, sir, I have.

2 MR. MOAK: Your Honor, at this time I would
3 like to submit Ms. Skipper as an expert in the
4 field of footwear analysis.

5 MR. OGBURN: Without objection, Your Honor.

6 THE COURT: All right.

7 Q On this case were you asked to analyze some items
8 that were submitted?

9 A Yes, sir, I was.

10 Q And was there a lab number issued on that?

11 A If I can refer to my notes?

12 Q Yes.

13 (Pause.)

14 A Yes. The lab number was L-0812192.

15 Q Okay. I show you this box. Is there a lab number
16 on this?

17 A Yes, it is.

18 Q What is that lab number?

19 A L-0812192.

20 Q Is that the same lab number?

21 A That is correct, yes.

22 Q And on your note, what exactly did you examine as
23 part of this case?

24 A I examined a pair of shoes, a CD that contained
25 photographs, and there was also a piece of blue

MELISSA L. SKIPPER -- DIRECT BY MR. MOAK

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1 plastic that was just submitted for scale.

2 Q Okay. Now, can you identify what this is?

3 A Yes. It is a pair of shoes submitted in the case.

4 Q Okay. These are the shoes you did examine?

5 A That's correct.

6 MR. MOAK: Your Honor, I would move these
7 shoes in evidence.

8 THE COURT: Any objection?

9 MR. OGBURN: No objection, Your Honor.

10 (WHEREUPON, State's Exhibit No. 37 was
11 marked for identification and received
12 into evidence.)

13 Q And also can you identify what this is?

14 A That appears to be the piece of blue plastic that
15 was submitted for the scale.

16 Q Is it still packaged like it was after it left your
17 custody?

18 A I don't recall, but it appears to be.

19 Q Is this is a SLED baggie?

20 A No, I did not package it in this bag.

21 Q Okay. Could this have been how you received it?

22 A Yes. My notes say that that was received in a
23 sealed plastic evidence bag.

24 Q Okay. So this is the piece of plastic?

25 A Yes.

1 MR. MOAK: Your Honor, I move this in as
2 State's 38.

3 MR. OGBURN: No objection.

4 THE COURT: Without objection.

5 (WHEREUPON, State's Exhibit No. 38 was
6 marked for identification and received
7 into evidence.)

8 Q And you said there was a CD with some pictures?

9 A That's correct.

10 Q And did you take some pictures as well?

11 A I don't recall. I don't think I did.

12 Q I show you these items and see if you recognize
13 these.

14 Did you look at these as part of your
15 examination?

16 A Yes, I did.

17 Q Okay.

18 MR. MOAK: Your Honor, at this time I move
19 these pictures she just identified into evidence.

20 MR. OGBURN: Without objection.

21 MR. MOAK: Without objection. It is 39
22 through 43.

23 (WHEREUPON, State's Exhibit Nos. 39
24 through 43 were marked for
25 identification and received into

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1 evidence.)

2 Q Now, to make it real clear, what are you looking
3 for when you are examining -- actually, before we
4 get there, Item 39, what is that?

5 A This is a photograph from the -- that was printed
6 from the shoe print.

7 Q And what were you asked to determine?

8 A Asked to compare those to the shoes that were
9 submitted in this case.

10 Q Okay.

11 MR. MOAK: Your Honor, may the witness
12 approach the jury?

13 THE COURT: Sure. Step down.

14 (Witness steps down.)

15 Q Can you explain, using these photographs, kind of
16 what footwear analysis is and how you conduct this
17 analysis in this case?

18 A This photograph, which is State's 39, is -- this
19 would be what we are calling the unknown footwear
20 impression, a photograph taken by a local
21 investigator and submitted to me for comparison to
22 these shoes, a photograph of the outsoles of the
23 shoes. Outsole being the bottom portion of the
24 shoe which comes into contact with the ground or
25 floor, whatever surface is being walked on.

1 When we do a comparison, we look at the
2 unknown, which in this case is this impression, and
3 we try to make a comparison with a known shoe,
4 which would be in this case these.

5 Things that we're looking for in unknown is
6 that the impression is documented perpendicular to
7 the surface of the impression, which means exactly
8 90 degrees. And also there is a scale in it so
9 that the photograph can be reproduced true to size,
10 and ideally it would be what we would call one --

11 THE COURT REPORTER: I'm sorry, I didn't hear
12 your last statement.

13 MR. MOAK: Ideally --

14 A Ideally it is reproduced one to one. That is
15 how -- that is what we need to make the comparison
16 to make sure that it is true to size.

17 In this instance, the piece of blue plastic
18 that you see in the photograph --

19 Q Right here.

20 A -- was submitted with this as a scale.

21 In this case, the -- our Photography
22 Department could not reproduce the photograph true
23 to scale because of the nature of the scale. If
24 there had been a ruler in it or something better to
25 use as a scale it would have been something we

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1 might would have been able to make a better
2 comparison, but at this time, since we could not
3 replicate this true to size, all I can say is it
4 has the same outsole design as the shoes that were
5 submitted.

6 And by outsole design means -- see the design
7 on the bottom of the shoe, it is the same type
8 design in this case as the left shoe. That is all
9 I can say. But I can't say it is the same size, I
10 can't say it is the same shape, width, or anything
11 else like that, or after that any kind of
12 identifying characteristics. That would be
13 something you look at after you determine size,
14 shape and outsole design. But at this time all I
15 can say is it has the same outsole design.

16 Q So basically you're saying if you say had like a
17 ruler or something laid beside that picture when it
18 was taken you might be able to put it to scale?

19 A It would have helped, yes, sir.

20 Q And what you are saying is that this circular
21 pattern on the footprint is consistent with the
22 left shoe?

23 A It is consistent with the same outsole design.

24 Q Okay.

25 A Outsole design only. I'm not saying it is made by

1 that left shoe, I'm saying it has the same outsole
2 design. That is all.

3 Q So if you had a scale you could like match the
4 width and the length of the shoe, then you can
5 start making a determination as to whether or not
6 there were any marks on the sole?

7 A That's correct. It has to also be -- a bulletin
8 scale has to also be documented exactly 90 degrees
9 to the surface that it is being taken. It is not
10 that it can't give it a true size of that.

11 Q And if you had two brand new pairs of the same
12 model shoe with no nicks or marks on them, would
13 you ever be able to definitively say that this was
14 one or the other shoe?

15 A As long as they are the same size, no, sir, I would
16 not.

17 Q And what are you looking for to make a definitive
18 judgment?

19 A The first thing that you look for are the size,
20 shape and outsole design.

21 And after that, if it has the same size, shape
22 and outsole design, you can start looking for
23 things which are called random identifying
24 characteristics, things like nicks, cuts, rocks,
25 anything that makes the bottom of that shoe unique

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1 just from normal wear.

2 Q And did you see any like marks on the shoes that
3 were submitted that would fit that?

4 A After not being able to produce the photograph to
5 scale, no further examination was done. I did not
6 examine the shoes for any nicks, cuts or anything
7 like that.

8 Q Okay. Did you see any on there?

9 A I don't recall.

10 Q Okay. So what is your -- what is your opinion as
11 to these shoes?

12 A It has the same outsole design as the other shoes.

13 Q Okay.

14 MR. MOAK: No further questions.

15 CROSS-EXAMINATION

16 BY MR. OGBURN:

17 Q So, Ms. Skipper, you can say the shoes and the
18 print of the photograph have the same outsole
19 design, is that correct?

20 A That's correct.

21 Q And -- but nothing further?

22 A That's correct.

23 Q So you can't say that that was the shoe that made
24 that impression?

25 A That's correct.

1 Q All right.

2 MR. OGBURN: No further questions.

3 MR. MOAK: Nothing more of this witness.

4 THE COURT: You may come down. Thank you very
5 much.

6 THE WITNESS: Thank you.

7 (Witness steps down.)

8 THE COURT: May the witness be excused?
9 Without objection. You are free to go, ma'am.
10 Thank you.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 MR. MOAK: Jasper Humbert.

14 (Witness enters courtroom.)

15 THE CLERK: Place your left hand on the Bible,
16 and raise your right hand, please.

17 (Witness complies.)

18 THE CLERK: Do you swear or affirm the
19 evidence you will give in this case will be the
20 truth, the whole truth, and nothing but the truth,
21 so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Please be seated in the witness
24 chair, and please state your full name for the
25 record. Right this way, please, sir.

JASPER HUMBERT -- DIRECT BY MR. MOAK

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1 (Witness seated.)

2 THE WITNESS: Jasper Humbert, H-U-M-B-E-R-T.

3 JASPER HUMBERT,

4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MOAK:

7 Q Agent Humbert, where are you employed at?

8 A I'm employed at the South Carolina Law Enforcement
9 Division.

10 Q And how long have you been there?

11 A Approximately three and a half years.

12 Q And where were you working before you got there?

13 A I was in a Genetics PhD program at Penn State.

14 Q Okay.

15 A In Hershey.

16 Q So you have a PhD?

17 A No, I left after three years in the program. I
18 have a masters.

19 Q What is your educational background?

20 A I have a bachelor's of science degree in biology
21 from Armstrong Atlantic State University in
22 Savannah, Georgia.

23 I have a master's degree in biological
24 sciences from the University of Iowa.

25 And as I mentioned earlier, I have three years

1 of further education in a Genetics PhD program from
2 Penn State, Hershey Medical College.

3 Q And where currently are you employed at SLED right
4 now?

5 A In the DNA Department.

6 Q And what is your job responsibility there?

7 A Basically my job responsibility is to assist
8 agencies in the state with doing serology and DNA
9 testing of evidence and standards.

10 Q If you were submitted a piece of evidence, do you
11 first determine if there is any DNA there?

12 A Yes, I do.

13 Q And were you asked to do that in the case we're
14 here about today?

15 A Yes, sir, I was.

16 Q Okay. Now, what specific training have you had as
17 to forensic DNA analysis?

18 A Well, I was trained under a DNA analyst in the
19 department where I basically did approximately a
20 couple of hundred samples or more and probably over
21 50 cases under supervised, basically teaching of
22 another analyst. And I basically did training
23 samples and other things to ensure that I was
24 qualified to become a DNA analyst.

25 Q And in the DNA lab, are your results checked by

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1 other members of the department?

2 A Yes, they are.

3 Q And it is kind of like a peer review situation?

4 A Yes. We have one technical review, and we have,
5 also have another review after that. We go through
6 two reviews before it actually goes out.

7 Q So your work is actually checked by other members
8 of your department?

9 A Yes, sir, it is.

10 Q And approximately how many DNA analyses do you
11 think you have completed?

12 A Hundreds, if not thousands.

13 Q Okay. Have you testified before in General
14 Sessions as an expert before?

15 A Yes, I have.

16 Q How many times?

17 A Approximately five times before.

18 Q And you were submitted as an expert in DNA analysis
19 every time?

20 A Yes, sir, I was.

21 Q Were you accepted every time?

22 A Yes, I was.

23 MR. MOAK: Your Honor, at this time I would
24 move to submit Mr. Humbert as an expert in DNA
25 analysis.

1 MR. OGBURN: No objection, Your Honor.

2 THE COURT: All right.

3 Q Agent Humbert, when you get a sample submitted,
4 what is the first thing you try to do with it?

5 A When I get a sample, I look at basically what the
6 request is for it.

7 Q Okay.

8 A So if basically the general DNA request is like
9 for -- instead of -- if there is a serology
10 request, then I will test to see if there is a
11 certain type of like body fluid on the item, but if
12 there isn't, I'll just take it straight to a -- or
13 forward to a DNA test.

14 Q What is the term touch DNA? What does that term
15 mean?

16 A Touch DNA is basically the way people use it is to
17 describe DNA or cells that may be left on an item
18 from someone touching it. So sometimes when
19 someone touches an item they leave trace amounts of
20 cells that a DNA analyst like myself may be able to
21 go and get DNA from later.

22 Q Now, do y'all have a good history of getting
23 results out of touch DNA requests?

24 A It is hit or miss. Actually, it can be fairly low
25 determined -- based on the item type. Like, for

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1 instance, if it is like clothing where someone has
2 worn it for a long time, usually we get a little
3 better result from that where it has rubbed up
4 against them a lot.

5 But if someone -- like an item like a ball or
6 something where they may touch it once or a counter
7 or a window, you know, you just have to see because
8 we can't tell by looking at a white swab that was
9 swabbed off a window whether we're going to get
10 anything, which just basically have to take it
11 forward and see if we can get a result from it.

12 Q And you don't actually know what that swab was
13 really swabbed of when you test it either, do you?

14 A I just test swabs that the agencies give to me and
15 I didn't -- don't see directly what they swab,
16 basically.

17 Q Now, on this case what were you asked to analyze?

18 A I was asked to analyze four swabs.

19 Q Uh-huh. And what were --

20 A According to the evidence I had, they were listed
21 to be swabs from a counter.

22 Q Okay. And what was your results?

23 A Of the four swabs, the first -- there were four
24 swabs. They were all from the same counter. The
25 Items 1 and 4, no DNA profile was received from

1 that item. I also note Item Number 2 there was no
2 DNA profile.

3 Q Okay.

4 A And Item 3 the profile was too low to make a
5 reliable interpretation.

6 Q Okay. And you say it was too low for a reliable
7 interpretation. Can you explain to us a little bit
8 about how DNA works, about like locations on the
9 DNA strand where y'all try to get matches?

10 A Sure. Basically what we do is we run a test on the
11 DNA and we test basically 15 locations.

12 If the DNA is at a very low amount, then
13 sometimes we don't get back a DNA profile that we
14 can use.

15 And what that basically ends up being is a DNA
16 profile is a series of numbers that we get by
17 testing the DNA. And if it is low DNA, we'll get
18 maybe one or two numbers, and that is not enough
19 for us to make a reliable basically conclusion on
20 any type of match or anything of that nature.

21 Q So basically y'all try to match as many locations
22 as possible that you can?

23 A Yes.

24 Q And do y'all have like a statistical diagram like
25 depending on how many locations are matched of the

JASPER HUMBERT -- DIRECT BY MR. MOAK

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1 one in quadrillion or whatever?

2 A If we have someone to compare it to and there is
3 enough numbers, we can make a match to that. And
4 we can basically -- because those numbers in the
5 population, there is a certain frequency that is
6 known, we can do basically a statistic and say,
7 okay, one in a hundred quadrillion chance that this
8 was left by someone besides that person.

9 Q But if you have a one location like a minor
10 contributor or a minor number, does the statistics
11 go the opposite way instead of going like more
12 specific, more general?

13 A Well, if we don't have -- if we have too few
14 numbers we don't even make a conclusion off of it
15 because there is too little information there for
16 us to confidently make a conclusion from it.

17 Q So on this one you didn't have enough to make any
18 conclusion whatsoever?

19 A That is correct.

20 Q And was this one location you found something on
21 it?

22 A On Item 3, at two of the locations there were only
23 basically three numbers.

24 Q Uh-huh.

25 A And it was too low for me to enter into the

1 database for searching or to match to someone.

2 Q Okay. So your official conclusion is it is
3 inconclusive?

4 A Yes.

5 MR. MOAK: No further questions.

6 CROSS-EXAMINATION

7 BY MR. OGBURN:

8 Q Mr. Humbert, you don't know where those swabs came
9 from?

10 A No, I do not. I just have it in my report a
11 description.

12 Q Right. So you were just sent the swabs, you don't
13 know what they were swabbed off of. And everything
14 was inconclusive?

15 A Yes.

16 Q Okay.

17 MR. OGBURN: No further questions.

18 THE COURT: All right. Anything else?

19 REDIRECT EXAMINATION

20 BY MR. MOAK:

21 Q The only thing you know is it said counter, right?

22 A What's that?

23 Q It said counter?

24 A The item written on the bag for the evidence said
25 counter.

JASPER HUMBERT -- REDIRECT BY MR. MOAK

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1 MR. MOAK: That's all, Your Honor.

2 THE COURT: All right, sir, you may come down.

3 (Witness steps down.)

4 THE COURT: Can the witness be excused?

5 MR. MOAK: Yes, Your Honor.

6 THE COURT: Without objection.

7 MR. MOAK: At this time we would call Arthur
8 Macklin, Your Honor.

9 THE COURT: Sir, you are free to go. Thank
10 you very much.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 (Next witness enters courtroom.)

14 THE CLERK: Place your left hand on the Bible,
15 and raise your right hand, please.

16 (Witness complies.)

17 THE CLERK: Do you swear or affirm the
18 evidence you will give in this case will be the
19 truth, the whole truth, and nothing but the truth,
20 so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Please be seated in the witness
23 chair, and please state your full name for the
24 record. Right this way, please, sir.

25 (Witness seated.)

1 ARTHUR MACKLIN,
2 after being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MOAK:

5 Q Mr. Macklin --

6 (Pause.)

7 Q Mr. Macklin, where do you live?

8 A [REDACTED].

9 Q Okay. Does your mom live there too?

10 A Yes, she does.

11 Q And that is pretty much where your family stays at?

12 A Yes, sir.

13 Q What area of Camden is that street at? Where is
14 that at?

15 A That is in the Dusty Bend area, in the Kirkwood
16 area.

17 Q You turn -- is Monroe Street the one you take a
18 right, if you are going north, you take a right
19 off 521 at the CVS?

20 A Yes, it is.

21 Q On July 25th, 2008, did you own a bicycle?

22 A Yes, I did.

23 Q And where were you that morning?

24 A In my yard raking the yard.

25 Q Okay. And was anybody with you?

ARTHUR MACKLIN -- DIRECT BY MR. MOAK

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- 1 A Yes, sir, it was.
- 2 Q And who was that?
- 3 A Sylvester, a guy named Sylvester.
- 4 Q Sylvester Fludd?
- 5 A Yes, it is.
- 6 Q That morning, did you see Mr. Jarvis Gibbs?
- 7 A Yes, I did.
- 8 Q Do you remember about what time you saw him?
- 9 A I don't know the exact time.
- 10 Q Was it in the morning?
- 11 A It was in the morning.
- 12 Q Did he borrow something from you?
- 13 A He borrowed a bicycle.
- 14 Q He borrowed your bicycle?
- 15 A Yes, he did.
- 16 Q Now, after -- did he -- I guess he rode off from
- 17 where you were at with your bicycle?
- 18 A Yes, he did.
- 19 Q After he left with your bicycle, did you
- 20 something -- you notice something about 10 or 15
- 21 minutes later?
- 22 A I would say about 10, 15, 20 minutes later we
- 23 noticed police cars riding the neighborhood.
- 24 Q You saw police cars riding around the neighborhood?
- 25 A Yes.

1 Q And you are on [REDACTED] [REDACTED], right?

2 A Yes, sir, it is.

3 Q And later on that morning, did you go near the
4 railroad tracks area where it crosses Lyttleton
5 Street?

6 A I walked straight up Monroe, went down, got on
7 Lyttleton Street, passed the bank, went around by
8 the 49er Disco Diner.

9 Q Uh-huh.

10 A Saw my bicycle in the back seat of a police car.

11 Q Okay. Now, you say you turned at the diner?

12 A At -- yeah, right across from the veterinarian
13 hospital.

14 Q See if you recognize State's -- marked as State's
15 31, 32, 33, 34 and 35.

16 A Yeah, this is Lyttleton Street. This is the
17 railroad track. And this is the 49er Disco Diner
18 right here.

19 Q Okay? So you are walking this way, from Dusty
20 Bend?

21 A In the same direction the cars are coming.

22 Q Okay.

23 A Coming that way. Towards the railroad track.

24 Q Okay. Is that the same angle?

25 A That's the same angle.

ARTHUR MACKLIN -- DIRECT BY MR. MOAK

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- 1 Q Is that closer up, same angle?
- 2 A Yes.
- 3 Q And so in these pictures over here, you are coming
4 towards whoever is taking the picture?
- 5 A Yes.
- 6 Q That direction?
- 7 A Yes.
- 8 Q Okay. And did you take a left where that diner is
9 at?
- 10 A Yes, I took a left here.
- 11 Q Okay. And what is this?
- 12 A This is -- right here?
- 13 Q Yes.
- 14 A This is the club that used to be the 49er Disco
15 Diner.
- 16 Q This is kind of another angle of that same
17 building?
- 18 A Yes.
- 19 Q And what is that?
- 20 A That is showing Railroad Avenue.
- 21 Q Now, is that -- does that show the direction you
22 were walking?
- 23 A Yes, it does.
- 24 Q So you are walking that way?
- 25 A Going up that hill.

ARTHUR MACKLIN -- DIRECT BY MR. MOAK

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- 1 Q Okay.
- 2 A On that street.
- 3 Q Now, you said you saw your bike. Where was your
4 bike at?
- 5 A It was in the trunk of a police car.
- 6 Q I show you what is marked State's 30. Is that your
7 bike in the trunk of the police car?
- 8 A That's my bike.
- 9 Q That's your bike? Now, you saw your bike in the
10 trunk of a police car. What did you do after you
11 saw it there?
- 12 A I proceeded to go home.
- 13 Q Okay. At some point did you try to contact the
14 Police Department?
- 15 A No, I did not.
- 16 Q At some point did they try to contact you?
- 17 A No, they did not.
- 18 Q Did you ever go to Mr. Tetterton's office?
- 19 A I went home, told my mother, and we called a
20 lawyer.
- 21 Q Okay.
- 22 A And let him know that my bicycle was in the police
23 car.
- 24 Q Okay. And did you end up speaking with the police
25 about this?

ARTHUR MACKLIN -- DIRECT BY MR. MOAK

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- 1 A I went to Mr. Tetterton's office and detectives
2 came and, yes, I let them know that was my bicycle
3 in the car.
- 4 Q Okay. So you spoke with the police?
- 5 A Yes.
- 6 Q Okay. And you gave a written statement to the
7 police?
- 8 A Yes, sir, I did.
- 9 Q And did you tell them anything that was not in that
10 written statement?
- 11 A I can't recall. I don't know.
- 12 Q Okay. Your bike was at the trunk of that car,
13 police car?
- 14 A Yes, sir.
- 15 Q Is this your bike right here?
- 16 A Like I told Lieutenant -- Detective Boan, that
17 looks like my bicycle. I don't recall the coil
18 being around the seat. And I thought that my bike
19 had rubber things where the shocks are on the
20 front.
- 21 Q So you are talking about you don't recognize this?
- 22 A I don't recognize that.
- 23 Q Okay.
- 24 A And on the yellow part --
- 25 Q Uh-huh.

- 1 A -- like where the shocks are --
- 2 Q Uh-huh.
- 3 A -- I thought that there were rubber black cushion
- 4 mark things on there where the seat goes up and
- 5 down.
- 6 Q Okay. But on this picture it says Free Spirit?
- 7 A Yes.
- 8 Q It says power something right there?
- 9 A I can't say because of the lines of the paper.
- 10 Q Would you agree that this says Free Spirit on
- 11 the -- on that one?
- 12 A On --
- 13 Q Do you agree that this is the same bike as in the
- 14 picture?
- 15 A I'm quite sure that is the same bike in the
- 16 picture.
- 17 Q Okay. And your bike was the one that was in the
- 18 back of the patrol car?
- 19 A Yes, it was.
- 20 Q And you identified this as your bike in the
- 21 picture?
- 22 A Yes.
- 23 Q So this is your bike?
- 24 A It has got to be.
- 25 Q So this is the bike that Jarvis Gibbs borrowed from

ARTHUR MACKLIN -- DIRECT BY MR. MOAK

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1 you?

2 A Excuse me?

3 Q Is this the bike that Jarvis Gibbs borrowed from
4 you?

5 A As I said, I know my bicycle, but I don't recall
6 the things that -- that coil on the seat.

7 Q Okay.

8 A And I thought my bicycle had the rubber things on
9 the shock part.

10 Q Okay. But this is your bike right here, right?

11 A That appears to be my bicycle.

12 Q And that bicycle is the one that Jarvis borrowed
13 from you?

14 A I assume that it is.

15 Q Okay. Now, when you talked to the police, were you
16 concerned about something?

17 A I didn't want to get caught up in it because I
18 didn't have anything to do with whatever happened.

19 Q Okay.

20 A I mean --

21 Q Were you worried about something?

22 A Am I worried about something?

23 Q Yes.

24 A Right now?

25 Q Yes.

1 A What I'm worried about is my life, is my safety.

2 Something happened --

3 Q Okay.

4 A -- I had nothing to do with.

5 Q Uh-huh.

6 A I got hurt behind that. After I talked to the
7 detectives, I was knocked out.

8 Q Uh-huh.

9 A I was supposed to be killed.

10 Q Uh-huh.

11 A Because some guys jumped on me and knocked me out
12 and they were supposed to shoot me and kill me
13 while I was on the ground.

14 Q Now, when you spoke to police at Tetterton's
15 office --

16 A Right.

17 Q -- did you ask that your name be kept out of it?

18 A I asked them not to say anything about my name,
19 period. Because I didn't want -- I walk the
20 street. I ride back and forth to work on a
21 bicycle. I didn't want nobody to jump on me or do
22 anything to hurt me or harm me.

23 Q And did you later find out that they actually told
24 the newspaper reporter here?

25 A Actually they put it in the paper.

ARTHUR MACKLIN -- DIRECT BY MR. MOAK

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- 1 Q Uh-huh.
- 2 A It was put in the paper what -- the owner of the
3 bicycle said what happened.
- 4 Q Yes.
- 5 A And that might as well say I said what happened.
- 6 Q Yes, uh-huh.
- 7 A And I asked that whatever I said be confidently
8 kept.
- 9 Q Uh-huh.
- 10 A But they put it in the paper, and I got hurt behind
11 that.
- 12 Q And you got assaulted because of that?
- 13 A Yes, sir.
- 14 Q And how bad were you hurt?
- 15 A All this side of my face right here was swollen.
- 16 Q Uh-huh.
- 17 A One of my -- my teeth -- my tooth back here was
18 almost out.
- 19 Q Uh-huh.
- 20 A I don't know what I got hit with, but I was knocked
21 out.
- 22 Q Do you know the name -- do you know who did that to
23 you?
- 24 A I don't know my assailant.
- 25 Q Was anything said when you were being assaulted of

1 why you were being assaulted?

2 A Nothing was said. I was hit from behind and I was
3 knocked out. When I came to, I was getting up off
4 the ground, being picked up off the ground.

5 Q And you are really not happy to be here right now,
6 are you?

7 A I didn't want to be here.

8 Q At 1:30 Monday morning where were you at?

9 A I was in Lugoff.

10 Q And did the Sheriff's Department come serve you a
11 subpoena?

12 A Yes, they did.

13 Q And that is why you are here?

14 A That's why I am here.

15 Q You didn't want to come, did you?

16 A No, sir. I'm afraid for my life.

17 Q Now --

18 MR. MOAK: Your Honor, at this time I would
19 move State's 1 in evidence. That is the actual
20 bike which he said is his.

21 THE COURT: You haven't moved it, have you?

22 MR. MOAK: Hum?

23 THE COURT: No, you have not.

24 MR. MOAK: I'm asking. Right now I move it
25 into evidence.

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1 THE COURT: Any objection?

2 MR. OGBURN: No objection, Your Honor.

3 THE COURT: Without objection.

4 (WHEREUPON, State's Exhibit No. 1 was
5 marked for identification and received
6 into evidence.)

7 Q Now, you are worried about your safety, right?

8 A Yes, I am. Not only my safety, but I have kids.

9 Q Uh-huh.

10 A I have a mother and I have my family. And
11 sometimes when people can't get to you, they go get
12 to people that is close to you.

13 Q Now, and I understand if you don't want to answer
14 these questions, but did the police ask you about a
15 4-wheeler that day?

16 A Yes, sir, they did.

17 Q Do you remember answering them about the 4-wheeler?

18 A Can I take the Fifth on these questions? I don't
19 want to be involved.

20 Q Just, did you answer the police about who was on
21 the 4-wheeler?

22 A I answered the questions, but I don't want to
23 answer them now.

24 Q Did you tell them that James Drakeford was on the
25 4-wheeler?

1 A I need the Fifth.

2 MR. MOAK: Your Honor, I mean, he is under
3 oath.

4 THE COURT: What?

5 MR. MOAK: He is under oath, is he not?

6 THE COURT: Yes, he is under oath.

7 All right, ladies and gentlemen of the jury,
8 let me excuse you from the courtroom for just a
9 minute while I take this matter up.

10 It would be a good time for an afternoon break
11 anyway. Just relax in the jury room, but don't
12 discuss the case among yourselves while you are in
13 there.

14 (WHEREUPON, the jury retires to the jury
15 room at 3:33 p.m.)

16 THE COURT: All right, Mr. Macklin, you have a
17 right to refuse to answer questions when those
18 answers may subject you to criminal prosecution,
19 criminal action.

20 THE WITNESS: Yes, sir.

21 THE COURT: That is your right. Invoking
22 the Fifth Amendment because you don't want to
23 answer a question is not the way the law operates.

24 The Fifth Amendment protects you against
25 making any statements that are inculpatory or

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1 prejudicial to you in a sense that you could be
2 prosecuted.

3 THE WITNESS: Okay.

4 THE COURT: In other words, if you were asked
5 if you were present when the bank robbery was
6 taking place, you could say, I refuse to answer,
7 because you could be prosecuted for that, even
8 though at that point you weren't under arrest.

9 So -- and I'm not -- I don't want any -- I
10 don't want you to respond on the record because I
11 don't know why you are refusing to answer.

12 Let me, before we go any further, what is the
13 purpose of this line of testimony? I mean, what is
14 the relevance of this inquiry?

15 MR. MOAK: Your Honor, once Lieutenant Boan
16 testifies, he is going to describe the scene where
17 the bike was found at, and the 4-wheeler tracks
18 that were leaving the scene where the bike was
19 abandoned at, so we're basically placing Mr. --
20 trying to connect Mr. Gibbs with the individual
21 with the 4-wheeler. And also --

22 THE COURT: Is this witness -- does it belong
23 to this witness?

24 MR. MOAK: No. What he -- what I'm told that
25 he told the police is that Mr. Gibbs arrived at his

1 house on a 4-wheeler driven by James Drakeford, who
2 is a Co-Defendant.

3 THE COURT: So there were two people on it?

4 MR. MOAK: Yes.

5 THE COURT: And he arrived back at his house?

6 MR. MOAK: To get to his house to get the
7 bicycle.

8 THE COURT: Before the --

9 MR. MOAK: Before the robbery.

10 THE COURT: -- event?

11 MR. MOAK: Yes. We're not saying he is
12 involved whatsoever.

13 THE COURT: I thought you meant that the
14 4-wheeler was used as a means of escape.

15 MR. MOAK: We have some tracks that would tend
16 to show that, Your Honor.

17 THE COURT: But you also said that they came
18 to this witness's house before --

19 MR. MOAK: Yes, Your Honor.

20 THE COURT: -- the robbery?

21 MR. MOAK: Uh-huh. With this witness I'm just
22 trying to get Mr. Gibbs arrived at his house on a
23 4-wheeler with the Co-Defendant.

24 And also he was asked about a black bag the
25 Defendant had. And that was the next line of

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1 questioning.

2 THE COURT: Well, go ahead and ask him the
3 question. Ask him that question.

4 MR. MOAK: Okay.

5 BY MR. MOAK:

6 Q Did you see Jarvis with like a black
7 backpack-looking bag?

8 A No, I did not.

9 Q Do you remember telling the police you did?

10 A No, I did not. I did not say that. If I wrote a
11 statement, I didn't say that in the statement
12 neither.

13 Q Do you remember the police asking you about the
14 bag?

15 A I remember telling him that -- I don't remember
16 even what he had on that morning.

17 Q Yeah. You are saying now that you did not tell the
18 police he had a bag?

19 A Yes.

20 Q Okay. And do you remember telling the police who
21 was on the 4-wheeler?

22 A I remember saying some things about the 4-wheeler,
23 but those two guys wasn't together. I didn't tell
24 them that those two guys was together.

25 Now, y'all trying -- they are trying to cross

1 me up. I didn't say -- they are saying things that
2 I didn't say.

3 THE COURT: Okay.

4 THE WITNESS: And I'm not going to lie because
5 I'm under oath, but I don't want to hurt myself and
6 have somebody looking for me and I didn't say
7 anything, Your Honor.

8 THE COURT: But that is all you have to say is
9 you didn't say that.

10 THE WITNESS: Okay.

11 THE COURT: Or that you disagree with what he
12 is asking you. You don't have to agree with him or
13 you don't have to agree with what the police
14 officer says.

15 THE WITNESS: Okay.

16 THE COURT: You are under oath to tell what
17 you know.

18 THE WITNESS: Okay.

19 THE COURT: And that is all. And if that is
20 not going to match somebody else's story, that's
21 fine.

22 THE WITNESS: Okay.

23 THE COURT: So, again, I don't -- I don't want
24 to order you to say something that could cause you
25 to be prosecuted for some crime because that is

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1 your right.

2 THE WITNESS: Right.

3 THE COURT: To deny -- I mean, refuse to
4 answer any questions that may incriminate you in a
5 crime. But you haven't been charged in this crime.
6 And --

7 THE WITNESS: May I say something?

8 THE COURT: Yes, sir.

9 THE WITNESS: When I was asked to testify, I
10 wasn't asked to testify about anything but the
11 bicycle.

12 THE COURT: Uh-huh.

13 THE WITNESS: Now I'm being questioned about
14 other things.

15 THE COURT: Well, I guess if it happened it
16 happened. If it didn't happen, it didn't happen.
17 Only you know that.

18 THE WITNESS: Right.

19 THE COURT: So unless you can tell me how it
20 would incriminate you from a --

21 THE WITNESS: I'm not worrying about being
22 incriminated in this whole case.

23 THE COURT: Okay.

24 THE WITNESS: I just -- I haven't been offered
25 protective custody. I have been hurt. I fear for

1 my life.

2 THE COURT: I know. And I'm sorry about that.
3 I don't know anything about that. And the police
4 in this community have an obligation to protect
5 you. Now, I don't know how you take that, but that
6 is their obligation.

7 THE WITNESS: Right.

8 THE COURT: And nobody wants --

9 THE WITNESS: I don't stay home. I don't stay
10 home and near my home a lot of times because I'm
11 afraid.

12 THE COURT: I'm sorry. I don't know that I
13 can do anything about that. I understand.

14 So at this point, from what you told me, I'm
15 going to order you to answer Mr. Moak's questions
16 as truthfully as you can. Do you understand?

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. How much -- are you
19 ready for the jury?

20 MR. MOAK: Yes, Your Honor.

21 THE COURT: Bring the jury, if they are ready.

22 (WHEREUPON, the jury came into open
23 court at approximately 3:42 p.m.)

24 THE COURT: All right, Mr. Moak, you may
25 continue.

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1 MR. MOAK: Okay.

2 DIRECT EXAMINATION CONTINUES

3 BY MR. MOAK:

4 Q You told the police who was on the 4-wheeler,
5 right?

6 THE BAILIFF: Hold it a minute.

7 MR. MOAK: I'm sorry, we are missing one.

8 (Pause.)

9 Q You told the police who was on the 4-wheeler,
10 right?

11 A Yes, sir, I did.

12 Q Okay. Did the police ask you about a black bag?

13 A Yes, they did.

14 Q Did you answer any questions -- did you tell them
15 anything about the black bag?

16 A I didn't know anything about a black bag.

17 Q Okay. So you told the police you didn't know
18 anything about the black bag?

19 A True.

20 Q Okay. Did you give the police a name as to who was
21 on the 4-wheeler?

22 A Yes, sir, I did.

23 Q And what name was that?

24 A I told them James Drakeford.

25 Q Okay. Now, you got beat up, right?

1 A Yes, I did.

2 Q Do you stay around your own house anymore because
3 of this?

4 A A lot of times I don't.

5 Q And why don't you stay there?

6 A I don't live in my -- I don't live in neighborhood
7 around my house because I don't know what might
8 happen.

9 Q And is that why you are hesitant?

10 A Yes.

11 Q Okay. But Jarvis Gibbs, you know him by name and
12 sight, don't you?

13 A Yes.

14 Q Is that him?

15 A Yes, sir.

16 Q Is that who borrowed your bike that morning?

17 A Yes, sir.

18 Q Fifteen, twenty minutes later you saw the police
19 coming around?

20 A Yes, sir.

21 Q And your bike was at -- in the back of the police
22 car?

23 A Yes, sir.

24 Q And this is your bike?

25 A Yes, sir.

ARTHUR MACKLIN -- CROSS BY MR. OGBURN

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1 MR. MOAK: No further questions.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION

4 BY MR. OGBURN:

5 Q Mr. Macklin, what time did Mr. Gibbs borrow the
6 bike, do you remember?

7 A I can't recall.

8 Q Was it in the morning?

9 A It was in the morning time. It was after 9:00
10 o'clock, I know.

11 Q After 9:00, before lunch?

12 A Yes, sir.

13 Q Okay. And are you sure that that is your bike?

14 A As I told the Solicitor, I don't remember the coil
15 being around the seat.

16 Q Yes.

17 A And I thought around the shocks there were some
18 black cushions where the shocks go up and down, but
19 it appears to look like the bike I let him use that
20 morning.

21 Q But you are not really sure?

22 A No, sir.

23 Q Okay. Do you have other bikes around the house?

24 A I have had other bicycles.

25 Q I didn't know if any other people left bikes there

1 or had bikes there?

2 A If there is any bikes around my house they belong
3 to me or my brothers.

4 Q Okay. And did your brothers have any bikes that
5 day?

6 A They did. He -- actually he didn't come looking
7 for me, he came and asked for my brother.

8 Q Right.

9 A And my brother wasn't there. And he said he wanted
10 to borrow his bike. And I said he is not here, I'm
11 not going to let you use his, but I'll let you use
12 mine.

13 Q Okay. And has Jarvis Gibbs ever threatened to hurt
14 you in any way?

15 A No way at all.

16 Q So are you sure that is the bike you got back from
17 the police?

18 A I never got it back.

19 Q You never got it back?

20 A They never returned it back. They said they was
21 going to keep it as evidence.

22 Q Right. So the police took your bike and you really
23 never got a bike back?

24 A I never seen it no more. I never -- this is the
25 first time I have seen it since.

ARTHUR MACKLIN -- REDIRECT BY MR. MOAK

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1 Q Right. And you are still not even sure that is
2 your bike?

3 A I'm not really sure.

4 Q Okay.

5 MR. OGBURN: No further questions.

6 THE COURT: Anything further?

7 REDIRECT EXAMINATION

8 BY MR. MOAK:

9 Q You saw your bike in the back of the patrol car?

10 A I refuse to repeat these line of questioning. I
11 mean, I have answered them already.

12 Q I mean, do you see that little cable wrapped around
13 the --

14 A I don't remember the coil being around the seat.

15 Q And do you see any rubber on there?

16 A I thought that some rubber was on the, like yellow
17 things right up above the yellow things like where
18 the shocks are.

19 Q But the bike you saw in the back of that patrol car
20 was your bike, right?

21 A Yes, sir, it was.

22 Q And you were sure enough that you went to go see a
23 lawyer?

24 A Excuse me?

25 Q You were sure enough that was your bike you went to

1 go see a lawyer?

2 A I went and told my mother, and we called the
3 lawyer.

4 Q Okay.

5 A And he ordered me to come down.

6 Q So you were sure that was your bike, right?

7 A I'm quite sure it was.

8 MR. MOAK: No further questions.

9 THE COURT: Anything? Recross?

10 MR. OGBURN: Yes.

11 RECROSS-EXAMINATION

12 BY MR. OGBURN:

13 Q Have you seen Mr. Gibbs after the robbery or after
14 this occurred?

15 A Yes, sir.

16 Q And has he said anything to you?

17 A Not one thing.

18 Q All right.

19 MR. OGBURN: No further questions.

20 THE COURT: All right, sir, you may come down.

21 You are free to go. Thank you very much.

22 THE WITNESS: Thank you.

23 (Witness steps down.)

24 MR. MOAK: The State calls Pamela Moore.

25 (Witness enters courtroom.)

PAMELA MOORE -- DIRECT BY MR. MOAK

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1 THE CLERK: Place your left hand on the Bible,
2 and raise your right hand, please.

3 (Witness complies.)

4 THE CLERK: Do you swear or affirm the
5 evidence you will give in this case will be the
6 truth, the whole truth, and nothing but the truth,
7 so help you God?

8 THE WITNESS: I do.

9 THE CLERK: Please be seated in the witness
10 chair, and please state your full name for the
11 record. Right this way, ma'am.

12 (Witness seated.)

13 PAMELA MOORE,
14 after being duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MOAK:

17 Q Sergeant Moore, are you with the City of Camden
18 Police Department?

19 A Yes.

20 Q Were you on duty on July 25th, 2008?

21 A Yes, sir, I was.

22 Q Do you remember an incident that happened that
23 morning in Dusty Bend?

24 A I do.

25 Q And what was that incident?

- 1 A Bank robbery.
- 2 Q Okay. Did you do the incident report on that?
- 3 A I did.
- 4 Q On that call?
- 5 (Pause.)
- 6 Q I'm going to show you something and see if you can
- 7 recognize it.
- 8 A I do.
- 9 Q Is that a copy of the incident report that you
- 10 prepared?
- 11 A It is.
- 12 Q Does it have your dispatch time on there?
- 13 A It does.
- 14 Q And what time is that?
- 15 A 10:52 a.m.
- 16 Q And what time did you arrive there, or what is the
- 17 arrival time?
- 18 A 10:59.
- 19 Q 10:59?
- 20 A Yes.
- 21 Q Okay. Were you one of the first officers on the
- 22 scene?
- 23 A I was.
- 24 Q Okay. And you did the incident report?
- 25 A Yes, sir.

PAMELA MOORE -- DIRECT BY MR. MOAK

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- 1 Q And you added the blocks with all the witnesses and
2 stuff too, or did somebody else do that?
- 3 A Someone else did that.
- 4 Q Okay. You just did the basic incident report?
- 5 A Correct.
- 6 Q Now, were you involved in riding around the
7 neighborhood looking for a suspect?
- 8 A Yes.
- 9 Q Were you there when the bike was located?
- 10 A Yes.
- 11 Q Do you remember where the bike was located at?
- 12 A Railroad Avenue.
- 13 Q Okay. I'm going to show you what is marked 22, 23,
14 24, 25, 26, 27, 28, 29 -- and actually 21, so it is
15 21 through 29.
- 16 Tell me if you recognize these things.
- 17 A Yes.
- 18 Q And what is 21?
- 19 A It is Lyttleton Street and the side parking lot of
20 First Palmetto Savings Bank.
- 21 Q So the parking lot of the bank towards Railroad
22 Avenue?
- 23 A Correct.
- 24 Q Okay. 22, what is that?
- 25 A Railroad Avenue.

1 Q And what is on that picture?

2 A Bicycle.

3 Q Okay. And the bicycle is there?

4 A Yes.

5 Q How about 23, is it the same basic picture?

6 A Yes.

7 Q Okay. 24, what is that?

8 A Bicycle the suspect was riding.

9 Q Are all these pictures fair and accurate depictions
10 of scenes you saw that day or that you can
11 identify?

12 A Yes.

13 MR. MOAK: Your Honor I move all these into
14 evidence, 21 through 29.

15 MR. OGBURN: Without objection.

16 THE COURT: Without objection.

17 (WHEREUPON, State's Exhibit Nos. 21
18 through 29 were marked for
19 identification and received into
20 evidence.)

21 Q So that is close-up of the bike as it lay on the
22 ground?

23 A Yes.

24 Q And what is 25?

25 A It is another shot of Railroad Avenue, the bicycle,

PAMELA MOORE -- DIRECT BY MR. MOAK

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1 and a Kershaw County patrol vehicle.

2 Q So it showed where the bike is at? And what is
3 that -- what is 26?

4 A It is another shot of where the bike was located.

5 Q Okay. And 27?

6 A Another shot of the bike.

7 Q Okay. 28?

8 A Same. Another shot of the bicycle.

9 Q And what is 29?

10 A 29 is a photo of the railroad tracks located beside
11 where the bike was found.

12 Q Okay. So all these have to do with where the bike
13 was found at?

14 A Yes.

15 Q Okay. I show you what has been marked as
16 State's 36.

17 (Pause.)

18 MR. OGBURN: I have no objection.

19 (WHEREUPON, State's Exhibit No. 36 was
20 marked for identification and received
21 into evidence.)

22 Q State's 36, can you identify what that is?

23 A It is an overview shot of the bank and Railroad
24 Avenue and Lyttleton Street.

25 Q Okay. Is this a fair and accurate -- does this

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1 appear to you to be a fair and accurate depiction
2 of what the area looks like from overhead?

3 A Yes.

4 Q Okay. Can you step off?

5 (Witness steps down.)

6 Q Okay. What road is this?

7 A Lyttleton Street.

8 Q 521?

9 THE COURT: Mr. Moak, the court reporter can't
10 hear what you are saying.

11 MR. MOAK: Okay.

12 Q How about this? What is that?

13 THE BAILIFF: Ron, excuse me, but they can't
14 see.

15 A Railroad Avenue.

16 Q Okay. And is this Lyttleton Street right here?

17 A It is.

18 Q Is that the bank?

19 A Yes, it is.

20 Q Is that 521?

21 A Yes.

22 Q Is that CVS?

23 A Yes.

24 Q What street is that? Is it marked?

25 A Monroe Street.

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- 1 Q Okay. And the 100 block of Monroe Street, are you
2 familiar with which end of it it is at?
- 3 A It is on the far end.
- 4 Q It is on this end?
- 5 A Yes.
- 6 Q And the bank is there, right?
- 7 A Yes.
- 8 Q Okay. Can you kind of point out the area where the
9 bike was found on Railroad Avenue?
- 10 A It is right here at this driveway.
- 11 Q That driveway there?
- 12 A Yes.
- 13 Q Okay. So the bike is found there, and the 100
14 block of Monroe Street is up here?
- 15 A Yes.
- 16 Q Okay. Now, you said that driveway. Is that -- you
17 can go back to the stand again.
- 18 (Witness returns to witness stand.)
- 19 Q Okay. Where is that driveway in relation to this
20 building right here?
- 21 A It is to the right.
- 22 Q I mean, can you estimate about how far to the
23 right?
- 24 A Roughly maybe 34 yards away.
- 25 Q Is it like the first driveway past that building?

1 A Yes.

2 Q Okay. So it is pretty close to that building?

3 A Yes, sir.

4 Q Where the bike was found?

5 MR. MOAK: No further questions of this
6 witness.

7 CROSS-EXAMINATION

8 BY MR. OGBURN:

9 Q Just a few questions, Sergeant. Sergeant, you
10 filled out the incident report, is that correct?

11 A Yes.

12 Q Do you have that in front of you?

13 A No.

14 Q Let me show you a copy of one page of the incident
15 report. And take a look at it and see if that is
16 the report you filled out, or at least a photocopy
17 of the report that you filled out.

18 A It is.

19 Q Could you read the description of the suspect?

20 A Black male, approximately 6'4" tall, wearing a
21 white T-shirt, ski mask, and latex gloves.

22 Q Okay. That was the suspect, right?

23 A Yes, sir.

24 Q And read below -- the line below his name, as far
25 as scars or any unusual identifying

PAMELA MOORE -- CROSS BY MR. OGBURN

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- 1 characteristics.
- 2 A It says upper front teeth are gold caps and tattoo
- 3 on both arms.
- 4 Q Did you see those tattoos?
- 5 A Rephrase the question.
- 6 Q Did you actually see the tattoos on Jarvis Gibbs'
- 7 arms?
- 8 A I didn't see him that day, sir.
- 9 Q You didn't see him that day? So someone just gave
- 10 you that information?
- 11 A Yes, sir.
- 12 Q Do you know who gave you the information?
- 13 A No, sir. It was based on written statements.
- 14 Q Okay. Thank you. Basically you were the first one
- 15 to respond to the bank, is that correct?
- 16 A No, sir, I was the first one to respond to that
- 17 area.
- 18 Q To the area. Okay. By area, you mean the Dusty
- 19 Bend area?
- 20 A Yes, sir.
- 21 Q And what did you do when you first got there?
- 22 A Set up perimeter.
- 23 Q Set up a perimeter? Then other law enforcement
- 24 vehicles came?
- 25 A Yes, sir.

1 Q And you sort of defended the perimeter?

2 A Yes.

3 Q And that was basically your extent?

4 A Yes.

5 Q Okay.

6 MR. OGBURN: No further questions.

7 REDIRECT EXAMINATION

8 BY MR. MOAK:

9 Q Sergeant Moore, on the incident report, you filled
10 this paragraph here in, right?

11 A Yes, I did.

12 Q And can you read that paragraph?

13 A Yes. It says officers responded to First Palmetto
14 Savings Bank in Dusty Bend in reference to an armed
15 robbery.

16 The victim stated a black male, approximately
17 6'4" tall, wearing a white T-shirt, ski mask and
18 latex gloves approached the first teller.

19 He pointed a handgun at her and told her to
20 put the money in a bag.

21 Subject then fled from the area riding a
22 bicycle south on Lyttleton Street towards the
23 railroad tracks.

24 The Kershaw County Sheriff's Office Bloodhound
25 Unit and SLED helicopter were notified.

PAMELA MOORE -- REDIRECT BY MR. MOAK

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- 1 Q Okay. Now, what is the name of y'all -- was it
2 Voltech, is that the name of y'all's computer
3 system at the Police Department?
- 4 A Yes.
- 5 Q If you enter a suspect's name using the system,
6 what happens?
- 7 A It pulls up all their information. It is already
8 on record.
- 9 Q So is that where that came from?
- 10 A Yes.
- 11 Q It came from already being in the system?
- 12 A Yes.
- 13 Q So nobody would have told you that, the computer
14 would have spit that out?
- 15 A Correct.
- 16 MR. MOAK: No further questions.
- 17 MR. OGBURN: No redirect.
- 18 THE COURT: All right. You may come down.
19 Thank you very much.
- 20 (Witness steps down.)
- 21 THE COURT: Can the witness be excused?
- 22 MR. MOAK: Yes, Your Honor.
- 23 THE COURT: Without objection.
24 (Witness excused.)
- 25 THE COURT: Next witness?

1 MR. MOAK: Your Honor, may we approach?

2 THE COURT: Yes.

3 (WHEREUPON, a bench conference was held
4 in the presence of the jury but out of
5 the hearing of the jury.)

6 THE COURT: All right, ladies and gentlemen,
7 things have moved a little faster today than I
8 think the parties anticipated and several witnesses
9 have been scheduled for tomorrow. These were all
10 the witnesses that had been scheduled for today.
11 We were going to obviously have to go into tomorrow
12 anyway, so at this time I'm going to dismiss you
13 for the evening and ask you to be back in the jury
14 room at 9:30 in the morning, at which time we'll
15 continue with the trial.

16 Again, don't -- I am going to ask you not to
17 discuss the case with anyone else over the evening
18 hours, including friends and family, and not -- and
19 ask that you not discuss it among yourselves when
20 you return to the jury room in the morning.

21 So have a pleasant evening. We will see you
22 at 9:30 in the morning.

23 Thank you very much.

24 (WHEREUPON, the jury is excused for the
25 evening at 4:02 p.m.)

1 THE COURT: All right, Mr. Ogburn, at this
2 time we will take up the issue of the statement
3 that your client gave. You had indicated to the
4 Court that you don't challenge the voluntariness of
5 that statement, but that you do -- I assume you
6 take the position that certain portions of that
7 tape, I'll just call it a tape, video, are what?

8 MR. OGBURN: Yes, sir, they are, in my
9 opinion, I argue that they are more prejudicial
10 than probative as to the current charge he is
11 facing.

12 THE COURT: All right. Do you have a list of
13 the excerpts prepared by the State?

14 MR. OGBURN: Yes, sir, I do have a copy of
15 that list that the State prepared, and it seems
16 they are very numerous, and I'm not sure if we can
17 edit all those out without taking out most of the
18 tape.

19 THE COURT: Well, my understanding, it is a
20 three-hour tape?

21 MR. OGBURN: Right.

22 MR. MOAK: Your Honor, this particular one is
23 one hour. Mr. Drakeford was the three-hour one.

24 THE COURT: I'm sorry, one hour. All right.
25 So you are making a 403 objection, is that my

1 understanding?

2 MR. OGBURN: Yes, sir. I mean, if these are
3 edited out, I don't see why the tape can't be
4 played if he wants the tape played, but I don't
5 think there is much evidence on it.

6 THE COURT: I don't know whether there is.

7 MR. OGBURN: Right. I have listened to it,
8 and basically it is a denial by Mr. Gibbs.

9 THE COURT: Well, whatever. I can't --

10 MR. OGBURN: Right.

11 THE COURT: I can't opine as to the contents
12 of the tape. Mr. Moak, what about that? What is
13 the -- although -- just wait a minute. Mr. Ogburn
14 has objected on the grounds of relevance. I have
15 that question as to what the relevance of these
16 statements are to the prosecution for a bank
17 robbery or kidnapping?

18 MR. MOAK: Your Honor, the ones of -- at 8:45;
19 14:03, 14 -- I mean 15:50, 17:02, 28:00, 28:18,
20 28:25, 28:31, 28:36, 32:50 and 51:30, Your Honor.
21 I would submit that, you know, it is more character
22 type evidence that the Defendant himself was
23 presenting the police as evidence of his character
24 to show that he would not have actually committed
25 the bank robbery. So, I mean, that is actually

1 more relevant on their side than my side for that.

2 As to 17:43, 17:45, 20:40, and 26:40, Your
3 Honor, I would submit that those actually go to Mr.
4 Gibbs actually specifically telling the police, I
5 could not have did a bank robbery because I was out
6 doing this.

7 So I think it definitely goes to the issue of
8 whether or not he actually committed the bank
9 robbery because these are him saying that
10 specifically, I was doing this during the bank
11 robbery.

12 And as a matter of fact, his time frame on the
13 video, on the statement as to when he borrowed the
14 bike, we would submit that once you view the video
15 and listen to Detective Boan about when they had
16 the bike, he actually has this after the police
17 have the bike.

18 So, I mean, as part of -- you know, we can
19 show that did not happen when he claimed it
20 happened, so we need this in here to basically
21 impeach his statement and show that --

22 THE COURT: Wait a second.

23 MR. MOAK: -- if he didn't do it why is he
24 lying about it, Your Honor. That is the basic
25 argument.

1 MR. OGBURN: Well, first of all, he made no
2 statements on the stand to impeach, right?

3 THE COURT: Right. I agree with that. He has
4 made no statement other than what is in the video.

5 And whether you could use it to impeach him or
6 not, that is not the question right now. The
7 question is whether it can be used by the State in
8 chief.

9 For whatever reason, he said it, and I don't
10 think counsel is disputing that he said it, and
11 even if it is considered an admission of some other
12 crime or guilt of another crime, what has it got --
13 I still don't understand what it has got to do with
14 this case.

15 MR. MOAK: Your Honor, part of the problem is
16 he had to listen to the whole video to see the
17 context of these.

18 He states that he wakes up from 10:30 and
19 11:00 and takes a shower, goes to Dusty Bend,
20 borrows a bike from Macklin, and that is where he
21 gets to that 17:45. He is talking about giving a
22 \$20 piece for the bike. He states where Macklin
23 was at, Macklin's house.

24 THE COURT: He says that is what Macklin told
25 him, is that right?

1 MR. MOAK: No. Jarvis Gibbs tells Lee Boan on
2 that video that he told Arthur Macklin, I will give
3 you a \$20 piece of crack to use the bike. And he
4 talks about how he then used the bike to ride
5 around to sell more crack, talked to a black female
6 named Pookie. And it sounds like he may have set a
7 date up for later that day. And then he claims he
8 went back to Macklin's house and dropped the bike
9 off. He describes the area with a fence and I
10 believe a mailbox where he left the bike at.

11 THE COURT: There is no objection to that.

12 MR. MOAK: And the whole point is, all those
13 events that he is describing doing while he is on
14 the bike take time. So, I mean, it is like a
15 timeline issue. So if you take out the event of
16 what he is doing in there, I think it misrepresents
17 the timeline, Your Honor.

18 THE COURT: Well, so what? I mean, he has no
19 obligation to make your timeline.

20 MR. MOAK: My point, Your Honor --

21 THE COURT: I understand that it may make your
22 case sound better if the timeline is established by
23 the Defendant, but he has got no obligation to do
24 that.

25 What about 17:45, Mr. Ogburn? That seems to

1 relate to the use of the bicycle, which is (a), it
2 has some indicia of relevance, and it may be
3 probative of the fact that your client says he had
4 a bicycle on that day. I think that is probative
5 evidence. I don't see much else on this list that
6 would --

7 MR. OGBURN: Yes, Your Honor.

8 THE COURT: -- link him to the --

9 MR. OGBURN: They did have the owner of the
10 bike on the stand and they made that point with him
11 there, with the actual owner of the bike.

12 THE COURT: Well --

13 MR. OGBURN: They didn't push the \$20 crack
14 issue, and it seems like they want to do it now.

15 THE COURT: Well, (a) you could have done
16 that. But, (b) it seems to me that -- everything
17 else --

18 MR. MOAK: Your Honor, I think the 20:40
19 should say Arthur Macklin, not Arthur Drakeford.
20 That refers back to him repeating what he gave --

21 THE COURT: I don't know. Don't put words in
22 his mouth.

23 MR. MOAK: Where it says 20:40, it says Arthur
24 Drakeford, it should say Arthur Macklin.

25 THE COURT: How are you going to put words in

1 his mouth? If he said Arthur Drakeford, he said
2 Arthur Drakeford. I don't know what he said.

3 All right, I'm going to grant your motion,
4 Mr. Ogburn.

5 MR. OGBURN: Thank you, Your Honor.

6 THE COURT: With the exception of 17:45. Now,
7 how the State goes about redacting that, I don't
8 know, but I'm sure it can be done.

9 All right.

10 MR. MOAK: Okay.

11 THE COURT: That is -- what else? Anything
12 else?

13 MR. MOAK: That was the last issue with Boan,
14 and I don't know -- it is going to -- now that I
15 know what we need to redact out, we are going to
16 have to figure out how we are going to do that.

17 THE COURT: Well, get a teenager. They know
18 how to operate it much better than probably you do.

19 MR. MOAK: Well, the problem is, if it was an
20 audio tape, we would like stop and start. The
21 problem is that this video is actually recorded on
22 software designed to prevent from doing that.

23 THE COURT: Well, I can't answer the question
24 at this point. You just have to try to figure it
25 out, unless you reduce it to writing.

1 All right, anything further?

2 MR. MOAK: Not today, Your Honor.

3 MR. OGBURN: Nothing from the Defense, Your
4 Honor.

5 THE COURT: All right, 9:30.

6 (WHEREUPON, court adjourned for the evening.)

7 (WHEREUPON, the trial resumed as follows.)

8 NOVEMBER 18, 2009

9 THE COURT: Is the State ready to proceed?
10 Yes, sir?

11 MR. OGBURN: Yes, Your Honor, I have a motion
12 that the Solicitor provide me a criminal history, a
13 ten-year criminal history of any of the witnesses
14 that are non-law enforcement for impeachment
15 purposes. I have not received any as of yet.

16 THE COURT: Well, how about settling the
17 record, Mr. Moak?

18 MR. MOAK: Okay, I'll get a rap sheet.

19 MR. OGBURN: Your Honor, I would ask that
20 apply to all non-law enforcement witnesses.

21 THE COURT: Well, you are entitled to that.

22 (Pause.)

23 MR. MOAK: Your Honor, we're waiting on the
24 rap sheet of Mr. Roberts.

25 THE COURT: Do you have the rest of them?

1 MR. MOAK: And Mr. Moore, who is the next
2 witness coming up, his is I think printing up right
3 now. So we have got those two.

4 THE COURT: All right.

5 MR. MOAK: And the bank tellers we already
6 ran. I think we ran those last week. They don't
7 have records.

8 MR. OGBURN: Is anybody here from the City?

9 MR. MOAK: Lee Boan is outside.

10 THE COURT: Bring him in. I want to talk to
11 him, please.

12 All right, this is off the record.

13 (Colloquy held off the record.)

14 THE COURT: All right, now, who is your next
15 witness?

16 MR. MOAK: Chad Roberts. We are waiting for
17 them to bring the rap sheet in so I can give it
18 to --

19 THE COURT: So you don't have it yet?

20 MR. MOAK: We are waiting for them to bring it
21 in.

22 (Pause.)

23 MR. MOAK: I have Mr. Roberts' rap sheet.

24 THE COURT: Is the State ready to proceed?

25 MR. MOAK: Yes, Your Honor.

1 THE COURT: Is the Defense ready to proceed?
2 MR. OGBURN: Yes, Your Honor.
3 THE COURT: All right, bring the jury, please.
4 (WHEREUPON, the jury came into open
5 court at approximately 9:53 a.m.)
6 THE COURT: Good morning, ladies and
7 gentlemen.
8 THE JURY: Good morning.
9 THE COURT: We are ready to continue with the
10 trial.
11 Solicitor, call your next witness.
12 MR. MOAK: Yes, Your Honor. The State now
13 calls Chad Roberts.
14 THE CLERK: Place your left hand on the Bible,
15 and raise your right hand, please.
16 (Witness complies.)
17 THE CLERK: Do you swear or affirm the
18 evidence you will give in this case will be the
19 truth, the whole truth, and nothing but the truth,
20 so help you God?
21 THE WITNESS: Yes, ma'am.
22 THE CLERK: Please be seated in the witness
23 chair, and please state your full name for the
24 record.
25 CHAD ROBERTS,

CHAD ROBERTS -- DIRECT BY MR. MOAK

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1 after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. MOAK:

4 Q Mr. Roberts, who is your wife?

5 A Melissa Roberts.

6 Q And where does she work?

7 A First Palmetto.

8 Q And she works in Dusty Bend?

9 A Yes, sir.

10 Q July 25th, 2008, were you going to go see her at
11 some point?

12 A Drop some money off, yes, sir.

13 Q And what was -- what do you mean by dropping some
14 money off?

15 A I was taking her some lunch money.

16 Q Was she going to go somewhere?

17 A She was leaving for lunch, yes, sir.

18 Q And where were you headed that day?

19 A To the lake.

20 Q Okay. And what direction did you come to the bank?
21 Did you come up 521, Lyttleton Street?

22 A Lyttleton Street.

23 Q Up Lyttleton Street?

24 A Yes, sir.

25 Q On the way to the bank, did you notice anything?

- 1 A Across the railroad tracks I seen a 4-wheeler
2 sitting beside the little club, but I didn't think
3 anything about it.
- 4 Q Okay. You said it was sitting beside the little
5 club?
- 6 A Between the little club and the railroad tracks.
- 7 Q I show you State's 32, is that the little club you
8 are talking about?
- 9 A Yes.
- 10 Q So where on this picture would the 4-wheeler have
11 been at?
- 12 A Between the railroad tracks and the door.
- 13 Q Okay. So it was over there?
- 14 A Uh-huh.
- 15 Q So you saw a 4-wheeler sitting there? Was there a
16 person on that 4-wheeler?
- 17 A Yes, there was somebody sitting on it.
- 18 Q Okay. When you got to the bank, what happened?
- 19 A Pulled up in the parking lot, parked my motorcycle,
20 got off. I heard somebody coming out the door,
21 sounded winded. I seen somebody coming out with a
22 mask.
- 23 Q Uh-huh. You saw somebody with a mask?
- 24 A Uh-huh.
- 25 Q Do you remember what the person looked like?

CHAD ROBERTS -- DIRECT BY MR. MOAK

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- 1 A 6'3", "6'4", had a mask on.
- 2 Q Okay. Had a mask on? Was he kind of big, skinny
- 3 or heavyset?
- 4 A 210, 220.
- 5 Q Okay. Did you talk to him or try to stop him?
- 6 A Not at that point, no.
- 7 Q What did you do?
- 8 A Run in the bank to check on my wife and the rest of
- 9 the tellers.
- 10 Q And you went in and checked on your wife and
- 11 tellers?
- 12 A Yes, sir.
- 13 Q Afterwards, did you go anywhere else?
- 14 A Yes, sir.
- 15 Q You tried -- where did you go?
- 16 A I went to see what direction he went.
- 17 Q And did you see the 4-wheeler again?
- 18 A No, sir.
- 19 Q Who were -- what were you looking for?
- 20 A The robber on the bicycle, is who I was looking
- 21 for.
- 22 Q You didn't see him, did you?
- 23 A No.
- 24 Q But you saw that 4-wheeler in front of that club?
- 25 A Yes, sir.

1 MR. MOAK: No further questions.

2 CROSS-EXAMINATION

3 BY MR. OGBURN:

4 Q Mr. Roberts, you have had a little trouble with the
5 law, is that correct?

6 A Years ago, yes.

7 Q Okay. What were you convicted of?

8 A I had a couple of bad checks.

9 Q Fraudulent checks?

10 A Nine, ten years ago.

11 Q Okay. Okay. And you were going to the bank that
12 day to see your wife?

13 A Going to take her some lunch money, yes, sir.

14 Q Right. And did you get a look at the robber?

15 A Yes, I got a look at the robber.

16 Q Okay. Did you ever see the robber's face?

17 A Never seen his face.

18 Q Okay. And he was running at the time, correct?

19 A He come out of the door and stopped, turned around
20 and looked at me.

21 Q Okay.

22 A And left.

23 Q And then you proceeded to go into the bank?

24 A Yes, sir.

25 Q And afterwards you said you went and you looked for

CHAD ROBERTS -- REDIRECT BY MR. MOAK

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1 the robber?

2 A I went to see what direction he went.

3 Q Okay. And were you able to tell what direction he
4 went?

5 A While I was in the bank I looked out of the
6 driver's window and I seen him going down Lyttleton
7 Street towards the railroad tracks.

8 Q Okay. Was he on foot or on a bike?

9 A Bicycle.

10 Q Okay.

11 MR. OGBURN: No further questions.

12 THE COURT: Anything further?

13 REDIRECT EXAMINATION

14 BY MR. MOAK:

15 Q Heading down Lyttleton Street where you saw the
16 4-wheeler at?

17 A Yes, sir.

18 MR. MOAK: No further questions.

19 MR. OGBURN: Nothing.

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

21 May the witness be excused?

22 MR. MOAK: Yes, Your Honor.

23 THE COURT: Without objection. You are free
24 to go. Thank you very much.

25 (Witness steps down and is excused.)

KERI GAINNEY -- DIRECT BY MR. MOAK

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1 MR. MOAK: The State calls Keri Gainey.

2 (Witness enters courtroom.)

3 THE CLERK: Place your left hand on the Bible,
4 and raise your right hand, please.

5 (Witness complies.)

6 THE CLERK: Do you swear or affirm the
7 evidence you will give in this case will be the
8 truth, the whole truth, and nothing but the truth,
9 so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Please be seated in the witness
12 chair, and please state your full name for the
13 record.

14 KERI GAINNEY,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MOAK:

18 Q Ms. Gainey, where do you work?

19 A First Palmetto Savings Bank.

20 Q How long have you worked there?

21 A A little over two years.

22 Q Over two years? What branch do you currently work
23 at?

24 A The Pontiac branch.

25 Q In July of 2008 what branch did you work at?

KERI GAINES -- DIRECT BY MR. MOAK

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1 A The Dusty Bend branch.

2 Q Do you remember the morning of July 25th, 2008?

3 A Yes, sir.

4 Q I'll show you a picture marked State's 3. And can
5 you identify this picture?

6 A That's the picture of the Dusty Bend branch behind
7 the counter.

8 THE COURT: Ma'am, you are going to have to
9 speak up a little bit in that microphone because
10 the ladies and gentlemen over here have to hear
11 what you have to say, okay?

12 THE WITNESS: Okay.

13 A It is a picture of the Dusty Bend branch.

14 Q Is that the drive-through window?

15 A Yes, sir.

16 Q And where were you at?

17 A Right there(indicating).

18 Q Okay. So you are right here? That is where you
19 were stationed at that day?

20 A Yes, sir.

21 Q And was somebody stationed over here?

22 A Yes, sir.

23 Q Who was that?

24 A Brenda.

25 Q And were Melissa Roberts and Leah Bailey also up.

1 there?

2 A Yes, sir.

3 Q So it was four tellers on duty that day?

4 A Yes, sir.

5 Q What do you remember happening that morning?

6 A It was a normal morning until a man came in and had
7 a gun pointed at Leah and demanded the money and
8 put a bag on the counter and robbed us and left.

9 Q And did you really look at the man?

10 A Not really. I mean, I could describe what he had
11 on, but that is about it.

12 Q Okay. What did he have on?

13 A He had on a ski mask, a white shirt and blue latex
14 gloves.

15 Q Okay. What was your -- what were your emotions
16 like when this happened?

17 A I was upset, scared.

18 Q And did he tell you to get up or anything like
19 that?

20 A I don't remember.

21 Q Okay. And did you have to empty money out of your
22 drawer?

23 A Yes, sir, he asked us for all our money out of the
24 drawer. And I took all my money out of the drawer
25 and put it in the bag.

KERI GAINY -- DIRECT BY MR. MOAK

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- 1 Q And the bag was -- the bag was placed on the front
2 counter?
- 3 A Yes, sir, in front of Leah's station.
- 4 Q Okay. And your drawer was over there by where you
5 were at?
- 6 A Yes, sir.
- 7 Q So you had to take your money from your drawer and
8 walk over to where the bag was at?
- 9 A Yes, sir.
- 10 Q And put it in the bag?
- 11 A Yes, sir.
- 12 Q And you can describe what he was wearing, but can
13 you remember anything else about him?
- 14 A No, sir.
- 15 Q Do remember his race?
- 16 A He was black.
- 17 Q Do you remember anything about his size?
- 18 A Really tall.
- 19 Q Okay. Did you see him go out the door?
- 20 A It happened so quickly, I didn't.
- 21 Q Okay. Did you look out the drive-through window
22 after it happened?
- 23 A No, sir.
- 24 Q Okay.
- 25 MR. MOAK: No further questions of this

1 witness.

2 CROSS-EXAMINATION

3 BY MR. OGBURN:

4 Q Good morning, Ms. Gainey.

5 A Good morning.

6 Q First of all, before the questions, I do want to
7 say I'm sorry that you had to go through such a
8 horrible and traumatic experience.

9 So you worked there at the branch there in
10 the -- in Dusty Bend?

11 A Yes, sir.

12 Q And you were there when the robbery occurred?

13 A Yes, sir.

14 Q How long was the robber in the bank?

15 A Not very long.

16 Q Okay. Would you say a minute?

17 A I would say no more than five minutes.

18 Q Okay.

19 A It happened awful quickly.

20 Q Very quickly? Okay. What did he look like?

21 A He had -- he had on a black ski mask, a white shirt
22 and blue latex gloves.

23 Q And the shirt was short-sleeved?

24 A Yes, sir.

25 Q Did you see any scars, birthmarks, tattoos on his

KERI GAINES -- CROSS BY MR. OGBURN

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1 arms?

2 A No, sir.

3 Q And he put a bag on the counter, is that correct?

4 A Yes, sir.

5 Q And could you describe the bag?

6 A It looked like an overnight bag, like a black
7 overnight bag you would take on vacations.

8 Q Did it have handles on the top?

9 A Yes, sir.

10 Q Did you notice any gold teeth on the robber?

11 A I couldn't see. He had on a mask.

12 Q Right. The mask didn't have a mouth opening?

13 A I didn't see it.

14 Q Or you just didn't notice it?

15 A I didn't notice it.

16 Q Okay. And you saw him leave the bank on foot, is
17 that correct?

18 A I didn't see him. When he went out, I didn't --

19 Q Right.

20 A -- see after that.

21 Q So -- did you ever see the robber's face?

22 A No, sir.

23 Q So you can't describe anything about his face?

24 A No, sir.

25 MR. OGBURN: No further questions.

1 THE COURT: Anything further?

2 MR. MOAK: Nothing further of this witness.

3 THE COURT: You may go. Yes, ma'am. Thank
4 you very much.

5 (Witness steps down and is excused.)

6 MR. MOAK: Next, Brenda Fannin.

7 (Witness enters courtroom.)

8 THE CLERK: Place your left hand on the Bible,
9 and raise your right hand, please.

10 (Witness complies.)

11 THE CLERK: Do you swear or affirm the
12 evidence you will give in this case will be the
13 truth, the whole truth, and nothing but the truth,
14 so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated in the witness
17 chair, and please state your full name for the
18 record.

19 (Witness seated.)

20 THE WITNESS: Brenda Fannin.

21 BRENDA FANNIN,
22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MOAK:

25 Q Ms. Fannin, where are you employed?

BRENDA FANNIN -- DIRECT BY MR. MOAK

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- 1 A First Palmetto Savings Bank.
- 2 Q And how long have you been there?
- 3 A Seven years.
- 4 Q Okay. On July 25th, 2008, which branch were you
- 5 working at?
- 6 A Dusty Bend branch.
- 7 Q Okay. And do you remember who was working there
- 8 with you that day?
- 9 A Leah Bailey, Melissa Roberts and Keri Gainey.
- 10 Q Okay. Do you remember anything unusual happening
- 11 that day?
- 12 A Yes.
- 13 Q And what happened?
- 14 A A black man came in and showed a gun and demanded
- 15 money.
- 16 Q Okay. Do you remember what the man looked like or
- 17 what he was wearing?
- 18 A He had a white T-shirt on and black pants.
- 19 Q Uh-huh.
- 20 A But other than that, I couldn't recognize him.
- 21 Q Do you remember anything about his face?
- 22 A No, he had something over his face.
- 23 Q Okay. And I'm going to show you what is marked as
- 24 State's 11. Actually, I show you what is marked as
- 25 State's 3. It is the same picture. Does this show

1 the area where you were working at that day?

2 A Yes.

3 Q Where were you at?

4 A I was right here.

5 Q Okay. So you are on this side?

6 A Right, on that side.

7 Q At the drive-through window?

8 A At the drive-through window.

9 Q Okay. And is this the counter where the walk-up
10 traffic comes?

11 A That's correct.

12 Q Okay. He was over here?

13 A Right. He was right here. He came -- Leah was
14 right there, and he came right to Leah.

15 Q So he was right here?

16 A Uh-huh.

17 Q And you were back -- way back in that area?

18 A Yes. Right there.

19 Q Okay. Now, do you remember where he put the bag
20 at?

21 A He put it right on the other side of the counter,
22 the high part, and then there is another counter,
23 he put it right over --

24 Q Was that near Leah's station or Melissa's station?

25 A That was Leah's.

BRENDA FANNIN -- DIRECT BY MR. MOAK

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- 1 Q So that is the first one coming in?
- 2 A Right.
- 3 Q Okay. And did he order y'all to give him any
- 4 money?
- 5 A Yes.
- 6 Q And what did you do?
- 7 A We gave him the money. We put the money in the
- 8 bag.
- 9 Q And was your drawer near where you were sitting --
- 10 where you were stationed at?
- 11 A Right.
- 12 Q So had to take the money from there over to
- 13 Leah's --
- 14 A Leah's.
- 15 Q -- station --
- 16 A Right.
- 17 Q -- to put in the bag?
- 18 A Right.
- 19 Q Okay. When he came in, did you duck or lay down or
- 20 anything?
- 21 A No. I -- I didn't -- he came in so fast that I
- 22 didn't even realize at first.
- 23 Q Okay. And did you see him when he left that door
- 24 where the height marks are at?
- 25 A No, I couldn't see that where I was.

- 1 Q Now, these pictures -- or this picture here,
2 State's 10 and 13, do you recognize -- can you tell
3 us what they show?
- 4 A That is out the drive-through window.
- 5 Q Looking out the window?
- 6 A Uh-huh.
- 7 Q Is that that outdoor power sports building?
- 8 A Yes.
- 9 Q Do you know what -- is that Lyttleton Street?
- 10 A Yes, that is Lyttleton Street.
- 11 Q There is railroad tracks back there?
- 12 A Yes, the railroad tracks are right back here.
- 13 Q Okay. Did you look out the window after the
14 robbery took place?
- 15 A Yes, I did.
- 16 Q And what did you see?
- 17 A I saw the black man leave on the bicycle.
- 18 Q And was it the same guy?
- 19 A Yes, it was.
- 20 Q In what direction was he headed?
- 21 A He was going towards the railroad tracks.
- 22 Q So he is heading that way?
- 23 A Yeah, he is heading down that way.
- 24 Q Okay.
- 25 (Exhibits published to jury.)

BRENDA FANNIN -- CROSS BY MR. OGBURN

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1 Q Now, how close were you to him when he was robbing
2 the bank?

3 A Well, when I had to put the money in the bag, very
4 close.

5 Q Okay. But did you ever try to look him in the face
6 or look at him real close?

7 A He had that mask over his head, so I really didn't
8 get a good look at him.

9 Q Okay. Do you have any estimate how tall he was or
10 how big he was?

11 A He was probably at least six foot, 200 pounds
12 probably.

13 Q Okay.

14 A I mean, that is just a rough guess.

15 Q You say at least six foot?

16 A Yes.

17 Q Could have been taller?

18 A He could have been.

19 Q Okay.

20 MR. MOAK: No further questions.

21 CROSS-EXAMINATION

22 BY MR. OGBURN:

23 Q Good morning, Ms. Fannin.

24 A Good morning.

25 Q Now, before we get started on the questioning, I

1 just want to say I'm sorry that you had to go
2 through such a terrible experience.

3 A Uh-huh.

4 Q Okay? So you were working there when the robbery
5 occurred?

6 A Yes, sir.

7 Q How long would you say the robber was in the bank?

8 A Not very long. Probably a minute, maybe.

9 Q Okay. And he had to -- he had a bag, correct?

10 A Right.

11 Q Could you describe the bag?

12 A It was dark, duffle kind of bag.

13 Q Duffle? Did it have handles on the top?

14 A I think, but I can't be sure. It has been a while.

15 Q And he had to -- he took the bag and he reached
16 over the counter to put the bag on the smaller
17 counter?

18 A Right.

19 Q Did you notice anything -- and his arms were
20 uncovered?

21 A Right.

22 Q Did you notice anything unusual about his arms:
23 Scars, marks, tattoos?

24 A No.

25 Q Did you notice any gold teeth, especially the front

BRENDA FANNIN -- CROSS BY MR. OGBURN

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1 two?

2 A No.

3 Q Okay. And how close did you get or how close did
4 the robber get to you?

5 A A foot or so, probably, I mean, when I actually had
6 to put the money in the bag.

7 Q Right. Did you notice any facial hair from his
8 neck or the mouth area?

9 A No, I didn't notice anything.

10 Q Did you ever see the robber with the mask off?

11 A No.

12 Q So you really can't describe any of his facial
13 features?

14 A No, I cannot.

15 Q Thank you.

16 MR. OGBURN: No further questions.

17 MR. MOAK: No further questions of this
18 witness.

19 THE COURT: All right. You may come down.
20 You are free to go. Thank you very much.

21 THE WITNESS: Okay. Thank you.

22 (Witness steps down and is excused.)

23 MR. MOAK: I have to check to see if my next
24 witness is here, Your Honor. Is he here?

25 (Pause.)

1 (Witness enters courtroom.)

2 MR. MOAK: Your Honor, the State now calls
3 Chad Moore.

4 MR. OGBURN: May we approach, Your Honor?
5 (WHEREUPON, a bench conference was held
6 in the presence of the jury but out of
7 the hearing of the jury.)

8 THE COURT: Swear him.

9 THE CLERK: Place your left hand on the Bible,
10 and raise your right hand, please.

11 (Witness complies.)

12 THE CLERK: Do you swear or affirm the
13 evidence you will give in this case will be the
14 truth, the whole truth, and nothing but the truth,
15 so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. Please be seated in
18 the witness chair, and please state your full name
19 for the record.

20 CHAD MOORE,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. MOAK:

24 Q Mr. Moore?

25 A Yes.

CHAD MOORE -- DIRECT BY MR. MOAK

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- 1 Q Obviously you are in jail right now, right?
- 2 A Yes, sir.
- 3 Q Where are you currently being housed at?
- 4 A Lexington County Detention Center.
- 5 Q And what charge are you being housed on?
- 6 A Bank robbery.
- 7 Q And what bank did you rob?
- 8 A First Citizens of Lugoff, South Carolina.
- 9 Q In Lugoff?
- 10 A Yes, sir.
- 11 Q Are you from Lugoff?
- 12 A Yes, sir.
- 13 Q Can you talk a little louder so they can hear you?
- 14 A Yes, sir.
- 15 Q And when did that happen?
- 16 A February 11th, 2008.
- 17 Q February 2008?
- 18 A Yes, sir.
- 19 Q Were you in the Kershaw County Detention Center in
- 20 July of 2008?
- 21 A Yes, sir.
- 22 Q Okay. As to your bank robbery charge, what is the
- 23 status of that case?
- 24 A Still going to appearances. Nothing is concrete so
- 25 far.

- 1 Q Have you pled guilty already?
- 2 A No, sir.
- 3 Q Are you intending to plead guilty?
- 4 A Yes, sir.
- 5 Q Okay. Do you have any prior convictions for
- 6 criminal sexual conduct?
- 7 A Yes, sir.
- 8 Q Armed robbery?
- 9 A Not armed robbery, no.
- 10 Q Strong armed robbery?
- 11 A Yes, sir.
- 12 Q Okay. How long ago were those?
- 13 A 2001.
- 14 Q Okay. And when did you get out?
- 15 A December 1st, 2006.
- 16 Q Okay. Now, in July of 2008, do you remember
- 17 speaking -- do you remember speaking with this
- 18 individual over here?
- 19 A Yes, sir.
- 20 Q And where -- and what was the content of that
- 21 conversation? What did he tell you?
- 22 A That he robbed the bank.
- 23 Q And was he asking about your bank robbery?
- 24 A Yes, sir.
- 25 Q Did he give you any details about his bank robbery?

CHAD MOORE -- DIRECT BY MR. MOAK

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1 A Yes, sir.

2 Q Did he tell you anything about how it went down?

3 A Yes, sir.

4 Q What did he tell you?

5 MR. OGBURN: Your Honor, I would object. This
6 is hearsay.

7 THE COURT: Overruled.

8 Q What did he tell you?

9 A He told me that he went to the bank on a bicycle.

10 Q He said he was on a bicycle?

11 A Yes, sir.

12 Q I am going to step up here so I can hear you
13 better.

14 A Yes, sir.

15 Q What else?

16 A He also said that he was with a guy they call
17 Little James, and Little James drove a 4-wheeler.

18 Q Okay.

19 A After he left the bank, he got on the 4-wheeler and
20 they went down to -- I'm not familiar with Dusty
21 Bend.

22 Q Okay.

23 A But it is a dirt road that they went down a trail
24 and ditched the 4-wheeler by a pond or a creek or
25 something.

1 Q Okay. They ditched the 4-wheeler by a pond, you
2 said?

3 A Yes, sir.

4 Q What else?

5 A After that Jarvis said he went to the barber shop
6 and got a haircut.

7 Q Okay.

8 A After he left the barber shop he went to the track,
9 and that is where he was picked up by the officer,
10 he told him to come to the car.

11 Q Okay. Did he tell you something about his shirt?

12 A About his shirt? Oh, just that he had -- he asked
13 me -- first of all, he asked me how good the
14 cameras were. He asked me did I have any pictures
15 from my case.

16 Q Okay.

17 A In the bank robbery. And I told him, said, I said,
18 yes, the pictures are pretty good.

19 And he said, well, do you think they can tell
20 by these tattoos and scars on my arm, do you think
21 the camera picked that up?

22 I said, man, time will tell.

23 That was the only thing he was really worried
24 about talking to me about was the scars on his arm
25 and tattoos.

CHAD MOORE -- DIRECT BY MR. MOAK

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1 And I asked him, I said, you robbed a bank
2 with a short-sleeved shirt? I mean, I ain't
3 even -- I ain't that crazy to rob a bank with a
4 short-sleeved shirt on, because I got tattoos and
5 scars on as well. When I robbed my bank I was
6 fully covered.

7 Q Okay.

8 A So I told him that was the first mistake.

9 But after that, he told me, said -- what did
10 he said after that?

11 Q Was it something about the color of the shirt?

12 A He had a white T-shirt on.

13 Q Yes.

14 A He said he had a white T-shirt on. A white tee,
15 blue jeans and black sneakers.

16 Q Okay.

17 A He said the only thing the police had was the
18 sneakers.

19 Q Did he say anything about his shoes?

20 A He just -- he just said he had black shoes on.

21 Q Okay. But he is asking you about a bank -- about
22 his bank robbery and you got caught for yours?

23 A Yes, he asked how did I get caught.

24 Q He is asking you for advice about his, and you got
25 caught?

1 A Uh-huh.

2 Q Now, did you contact the City of Camden Police
3 Department to tell them this?

4 A I contacted my mother. My mother got in contact
5 with the City Police.

6 Q Okay. And do you remember talking to the City of
7 Camden Police Department?

8 A Yes, I do.

9 Q Did they tell you any of this information?

10 A No, sir.

11 Q So this is all information you heard from Mr.
12 Gibbs?

13 A Yes, sir.

14 Q And this is the individual you talked to?

15 A Yes, sir.

16 Q Did he tell you anything about where the gun came
17 from?

18 A No, he just told me that -- he said it was all
19 tricked out. He had a 9-millimeter with the
20 buttons and, you know, all that stuff on it. It
21 was a pretty gun, the way he described it.

22 Q Okay. Did he tell you about any masks or any
23 facial -- something to cover his face?

24 A Yes. He said he had a toboggan hat on and cut some
25 holes out for the eyes and pulled it over his face.

CHAD MOORE -- DIRECT BY MR. MOAK

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1 Q Okay.

2 MR. MOAK: Beg the Court's indulgence.

3 (Pause.)

4 Q Did he tell you anything about how many tellers
5 were in the bank?

6 A No, he just told me that he gave the teller the
7 money -- I mean, the bag. He didn't go over the
8 counter. I went over the counter in my bank
9 robbery. He demanded the money from the tellers.

10 Q Okay. Did he say he got money from all the
11 tellers?

12 A Yes, sir.

13 Q And did he tell you how he did the bag?

14 A He said he held out the bag and held the gun with
15 the other hand.

16 Q So he didn't go over the counter?

17 A No, sir.

18 Q Did he say anything about changing his T-shirt?

19 A No, he didn't tell me anything about changing his
20 T-shirt.

21 Q Okay. But, again, he is talking to you asking you
22 for advice about his bank robbery?

23 A Yes, he asked me how did I get caught in my bank
24 robbery.

25 Q Okay. No further questions.

1 THE COURT: Mr. Ogburn?

2 CROSS-EXAMINATION

3 BY MR. OGBURN:

4 Q Mr. Moore, besides the conviction for criminal
5 sexual conduct and the strong armed robbery, you
6 have also had a conviction for burglary, is that
7 correct?

8 A Yes, sir.

9 Q And you are currently incarcerated on bank robbery
10 charges, correct?

11 A Yes, sir.

12 Q And the FBI is handling your bank robbery case, is
13 that correct?

14 A Yes, sir.

15 Q Okay. And at the time -- were you ever in the cell
16 with Jarvis Gibbs?

17 A Yes, sir.

18 Q Y'all were locked up together?

19 A Yes, sir.

20 Q In fact, you are making this testimony in order to
21 get a deal on your case, right?

22 A I haven't spoke to anybody about a deal in my case.

23 Q Nobody has offered you a deal?

24 A No, nobody has offered me anything.

25 Q In fact, you have offered to testify on several

CHAD MOORE -- CROSS BY MR. OGBURN

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1 cases, right?

2 A No, not several, no.

3 Q You haven't made any deals or told law enforcement
4 that you would get information in order to cut your
5 sentence lighter?

6 A No, I didn't tell no law enforcement that, no, I
7 didn't.

8 Q In fact, you asked them to go back in the cell with
9 Jarvis Gibbs to get more information, correct?

10 A No, I didn't ask to go back in the cell. I went
11 back to my own cell. Jarvis is in the cell with
12 me.

13 Q Oh, so now you -- you said you went to your own
14 cell?

15 A Yes.

16 Q Not to Jarvis's cell?

17 A I was there before Jarvis.

18 Q You was there before Jarvis. Okay. And when you
19 are in the -- in jail, you still hear what happens
20 on the street, is that correct?

21 A Yes.

22 Q I mean, people talk in jail?

23 A Yes, it comes through the channel, but it is never
24 the same when you hear it.

25 Q Right. So they tell all kind of things that happen

1 in the outside, right?

2 A Yes.

3 Q So you are inside and you don't know if what they
4 are saying is true or not, do you?

5 A No, not when it is said about somebody else. But I
6 consider it to be true when the person that did it
7 tell me out his mouth hisself.

8 Q Okay. But how do you know Jarvis did it?

9 A Because he told me he did it.

10 Q Right. So are you saying that you did talk with
11 Jarvis?

12 A Yes, I'm saying that.

13 Q Okay.

14 MR. OGBURN: No further questions, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. MOAK:

17 Q You got this from Jarvis, right?

18 A Yes, sir.

19 Q You didn't get it from anybody else?

20 A No, sir.

21 Q Now, was Jarvis upset about this?

22 A No, he wasn't.

23 Q Was he worried about the money?

24 A Yes, he was worried about his money.

25 Q What was he worried about the money for?

CHAD MOORE -- RECROSS BY MR. OGBURN

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1 A He was worried about the money because he was out
2 in the street and he was in jail.

3 Q Uh-huh. So his partner was out and he wasn't?

4 A At the time, yes.

5 Q Was he worried about splitting the money up?

6 A No, he never said anything about splitting it.

7 Q Okay. So all of this information that you have
8 testified to today you got from Jarvis?

9 A Yes, sir.

10 MR. MOAK: No further questions.

11 RECROSS-EXAMINATION

12 BY MR. OGBURN:

13 Q Mr. Moore, is this the first case you have
14 testified against someone in jail?

15 A Yes, sir.

16 Q And why do you think Jarvis would just come up to
17 you and offer you this information?

18 A He was just running off at the mouth.

19 Q Okay.

20 MR. OGBURN: No further questions.

21 THE COURT: All right. You may come down.

22 Thank you very much.

23 (Witness steps down.)

24 MR. MOAK: Your Honor, my next witness is --

25 THE COURT: I usually tell witnesses they are

1 free to go, but I couldn't tell that one he is free
2 to go.

3 He's finished. Thank you.

4 (Witness taken out of the courtroom.)

5 THE COURT: All right, ladies and gentlemen,
6 the Solicitor tells me they want to set up a
7 projector to show you something. That is going to
8 take a few minutes to do and to get the electronics
9 and all set up.

10 So I'm going to just ask you to go to the jury
11 room and just relax for about 10 or 15 minutes I
12 guess it will take them to get this video equipment
13 set up so you will -- that will cover the next
14 witness.

15 (WHEREUPON, the jury retires to the jury
16 room at 10:26 a.m.)

17 (Break.)

18 THE COURT: Who is the next witness?

19 MR. MOAK: Lee Boan.

20 THE COURT: Bring the jury. I'm sorry, is the
21 State ready for the jury?

22 MR. MOAK: Yes, sir.

23 THE COURT: Is the Defense ready for the
24 jury?

25 MR. OGBURN: Yes, sir.

LEE BOAN -- DIRECT BY MR. MOAK

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1 (WHEREUPON, the jury came into open
2 court at approximately 10:49 a.m.)

3 THE COURT: We're ready to continue with the
4 trial. Call your next witness.

5 MR. MOAK: The State calls Lee Boan.

6 THE CLERK: Place your left hand on the Bible,
7 and raise your right hand, please.

8 (Witness complies.)

9 THE CLERK: Do you swear or affirm the
10 evidence you give in this case will be the truth,
11 the whole truth, and nothing but the truth, so help
12 you God?

13 THE WITNESS: Yes, ma'am.

14 THE CLERK: Please be seated in the witness
15 chair, and please state your full name for the
16 record.

17 THE WITNESS: My name is Lee Boan.

18 LEE BOAN,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MOAK:

22 Q Detective Boan, where are you employed?

23 A With the Camden Police Department.

24 Q How long have you been there?

25 A I've been nine years with the Camden Police

1 Department.

2 Q How long have you been in law enforcement?

3 A I've been 15. Prior to that I worked for the
4 Kershaw County Sheriff's Office for about five
5 years, and before that I did one year at Richland
6 County Sheriff's Office.

7 Q When you were at the Kershaw County Sheriff's
8 Department, what was your position?

9 A I was -- I was hired in at patrol. At some point,
10 probably halfway through the five years, I probably
11 moved to a narcotics investigator.

12 Q Okay. So you became an investigator while you were
13 at the Sheriff's Office?

14 A Yes, sir.

15 Q At the City of Camden, what is your position?

16 A I'm a detective, which is investigator, detective,
17 same thing.

18 Q And have you been detective the whole time?

19 A Yes, sir, they hired me as a detective.

20 Q What background and training do you have in law
21 enforcement or military?

22 A I've been through the South Carolina Criminal
23 Justice Academy and been to multiple classes on
24 interviewing and crime scene processing and
25 investigative type classes.

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1 In the military I was -- I have been in the
2 National Guard -- still in the National Guard. I
3 was military police for six years.

4 Q What is your rank in the guard?

5 A Currently I'm captain, company commander in the
6 Rock Hill unit.

7 Q And were you -- shortly before this incident
8 happened, were you in the United States or
9 elsewhere?

10 A Actually prior to this incident I was coming
11 back -- I had just come back from my second
12 employment in Afghanistan, probably just a few
13 months before this incident.

14 Q And what is your educational background?

15 A I have a bachelor's in criminal justice and a
16 master's in public administration.

17 Q Okay. And are you the lead investigator on this
18 case?

19 A Yes, sir.

20 Q And do you remember what day this incident
21 happened?

22 A On July 25th of last year.

23 Q Were you one of the first officers on the scene?

24 A Yes, sir, I was.

25 Q Do you remember about what time of day you arrived

1 in the Dusty Bend area?

2 A In looking at the report, it is showing that our
3 dispatch time was at 10:56 a.m. I remember I was
4 at the Police Department when the call come out, so
5 the time it took me to drive from the Police
6 Department to the Dusty Bend bank, just a few
7 minutes. That is with blue lights and siren.

8 Q When you got to the bank, did you speak with any
9 witnesses?

10 A When I first got to the bank, there was a UPS man,
11 was the first one I seen, in a brown truck. He
12 told me there were some people in a white truck and
13 a red Jeep were chasing the robber on Lyttleton
14 Street. So instead of stopping at the bank, I
15 drove straight through and started going after
16 this -- looking for these vehicles.

17 I went down Lyttleton Street. You have a map.
18 I went down Lyttleton Street in the direction the
19 robber went in and wasn't able to find the vehicle
20 so I turned around to come back, and they had got
21 off the road a little bit and started going down
22 the railroad tracks, they were off road.

23 Q Will a map help you describe better?

24 (Pause.)

25 Q Tell the jury where -- what you are talking about

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1 on the map.

2 A Here is where the bank is here. Here is our bank
3 right here. This is Lyttleton Street. Here is our
4 railroad track.

5 When I pulled in, I was coming from this
6 direction. I pulled into the bank and was told
7 that the guys were headed out this way. And I
8 drove this way. I couldn't see them, and I circled
9 around to come back. That's when I could see the
10 vehicles here down the railroad tracks looking for
11 the guy.

12 I turned in here, and that is when I observed
13 the bicycle, the first thing I noticed here, right
14 in this area.

15 Q Okay.

16 A And I parked my car here, started talking to the
17 witnesses, asked, you know, where was the last
18 place they were seen.

19 Q Uh-huh.

20 A When you are that close to somebody, you want to
21 call the dogs out, and you don't want to just start
22 contaminating the area by walking, so you want to
23 try to mark the last place someone actually saw the
24 robber.

25 Q Okay.

1 A So when the dogs get there you know where to put
2 the dogs down at.

3 Q Okay.

4 A Once we got there, that is when we went ahead and
5 made the call for the dogs and helicopter.

6 Q And that was where the bicycle was at that you are
7 talking about?

8 A Yes, sir, that is where the bicycle was at.

9 Q Okay. And was the bicycle taken into evidence?

10 A Yes, at some point later on it was taken into
11 evidence.

12 Q Let me show you State's 30 through 35. Are these
13 all pictures of what you are talking about?

14 A Yes, sir.

15 Q Can you go through each one and show the jury what
16 they are.

17 A This here, this is a picture of the bike propped
18 up, and I think the ink on the printer here wasn't
19 working too well, that is why the blue color, but
20 this is the bike we are seeing here. It was just
21 leaned up against one of the patrol cars before we
22 took it.

23 Q And that is State's 30.

24 A This is a view of past the railroad track looking
25 back up towards the bank on Lyttleton Street.

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1 Q And where was the bike found?

2 A It would have been to the right, back this way on
3 the railroad tracks.

4 Q Okay. This is State's 31?

5 A That is 32, it is about the same angle.

6 Q 32 is the same angle?

7 A Yes. 33 is the same. 34 --

8 Q Same?

9 A Yes. 34 you can see a little bit better view of
10 the old store here, but you still can't see where
11 the bike -- the bike is a little further down to
12 the right.

13 Okay, on this here you can see -- 34, which is
14 a picture of the store there.

15 35 is looking from Lyttleton Street looking
16 down the railroad tracks back this way, and the
17 bicycle would have been right over here somewhere.
18 And you can see it from the road down Lyttleton
19 Street. You won't see it in the picture because
20 the picture was taken after we moved.

21 Q I show you State's 22 and 23. Are they where the
22 bike was at?

23 A Yes. This is just two different angles of where
24 the bike was found beside this -- beside this fence
25 here. That is exactly where I found it when we

1 pulled up. Both pictures, 22 and 23, are just
2 slightly different angles of the same shot with our
3 blue printer.

4 Q And 26, is this the angle with the bike, the other
5 angle of the bike?

6 A Yes. This is another angle. 26, see, this is my
7 car here in the picture. And this is one of our
8 patrol cars. We pretty much are just blocking off
9 the road to keep the traffic from going up the road
10 because we know that is where we are going to put
11 the dog down at. That is the last place we know
12 our robber was at.

13 Q And these other pictures, 25, 27, 28, 29 and 24,
14 are they all other pictures of the area where the
15 bike was found?

16 A Yes.

17 Q Did you take these pictures?

18 A Yes.

19 Q Okay. Are they take fair and accurate depictions
20 of what was there?

21 A Yes, sir. This picture here, I don't know if we
22 are going to confuse things or not, this is
23 actually the picture of the opposite side of
24 railroad track here.

25 Picture 29, this is a shot going back this

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1 way, photographed it also. We never found anything
2 in that direction.

3 And 24 is just a better shot of the bike.
4 Shot of the bike.

5 Q Okay. So can you point on the map where the bike
6 was found at?

7 A Okay, from the bank right down the road, took a
8 left here near the railroad track, found it was
9 right in this area here. And just out of site at
10 the bank. You couldn't see it from the bank
11 parking lot, but it was just -- you could see it
12 just off the road.

13 Q What is marked State's 39, where was this picture
14 taken from?

15 A This was taken at the bicycle. It was a picture of
16 a footprint. This will be the same one that --

17 Q That is at the bicycle?

18 A Yes, at the bicycle.

19 Q Okay. And this is the bicycle?

20 A Yes, sir, that is the bicycle.

21 Q Has it been sitting in y'all's evidence room since
22 that day?

23 A Yes, sir.

24 Q Did you see any other tracks there?

25 A Just below the bike there was what appeared to be

1 like a 4-wheeler track or something that the bike
2 was on. I think it was in one of the pictures we
3 had. But the bike is -- you might be able to see
4 it in the total picture. If you can see a track,
5 it looked like a 4-wheeler track underneath the
6 bicycle where the bike was laying down at.

7 Q You saw a 4-wheeler track?

8 A Yes, I saw the 4-wheeler track and then the
9 footprint and then the bike where it was laying at.

10 Q And did you also collect what is marked as
11 State's 38?

12 A Yes, sir, I did.

13 Q And why did you collect that?

14 A Okay, this is the same footprint that one of the
15 SLED agents testified to earlier on the comparison.
16 What I done is when I photographed it, as I say,
17 when I was on the scene, our other detectives were
18 at the bank with our victims trying to get as much
19 as they can out of them. People are going
20 everywhere and, you know, and we're not a huge
21 department, a lot of times you have to do -- you
22 have to multi-task yourself.

23 When I got here at this bike, we wanted to get
24 the dogs on the way and we wanted to get the
25 helicopters up. I didn't want to leave the bike

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1 because I knew it could be -- at the time we didn't
2 know it was tied in to the robbery, but we thought
3 it could be potentially, so I started photographing
4 everything while waiting on the dogs to get there.
5 I didn't take the time to put everything to scale
6 because, you know, we are more concerned about
7 trying to get to our guy. That is one of the
8 disadvantages of being a small department, where
9 you don't have the resources to have a CSI unit
10 that is just processing the scene. You know, we
11 pretty much do everything. And at that time, you
12 know, the trail was still hot, we wanted to get our
13 guy. So I didn't put a scale in the photo. And by
14 the time I got back, you know, we were moving the
15 bike and my stuff was gone.

16 So what I done was in the photo, I saw a blue
17 piece of plastic that was in the photograph with
18 it, so what I done is I went back to the area and
19 found that blue piece of plastic. The footprint
20 was no longer there. It had done been drove over
21 by traffic. We had already released the scene, so
22 I took this blue piece of plastic you see in the
23 photo and I located it. I sent it in to SLED for a
24 scale hoping that they could measure this and put
25 it on here to get them to scale for one to one.

1 And, I mean, I'm guessing it didn't work out.

2 Q You tried?

3 A Yes, sir, we tried.

4 Q Now, did y'all get a copy of the bank security
5 video?

6 A Yes, sir, we did.

7 Q And is that already in evidence as State's 20?

8 A Yes, sir, it is the same one I saw.

9 Q Is there a copy of this video in that laptop?

10 A I think it is actually burned to the hard drive.

11 Q Burned to the hard drive?

12 A A copy of this.

13 MR. MOAK: Can we have Sergeant Corey operate
14 it?

15 (Video played for the jury.)

16 A This is the same video you watched yesterday. We
17 have just got a projector where everybody can see
18 it a little better today and kind of walk through
19 it.

20 This is Leah Bailey, which was the first
21 witness.

22 MR. MOAK: Is it easier to see it today than
23 it was yesterday?

24 THE JURY: Yes.

25 (Video continues.)

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1 A And all these run at the same time. If you'll
2 notice the door when it comes open, the top tick
3 mark I think is marked at six foot. We actually
4 measured it at 75 inches, which is 6'3". That was
5 where we determined the height just by looking at
6 it.

7 He throws the black bag over the counter. You
8 notice he is wearing gloves, white T-shirt.

9 Q Stop that right there. His forearms, did you try
10 to get that enhanced at all?

11 A Yes. We took it to SLED. We called the company
12 that we got this video system from. We couldn't
13 find anybody that could enhance it. They pretty
14 much told us what you see is what you get.

15 Q Okay.

16 A And we done everything we could, but we were just
17 never able to get that video enhanced enough to see
18 any real good details.

19 Q Okay.

20 A That's pretty much all you'll see. After he
21 left -- do you want to show the one with -- coming
22 in the door? Double click and go back from the
23 start. You can see the tick marks here in the
24 door. The tallest point I measured at 75 inches.
25 We were watching when he first comes in. That is

1 how I was able to determine kind of a rough height.
2 Of course, he didn't stand up against the door
3 frame and pose to get an exact height, so we have
4 to kind of estimate, and that is what the picture
5 in the door is for.

6 Another thing to point out, when he enters
7 in -- and he made no effort to come across the
8 counter, he made no effort to come around the
9 counter. He stayed there and at gunpoint pretty
10 much told the clerk, give me the money, threw her
11 the bag. That is where we made the decision on the
12 kidnapping charge because she was not free to walk
13 away. He didn't tell her to go away, not get
14 involved, he made her stay there at gunpoint and
15 put that money in the bag, as well as all four of
16 the clerks.

17 Q Go back to the angle where he is leaving the bank
18 where he is actually going through the door. That
19 one.

20 A This would be the countertop.

21 Q Do you actually see the bicycle in that picture?

22 A Yes, you can see the bike here, the back tire. The
23 light was pretty bright outside, it kind of messed
24 up the camera. It is hard to get the focus right.
25 You can definitely tell this was a bicycle here.

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1 Q Now, are those two the two best angles of the
2 security video?

3 A Yes, I think that is probably -- there is one here
4 of the lobby when he comes in, you really can't see
5 the clerks or what they are doing.

6 Q Play that one, the full video of that.

7 (Video continues.)

8 Q Is that it? Okay. Okay, so that is the bank
9 video?

10 A Yes, sir.

11 Q That is State's 20?

12 A Yes, sir.

13 Q Okay. Now --

14 MR. OGBURN: Your Honor, excuse me, while we
15 have the video up and running, could we time the
16 video, or time the -- time it from the time the
17 robber walks in until the time he walks out?

18 THE COURT: You can ask the witness when you
19 cross-examine.

20 MR. OGBURN: When I cross? Okay, we'll wait.

21 THE COURT: You can ask him.

22 Q When you viewed the video --

23 THE COURT: Have a seat. All right. Back to
24 question and answer.

25 Q When you went to the bank to pick the video up, did

1 you see a discrepancy from the time stamp on the
2 bank video system and the actual time?

3 A Yes. The bank video, the time that you see on the
4 video is off I want to say ten minutes. Give me
5 one second here. Yes, the video is about ten
6 minutes slower than the actual time.

7 Q So if it is 10:45 it is really 10:55?

8 A Yes.

9 Q Okay. And you confirmed that by the machine
10 actually running?

11 A Yes. We look at it, you know, live while we are
12 there, called dispatch to find out what times they
13 were giving us that is on the report, and we were
14 able to determine it was a 10-minute difference in
15 it.

16 Q So you actually looked at the live feed, looked at
17 the time stamp on the live feed and --

18 A Called dispatch.

19 Q -- and confirmed the 10-minute difference?

20 A Yes, sir.

21 Q Okay. Now, at some point on July 25th did you talk
22 to one Arthur Macklin?

23 A Yes, sir, I did.

24 Q And where did you talk to him at?

25 A It was at William Tetterton's office, which is

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1 right beside the courthouse here.

2 Q Does Arthur have a nickname?

3 A They call him Junior.

4 Q Do you know where Arthur lived or what his address
5 was?

6 A I say [REDACTED] [REDACTED] [REDACTED].

7 Q Okay. And back to the aerial map, which is marked
8 as State's 36, can you show us where Monroe Street
9 is at?

10 A Monroe -- stop right here. This is where the CVS
11 is in Dusty Bend and you come back, Monroe is here.

12 Q And over here by where it says Monroe Street, what
13 is that?

14 A That is where Junior stays at.

15 Q That is [REDACTED]?

16 A Yes, sir, [REDACTED].

17 Q Okay. Is there a fence around that house?

18 A Hum, I think there is.

19 Q Okay.

20 A I'm not positive.

21 Q Okay. When you talked to Junior, or Arthur, was he
22 asked about if he saw that?

23 A Can you repeat that one more time?

24 Q When you talked with Arthur Macklin at William
25 Tetterton's office --

1 A Uh-huh.

2 Q -- did you ask him if he saw Mr. Gibbs with a black
3 bag?

4 MR. OGBURN: I am going to object, Your Honor.
5 We are getting into hearsay here.

6 THE COURT: That calls for a hearsay answer,
7 so I sustain the objection.

8 MR. MOAK: Your Honor, Mr. Macklin testified
9 yesterday that he was at Mr. Tetterton's office.

10 THE COURT: I understand that.

11 MR. MOAK: And I believe this is under Rule
12 613 he was given notice of who he made the
13 statement to, where, time and place and he denied
14 making any statement about the bag, so I think
15 under Rule 613 I think it is admissible.

16 MR. OGBURN: Your Honor, he has had the
17 opportunity to fully question Mr. Macklin
18 yesterday. He had him on the stand and called him
19 as his witness.

20 THE COURT: Mr. Macklin denied making a
21 statement as I recall.

22 MR. MOAK: And I believe that is the predicate
23 for the --

24 THE COURT: I will allow the question, but you
25 are not going any further, just to impeach his

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1 testimony, for that purpose only.

2 MR. MOAK: Okay.

3 Q Did he say anything about the black bag?

4 A Yes, sir.

5 Q What did he say?

6 MR. OGBURN: Your Honor, again, hearsay.

7 THE COURT: Sustained.

8 MR. MOAK: Sustained?

9 THE COURT: Yes, sir. Move on.

10 Q After you talked to Arthur Macklin, do you know who
11 owned the bicycle?

12 A Yes, sir, it was Arthur Macklin.

13 Q And did you have the name of somebody who had
14 possession of the bicycle?

15 A Yes, sir, we did.

16 Q And who was that?

17 A Jarvis Gibbs.

18 Q Is that him sitting right there?

19 A Yes, sir.

20 Q Did you locate him later that day?

21 A Yes, sir, we did.

22 Q Where was that at?

23 A It was about 5:00 o'clock the same day of the
24 robbery. We located him near Chestnut Street area,
25 the area they commonly called "the tracks" in

1 Camden. It is near the railroad tracks on Chestnut
2 Street.

3 Q And it is the same railroad tracks, right?

4 A Yes, sir.

5 Q Just like further down this way?

6 A Yes, sir. You can't see it on the picture here.

7 Q Okay. Did you find it at a residence?

8 A Yes, sir, he was found at [REDACTED].

9 Q And whose residence was that?

10 A That is -- that is going to be Charles Benson.

11 Q Okay. Was Mr. Gibbs taken to the Police
12 Department?

13 A Yes, sir.

14 Q Was he placed under arrest initially?

15 A No, sir. I approached him. When I saw him -- I
16 saw him in the area. I approached him, signaled
17 for him to come to me. He came to me.

18 And I asked him if he minded going to the
19 Police Department and talking to me.

20 He said sure. He got in the car with me, and
21 no handcuffs or anything, and we just drove to the
22 Police Department.

23 Q When you got to the Police Department, did you
24 interview him?

25 A Yes, sir, I did.

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1 Q When you interviewed Mr. Gibbs, did you Mirandize
2 him?

3 A Yes, sir.

4 Q I'm going to show you a copy of what is marked --
5 do you have the original of that sheet where he is
6 Mirandized?

7 A Yes, sir.

8 Q We will mark that as State's 44.

9 (WHEREUPON, State's Exhibit No. 44 was
10 marked for identification only.)

11 Q Now, the information on the top, did you fill that
12 in?

13 A Yes, sir.

14 Q Did you read his Miranda rights off that
15 statement -- off that form?

16 A The top with his information wrote out or just the
17 Miranda?

18 Q I'm talking about the Miranda rights.

19 A Okay. We like to read them all when we take
20 somebody to interview.

21 It starts out with:

22 You have a right to remain silent and not make
23 any statement at all.

24 And after I read each sentence, I'll check it.

25 And any statement you make may be used against

1 you at your trial. I checked it.

2 Any statement you make may be used as evidence
3 against you in court.

4 And that you have a right to have a lawyer
5 present to advise you prior to and during any
6 questioning.

7 And if you are unable to employ a lawyer, you
8 have the right to have a lawyer appointed to advise
9 you prior to any questioning.

10 And you have the right to terminate the
11 interview at any time.

12 It is pretty much the same rights that you
13 hear all the time on TV. I normally read them and
14 then I'll explain it a little bit further to them
15 what their rights are.

16 Q Yes. And did Mr. Gibbs initial that form at any
17 place?

18 A Yes, sir, he did.

19 Q He actually himself initialed it?

20 A Yes, sir.

21 Q Is it in two places?

22 A Yes, sir. This is -- right after I read his
23 Miranda rights, get him to initial here. And the
24 next one is just a statement of waiving the Miranda
25 rights and talking with law enforcement. And he

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1 initialed here.

2 Q And he initialed those statements?

3 A Yes, sir.

4 MR. MOAK: Your Honor, I move State's 44 into
5 evidence as to where he was given written Miranda.

6 MR. OGBURN: No objection, Your Honor.

7 (WHEREUPON, State's Exhibit No. 44 was
8 admitted into evidence.)

9 BY MR. MOAK:

10 Q As to evidence, I believe you have already seen 22
11 through 35, you have already identified those?

12 A Yes, sir.

13 MR. MOAK: Just to make the record clear, Your
14 Honor, I would like to move 30 through 35 into
15 evidence. Some of these for some reason don't have
16 a little note by the court reporter. They have
17 already been identified.

18 MR. OGBURN: Without objection.

19 THE COURT: Without objection.

20 (WHEREUPON, State's Exhibit Nos. 30

21 THROUGH 35 were marked for
22 identification and received into
23 evidence.)

24 Q Okay. So he was given Miranda initially. Did he
25 give a written statement?

1 A No, sir, he never gave a written statement.

2 MR. OGBURN: Let's approach the bench.

3 (WHEREUPON, a bench conference was held
4 in the presence of the jury but out of
5 the hearing of the jury.)

6 (WHEREUPON, State's Exhibit No. 45 was
7 marked for identification only.)

8 Q I am going to show you what is marked State's 45
9 for identification only. Do you know what that is?

10 A Yes, sir.

11 Q That is a video of his interview?

12 A Yes, sir.

13 Q In this interview, about how long does it take?

14 A It is about -- it is about an hour long.

15 Q During this video, are there a couple of times
16 where you actually leave the room?

17 A Yes, sir. There was a few times I left the room
18 during the interview.

19 Q And does that take about half the time of the
20 interview?

21 A It takes a good little bit of time.

22 Q And what are you doing when you leave the room
23 during the interview?

24 A On this case here, when you get -- when you get a
25 Defendant that is arrested the same day of an

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1 incident -- you know, we haven't had a chance to
2 gather up everything ourselves, everything is still
3 new to us, so we don't have a line of questioning
4 lined up waiting on him.

5 When we brought him in, you know, we start on
6 a timeline, basically want to know what he has done
7 throughout that day, you know, get him to tell us
8 how his whole day went.

9 When you arrest somebody on the same day of an
10 incident, then chances are they are going to
11 remember things. Y'all probably remember what you
12 have done all day today. We usually go through the
13 timeline first.

14 As he is giving me the timeline, I'm asking
15 for details.

16 MR. OGBURN: Your Honor, I object to this just
17 rambling about what they are going to do in the
18 interview. I don't see the relevance or the point
19 of this.

20 THE COURT: Just ask him what took place in
21 the interview.

22 Q How did you interview him?

23 A I brought him in, sat him down, and we started the
24 video as soon as we brought him in the room. Read
25 him his Miranda rights. Explained them to him. We

1 started talking. I pretty much just asked him what
2 he had done that day, from the time he woke up what
3 he had done throughout that whole day.

4 Q What time did he tell you he woke up?

5 MR. OGBURN: Your Honor, here we go into
6 hearsay.

7 THE COURT: No, sir, it is not hearsay if your
8 client said it.

9 A He told me he woke up at the same house where I
10 picked him up at, which is [REDACTED].

11 Q And that is Charles Benson's house?

12 A Yes, sir, Charles Benson's house. He told me he
13 woke up there between 10:30 and 11:00, took a
14 shower, and left to go towards the Dusty Bend area.

15 Q So he said he woke up and took a shower at Charles
16 Benson's house?

17 A Yes, sir.

18 Q Okay. After this interview, did you go check into
19 whether or not it was possible for him to have
20 woken up there at that house and taken a shower
21 there?

22 A Yes, sir, I did. I went to the house. I was
23 allowed to go in. I walked through the house. I
24 seen no clothing items that belonged to Mr. Gibbs.
25 The house, there was no electricity or water in the

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1 house. The bathtub, there was spiderwebs, dust,
2 kind of rust and stuff in there. I mean, the
3 shower probably hadn't been used in maybe years.

4 Q So it was obvious that a shower had not been taken
5 in that shower recently?

6 A Unless he used dry water, there is no way he could
7 have took a shower.

8 Q Okay. And were you able to determine that he
9 actually had been in that home the night before?

10 A No, I was not.

11 Q And that was from a resident?

12 A Yes, sir.

13 Q Okay. So after he wakes up and takes a shower,
14 according to him, what does he say he did?

15 A He said he walked to the Dusty Bend area.

16 Q And how did he say he walked to Dusty Bend?

17 A I don't think he give me a direct path he took, but
18 he said he walked to the Dusty Bend area to get a
19 haircut.

20 Q Okay. And this is the Dusty Bend area?

21 A Yes, sir.

22 Q Okay. Did he tell you where he went?

23 A Yes, sir. He said he went to JB's. It is a little
24 further up this way. The bank is here. He was
25 down this way, and he came up to this area here,

1 and a little further up the road to the right is
2 where he got his haircut.

3 Q And JB's is a barber shop?

4 A It has got a different name to it. JB is the one
5 that cut his hair. It is called Custom Cuts Barber
6 Shop.

7 Q Okay. And is it up here near where the Camden Tire
8 is, or --

9 A Yes, sir.

10 Q -- Horton Tires?

11 A Yes, sir.

12 Q So at one point he said he went from Benson's house
13 to get his haircut?

14 A Yes, sir.

15 Q Okay. Did he at some point give another location
16 of where he went to first after the haircut --
17 after waking up?

18 A Yes. As the interview went on -- I mean, that is
19 what he told me first, he got up, you know, went
20 straight up there to get a haircut, and had to wait
21 there several hours, and they were crowded.

22 Then I asked him about James Drakeford.

23 Q Okay.

24 A The Co-Defendant.

25 Q Uh-huh.

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1 A And he tells me he hadn't seen James Drakeford in
2 two to three days. He has not seen him any time
3 during that day.

4 Q Okay.

5 A In about two or three days.

6 Then I asked him if he had borrowed somebody's
7 bicycle that day. And he said he did, he borrowed
8 someone's bike from the Kirkwood area.

9 Q And did he tell you who he borrowed the bike from?

10 A He did. He didn't know his -- he didn't know his
11 full name. He told me -- he started out by telling
12 me the owner of the bike was a crackhead. And then
13 he give me a direction where his house was. And
14 eventually he told me the name Junior.

15 Q He gave you the name Junior?

16 A He gave me the name Junior.

17 Q And the directions to Junior's house, do you
18 remember how he told you to get to Junior's house?

19 A Yes. I mean, he give me the directions to get to
20 Junior's house. And he, I want to say he mentioned
21 the CVS, where to turn at and how to get to
22 Junior's house.

23 Q And did he describe the route to Junior's house?

24 A I can't remember any details of how he described
25 it. He described it to me well enough I knew where

1 he was talking about where Junior was.

2 Q Okay. Did he say how he borrowed the bicycle?

3 MR. OGBURN: Objection, Your Honor. This is
4 getting into exactly what we have been discussing
5 in chambers.

6 THE COURT: What was the question again?

7 MR. MOAK: Did he say how he borrowed the
8 bicycle?

9 THE COURT: Yes, sir.

10 (WHEREUPON, a bench conference was held
11 in the presence of the jury but out of
12 the hearing of the jury.)

13 THE COURT: Ladies and gentlemen, I have a
14 matter of law I need to take up with the attorneys.
15 Just go to the jury room for a few minutes and I'll
16 call you when we're ready.

17 (WHEREUPON, the jury retires to the jury
18 room at 11:32 a.m.)

19 THE COURT: All right, Mr. Ogburn, you made an
20 objection to the video yesterday.

21 MR. OGBURN: Yes, Your Honor.

22 THE COURT: And the conversations on the video
23 that involved your client confessing or stating
24 that he was either selling drugs or was involved
25 with drugs or a number of references in this video

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1 to him being involved in drug trafficking. And you
2 objected on the grounds of 403 that that evidence
3 was being offered to the jury as being used to
4 prejudice the jury and that its prejudicial effect
5 outweighed any probative effect.

6 And I sustained that objection with the
7 exemption of a comment or a statement by your
8 client that involved the use of the bicycle. I
9 know you even objected to that, but I felt that
10 that was probative because, I mean, it is proof
11 that there is a bicycle and your client may have --
12 may have taken the bicycle as a result of this
13 transaction. I mean, so it is definitely probative
14 of the matter that we're here for. But all of the
15 other comments about your client's use of drugs or
16 selling of drugs, or whatever else is on that tape,
17 I ruled inadmissible.

18 Now Mr. Moak -- and so far, I mean, this
19 testimony has been in accordance with my rule of
20 yesterday, ruling of yesterday.

21 So what, Mr. Moak, what do you wish to do at
22 this time?

23 MR. MOAK: Your Honor, in the statement --
24 actually this is part of the section which you said
25 was admissible but now you are saying is not.

1 THE COURT: No, I have not changed my opinion
2 now. I ruled yesterday and I have ruled the same
3 thing again today, so --

4 MR. MOAK: Mr. Gibbs tells him that he gave a
5 20-piece of crack to borrow the bike and then what
6 he did with the bike at that point.

7 THE COURT: All right.

8 MR. MOAK: The first version he drops the bike
9 back off at Arthur Macklin's house and does not see
10 him.

11 Then later he says he gave Arthur Macklin a
12 20-piece of crack after he gave him back
13 face-to-face the bicycle.

14 THE COURT: All right. All you gave me
15 yesterday was: "I will give you a 20-dollar crack
16 rock if you let me use your bicycle to go around
17 the corner to make a sale."

18 MR. MOAK: Your Honor, I asked you at least
19 two times on the record yesterday to let us play
20 the video, and you asked me to try to reduce it to
21 writing. This was the best I could.

22 I mean, I think right now we are at a point
23 where I think you have to look at the video to make
24 these decisions.

25 THE COURT: All right. That's fine. Go

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1 ahead.

2 My ruling was based on what the State offered
3 as the contents of the video.

4 MR. OGBURN: Your Honor, if Mr. Moak is trying
5 to offer some of this evidence just as to prove
6 that Jarvis Gibbs borrowed a bike from Arthur
7 Macklin, again, he had Arthur Macklin on the stand
8 yesterday and made that point directly from Arthur
9 Macklin. So this would just be redundant, not only
10 redundant, but adding an element of drugs in there,
11 which, again, would prejudice the jury.

12 THE COURT: Well, everything is prejudicial.

13 MR. MOAK: Your Honor, what we are trying to
14 show --

15 THE COURT: That is not the rule.

16 MR. MOAK: Your Honor, what we are trying to
17 show --

18 THE COURT: Come on up here, Mr. Ogburn.

19 (Video played for Court.)

20 THE COURT: What are you seeking to offer in
21 addition to what I just saw?

22 MR. MOAK: If you will continue, Your Honor,
23 he actually goes back and says he gave -- he says
24 he dropped the bike off back to Arthur Macklin's
25 house, did not see him. And then later says that

1 whether to play that video or not.

2 MR. OGBURN: I do not want the video played.

3 THE COURT: Okay. I mean, your client denies
4 any involvement in this case. And, you know, that
5 is out of my hands whether you object or not
6 object. You have a continuing objection to the use
7 of that -- or I sustained your objection to using
8 the video, but I overrule your objection if your
9 client said anything to the officer about how he
10 got the bike that is directly linked to this case.

11 MR. OGBURN: Yes, sir. I understand you are
12 overruling my motion, but for the record I would
13 continue that objection.

14 THE COURT: All right. Are you ready for the
15 jury?

16 MR. MOAK: Yes, Your Honor.

17 THE COURT: Bring the jury, please, somebody.
18 (WHEREUPON, the jury came into open
19 court at approximately 11:45 a.m.)

20 THE COURT: Solicitor, you may continue.

21 BY MR. MOAK:

22 Q Okay, Detective Boan, Mr. Gibbs told you initially
23 he went to the barber shop first?

24 A Yes, sir.

25 Q Waited several hours?

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- 1 A Yes, sir.
- 2 Q Do you remember if he told you what time he got to
- 3 the barber shop?
- 4 A He said 11:00, 12:30, 1:30. He wasn't real sure
- 5 about the time.
- 6 Q Okay. One of those times was 11:30?
- 7 A I got wrote down 11:00, 12:30, 1:30, just kind
- 8 of wasn't real sure.
- 9 Q Did you ask Mr. Gibbs about a bike?
- 10 A Yes, sir.
- 11 Q And what did he tell you?
- 12 A He borrowed the bike from a man named Junior.
- 13 Q Uh-huh.
- 14 A And he told me where he lived at and described him,
- 15 some of his family and all, to where I knew he was
- 16 talking about the same Junior that -- Mr. Macklin.
- 17 Q Did he talk about a nephew of Junior's?
- 18 A Yes, he talked about Frank Warren, which is one of
- 19 his nephews. And Frank Warren was a good kid in
- 20 school, wrestling team, he done real good in
- 21 wrestling. And we talked about how we thought he
- 22 would be, you know, a coach one day doing wrestling
- 23 there at school, and won the tough man contest here
- 24 in Camden. It was -- without knowing his name, you
- 25 know, I was just wanting to make clear that we were

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1 talking about the same person that let him borrow
2 the bike, and I was sure we were talking about the
3 same person.

4 Q And is Frank Warren Arthur Macklin's nephew?

5 A Yes, sir.

6 Q Okay. And he also described to you where Arthur
7 Macklin's house is at?

8 A Yes, sir.

9 Q Okay. Did he tell you how he borrowed the bike
10 from Arthur Macklin?

11 A Yes. He said he give him a 20-dollar piece of
12 crack for the bike to borrow it.

13 Q Did he say he used it for a business transaction
14 after he borrowed it?

15 A Yes, sir. He said he was -- he wanted to use the
16 bike to go around the area and, you know, sell more
17 drugs.

18 MR. OGBURN: Your Honor, I would object. This
19 is going a little further than --

20 THE COURT: Yes. Sustained.

21 MR. OGBURN: And I would ask for a mistrial at
22 this point.

23 THE COURT: Overruled. Go ahead.

24 Q Did he say he talked to an individual named Pookie?

25 A Yes, sir.

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1 Q During this trip on the bike?

2 A Yes, sir.

3 Q And what was that about?

4 A I'm not sure about his -- he told me he talked with
5 her. It was somebody he knew. When I asked, you
6 know, what was her real name, he couldn't tell me.
7 He just kind of like he hit a brick wall.

8 Actually, he hesitated to tell me her nickname. He
9 just told me he talked to some girl, and then he
10 told me that they had had a relationship in the
11 past together. But he couldn't -- he didn't know
12 her name.

13 Q So he borrows the bike, he is conducting a business
14 transaction, talking to a girl named Pookie while
15 on the bike?

16 A Yes, sir, that is what he is telling me.

17 Q Did he say he returned the bike?

18 A There was a couple of different versions. One
19 version he said he brought it back, laid it by the
20 fence. And then another version he said he brought
21 it back and gave it back to Junior.

22 Q And in that version, is that when he gave him the
23 20-piece of crack?

24 A Yes, sir, when he brought -- give him the bike back
25 is when he gave him his 20-dollar piece of crack.

1 Q Okay. And does he give a time frame of when he
2 supposedly borrowed this bike?

3 A I don't have wrote down that -- he said some time
4 after 11:30 is when he thought he brought it back.

5 Q So after 11:30?

6 A Yes, sir.

7 Q And did y'all already have the bike in custody at
8 that point?

9 A Yes, sir. I mean, we talked about -- the robbery
10 took place just before 11:00 o'clock, so we would
11 have had the bike by -- you know, we would have had
12 it secure by 11:00 o'clock.

13 Q So when you talked to Jarvis, you knew you already
14 had the bike in custody?

15 A Yes, sir, we already had the bike and we already
16 talked with the owner of the bike before we talked
17 with Jarvis.

18 Q You knew what time y'all had the bike in custody?

19 A Yes, sir.

20 Q You had already talked to Mr. Macklin?

21 A Yes, sir.

22 Q You had already known that Jarvis had borrowed the
23 bike?

24 A Yes, sir.

25 Q And he tells you some time after 11:30 is when he

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1 borrowed the bike?

2 MR. OGBURN: Your Honor, again, objection to
3 hearsay.

4 THE COURT: Well, you are leading the witness.

5 MR. OGBURN: Leading.

6 THE COURT: Don't lead the witness.

7 Q What time did he tell you he borrowed the bike?

8 A He said it was some time after 11:30. And while we
9 were on the scene, when I was near the bicycle,
10 Junior actually walked past us while we were there.
11 I remember seeing him. He was real -- he was
12 paying real close attention, you know, more than
13 normal.

14 You have usually your sightseers will stay off
15 to the side and look what we are doing when they
16 see us in the middle of something, but he made a
17 point to get real close, and he walked past the
18 vehicle I want to say maybe twice he went past the
19 vehicle.

20 And that is when later on in the day, you
21 know, he ended up at his lawyer's office. His
22 lawyer made contact with us. Once he knew that he
23 knew something about a crime that had taken place,
24 his lawyer contacted us and we go to the lawyer's
25 office and we sit down with him. He explains to us

1 that that was his bike in the back of the car.

2 MR. OGBURN: Again, Your Honor. That is
3 hearsay, Your Honor.

4 THE COURT: That is hearsay. That is not
5 coming from the Defendant. Sustain the objection.

6 Q On this interview, isn't it true that Mr. Gibbs
7 repeatedly denied any involvement in this?

8 A Yes, sir, he denied robbing the bank.

9 Q Okay. After you interviewed him, did you talk with
10 Chad Moore?

11 A Yes, sir, I talked with Chad Moore. It was on the
12 28th.

13 Q Was that a Monday?

14 A Yes, sir, on Monday.

15 Q On the 29th, on a Tuesday, did you happen to go
16 near Firetower Road?

17 A Yes, sir. We got a call of a 4-wheeler that had
18 been dumped into a pond back there. We went to
19 there and they had already pulled the 4-wheeler out
20 of the pond when we got there, but we were able to
21 recover it. It was a stolen 4-wheeler and --

22 Q I show you what has been marked as State's 46 and
23 47. Do you recognize these two pictures?

24 A Yes, sir.

25 Q What is 47?

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1 A 47, this is a picture of the 4-wheeler that was
2 pulled out of the pond. And this is the way it was
3 when we got it. It had already been pulled out.
4 You know, we photographed it there.

5 Q And is that a fair and accurate depiction of what
6 the 4-wheeler looks like?

7 A Yes, sir.

8 MR. MOAK: Your Honor, I move 47 into
9 evidence.

10 MR. OGBURN: No objection.

11 THE COURT: Okay.

12 (WHEREUPON, State's Exhibit No. 47 was
13 marked for identification and received
14 into evidence.)

15 Q And what is 46?

16 A 46 -- we got him to take us back to the pond where
17 it was taken out of, and you could see the, you
18 know, the tracks here where they pulled it out.
19 And this is the pond.

20 Q So that was the tracks going into the pond?

21 A Yes, sir.

22 Q And is this a fair and accurate depiction of that?

23 A Yes, sir.

24 MR. MOAK: Your Honor, at this time I would
25 move 46 in evidence.

1 there, what -- does it -- do you have to enter it
2 all individually?

3 A No. No. That is just one of the good things about
4 the system. Once you enter in a name, if we have
5 already got it in the system, it pops up everything
6 we already know about him, like date of birth,
7 social security, height and weight, you know, any
8 kind of scars, tattoos or anything about him, that
9 is already there.

10 Q So just because it says scars and tattoos on the
11 incident report does not mean the witness says he
12 had that?

13 A No, no, it doesn't mean that, it just means that is
14 a description of that subject that is already in
15 the computer.

16 Q What is the height and weight listed for Jarvis
17 Gibbs?

18 A They have got him at 6'3", 220 pounds.

19 Q Okay. Now, during the interview, this hour-long
20 interview you had with Jarvis Gibbs, did you take a
21 bunch of pictures of his forearms?

22 A Yes, sir.

23 Q And what was the purpose of that?

24 A Well, he has tattoos, scars on his arms. We were
25 hoping -- you know, I don't -- I'm not even sure if

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1 I viewed the video at this time, but we were hoping
2 to --

3 MR. OGBURN: Objection, Your Honor.

4 THE COURT: Sustained.

5 MR. MOAK: Okay.

6 Q Did you attempt to match that to the video?

7 A Yes, sir, we did.

8 MR. OGBURN: Objection, Your Honor.

9 THE COURT: Overruled.

10 MR. MOAK: Sustained or --

11 MR. OGBURN: I'm overruling -- excuse me, I'm
12 making the objection because he is still trying to
13 get the video in through some other means or trying
14 to say it or have him say the video.

15 THE COURT: He said did he see any scars or
16 tattoos on his arms, and he said yes.

17 I sustained the first objection because he
18 said what he was hoping to find.

19 MR. OGBURN: Right. That is another thing,
20 just hoping --

21 THE COURT: The question is what he found.

22 Q What is marked as State's 37, did these come off of
23 Jarvis Gibbs?

24 A Yes, sir.

25 Q These shoes?

- 1 A Yes, sir.
- 2 Q So he was wearing these?
- 3 A Yes, sir.
- 4 Q That is who the shoes came off of?
- 5 A Yes, sir.
- 6 Q That is who you interviewed?
- 7 A Yes, sir.
- 8 Q That is who gave you different stories about
- 9 where -- or about the bicycle?
- 10 A Yes, sir.
- 11 Q At some point did he tell you that he got the
- 12 bicycle after he went to the barber shop?
- 13 A He did at one time. He kept kind of jumping around
- 14 on his times. One time he said he wasn't sure
- 15 whether he had done it before or after the barber
- 16 shop, and then he said, no, it was before the
- 17 barber shop, and --
- 18 Q So he gave you different stories?
- 19 MR. OGBURN: Your Honor, leading his witness.
- 20 THE COURT: Yes, sir. Yes, sir, you are
- 21 leading the witness. Ask him a question, but don't
- 22 lead your witness. You are telling him the
- 23 answers.
- 24 Q First Palmetto is a bank?
- 25 A Yes, sir, it is a bank.

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1 Q In the City of Camden?

2 A Yes, sir, it is in the city limits of Camden.

3 Q It is in Kershaw County?

4 A Yes, sir, it is in Kershaw County.

5 Q That bank video shows the Defendant with a gun?

6 A Yes, sir, it does.

7 Q Firearm?

8 MR. OGBURN: Objection, Your Honor.

9 THE COURT: Sustained.

10 MR. MOAK: No further questions.

11 THE COURT: Strike that from the record.

12 MR. OGBURN: Yes, sir. Your Honor, I would
13 ask for a mistrial based on that.

14 THE COURT: I understand. Overruled.

15 Disregard that last question and answer,
16 ladies and gentlemen. That was improper. That is
17 the jury's decision whether it is the Defendant in
18 this video, not Mr. Moak's.

19 CROSS-EXAMINATION

20 BY MR. OGBURN:

21 Q Detective Boan, you are employed with the City of
22 Camden Police Department?

23 A Yes, sir.

24 Q And how long have you been employed there?

25 A Been nine years.

1 Q And you were called to the scene of the bank
2 robbery?

3 A Yes, sir. It was dispatched out. We just --
4 everybody that heard the radio went thataway.

5 Q Right. About what time did you get there?

6 A I'm not real sure. It would have been -- from the
7 time it went out -- I was actually in the parking
8 lot of the Police Department. One of ladies inside
9 stepped out and told me, you know, the call had
10 just came out. I got in my car, blue lights and
11 siren, and got up there as quick as I could, so it
12 couldn't have been no more than a couple of minutes
13 or so.

14 Q So they flagged you down, right? In other words,
15 they were waving saying --

16 A You mean when I got to the bank?

17 Q Right?

18 A Yes, sir, when I got to the bank.

19 Q What day was that on?

20 A It was on a Friday.

21 Q Friday. What did you do when you arrived at the
22 bank?

23 A I went straight to the bank to start with. When I
24 pulled into the parking lot is when I saw the UPS
25 driver. And he told me that two people were

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- 1 chasing the guy further down Lyttleton Street. So
2 I drove thataway.
- 3 Q And so you left the bank area?
- 4 A Yes, sir.
- 5 Q Did you talk to the bank tellers that day?
- 6 A I'm not sure if I talked to them that day. It
7 wouldn't have been immediately when I got there.
- 8 Q Right.
- 9 A It would have been later on that afternoon.
- 10 Q Later on after you went to the -- where you thought
11 the robber was headed?
- 12 A Yes, sir.
- 13 Q Okay. So in other words, you checked out that and
14 then came back to the bank?
- 15 A Yes, sir. It would have worked like that. I
16 was -- that was my first priority is to go after
17 the guy that we thought had just left and thought
18 may be on foot at the time.
- 19 Q Were the dogs called out?
- 20 A Yes, sir.
- 21 Q What type of dogs?
- 22 A I think the Sheriff's Office dogs were called.
23 Yes, sir, it was the Sheriff's Office dogs.
- 24 Q You don't know what breed of dog they are?
- 25 A They have bloodhounds. I mean, I'm not real sure

1 which kind they brought. They were dogs.

2 Q And they first started with the dogs at the bank or
3 where the bike was located?

4 A I'm not sure.

5 Q Not sure? Did the bloodhounds find anything?

6 A No, sir, I don't think they got a good trail.

7 Usually in an area where you have got that much
8 foot traffic it is not uncommon for the dogs to get
9 a little --

10 Q So they didn't find anything?

11 A No, sir.

12 Q Was a helicopter called out?

13 A Yes, sir.

14 Q Did the helicopter locate anybody or anything?

15 A No, sir.

16 Q Okay. And the bank tellers gave you a description
17 of -- well, what description did they give you of
18 the person who robbed the bank?

19 A You mean when it come over the radio or once I went
20 back and talked with them?

21 Q Did they gave you a description? You did say you
22 went to the bank, correct?

23 A Yes, I mean, I would have eventually went to the
24 bank. I don't know when it would have been.

25 Q And like I say, did the tellers give you a

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1 description of the person that robbed the bank?

2 A Let me see if I can find their statements in here.

3 Q Sure.

4 A Yes, sir.

5 Q So you did have a description. Would you tell us
6 what description they gave you of the robber?

7 A Okay. One teller said he had a white T-shirt,
8 black pants and black mask on.

9 And the next one said, describes as a black
10 male, he was about 6'4", he was wearing a black
11 mask and white T-shirt and black pants.

12 Another one says black male with a white
13 T-shirt.

14 The next one is, a man come into the bank with
15 a black ski mask on.

16 That looks like the only descriptions I got in
17 the statements.

18 Q So the only description you have was a tall black
19 male wearing white T-shirt and black pants?

20 A Yes, that was pretty much the main description that
21 was given out.

22 Q And that is the only description you had of the
23 robber when you placed Jarvis Gibbs under arrest?

24 A Yes, sir, from the bank, yes.

25 Q Did any of them mention facial features of the

1 robber?

2 A I can't recall.

3 Q Can't recall.

4 A I don't see it in their statements here. I can't
5 remember.

6 Q Okay, you went back to the bank on Monday, correct?

7 A I probably did. Let me -- yes, sir, we did.

8 Q Okay. Did you measure the height on Monday?

9 A Yes, sir.

10 Q Okay. Did you tell the girls at the bank that you
11 had made an arrest?

12 A Yes, sir.

13 Q Did you tell them who you arrested?

14 A Yes, sir.

15 Q Okay. What else did you do that Monday?

16 A Okay, that is when we went in, reviewed the video
17 in their computer when we could tell the time
18 difference in the computer on their cameras to the
19 dispatch time. And we requested a copy of the
20 video.

21 We measured the door markings on the front
22 door.

23 It looks like we got a total amount on the
24 money that was taken.

25 Q How much money was taken?

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1 A I just got in my notes it was a little more than
2 \$7,400 because there was no bait money was given.

3 And that is when, you know, I talked with
4 Melissa Roberts, I think was the second witness
5 that came up, and she told me the same thing she
6 told y'all earlier.

7 Q Okay. Did you go back to the bank on Wednesday?

8 A I don't have it in my notes that I went back that
9 Thursday.

10 Q Did you go on Wednesday and dust for prints?

11 A Wednesday. I don't have any notes about going back
12 on Wednesday and dusting for anything.

13 Q When did you go back and dust for prints?

14 A I never dusted for prints inside the bank. Inside
15 the bank, like I told you earlier, when I got to
16 the scene I went out to where we thought the guy
17 may be at. Other detectives went to the bank.

18 Q Did anyone else dust for prints?

19 A I don't know. I don't know.

20 Q You don't know?

21 A No, sir.

22 MR. OGBURN: If you'll excuse me a minute,
23 Your Honor.

24 (Pause.)

25 Q Do you have any DNA evidence in this case?

- 1 A No, sir.
- 2 Q So you have no DNA evidence linking --
- 3 A The one countertop that we did swab pointed out in
- 4 the video, we sent that in, and that was it. We
- 5 didn't -- we didn't test for DNA on the bicycle
- 6 because we were able to determine that was the
- 7 bicycle that was used.
- 8 Q So you have no evidence that that bank -- excuse
- 9 me, that bike was the actual bike used in the
- 10 robbery?
- 11 A Other than the statements.
- 12 Q So you have no physical evidence that bike was the
- 13 one used in the robbery?
- 14 A I mean, I don't --
- 15 Q No, do you? You don't have any, do you?
- 16 A You are asking about physical evidence. I mean,
- 17 are you talking about statements from witnesses?
- 18 Q Well, do you have anybody saying that the bank
- 19 robber left on that particular bike?
- 20 A No, we don't have nobody from the bank saying that
- 21 that is the bicycle that was used in the robbery.
- 22 Q Right. So you have no evidence that that
- 23 particular bike was used in the robbery?
- 24 A I wouldn't say no evidence or I wouldn't have
- 25 brought it in here today.

LEE BOAN -- CROSS BY MR. OGBURN

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1 Q Right. But you are not giving any evidence.

2 A Okay. Well, I mean, y'all -- we have already had
3 the witnesses up here to testify to whose bike it
4 was, who they let use the bike and --

5 Q Officer, I don't think you are understanding my
6 question. The evidence with the owner of the bike
7 or the testimony with that, that proves he borrowed
8 the bike, Jarvis borrowed the bike from
9 Mr. Macklin, but what evidence do you have that
10 that particular bike was the actual bike used in
11 the robbery?

12 A It being found down the road in the proximity where
13 the robber was last seen at and fit the description
14 of the bike he was driving. And we don't commonly
15 drive down the road and see a bike just laying in
16 the road like that.

17 Q So just because it was in the direction that the
18 robber left in, does that prove that it was used in
19 the robbery?

20 A In my opinion it -- the bike was used.

21 Q Just your opinion?

22 A Yes, sir.

23 Q Did you ever locate the gloves?

24 A No, sir.

25 Q Do you have any evidence linking Jarvis Gibbs to

- 1 those latex gloves?
- 2 A We never found the gloves.
- 3 Q What about the ski mask? Did you ever find the ski
- 4 mask?
- 5 A No, sir.
- 6 Q And what evidence do you have linking Jarvis Gibbs
- 7 to the ski mask used in the robbery?
- 8 A We never found a ski mask.
- 9 Q So none? Did you ever find the money?
- 10 A No, sir, we never found the money.
- 11 Q And what evidence do you have linking Jarvis Gibbs
- 12 to the actual money taken at the bank?
- 13 A We never did find the money.
- 14 Q What about the gun? Did you ever find the gun?
- 15 A No, sir, we never found the gun.
- 16 Q So do you have any evidence linking Jarvis Gibbs to
- 17 the gun?
- 18 A No, sir, we never found the gun.
- 19 Q How much money did Jarvis Gibbs have on his person
- 20 when you arrested him?
- 21 A I don't know if he had anything on him at the time.
- 22 I can't remember.
- 23 Q Y'all would have searched him after you arrested
- 24 him, correct?
- 25 A Yes, sir, he would have been searched, and if he

LEE BOAN -- CROSS BY MR. OGBURN

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1 had any money it would have been on the booking
2 sheet at the jail.

3 Q So you don't know of any money?

4 A No, sir, I don't know of any.

5 Q Did Jarvis Gibbs have a beard that day?

6 A He had -- I want to say it was pretty thin. I
7 mean, he told me that he had just got a haircut and
8 shaved and stuff, so --

9 Q And does he have tattoos, scars, marks on his arms?

10 A Yes, sir, he does.

11 Q And the lower part of his arms?

12 A Yes, sir.

13 MR. OGBURN: Pardon me just a minute, Your
14 Honor.

15 (Pause.)

16 Q Detective Boan, what is a photo line-up?

17 A A photo line-up is when -- these are like if you
18 have a witness to a crime, they don't know the
19 person, we would do a photo line-up where we take
20 that person and five other people that look similar
21 to that person and put them on a piece of paper and
22 show them to a witness.

23 Q How many photo line-ups have you done in your
24 career?

25 A I wouldn't have any idea. I have done a lot.

1 Q A lot. Would you say more than 100?

2 A Yes, sir.

3 Q Okay. And, again, the purpose is to determine
4 identity, correct?

5 A Yes, sir.

6 Q And there were eyewitnesses in this case, correct?

7 A Yes, sir.

8 Q And you did not do a photo line-up?

9 A No, sir. On cases like here where a mask was worn,
10 it wouldn't have been feasible for me to put six
11 people wearing masks on a photo line-up, nobody saw
12 his face.

13 And the one -- the one witness who did
14 recognize him, told me Monday, she already knew
15 him, so we don't do photo line-ups of somebody that
16 already knows somebody because they are coming in
17 and telling us who they are, who the person is.
18 There was no photo line-up used in this case. And
19 it wasn't that I forgot, I just didn't do it. I
20 wouldn't do it. Today I still wouldn't do it.

21 Q So the reason is no one saw the robber's face?

22 A All they saw was the mask, yes, sir.

23 Q Okay. Did you bring a sketch artist in?

24 A No, sir. We don't bring a sketch artist in to draw
25 a mask. It would have been -- there was no face

LEE BOAN -- REDIRECT BY MR. MOAK

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1 that was seen.

2 Q So you had no facial description when you arrested
3 Jarvis Gibbs?

4 A No, sir.

5 Q Okay.

6 MR. OGBURN: No further questions.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION

9 BY MR. MOAK:

10 Q When you picked Jarvis Gibbs up, you had a
11 description from the tellers?

12 A Yes, sir.

13 Q And you had also talked to Arthur Macklin, had you
14 not?

15 A Yes, sir, the owner of the bike, yes, sir.

16 Q And, again, on the map where did Jarvis say that he
17 dropped the bike back off at?

18 A It would have been over here near Junior's house.

19 Q So this is where he says he returns the bike?

20 A Yes, sir.

21 Q Where did you find the bike?

22 A Right down here.

23 Q And you have got 4-wheeler tracks leaving from
24 where the bike is at?

25 A Yes, sir, located where we found the bike at.

1 4-wheeler tracks and the shoe print.

2 Q You have got that shoe print at the bike?

3 A Yes, sir.

4 Q You have got Mr. Gibbs' shoes?

5 A Yes, sir.

6 Q You've got Chad Moore's statement?

7 A Yes, sir.

8 Q You've got evidence of Gibbs on the bike?

9 MR. OGBURN: Your Honor, leading the witness.

10 THE COURT: Yes, sir, you are leading the
11 witness. Ask him a question.

12 Q So you've got evidence that this is the bike used
13 in the robbery?

14 A Yes, sir, I feel we've got evidence that that is
15 the bike.

16 Q And you didn't just arrest him based on the
17 tellers' description?

18 MR. OGBURN: Your Honor, again he is leading
19 the witness.

20 THE COURT: Yes, sir. Sustained.

21 MR. MOAK: No further questions.

22 THE COURT: Anything further?

23 MR. OGBURN: Just a few.

24 RECROSS-EXAMINATION

25 BY MR. OGBURN:

LEE BOAN -- RECROSS BY MR. OGBURN

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1 Q When you picked up Jarvis Gibbs, did he come
2 voluntarily?

3 A Yes, sir, he did.

4 Q And did he speak to you voluntarily?

5 A Yes, sir, he did.

6 MR. OGBURN: No further questions.

7 THE COURT: All right. You may come down.
8 Thank you very much.

9 (Witness steps down.)

10 MR. MOAK: Your Honor, at this time, with the
11 exception of State's 45 for ID, I make a motion to
12 move all the remaining pieces of evidence that have
13 not been introduced into evidence -- I think they
14 are all in, but just to catch them. And with that
15 I will rest.

16 MR. OGBURN: Your Honor, I do have a motion.

17 THE COURT: I understand that. He says all
18 evidence that had not been previously introduced.
19 I mean --

20 MR. MOAK: I think there were some items that
21 I believe that have been introduced that don't have
22 the little mark from the court reporter.

23 THE COURT: Make sure of that. Is the State
24 going to rest, Mr. Moak?

25 MR. MOAK: After we do that we will rest, Your

1 Honor.

2 THE COURT: Well, we don't need the jury to
3 sit and watch you go through all those documents.

4 Ladies and gentlemen, that will conclude the
5 case for the State of South Carolina. In other
6 words, the State is resting at the time.

7 There are some legal matters I need to take up
8 with the attorneys before we continue with the
9 trial, so I think the most efficient use of our
10 time would be to allow you to go to lunch right
11 now. It will probably take us about, oh, 30 or 45
12 minutes to complete that process.

13 So I ask you to be back in the jury room at
14 2:00 o'clock, at which time we will continue with
15 the trial.

16 Thank you very much.

17 Again, don't discuss the case among yourselves
18 when you return to the jury room or with anyone
19 else over the lunch hour, lunch period.

20 (WHEREUPON, the jury is excused for
21 lunch at 12:18 p.m.)

22 THE COURT: Are we satisfied that all the
23 evidence the State wishes to place into evidence
24 are in evidence?

25 MR. MOAK: I believe so, Your Honor.

1 THE COURT: Correct, Madam Court Reporter?

2 THE COURT REPORTER: Yes, sir.

3 THE COURT: All right, Mr. Ogburn.

4 MR. OGBURN: The Defense at this time would
5 make a motion for a directed verdict. Given all
6 the evidence in the light most favorable to the
7 State, they have not shown any evidence linking Mr.
8 Gibbs to the bank robbery, they have not shown any
9 evidence of kidnapping. And basically without
10 identity, all three of the charges basically are
11 without merit.

12 THE COURT: All right. Mr. Moak? Mr. Moak,
13 what is the State's position?

14 MR. MOAK: The State's position is that we
15 have one witness that testified that Mr. Gibbs
16 admitted to him he did it. That is a pretty strong
17 piece of evidence. We've got the bank tellers
18 testifying, and at least two of them testifying
19 that they were forced to remove cash from their
20 cash drawers and physically move from their station
21 to another location with the cash. I believe that
22 satisfies the kidnapping, Your Honor. I believe
23 the video itself shows the firearm, so that would
24 be use of firearm during the commission of a
25 violent crime. This is a bank and the video shows

1 the robbery. So I do believe we have sufficient
2 evidence in the light most favorable to the State
3 to go to the jury for these three charges.

4 And if nothing else, Chad Moore's statement
5 that he admitted to it is a very strong piece of
6 evidence as to identity.

7 MR. OGBURN: Your Honor, no witness has
8 testified that they saw the face of the bank
9 robber.

10 THE COURT: Yes, I realize that. Well, at
11 this point, viewing the evidence most favorable to
12 the State, I feel the evidence goes beyond that of
13 mere conjecture or suspicion. There is evidence,
14 either direct or circumstantial or some combination
15 of both, which reasonably tends to prove the guilt
16 of the Defendant from which that guilt might be
17 logically and reasonably deduced if that evidence
18 is taken in the light most favorable to the State.

19 So I must respectfully deny your motion for a
20 directed verdict.

21 MR. OGBURN: Thank you, Your Honor.

22 THE COURT: Now, Mr. Gibbs, I need you to -- I
23 need to talk to you for a minute. Do you
24 understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: You may want to stand up so you
2 can hear --

3 MR. OGBURN: If you'll stand up.

4 (Defendant stands.)

5 THE COURT: -- what I have to say to you.

6 Mr. Gibbs, at this time I'm going to explain
7 to you certain of your rights. If you do not
8 understand anything I say, please let me know. If
9 you want me to explain anything in more detail,
10 please let me know. Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: We have now reached the stage of
13 the trial where you may present your Defense. You
14 have a right to claim the protections given to you
15 by the Fifth Amendment to the constitution of the
16 United States. This amendment states in part that
17 no person shall be compelled in any criminal case
18 to be a witness against himself. This means that
19 you cannot be required to testify in this case.
20 You have the right to testify on your own behalf.
21 However, no one can make you testify. This is a
22 personal right, and no one can waive this right
23 except you. If you decide to testify, you'll be
24 subject to the same rules that govern all other
25 witnesses and you may be examined and

1 cross-examined on any relevant issue in this case.

2 In addition, if you have any convictions
3 involving dishonesty or false statement or for
4 crimes punishable by imprisonment for more than one
5 year and this Court determines that the probative
6 value of admitting this evidence outweighs the
7 prejudicial effect to you, the Solicitor will be
8 able to introduce your record to attack your
9 credibility.

10 If you decide to testify, this decision on
11 your part must be freely, voluntarily and
12 intelligently made with knowledge of the
13 protections given to you by the Fifth Amendment to
14 the constitution and the consequences of your
15 decision to testify.

16 If you decide not to testify, I will instruct
17 the jury that they cannot give the fact that you
18 did not testify any consideration whatsoever and
19 that there is to be absolutely no prejudice to you
20 because you didn't testify.

21 It is left entirely up to you whether or not
22 you testify. You may talk with your attorney, your
23 family and friends, or anyone else, but the final
24 decision will be left entirely up to you.

25 Do you understand what I have explained to

1 you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions about
4 what I explained to you?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you discussed with your
7 lawyer whether or not you should testify?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Do you wish to talk to
10 your lawyer any more about it at this time?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. Now, before I ask Mr.
13 Gibbs if he wishes to testify, what is his record
14 and what is -- what could be used to impeach him?

15 MR. MOAK: The record I think that can be used
16 to impeach him is he has a prior purse snatching
17 conviction.

18 THE COURT: From what year?

19 MR. MOAK: And a prior shoplifting conviction.

20 THE COURT: What year?

21 MR. MOAK: The purse snatching was convicted
22 originally in '97. He got a YOA suspended on two
23 years' probation. He was revoked in February of
24 1999. So it looks like he was actually revoked for
25 YOA not to exceed six years. He actually got the

1 active portion started February of '99. So I will
2 submit he was in custody and under the supervision
3 and within the past ten years for that.

4 And he also has a 2005 conviction for
5 shoplifting.

6 THE COURT: For what?

7 MR. MOAK: Shoplifting.

8 MR. OGBURN: Your Honor, we would argue that a
9 1997 purse snatching is too old to be used for
10 impeachment.

11 THE COURT: Well --

12 MR. MOAK: Your Honor, the rule clearly states
13 if he is still under supervision or in custody.

14 THE COURT: Well, let's -- I'm going to read
15 the rule out loud.

16 Since date of conviction or of the release of
17 the witness from confinement imposed for that
18 conviction, whichever is the later date.

19 Besides that -- well, I don't think our courts
20 have ever determined that purse snatching is a
21 crime of dishonesty, but our courts have certainly
22 in Al-Amin decided that robbery is a crime of
23 dishonesty. If it is a crime of dishonesty --
24 involving dishonesty -- well, I think the
25 confinement issue is clear under 609(b),

1 Mr. Ogburn. Has elapsed since date of conviction
2 or release of witness from confinement.

3 All right. So I think both of those would be
4 admissible.

5 Now, given that information, I want your
6 client to have full knowledge of what the State may
7 use to try to impeach him.

8 Mr. Gibbs, do you wish to testify in your own
9 behalf?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You do?

12 THE DEFENDANT: (Nods affirmatively.)

13 THE COURT: All right, fine. All right, thank
14 you very much.

15 All right, let's stand at ease until
16 2:00 o'clock. The jury will return at
17 2:00 o'clock.

18 (Lunch recess.)

19 THE COURT: Mr. Ogburn, how many witnesses do
20 you have?

21 MR. OGBURN: Yes, Your Honor, I have one
22 witness to call.

23 THE COURT: Just for planning purposes, do you
24 anticipate the case going to the jury today? If
25 so --

1 MR. MOAK: It depends on what that witness
2 says.

3 THE COURT: Oh, I understand that. I'd like a
4 little better answer than that.

5 MR. MOAK: I mean, depending on what the
6 witness says, we may have a reply witness. I mean,
7 I don't think our closing arguments are that long,
8 so, I mean, I could -- it is 2:00 o'clock now. I
9 don't see us running past 5:00 o'clock.

10 THE COURT: You mean for the -- in what sense?

11 MR. MOAK: Well, I mean --

12 THE COURT: I mean, I don't want to give it to
13 the jury at 5:00 o'clock, if that is what you are
14 suggesting, if that is what you are sort of
15 anticipating. It is 2:00 o'clock.

16 MR. MOAK: I mean, I would find it hard to
17 believe that we will be arguing and charging. With
18 what he is putting up, what I am going to put in
19 reply would put us past 3:30, 4:00 o'clock starting
20 closing arguments.

21 THE COURT: Do you disagree with that?

22 MR. OGBURN: I don't necessarily disagree,
23 Your Honor. My only contention is that I would
24 like for closing arguments to occur right before
25 they go deliberate, if you know what I'm saying,

1 for those two to be together and not be separated
2 by an evening.

3 THE COURT: All right. Does the State have
4 any requests to charge?

5 MR. MOAK: None, Your Honor.

6 THE COURT: Does the Defense have any requests
7 to charge?

8 MR. OGBURN: None, Your Honor.

9 THE COURT: All right. Well, I had a set of
10 charges and proposed jury -- I mean, verdict form.
11 I have to make one change to the proposed charges
12 that I have drafted. We'll talk about that after.

13 Is the State ready for the jury?

14 MR. MOAK: Yes, Your Honor.

15 THE COURT: Is the Defense ready?

16 MR. OGBURN: Yes, Your Honor.

17 THE COURT: Bring the jury.

18 (WHEREUPON, the jury came into open
19 court at approximately 2:12 p.m.)

20 THE COURT: All right, ladies and gentlemen, I
21 hope you had a pleasant lunch. We're now ready to
22 continue this trial.

23 Mr. Ogburn?

24 MR. OGBURN: May it please the Court, Your
25 Honor? The State would call Jarvis Gibbs to the

1 stand.

2 THE CLERK: Place your left hand on the Bible,
3 and raise your right hand, please.

4 (Witness complies.)

5 THE CLERK: Do you swear or affirm the
6 evidence you give in this case will be the truth,
7 the whole truth, and nothing but the truth, so help
8 you God?

9 THE WITNESS: I do, ma'am.

10 THE CLERK: Please be seated in the witness
11 chair, and please state your full name for the
12 record.

13 THE WITNESS: Jarvis Gibbs.

14 JARVIS GIBBS,
15 after being duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. OGBURN:

18 Q Jarvis, how old are you?

19 A Thirty-one.

20 Q And where do you live?

21 A I live up [REDACTED] -- I mean, [REDACTED]

22 [REDACTED].

23 Q Is that here in Camden?

24 A Yes, it is.

25 Q Okay. How far did you go in school?

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1 A To the ninth grade, then I went to Job Corps.

2 Q So you quit in the ninth grade?

3 A Yes, sir.

4 Q And what school did you go to?

5 A North Central.

6 Q Okay. What jobs have you worked?

7 A I been working at Goodyear off and on for about the
8 last seven, eight years.

9 Q Do you remember the day that the Palmetto Federal
10 Bank was robbed?

11 A Yes, sir.

12 Q Tell us what you did that day.

13 A I woke up. I had went to Kirkwood. I got to
14 Kirkwood about, probably about 8:30, 8:45, talked
15 to -- I stopped by my home boy house, talked to him
16 for a few minutes. We sat around for a little
17 while.

18 Then I had seen Arthur Macklin. I mean, I
19 ain't lying, I did use the bicycle. I used the
20 bicycle, but I brought the bicycle back like 10 or
21 15 minutes, you know what I'm saying. I laid --
22 when I came back, I put the bicycle on the fence,
23 then I went to the barber shop.

24 Q Okay, Jarvis, if I can interrupt you. Would you
25 move that microphone down just a little, it is a

1 little hard to hear.

2 A Yes, sir.

3 Q And if you can maybe try to talk a little slower.

4 A Yes, sir.

5 Q So you did borrow a bike from Arthur Macklin?

6 A Yes, sir.

7 Q Is this the bike that you borrowed?

8 A I mean, it looks like it.

9 Q Okay. And how long did you borrow the bike?

10 A I might have had the bike like 10, 15 minutes just

11 to go up the street, and then I came back and then

12 I dropped it off back to him.

13 Q So after you borrowed the bike, what did you do?

14 A I walked to the barber shop.

15 Q Did you go to the bank riding that bike?

16 A No, sir.

17 Q Did you rob that bank?

18 A No, sir.

19 Q Have you ever set foot in that bank?

20 A No, sir.

21 Q Do you have an account at that bank?

22 A No, sir.

23 Q Okay. Did you return the bicycle?

24 A Yeah, I laid the bicycle back on the fence. I be

25 there at the house right across from their house.

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1 That is where I hang out at, at the house next
2 door. His nephew is my first cousin, so I be --
3 that is where I be at.

4 Q And that is where you left the bike?

5 A Yes, sir.

6 Q And after you dropped the bike off, what did you
7 do?

8 A I walked to the barber -- the barber shop right --
9 like we -- I stay in -- I be in Kirkwood, but the
10 barber shop sits like right beside Kirkwood. It is
11 like right through by the discount store. See, we
12 got a little path. We can walk through the path
13 and walk to the barber shop, you know what I'm
14 saying.

15 Q How many people were at the barber shop?

16 A Probably about nine, ten.

17 Q Did you -- were you going to get your hair cut?

18 A I got a haircut.

19 Q Okay. How long did it take to get the haircut?

20 A I sat there and waited probably about -- probably
21 about 45 minutes, got a haircut, that took another
22 about 10, 15 minutes.

23 Q Did you have a beard?

24 A Yeah, I used to have a beard, not a full beard, but
25 I had a beard.

1 Q Did you get your beard trimmed at the shop?

2 A Yes, sir.

3 Q What did you do after you left the barber shop?

4 A I started walking towards the tracks.

5 Q What time do you think you finished at the barber
6 shop?

7 A Forty-five minute wait. Probably -- probably took
8 about an hour all together.

9 Q Okay. What time of the day was that?

10 A I was at the barber shop -- I probably got to the
11 barber shop around 9:30, 9:45, something like that.

12 Q You got to the barber shop at about 9:30, 9:45?

13 A Yes, sir.

14 Q And what time did you leave?

15 A When I left the barber shop it was probably about
16 10:00 -- about 10:00 or 11:00 something.

17 Q Okay. Did you still have the bike?

18 A No, sir. I already dropped the bike back off
19 earlier that day when I had it.

20 Q So you would have left the bike before you even
21 went to the barber shop at 9:30?

22 A Yes, sir.

23 Q Okay. What did you do after the barber shop?

24 A I went down to Boykin Park. Well, I started
25 walking down towards Boykin Park, then I caught a

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1 ride from somebody. But, I mean, I don't got no
2 car, or I ain't got no driver's license, so I
3 caught a ride to Boykin Park and I got dropped up.

4 Q Where is Boykin Park in relation to Dusty Bend?

5 A Um, I don't know, it probably -- I mean, walking
6 down there it probably takes about 35, 45 minutes.
7 In a car it probably takes about 15, 20 minutes.
8 Probably about 15 minutes.

9 Q Right. But, again, where is Boykin Park at?

10 A Like on the lower part. It is not Dusty Bend, it
11 is like the lower part of downtown.

12 Q Okay. Were you in the bank earlier that week?

13 A No, sir. Never been in that bank.

14 Q Have you ever eaten at the restaurant called, what
15 was it, Riverside or River -- the restaurant the
16 witness was talking about?

17 A No, sir.

18 Q Never been in there?

19 A Never been up there, sir.

20 Q Okay. Did you have an occasion to walk by the bank
21 that day?

22 A No, sir. By the time -- when I left the barber
23 shop, leaving the barber shop, I caught a ride
24 right there by Food Lion. Like Food Lion sits
25 right beside the barber shop, so when I was walking

- 1 I caught a ride from there. Terrence gave me a
2 ride.
- 3 Q And who is Terrence?
- 4 A A friend of mine.
- 5 Q Okay. Then what did you do after you caught a ride
6 with Terrence?
- 7 A I went to Boykin Park. I sit down there the rest
8 of the day because, like, I ain't had nothing to
9 do. I usually be working, so, I mean, like I was
10 off work that day, so, I mean, like I got free
11 time. I work -- I work Monday through Friday. I
12 mean, we work -- Saturday we work till 1:00 o'clock
13 and we get off, you know what I'm saying. So, I
14 mean, like it was just like you ain't got nothing
15 to do, like you just -- I was relaxing, you know
16 what I'm saying.
- 17 Q Okay. Did a police officer pull up --
- 18 A Yes, sir.
- 19 Q -- where you were staying? Okay. Were you inside
20 the house or outside the house?
- 21 A We were standing outside. Me and a couple of
22 friends were standing outside.
- 23 Q Okay. What happened after the police arrived?
- 24 A Well, I think -- they county and I was on the
25 city -- I was across the train track on the city

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1 line. So, you know, county can't come on city
2 line.

3 So Mr. Boan, I seen Mr. Boan, he came -- went
4 to the train track. He was like, Mr. Gibbs, can I
5 speak to you?

6 So I was like, all right.

7 So he was like, I can't come over there, you
8 got to come over here. So I walked across the
9 train track.

10 After I walked across train track, he was
11 like, do you mind if I talk to you?

12 I was like, all right.

13 He was like, well, can you get in the car with
14 me and ride down to the station?

15 I was like, all right, I'll ride with you,
16 you know what I'm saying, like, I'll ride with you.

17 Q Okay. So you voluntarily went with Detective Boan?

18 A Yes, sir.

19 Q Were you in handcuffs?

20 A No. I mean, like he asked me, do you mind riding
21 down to the police station?

22 So I was like, what is this about?

23 I mean, like he ain't never say nothing. He
24 said, look, I just want to talk to you and ask you
25 a couple of questions.

1 So I was like, all right then. I got in the
2 police car, we went down to the station. We got
3 down to the station. We walked into the police
4 station.

5 Q And did he ask you a lot of questions?

6 A Yeah. He was just asking me questions at first
7 like what I did today, and stuff like that.

8 And then like after probably about 30 minutes,
9 I asked him like, why am I here?

10 So he was like, did you hear anything about a
11 bank robbery?

12 I was like, yeah, I heard people -- I mean,
13 like in the hood, like you can't -- I mean, in the
14 area where I stay at, like you can't help but hear
15 about people talking about it. I was like, yeah, I
16 heard about it, you what I'm saying. So I was
17 like, yeah, I heard about it.

18 Q About how long did he question you?

19 A Probably about an hour. He questioned me for a
20 little while, he leave out the room, then he will
21 come back, he questioned me for a little while,
22 then he left out the room, then he came back,
23 questioned me for a little while, then he left out
24 the room. And like then he came back.

25 So I was like, after a while I was just like,

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1 well, what are you trying to say, you know what I'm
2 saying.

3 Q Uh-huh.

4 A So he was like, you know what I'm trying to say,
5 you robbed the bank.

6 So I was like, I ain't robbed no bank. So
7 then I told him, just take me to the Police
8 Department, you know what I'm saying. If you are
9 locking me up, charging me with robbing a bank, go
10 ahead and charge me and let me talk to my family,
11 or whatever, you know what I'm saying, because I
12 don't know even what going on, I been sitting up
13 here all day, you know what I'm saying.

14 Q Uh-huh. Did he ever take any photographs of your
15 arms?

16 A Yeah, he took photographs of my arms.

17 Q Why do you think he was taking pictures of your
18 arms?

19 A I don't know. He ain't never say why he was taking
20 pictures of my arm. He just asked me to stick my
21 arms down on the table, so I stick my arms on the
22 table. And the next thing you know he took
23 pictures with a camera.

24 Then I asked him, and he ain't, you know what
25 I'm saying -- no, they was like, the person that

1 robbed -- they was like, we know you robbed the
2 bank because the person that robbed the bank -- I
3 don't know if he said they had tattoos or they were
4 trying to check it for tattoos.

5 Q Okay. So do you have tattoos?

6 A A bunch of them. I got my forearms and my arms, my
7 whole -- all arms.

8 Q Right. When did you get those tattoos?

9 A I'm 31. I had tattoos since about 23, 24.

10 Q Okay. Did you admit to him to robbing the bank?

11 A No, sir.

12 Q Did you ever say that you had any connection to
13 robbing the bank?

14 A No, sir. The only thing they asked me was -- I
15 mean, it was like, we got the bicycle that you was
16 on.

17 I said, what bicycle I was on? I mean, I told
18 them -- I mean, I did, I used a bicycle that day.
19 I mean, it just so happened the bicycle that I
20 happened to rode got used to rob a bank, but I
21 didn't rob no bank, you know what I'm saying.

22 First, like I told him, if I robbed a bank,
23 why I'm going to be sitting out -- like I'm in the
24 middle of an open area. Like who robs a bank and
25 don't leave? You see what I'm saying? That don't

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1 make sense. Like why am I going to rob a bank for,
2 see what I'm saying. Like I was working, so why am
3 I going to rob a bank if I'm working.

4 Q Do you know if that bike was used to rob a bank
5 that day?

6 A No, sir. Like I didn't even know it. I didn't
7 know -- they asked me did I know Junior Macklin.
8 I was like, yeah.

9 He asked me, have you seen Junior Macklin that
10 day.

11 I said, yeah, I seen Junior Macklin. I used
12 his bicycle earlier because I rode around the
13 corner and I brought the bicycle back and laid it
14 on the fence.

15 Q Uh-huh. And so they arrested you that night?

16 A No, they arrested me about 4:30.

17 Q 4:30 in the afternoon?

18 A Yeah. But I wasn't placed under -- they had me in
19 the station around 4:30 -- 4:30.. Then they took me
20 down to the county. I wasn't put on arrest
21 until -- I mean, nobody came -- I sat in the county
22 like three days. Nobody came and talked to me,
23 nobody said nothing. Then after a while they
24 brought some arrest warrants for a bank robbery.

25 Q Did you go home that night?

1 A No, sir, I was in the county.

2 Q By "in the county," what you mean?

3 A Like I was in the county jail.

4 Q Okay. Did you remember a Chad Moore being at the
5 county jail?

6 A Yes, sir.

7 Q Were you locked up with him?

8 A Yeah, he was in my pod with us.

9 Q In your pod? How many people are in a pod?

10 A Well, they put me in F -- they put me in F pod
11 because, you know, F pod is for people with violent
12 crimes, so it was probably like -- it was like
13 nine, ten people were there.

14 Q Were you ever in a cell alone with Chad Moore?

15 A No, sir.

16 Q Did you ever talk to Chad Moore?

17 A Yeah, I did.

18 Q Okay. What did you say to Chad Moore?

19 A I mean, when I came there, you know what I'm
20 saying, like I knew a couple of people that was
21 already incarcerated, so, you know what I'm saying,
22 I ain't talked to -- I ain't even knew him.

23 So after a couple of days, you know what I'm
24 saying, he was like, I heard you was in here for a
25 bank robbery, you know what I'm saying.

1 I was like, yeah, they are trying to say that
2 I used a bicycle and then I jumped on a 4-wheeler
3 and robbed a bank.

4 So he was like, word.

5 I was like, yeah.

6 He is like, I'm in for bank robbery too.

7 I was like, word. I was like, all right,
8 then.

9 I mean, I ain't -- that is the first time I
10 met him in 31 years, like I never seen him a day in
11 my life.

12 Q Did you ever tell him that you robbed a bank?

13 A No, sir.

14 Q Did you give him any details about the bank
15 robbery?

16 A No, sir. I mean, I can't give you details about
17 something I didn't do, you see what I'm saying.

18 Q Right. Was Chad Moore getting information from
19 other inmates?

20 A I mean, I don't see how he could because I never
21 talked to nobody about a bank robbery, you see what
22 I'm saying.

23 Q Right.

24 A Except people ask me, like they will, Jay --
25 because everybody call me Jay -- they are like,

1 A No, sir. Like I say, I'm 31 years old. Like she
2 said, she was like 28, 29. I been -- I mean, you
3 know, Central start from seventh grade. So by the
4 time she got in school I wouldn't even have been
5 there, you see what I'm saying. Like I wouldn't
6 even have been there then.

7 My grandmama pulled me out at the ninth grade
8 because she was like, I'm going to just -- you have
9 been getting in trouble a little bit so I am going
10 to just send you to Job Corps. So I went to Job
11 Corps, finished Job Corps and got my GED and my
12 welder's certificate.

13 Q Did you have any classes with Ms. Roberts?

14 A No, sir.

15 Q Were you -- did you hang out with Ms. Roberts?

16 A No, sir. Never seen her a day in my life.

17 Q So you don't even know her?

18 A I couldn't tell you what her name was. I never
19 seen her before. I never seen her. The first time
20 I seen her was when I came into the courtroom
21 today. I mean, when my trial started.

22 Q Do you own a gun?

23 A No, sir.

24 Q Did you own a gun or even have a gun the day of the
25 bank robbery?

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1 A No, sir.

2 Q Did you wear a ski mask that day?

3 A No, sir.

4 Q And you have never been in that bank before?

5 A I have never been in it a day in my life, sir.

6 Q Jarvis, is there anything else you'd like to tell
7 this jury?

8 A I mean, like -- I mean, I did a lot of things in my
9 life, you know what I'm saying, but I ain't robbed
10 no bank, feel me. Like I ain't robbed no bank.
11 Like, I mean, that's it. Like -- that's all I got
12 to say.

13 Q Mr. Gibbs, have you ever been in trouble before?

14 A I mean, not no big trouble, like I got -- I never
15 been convicted. Like I had like misdemeanor charge
16 and stuff like that. And like when I was 17 I got
17 convicted of purse snatching, you know what I'm
18 saying. Me and another home boy, we were together.
19 I mean, like I'm 16 -- I caught the charge at 16
20 years old. It was two of us. They gave me
21 probation, though. I had five years' probation. I
22 finished like three years' of probation, then I
23 violated my probation. They sent me -- I had a
24 Youthful Offender's Act, so I had boot camp. I
25 went and did my boot camp time, came back, and I

1 never been back to the Department of Corrections
2 again.

3 Q Did you -- have you ever been charged or convicted
4 of shoplifting?

5 A Yes, sir.

6 Q Okay.

7 A That's from eating -- that's from eating in a
8 store. I was going to pay for it, but, you know, I
9 mean, like you ever go in a grocery store and start
10 eating a peach? Like some people do it. Like I
11 went in a grocery store and started eating a peach,
12 like, you know what I'm saying, like --

13 Q Were you convicted of anything else?

14 A No, sir.

15 Q Okay. Unless you have anything else to tell the
16 jury, I have no further questions. Please answer
17 any questions Mr. Moak may have.

18 A Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. MOAK:

21 Q What day is today?

22 A Sir?

23 Q What day is today?

24 A Thursday. Thursday or Wednesday.

25 Q November 18th?

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- 1 A I don't know the date. I been going -- I mean,
2 like I ain't been keeping up with it. Like I'm
3 stressed out, man, like --
- 4 Q How long ago was July 25th, 2008?
- 5 A That was last year.
- 6 Q A year and almost four months?
- 7 A You said what was what?
- 8 Q A year and almost four months?
- 9 A That was last -- yeah, last year.
- 10 Q Okay. Do you remember talking with police the day
11 this happened?
- 12 A Yes, sir, I talked to Mr. Lee Boan.
- 13 Q Okay. And you had a year and four months to think
14 about what happened that day?
- 15 A No, because, I mean, like I thought about me being
16 locked up, because, I mean, like I'm being lockup
17 for something I didn't do. How can you not think
18 about it? I been locked up a whole year.
- 19 Q So you have had a year and four months to think
20 about it?
- 21 A Yes, sir, if that is what you want to say.
- 22 Q And you have been sitting here since Monday
23 listening to all the witnesses and hearing what is
24 going on?
- 25 A Yes, sir.

1 Q And you don't want to get convicted, do you?

2 A I mean, I would get convicted if it was something I
3 did. Just like I told Mr. Lee Boan, when they
4 questioned me I told them, I said, Mr. Lee Boan, if
5 I did something I would tell you I did it. It is
6 in my statement, you know what I'm saying.

7 He was like -- I was like, I always -- any
8 police that ever locked me up, you know, like I
9 always told the truth, like if I did it, I would
10 have did it, but I don't feel like I should be
11 locked up for something I didn't do.

12 And I'm not going to sit -- and like they gave
13 me a plea, you know what I'm saying, but for 15
14 years, like I'm not going to take a plea for
15 something I didn't do. I'm not going to jail for
16 something I didn't do. You see what I'm saying?
17 That is common sense. I think that would be
18 anybody put in a situation where they ain't did
19 something.

20 Q So you are saying you would tell the truth?

21 A Yes, sir.

22 Q Okay. And you want this jury to believe your story
23 on November 18th, 2009, over your story of
24 July 25th, 2008?

25 A I don't feel like the jury is going to believe my

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1 story, I believe the jury is going to look at the
2 evidence and they are going to make their own
3 decision.

4 Q Do you remember giving the police a story of what
5 you did on July 25th, 2008?

6 A Yes, sir.

7 Q You just testified you got to Kirkwood between 8:30
8 and 8:45? Is that what you just testified to?

9 A Yeah, around 8:30, 8:45, 9:00, somewhere up in that
10 area.

11 Q Do you remember telling Lee Boan that you didn't
12 wake up over on Garden Street till 10:30, 11:00
13 o'clock that morning?

14 A No, sir, I didn't.

15 Q You say you didn't say that?

16 A No, sir.

17 Q Okay. You didn't tell Lee Boan you went from
18 Garden -- and you took a shower at Garden Street at
19 Charles Benson's house?

20 A No, sir, I told Lee Boan that we sat on the porch.
21 There was a couple of us that sat on the porch and
22 I fell asleep on the front porch. That's what I
23 told Lee Boan. It is in my testimony.

24 Q So you are saying you didn't say -- you are saying
25 you did not take a shower?

1 A No. My testimony stated that I sat on the porch, a
2 couple of us sat out there, we was out there
3 drinking, and I sat on the porch and fell asleep
4 right there in the chair. It was about three of
5 us.

6 Q Okay.

7 A It was already morning time. It was almost 5:00 or
8 6:00 o'clock. We been standing out there just
9 chilling all night.

10 Q Okay. So going with what you are saying today,
11 you -- when did you borrow the bike from Arthur
12 Macklin?

13 A I borrowed the bike from him like early that
14 morning.

15 Q Was it before or after you went to the barber shop?

16 A It was before I went to the barber shop.

17 Q And you are saying today that you brought the bike
18 back within 10 to 15 minutes of getting it?

19 A Well, yes, sir.

20 Q So are you saying you had brought the bike back by
21 around 9:00 o'clock?

22 A Around that time. Probably a little bit before --
23 probably around a little bit -- around about 9:00,
24 because by the time I got to the barber shop it was
25 about, probably about 9:45, and it take probably

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1 about 15 -- it probably take about 20 minutes to
2 walk to the barber shop.

3 Q Okay. And you are saying you were at the barber
4 shop for an hour?

5 A About an hour, because --

6 Q So what time did you leave the barber shop?

7 A I left the barber shop probably about, I don't
8 know, around 10:00 something, around 10:35, 10:40,
9 somewhere up in that area.

10 Q Do you remember telling Lee Boan that you had heard
11 about the robbery at the barber shop?

12 A Yes, sir. I mean, I -- yes, sir.

13 Q You told him that?

14 A Yeah, I heard -- I told him people was talking
15 about it.

16 Q Okay. If you left the barber shop at 11:00, what
17 is your explanation of how you heard about the
18 robbery that happened at 11:00?

19 A You said the robbery -- I heard -- the way it came
20 back, the robbery happened around 10:00 something.
21 When I was at the barber shop, it was people coming
22 in talking about somebody just robbed a bank and
23 they jumped on a bicycle and left. That is what I
24 heard people talking about. I mean, that is what I
25 heard.

1 Q You have heard the testimony of the witnesses that
2 got robbed, haven't you?

3 A Yes, sir.

4 Q And they all said five till 11:00?

5 A Yes, that is what they say, but I'm just telling
6 you what I heard. I ain't got nothing to do with
7 what they say, I can just tell you what I heard,
8 sir. And if you check my -- if you -- if you look
9 at my testimony, my testimony said the same thing.

10 Q And you said you put the bike on the fence at
11 Arthur Macklin's house?

12 A Yes, sir, because I be right next door at his
13 nephew's house.

14 Q How do you get to Arthur Macklin's house?

15 A From where?

16 Q If you are coming up -- if you are at the CVS,
17 which is right here, how would you get to Arthur
18 Macklin's house?

19 A He was straight down that road.

20 Q That road there?

21 A It goes into Kirkwood. If you was coming from --
22 pass by the liquor store, you would make a right,
23 turn, CVS would be on the left, a beauty salon
24 would be on the right, and you keep straight you
25 will see the Foxes Den on the left, and then you

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1 keep straight down --

2 Q Yes, that is the Foxes Den right there.

3 A You'll keep straight and you will see his mama and
4 them beauty salon right there on the right.

5 Q It is right there.

6 A And then you keep straight through, and then after
7 you come through the next intersection, it will be
8 a couple of houses, and you go through that
9 intersection, then his house sits on the left and
10 his nephew house sits on the right. Like I stay in
11 Kirkwood.

12 Q Is that his house right there?

13 A I mean, I don't know. I can't tell from -- I can't
14 tell from an aerial photo.

15 Q But it is on this street?

16 A Yes, sir, I'm guessing. Is that the same street?

17 Q Okay. And that is where you say you left the bike
18 at?

19 A Yes, sir. On the fence.

20 Q Not over here?

21 A No, sir.

22 Q Do you remember telling anyone you walked by and
23 saw all the police at the bank?

24 A No, sir.

25 Q So you are saying now that you got up at 8:45?

- 1 A Yes, sir. No -- yeah, I got up around 8:45.
- 2 Q 8:30, 8:45?
- 3 A Yes, sir.
- 4 Q You are saying you did not tell Lee Boan you woke
5 up between 10:30 and 11:00?
- 6 A No, sir. If you check my statements, it's not in
7 none of my statements saying I woke up at that
8 time.
- 9 Q Okay.
- 10 A I mean, you got my statement, right? All you got
11 to do is read my statement. You can show the jury
12 my statement.
- 13 Q Well, we're going to get to that.
- 14 A Oh.
- 15 Q And you said -- one of your answers to Mr. Ogburn,
16 you actually said the bike you rode got used in the
17 bank robbery?
- 18 A Say what, sir?
- 19 Q You actually said, the bike I rode got used in the
20 bank robbery?
- 21 A No, I didn't. I said I don't know.
- 22 Q You said, it turns out the bike I used got used in
23 the bank robbery.
- 24 A No. He asked me did I ride a bicycle. I said --
25 borrow somebody's bicycle. I said yes.

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1 He said, is that the bike I rode.

2 I said, I don't know, I don't remember. I
3 mean, I don't know if that was the bike that was
4 used in the bank robbery or not.

5 Q And as to Chad Moore, Mr. Ogburn asked you if you
6 thought it was possible that Chad Moore got
7 information from other inmates about you?

8 A Yes. I mean, it was on the news. I mean, who --
9 on the news, when it came out on the news, it said,
10 somebody robbed a bike -- somebody robbed a bank on
11 a bicycle. I mean, with common sense, like it is
12 on the news, so how wouldn't you know. It was
13 broadcast. It came on WIS.

14 Q Okay. How is it -- I just want -- you are saying
15 you did not talk to Chad about this?

16 A No. The only thing Chad asked me why I was locked
17 up for. I told him why I was locked up. I said,
18 the reason they locked me up, they said that I
19 robbed a bank on a bicycle and used a 4-wheeler to
20 get away.

21 Q And you realize Chad had been in jail for some time
22 before you got there, right?

23 A No, I never even knew Chad Moore. I didn't know
24 Chad Moore until the first day I got there. When I
25 met Chad, like I stayed there like two or three

1 days before I even talked to him. Like after a
2 while, if you locked up -- I don't know if y'all --
3 y'all probably haven't been locked up before, but
4 it is like, if you locked up, you can't help but
5 talk to people after a little while. All y'all --
6 it is like, it is like eight, nine of us in a wee
7 little pod like. It is like nine of y'all -- like
8 nine of us in a booth pod. The pod almost from
9 that wall right there to that wall, from where she
10 at to that wall. That is how big the booth is.
11 Like I am going to pass you. When I go past to
12 take a shower, people on the telephone, how can I
13 not pass you, see what I'm saying.

14 Like after a while -- that is like if you
15 start working for somebody, if you was to go to
16 work with somebody, after a while you might be
17 like, well, I ain't going to talk nobody at this
18 job. Well, after a while you are going to start
19 talking to each other because y'all are right
20 around each other.

21 Q Okay. So, again, I mean, if you have a theory,
22 what is your explanation for how Chad knew the
23 4-wheeler was in a pond before it was found?

24 A I don't know. I ain't never knew that he knew it
25 was in a pond.

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1 Q You weren't here this morning when he testified?

2 A Yeah, I heard his testimony.

3 Q Yes. You didn't --

4 A I know he done talked to y'all too since then,
5 so --

6 Q So you didn't hear him testify that he spoke to the
7 police on July 28th?

8 A Yeah. I mean, like I wasn't really paying him no
9 attention because like, I mean, like what he say
10 don't concern me, that's how I feel because like --

11 Q And you didn't hear Lee Boan say they didn't find
12 the 4-wheeler till the 29th?

13 A All right, if I got locked up -- they found the
14 4-wheeler on the 29th of what?

15 Q Of July.

16 A All right. I got locked up on the 25th.

17 Q Yes.

18 A So what day did Chad come talk to Mr. Lee Boan?

19 Q You heard him testify he went to see him on
20 July 28th.

21 A No, I ain't hear him testify to that.

22 Q Yes. But you didn't talk to him?

23 A No.

24 Q Okay. As to this bike, did you borrow the bike or
25 did you give Arthur something for the bike?

1 A I borrowed the bike from Arthur. I asked could I
2 use the bicycle. He said yes.

3 Q You didn't give anything for the bike?

4 MR. OGBURN: Your Honor, he has already
5 answered -- asked and answered that question.

6 THE COURT: Sustained.

7 Q Was Arthur there when you dropped the bike back
8 off?

9 A No, I ain't see nobody, I just laid the bike on the
10 fence.

11 Q What did you do while you were riding the bike?

12 A I went, made a little run real quick, I brought the
13 bicycle back. I just rode up the street for a
14 second and came back.

15 Q Did you talk to anybody?

16 A Yeah.

17 Q Who?

18 A Low Ball. But he dead now, but I talked to Low
19 Ball. I stopped by Low Ball house real quick.

20 Q That is the only person you talked to?

21 A Yes, sir.

22 Q Now, you realize you were videotaped when you
23 talked to Lee Boan, do you not?

24 A Yes, sir.

25 Q And have you looked at that tape?

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1 A Yes, sir.

2 Q So you are saying you did not tell him that you
3 woke up on [REDACTED] Street between 10:30 and 11:00?

4 A No, sir.

5 MR. OGBURN: Again, Your Honor, we have been
6 over this several times and he has answered.

7 THE COURT: Overruled. Go ahead.

8 (Pause.)

9 MR. OGBURN: Again, Your Honor, I would object
10 to any use of the video. We have already been
11 over -- we have already been over this.

12 THE COURT: I don't know.

13 (Pause.)

14 MR. MOAK: Is it working?

15 Q Okay. You testified -- you just testified you did
16 not tell Lee Boan you woke up between 10:30 and
17 11:00 on [REDACTED] Street to take a shower?

18 A Yes, sir.

19 Q That's what you just testified to. Can you get up
20 and -- can you get up?

21 (Witness steps down.)

22 MR. OGBURN: Your Honor, I would object except
23 for the limited purpose of impeaching this
24 particular point and would ask that the video be
25 turned off once that point is impeached.

1 MR. MOAK: Your Honor, the only thing that has
2 been excluded is some statements. I'm not trying
3 to show those statements. That is the only thing
4 that has been excluded. And there is four or five
5 different parts I am going to try to show.

6 THE COURT: For impeachment purposes it is
7 admissible.

8 MR. MOAK: I've got him on video saying things
9 that he just testified he never said.

10 MR. OGBURN: For that limited point I don't
11 have an objection.

12 THE COURT: Well, see what happens.

13 Q Mr. Gibbs, can you please approach the screen?

14 A (Witness complies.)

15 Q Is that you in that room?

16 A Yes, sir.

17 Q Okay.

18 (Video played in open court.)

19 MR. OGBURN: Your Honor, he made the point of
20 the time.

21 Q Mr. Gibbs, take the stand back.

22 (Witness returns to witness stand.)

23 Q Now, is it still your testimony that you never told
24 Lee Boan that you woke up between 10:30 and 11:00
25 and took a shower?

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1 A I mean, like I still don't remember telling him
2 that. I mean, like if I did, I mean, like I said,
3 it been a year ago.

4 Q Now, you are saying now that you didn't give Arthur
5 Macklin anything to use that bike?

6 A I asked him to use the bicycle, and he let me use
7 it.

8 MR. OGBURN: Again, Your Honor, I would
9 object.

10 THE COURT: Well, overruled at this point.

11 (Video played in open court.)

12 Q Okay, you are saying now you didn't give Arthur
13 anything to use that bike?

14 A No, because when we talked earlier the judge said I
15 ain't had to make that statement.

16 MR. OGBURN: Your Honor, I'd like to, out of
17 the presence of the jury, not now, make an
18 objection on the record.

19 THE COURT: All right. Go ahead, Mr. Moak.

20 Q So how long were you using this bike?

21 A Like I said, I used the bike for like, probably
22 like 10 or 15 minutes.

23 Q Ten to 15 minutes. And when are you saying you are
24 using the bike now?

25 A I used the bike probably around 9:00 something. I

1 mean, that is what time I used the bike.

2 Q Again, on July 25th, 2008, do you remember what
3 time you told the police what time you got up?

4 A Yeah, I told them -- I mean, like -- I mean, like
5 if I told them it was a later date, then that is
6 what I said, you know what I'm saying. But you got
7 to remember, I just got locked up. They done come
8 and got me from the tracks corner and they done
9 locked me up. For what reason I don't know. So
10 when my day is messed -- when my time is messed up,
11 then, I mean, it is more or less out of fear, like
12 why is y'all locking me up. That is anybody. Like
13 why is -- y'all just come -- they called me and all
14 of a sudden they are locking me up for some reason.
15 Like I don't know, like -- that is like anybody
16 that is scared or something, I mean, like you get
17 confused. Like how can you not get confused? If
18 somebody just come and lock you up for no reason,
19 you don't know why you are being locked up or
20 nothing, like you can't help but get confused, like
21 you get scared like, because, I have done wrong, I
22 have done been in trouble before, I have been in
23 trouble, you know what I'm saying. I done been
24 locked up before, you know what I'm saying. That
25 is anybody out here. Don't get me wrong. I mean,

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1 like whatever I said I might have did or what I was
2 doing like, you know, like, I mean, that is what I
3 said. But, I mean, you get confused, like if you
4 are in a situation where like if you put a dog in a
5 corner, you put a dog in the corner and you go try
6 to catch him, what he going to do? Nine times out
7 of ten he is going to bite you. So you get
8 confused. Like who keeps counts of time? I mean,
9 like if you ain't doing nothing, who sit there --
10 like I don't wear no watch -- who sit back and
11 wears a watch and worry about what time it is or
12 what time something is going on, unless you got
13 something to do or you got like -- unless you are
14 going -- like, well, I got something I got to do at
15 10:30. All right, you check the time so you know
16 you got to do it at 10:30. But other than that,
17 you don't really keep count of no dates or no time.

18 Q What time did you tell Lee Boan on July 25th, 2008,
19 that you got to the barber shop?

20 A Up there it said I told him I got there about
21 10:30, 11:00, 11:00, 12:00, and I sat there till
22 about 1:00. But --

23 Q Are you saying you just heard 10:30 there?

24 A I'm sure that is what it said, but I mean --

25 Q You want me to play it back?

1 A That is what I said. I said that is what it just
2 said, but, I mean, like I don't keep track of time.

3 Q Okay. Back in 2008, how would you borrow a bike
4 that was already in police custody?

5 A Like I said, that was -- it was a time -- it was a
6 time thing.

7 Q How long were you at that barber shop?

8 A I was at the barber shop for probably about an
9 hour, hour -- about an hour. Even the barber said
10 I was there around 10:30. See, the barber -- they
11 got a barber -- the barber say I was there around
12 10:00 o'clock, from like 10:00 to 11:00. They
13 won't even show you that. The barber -- it is on
14 the paper my lawyer got. Like the barber stated I
15 was there from about 10:00 o'clock, 10:00 to 11:00.

16 Q But you want the jury to believe you today after
17 you had a year and four months to think about this
18 and after you heard all the other witnesses, you
19 think they should believe your story here today as
20 opposed to the one you gave the day of the offense?

21 A No, actually I want the jury to look at the
22 evidence and identify who went in the bank. I
23 mean, you trying to say I robbed a bank because I
24 used a bicycle. How can that prove I robbed a
25 bank? I mean, that is why I'm here. I'm here

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1 because they said I robbed a bank. I'm here
2 because I might be spending the next 30 years of my
3 life in prison because they said I robbed a bank.
4 I ain't saying I robbed a bank because I borrowed
5 somebody's bicycle and I took it back.

6 They ain't said I robbed a bank because
7 somebody seen me go in a bank or somebody said they
8 seen my physical features.

9 Even the tellers said he -- how could you not
10 know I got tattoos? My whole arm is tattooed up.
11 Like how could you not know? Like you said -- she
12 said she is standing right beside me. If you are
13 standing right beside me, look at my arms, I got
14 lacerations on my arms from when I was at work,
15 like I got a physical cut laceration. Like how can
16 you miss all these lacerations? My whole arm is
17 lacerated where my arm got caught in a machine.
18 Like how can you not know it? See what I'm saying?

19 Then if I was going to rob a bank, why
20 wouldn't I at least have common sense to put on a
21 long-sleeved T-shirt? I mean, that would be common
22 sense. Why -- I mean, if I were the person who
23 robbed the bank. If I robbed a bank, why would I
24 be sitting around on a corner instead of leaving,
25 you know what I'm saying? Not to say nothing, but

1 the average person, I mean, not to say that y'all
2 would rob a bank, but if you robbed a bank, you
3 gone. I mean, why would -- I mean like if I robbed
4 a bank, if I'm broke and I ain't got no money and I
5 rob a bank, I'm gone. I mean, I would hope that
6 y'all would leave too, common sense. You say I got
7 over \$7,500, \$8,500. That is almost \$10,000. What
8 I'm going to be sitting around drinking liquor for
9 if I got \$10,000 in my pocket? You see what I'm
10 saying? They found me with \$10 in my pocket. I
11 got \$10. A measly \$10. That is all I got. You
12 see what I'm saying? I was working. That don't
13 make sense. I mean, common sense like. I ain't
14 saying common sense, I mean like --

15 Q Okay. You want the jury to look at the evidence,
16 right?

17 A I want the jury to believe what they think is
18 right. If they believe I did it, then they going
19 to believe I did it. If you don't believe I did
20 it, then they are going to believe I didn't do it,
21 you see what I'm saying?

22 Q Uh-huh. Now, you already -- I already asked you if
23 you had seen this video and you said you had?

24 A Yeah.

25 Q So you looked at this video, and you have looked at

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1 it, and you know you told Lee Boan 10:30 to 11:00
2 o'clock, and you just testified today that you
3 never told him that?

4 A Yeah. I mean like --

5 Q You know the video is there, and you are telling
6 this jury --

7 A Because I mean --

8 Q -- something else and want them to believe it, and
9 you know we have got a video of it?

10 A The last time I seen the video was the beginning of
11 the year. I mean, I'm not stating about -- I'm not
12 sitting here trying to keep a story straight. I'm
13 not trying to keep it -- to keep saying the same
14 story I said the last time. The only thing I can
15 state is what I know that happened, all right? I
16 was confused, I was scared. That is anybody.
17 Like, I mean, I hate to say it like this, but I'm a
18 male right here in Camden, like I'm scared, like
19 you come arrest me, like I done been in trouble,
20 you come arrest me. I mean, like I can't help but
21 get confused. If the police pull you over for
22 something or you ever been stopped by the police, I
23 mean, you get confused. I mean, like I got
24 confused like, that is what happened.

25 Q Again, Mr. Gibbs, you didn't say you were confused,

1 you said you never said it.

2 A Well, the tape just said I said it, so I guess you
3 made me look like I lied then.

4 Q Okay.

5 MR. OGBURN: Your Honor, we have beat this
6 time thing to death. At this time --

7 THE COURT: It is cross-examination. I'll
8 allow it. Go ahead.

9 Q My whole point is, you are saying now you are
10 confused, but you testified earlier that you never
11 said it?

12 A No, what I'm saying is I didn't rob no bank. That
13 is what I'm saying. I didn't rob no bank. I done
14 did a lot of sh -- stuff, but I didn't rob no bank.

15 Q 10:30, 11:00 o'clock the morning of July 25th,
16 2008, where were you at?

17 A I don't know, man.

18 Q Did you take a shower?

19 A It said I did.

20 Q You just testified today that you said you sat, not
21 showered?

22 A Yeah, because I don't remember taking no shower at
23 his house. I mean, I might have just said that
24 because he asking me questions, like you
25 interrogating me. I might have just talked -- said

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1 that because you talk -- like he asking me
2 questions so I'm just telling him anything. I
3 mean, leave me alone. I don't know why I'm here.
4 You interrogating me, I'm going to tell you
5 anything like I am, like I hate to say it, but I
6 am, like you just pull me, you brought me to the
7 police station, I'm going to tell you whatever so I
8 can go ahead and get on through because you, the
9 only reason you tell me you bring me down here
10 because you want to talk to me. That is why you
11 asked me to come. He was like, I want to talk to
12 you. So I go down there so you can talk to me. I
13 get down there, next thing I know you are arresting
14 me. So, I mean, like if you brought me down here,
15 I am going to tell you whatever you want to hear so
16 I can go. I'm thinking, well, I will go ahead and
17 tell him whatever so I can go ahead and get out of
18 here and go on back to whatever I was doing.

19 Q No further questions.

20 THE COURT: Just hold it a minute. Lights,
21 please.

22 REDIRECT EXAMINATION

23 BY MR. OGBURN:

24 Q Jarvis, are you telling the truth here today?

25 A I ain't robbed no bank, man. I ain't robbed no

1 bank.

2 Q But are you telling the truth here on the stand?

3 A Yes, sir.

4 Q Have you told the whole truth?

5 A Yes, sir.

6 Q Okay. No further questions.

7 THE COURT: Anything further?

8 MR. MOAK: Nothing, Your Honor.

9 THE COURT: All right, you can come down.

10 Thank you very much.

11 (Witness steps down.)

12 THE COURT: Anything further?

13 MR. OGBURN: No further witnesses for the

14 Defense, Your Honor.

15 THE COURT: Any reply?

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

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

18 All right, ladies and gentlemen, that will
19 conclude the trial, the evidence portion of the
20 trial, that is.

21 The final remaining portion of the trial
22 consists of the final arguments of counsel and my
23 instructions to you on the law as it applies to
24 this case.

25 Now, I do need to take up one legal matter

1 with the attorneys before that takes place. So
2 just retire to the jury room, and I may send a
3 message to you in just a minute. I'm trying to
4 calculate the time. And so just go to your jury
5 room for a few minutes. Don't discuss the case
6 while you are in the jury room. We'll call you in
7 just a few minutes.

8 (WHEREUPON, the jury retires to the jury
9 room at 3:06 p.m.)

10 THE COURT: Mr. Ogburn, you had a motion?

11 MR. OGBURN: Yes, Your Honor. For the record,
12 again I would state an objection to using any
13 portion of the video that dealt with any use of
14 drugs or crack cocaine in this matter. It was
15 played by the State. And for the record, I would
16 like to request a mistrial.

17 Basically, this is not a trial concerning
18 drugs, and they are introducing evidence of another
19 trial. And with the video he is not able to assert
20 any Fifth Amendment rights.

21 THE COURT: I'm sorry, I didn't -- I didn't
22 understand.

23 MR. OGBURN: In other words, if they play the
24 video here, he can't assert Fifth Amendment rights
25 as far as implicating himself on other crimes, if

1 you understand what I'm saying.

2 THE COURT: Well, I think I do. I think that
3 trading -- if there is such a thing as trading
4 drugs for use of a bicycle, if that is -- if that
5 is a probable distribution, I mean, I guess you
6 could call it that.

7 MR. OGBURN: Yes. And that is why I argue
8 that that is -- the prejudicial effect outweighs
9 the probative value. And also we're here trying a
10 bank robbery and kidnapping and use of a weapon,
11 not drug charges.

12 And, again, you know, you can assert that he,
13 when he was making the video or being taped he did
14 have the opportunity to use the Fifth Amendment
15 rights --

16 THE COURT: He had a right --

17 MR. OGBURN: -- not to incriminate himself,
18 but he can't here today while the video is playing.

19 THE COURT: Okay. All right. What is the
20 State's position?

21 MR. MOAK: The State's position is we argued
22 about the parts of this video that are admissible
23 and aren't admissible. This is like the third time
24 it has come up. And the part I showed is the part
25 that you have already ruled twice that was

1 admissible and which did not have to be redacted.

2 And then when Mr. Gibbs gets up here and
3 testifies that he did not -- that he borrowed it,
4 did not give the individuals anything, I think I'm
5 entitled to go attack his credibility when he says
6 something on the stand that is the exact opposite
7 of what he has already told the police and that we
8 have a video of. And, again, this is what you have
9 ruled at least twice was admissible.

10 THE COURT: Yes, I understand that. I think
11 the fact that it came in in the State's case in
12 chief is one thing. And the video was used in this
13 case, I mean, in the cross-examination to impeach
14 your client on several issues.

15 And I think that under that theory alone it
16 should be allowed to come in for the jury to hear.

17 So I respectfully overrule your objection, and
18 I overrule your motion for mistrial.

19 Now, how much time do you need, Mr. Moak?

20 MR. MOAK: I think we are ready. But did he
21 make a directed -- renew his directed verdict as
22 well, Your Honor?

23 THE COURT: I assume he is going to, yes.

24 MR. MOAK: Mr. Derieg is opening on the law.
25 He states he needs five to ten minutes, Your Honor.

1 THE COURT: Five or ten minutes to open on the
2 law?

3 MR. MOAK: To prepare, I think.

4 MR. DERIEG: Are you asking how long?

5 THE COURT: I'm trying to figure out how long
6 it is going to take y'all and whether to send it to
7 the -- to try to get it to the jury today or wait
8 till in the morning. I'm just trying to get a time
9 frame for the State's argument.

10 MR. MOAK: I think we should be, depending on
11 what Mr. Ogburn argues, we should be done by 4:00
12 with arguments, Your Honor.

13 THE COURT: You are going to open and close?

14 MR. MOAK: Yes, Your Honor.

15 MR. OGBURN: Your Honor, I anticipate about 45
16 minutes, give or take a few minutes. And I think
17 that is going to put us close to 4:30. And then if
18 you charge, I think we're hitting 5:00 o'clock to
19 go home. I would prefer to do a fresh start in the
20 morning and get the arguments and charge and
21 deliberations.

22 MR. MOAK: And we're fine with that. I didn't
23 realize he would take that long in his closing,
24 Your Honor.

25 THE COURT: Well, I kind of doubt it will, but

1 I will give him the benefit of the doubt.

2 Counsel, take a look at the charges. I have
3 prepared a proposed set of jury charges. Any
4 objection from the State?

5 MR. MOAK: None from the State, Your Honor.

6 THE COURT: Any from the Defense?

7 MR. OGBURN: None from the Defense, Your
8 Honor.

9 THE COURT: All right, thank you very much.
10 All right, counsel.

11 MR. OGBURN: Your Honor, I would, while we're
12 on the record, just renew my directed verdict
13 motion.

14 THE COURT: Yes, sir. On the same grounds as
15 previously expressed?

16 MR. OGBURN: Correct, Your Honor.

17 THE COURT: All right. I don't see any reason
18 to change my mind at this point. I don't think
19 that the proof of the case has changed any. I
20 think it is a fair question for the jury to decide.
21 And I respectfully deny your motion.

22 Now, okay, well, it is 3:30, and by the time
23 we get to the jury with my instructions it probably
24 would be closer to 5:00 o'clock. So I am going to
25 dismiss the jury for the day and ask them to return

1 at 9:30 in the morning.

2 (WHEREUPON, the jury came into open
3 court at approximately 3:23 p.m.)

4 THE COURT: All right, ladies and gentlemen, I
5 was just consulting with the attorneys about how
6 much time we need to complete this matter. The
7 State will have two arguments, the Defense has one.
8 And I'll explain that to you, or they'll explain it
9 to you why that is our procedure.

10 Following that there will be my instructions
11 on the law as it applies to this case. Now,
12 because there are three different indictments,
13 three different charges, my instructions to you
14 will be a little more lengthy than normal,
15 obviously with just one charge.

16 That process is probably going to take us, to
17 get it to the point where we hand it to you and say
18 go make a decision, it is probably going to be
19 about 5:00 o'clock before we could successfully
20 complete everything that needs to be done.

21 So rather than give you the case at 5:00
22 o'clock in the evening, I think the best and most
23 efficient use of our time would be to adjourn now
24 until 9:30 in the morning. Everybody will be
25 fresh. And you will get the case tomorrow morning

1 and you can make -- you'll have the whole day to
2 make a decision if you need it. I just don't want
3 to run you into the evening hours unnecessarily.

4 So that will -- and that will complete -- that
5 will be a pretty good week's work this week. So
6 you will be dismissed after that. So thank you
7 very much. And I'm going to dismiss you now until
8 9:30 in the morning, at which time we'll complete
9 the trial.

10 And have a pleasant evening. We'll see you at
11 9:30. Again, don't discuss the case among
12 yourselves when you return to the jury room or with
13 anyone else during the evening hours.

14 Thank you very much.

15 (WHEREUPON, the jury is excused for the
16 evening at 3:25 p.m.)

17 THE COURT: Anything further from the State?

18 MR. MOAK: Nothing from the State, Your Honor.

19 THE COURT: From the Defense?

20 MR. OGBURN: Nothing from the Defense, Your
21 Honor.

22 THE COURT: 9:30 in the morning. And thank
23 you very much.

24 MR. OGBURN: Yes, sir, Your Honor.

25 THE COURT: By the way, have you had an

1 opportunity to look at the verdict form? Any
2 objection to the verdict form?

3 MR. OGBURN: No, Your Honor.

4 (WHEREUPON, court adjourned for the evening.)

5 (WHEREUPON, the trial resumed as follows.)

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7 THE COURT: Is the State ready to proceed?

8 MR. MOAK: The State is ready.

9 THE COURT: Is the Defense ready to proceed?

10 MR. OGBURN: Ready, Your Honor.

11 THE COURT: Bring the jury in.

12 (WHEREUPON, the jury came into open
13 court at approximately 9:52 a.m.)

14 THE COURT: Good morning, ladies and
15 gentlemen. We are now ready to conclude the trial.

16 Mr. Derieg, you may present your final
17 summation, final argument.

18 MR. DERIEG: May it please the Court, Your
19 Honor?

20 THE COURT: Yes, sir.

21 CLOSING STATEMENT

22 MR. DERIEG: Ladies and gentlemen, you'll have
23 two tasks to perform today. One is to determine
24 whether the State of South Carolina has proven to
25 you beyond a reasonable doubt that any crimes were

1 committed. We have to prove to you beyond a
2 reasonable doubt that a bank robbery was committed.
3 We have to prove to you beyond a reasonable doubt
4 that kidnapping was committed. And we have to
5 prove to you beyond a reasonable doubt that a gun
6 was possessed during the commission of a violent
7 crime.

8 The next thing you will have to do is
9 determine whether or not the State of South
10 Carolina has proven to you beyond a reasonable
11 doubt that that man committed all three of those
12 crimes.

13 If we fail, the State of South Carolina fails
14 to meet that burden, you must find him not guilty.
15 However, if you believe beyond a reasonable doubt
16 that those three crimes were committed and that man
17 was the one that committed those three crimes, then
18 you must find him guilty.

19 Good morning. My name is Lir Derieg. I,
20 along with Ron Moak, work with Solicitor Barney
21 Giese. My job this morning, along with this being
22 the first time I have gotten to speak with you
23 guys, my job is to talk to you a little bit about
24 the law that is applicable to this case and use a
25 few illustrations from the facts and the testimony

1 of this case that go along with the law.

2 Now, I'm not going to talk about all the
3 witnesses. I'm not going to talk about all the
4 evidence. If I leave something out, it is not
5 because I forgot, it is not a mistake. It is just
6 my job right now is not to discuss all the facts of
7 the case. Mr. Moak is going to get up here after
8 Mr. Ogburn and it will be his job to tell you how
9 the State of South Carolina views the evidence. My
10 job is to tell you how the State of South Carolina
11 views the law.

12 However, Judge Cooper is the law. He will,
13 after Mr. Ogburn speaks and Mr. Moak speaks, the
14 judge will charge you on the law. If he says
15 anything different than what I'm about to say,
16 please, he is the law, go with what he says. If he
17 and I differ in exactly how we state the law, it is
18 not intentional. I'm not trying to be misleading.

19 To be honest with you, this is the first time
20 I have done a closing argument, so I just -- I'm
21 not trying to mislead you guys and please don't
22 hold it against me or the State of South Carolina
23 if the judge says something different than what I
24 have said, he is the law, please follow what he
25 says.

1 Going along with that, you guys are the judge
2 of the facts. Nothing I say is going to be
3 evidence. Nothing Mr. Ogburn says is evidence.
4 Nothing Mr. Moak says is evidence. Our opinions
5 don't matter. Our beliefs don't matter. It is
6 what you guys believe. You saw the evidence. You
7 heard the testimony. If anything we say differs
8 from what you remember, go with what you remember.
9 Ultimately you guys are the judge of the facts.

10 The first point of law I want to address this
11 morning is something that you guys have all heard.
12 Y'all probably know what it means. And it is
13 applicable to every one of the charges that we're
14 going to discuss. It is reasonable doubt.

15 What is reasonable doubt? The Supreme Court
16 of South Carolina has defined reasonable doubt as a
17 doubt that would cause a reasonable person to
18 hesitate to act.

19 Now, what does that mean? Who is a reasonable
20 person? I guess that is left up to some debate.
21 But our Supreme Court did go further in defining
22 reasonable doubt, also proof beyond a reasonable
23 doubt.

24 The South Carolina Supreme Court has defined
25 proof beyond a reasonable doubt as proof that

1 leaves you firmly convinced of the Defendant's
2 guilt.

3 They went on to say, there are very few things
4 in this world that we know with absolute certainty,
5 and in criminal cases the law does not require
6 proof that overcomes every possible doubt.

7 If based on your consideration of the evidence
8 you are firmly convinced that the Defendant is
9 guilty of the crime charged, you must find him
10 guilty.

11 However, if on the other hand you think there
12 is a real possibility he is not guilty, you must
13 give him the benefit of the doubt and find him not
14 guilty.

15 Ladies and gentlemen, you must be firmly
16 convinced that those three crimes were committed
17 and you must be firmly convinced that man committed
18 those three crimes.

19 The first of the crimes that I'd like to talk
20 about is bank robbery. The State of South Carolina
21 has a bit of a different name for it. And I
22 believe His Honor will tell you that later. It is
23 entering a bank, depository or building and loan
24 association with the intent to steal.

25 The elements of this crime are: Entering a

1 bank, or another proximity of a bank, with the
2 intent to steal money or security, by force, threat
3 or intimidation.

4 So regarding the bank robbery, was a crime
5 committed?

6 Well, I ask you ladies and gentlemen when you
7 go back to the jury room, watch that video again.
8 Watch the video of the bank on July 25th, 2008.
9 I'm not sure if there could be any more evidence
10 beyond a reasonable doubt that a bank robbery was
11 committed at this First Palmetto Bank.

12 Additionally, you saw and you heard the
13 testimony of Leah, Melissa, Keri and Brenda, the
14 four tellers. You met two of them yesterday, two
15 of them on the first day of trial. You heard their
16 testimony. You heard them say that a man wearing a
17 ski mask with a gun came in and put the gun in
18 their face, ordered them to take all the money out
19 of the drawers, put it in his bag, and he left.
20 And they told you that they do work in a federally
21 insured bank.

22 A crime was committed.

23 Now, did the Defendant commit that crime? I
24 think there is -- the State submits there is a lot
25 of credible evidence that goes to prove that he

1 committed that crime.

2 The two that I will ask you to look at are
3 Melissa Roberts and Chad Moore. I think those two
4 people are very important in this case.

5 Melissa Roberts, she recognized him. She knew
6 him from high school. She has seen him over the
7 years. She had seen him earlier that week. She
8 viewed the video tape on her own and came to that
9 conclusion on her own without ever knowing that Lee
10 Boan had gone to arrest Jarvis Gibbs already.

11 When she was sitting there the weekend after
12 the robbery thinking about who had done it,
13 thinking about what she had seen and what she had
14 heard, she said, I know that was Jarvis Gibbs. You
15 heard her, no doubt in her mind that Jarvis Gibbs
16 was the man that came in and put a gun in her face
17 and robbed her.

18 And Chad Moore, the man that the Defendant
19 essentially confessed to, the man that came in here
20 to tell you his story, tell you he is guilty of
21 bank robbery, that he plans to plead guilty, and
22 that he is not receiving anything for his
23 testimony.

24 The State submits Jarvis Gibbs committed bank
25 robbery.

1 The next charge I'd like to talk to you about
2 is kidnapping. And after watching the video and
3 hearing the testimony you may ask yourself, why is
4 there a kidnapping charge in this case?

5 And before -- even all through college, before
6 I ever went to law school, my belief was kidnapping
7 was what you see on TV, somebody pulls up in a van
8 and grabs you, throws you in the van, drives off
9 and hides you somewhere, ties you up and asks for
10 ransom.

11 That is not all that kidnapping is here in the
12 State of South Carolina. Kidnapping is the
13 unlawful seizure, confining, inveigling, decoying,
14 abducting or carrying away of a person by any means
15 without authority of law.

16 Now, a lot of words up here in this first --
17 in this first element. Inveigling essentially
18 means a decoy, to lure, entice, or to lead astray.
19 I think the other words are fairly self-
20 explanatory. However, I would ask you to focus
21 your efforts on the confining. It means to limit,
22 restrict or enclose within bounds, imprison or shut
23 or keep in.

24 When you answer that first question as to
25 whether or not kidnapping was committed, watch that

1 video, listen to the testimony of the tellers.

2 When Leah was forced to stay at her teller
3 station and put -- and put her money in his bag and
4 comply with his orders, she had been kidnapped.

5 When the other three tellers were forced to
6 take the money from their station and walk across
7 the bank, put it in the bag, they had been
8 kidnapped.

9 If they weren't free to leave that bank if
10 they wanted to and it was because there was a gun
11 being pointed at them and told, you stay here, you
12 give me your money, the State submits they have
13 been kidnapped.

14 Ladies and gentlemen, the State only has to
15 prove one of these beyond a reasonable doubt. We
16 have to prove each of the elements, but as to
17 element one we only have to prove one. And I
18 submit to you you have four examples of a
19 kidnapping in that bank that day.

20 Now, did the Defendant commit kidnapping?
21 Well, go back to Melissa. Go back to Chad Moore.
22 Melissa's -- well, really you can go to any of the
23 tellers, but Melissa recognized him. She knew him.
24 She knew that the man that ordered her to put the
25 money in his bag was Jarvis Gibbs.

1 And, again, Chad Moore, sitting in that jail
2 cell comparing notes on their crimes. He supplied
3 Chad Moore with everything he testified to. The
4 only reason Chad Moore knows about this crime at
5 all is he was in a jail cell with Jarvis Gibbs.

6 And the third crime that Mr. Gibbs is charged
7 with is a crime that is somewhat interlocked with
8 kidnapping: Possession of a firearm or knife
9 during the commission or attempted commission of a
10 violent crime.

11 Was a crime committed?

12 The Defendant must be convicted of committing
13 or attempting to commit a violent crime. The
14 Defendant at the time of this violent crime was in
15 possession of a firearm, visibly displayed what
16 appeared to be a firearm, or visibly displayed a
17 knife.

18 Further, ladies and gentlemen, the State of
19 South Carolina defines kidnapping as a violent
20 crime.

21 If you find that Jarvis Gibbs did not commit
22 kidnapping, you cannot find that he is guilty of
23 possession of a firearm during the commission of a
24 violent crime.

25 Now, was this crime committed?

1 I submit to you that a kidnapping -- a violent
2 crime was committed. You guys saw the video. You
3 can watch it again. If that is not a gun in that
4 robber's hand, he at least visibly displayed what
5 appeared to be a gun.

6 And did Jarvis Gibbs -- was he the man with
7 that gun?

8 Again, I say, listen to the testimony of
9 Melissa Roberts, listen to the testimony of Chad
10 Moore.

11 When you are judging what you believe and who
12 you believe, you have to think about the
13 credibility of the witnesses that have taken the
14 stand this week.

15 You saw them sit on that stand. You heard
16 them. You heard their stories. You heard Mr. Moak
17 and Mr. Ogburn question them. Judge what their
18 demeanor was. Were they nervous? Were they
19 forthright? Did they look like they were hiding
20 something? Was the witness forthright or hesitant?
21 Was the testimony of the witness consistent?

22 Number Three is the big point. Was their
23 story the same? Did they say the same thing back
24 in July of 2008 that they did on that witness stand
25 this week? Was the testimony of that witness

1 corroborated? Did the witness have any reason to
2 be biased or prejudiced?

3 To illustrate a little bit of the credibility
4 of witnesses in this case, focus on the tellers,
5 Chad Moore, and the Defendant himself, Jarvis
6 Gibbs.

7 I submit to you that those tellers were very
8 credible. Their stories were not all the same
9 because they -- each person experiences life in a
10 different way. That gun being put in their face
11 and them being ordered to put the money in the bag
12 affected each one of them differently. Some of
13 them you could see were calm and weren't too
14 bothered by the situation. Others, like Keri
15 Gainey, was on the stand shaking, still has trouble
16 sleeping.

17 And I submit to you, if their stories were all
18 the same, that would be far less credible. If they
19 had gotten together and everything they said
20 matched up, I would submit to you that would be far
21 less credible. Three of the tellers got up and
22 said they don't know this man. They don't know if
23 he was the one that robbed them. The only one that
24 was able to recognize him was the one that went to
25 high school with him, Melissa.

1 If they -- if these tellers weren't telling
2 the truth, I submit to you all four of those
3 tellers would have been on the stand saying they
4 recognized Jarvis Gibbs, they knew who he was, they
5 had seen him, they saw his face, they knew who he
6 was, and he was man that robbed them. But three
7 out of the four couldn't tell you that.

8 Credibility.

9 Chad Moore. Nothing to gain from coming in
10 here. In fact, he got on that witness stand under
11 oath and in a court of law and admitted he is
12 guilty of bank robbery, a crime he has not yet been
13 convicted for. He admitted to you guys that he
14 plans to plead guilty to that crime, more or less
15 locked himself in. He didn't benefit by getting on
16 that stand and telling you that he was in a cell
17 and then Jarvis Gibbs told him what happened.

18 And then finally, judging the credibility of
19 the witnesses, look at the Defendant's statement.
20 Listen to what he said on that stand. Number
21 Three. Was his testimony consistent?

22 You guys saw the tape. You saw the piece of
23 the interview with Lee Boan. Mr. Gibbs was
24 essentially arguing with himself. He was on the
25 stand saying that he never said certain things.

1 Even watched -- even watched the video and said he
2 never said those things.

3 Credibility, ladies and gentlemen.

4 Consistency, bias, their reasons for being on the
5 stand. Please judge each witness that you saw and
6 that you heard, judge their credibility.

7 I'd like to talk about reasonable doubt one
8 more time, very briefly, and I'm almost done.

9 Now, I'm not sure what Mr. Ogburn is going to
10 get up here and say to you. But I submit that
11 there will be a lot of talk about reasonable doubt
12 in this courtroom after me. Mr. Ogburn will talk
13 about it, I'm sure, Mr. Moak will talk about it,
14 I'm sure, and His Honor will instruct you on
15 reasonable doubt.

16 So what are the possible pieces of reasonable
17 doubt? What are the things that might not leave
18 you firmly convinced?

19 Well, in his opening and throughout the trial,
20 Mr. Ogburn said that the Defendant wore a mask.
21 That no photo line-ups or sketches were done
22 because the Defendant wore a mask. No DNA or
23 fingerprints found or collected. At trial you
24 heard the SLED agent come in to let you guys know
25 that there was no DNA that was found. The robber

1 wore gloves.

2 And Mr. Ogburn seemed to make a big point
3 about the fact that none of the tellers saw any
4 scars, tattoos or gold teeth on the robber.

5 Ladies and gentlemen, those women had a gun in
6 their face. They were being ordered to put all
7 their money in a bag, and their lives were being
8 threatened. I submit to you that is not
9 unreasonable for them not to notice some tattoos on
10 the arm of a man that has a gun in their face.

11 And two things that I submit to you get beyond
12 all reasonable doubt. And you probably know the
13 two witnesses I'm going to refer to: Melissa
14 Roberts and Chad Moore. Melissa, because she
15 recognized him. And actually I wrote this down to
16 make sure that I remembered it correctly.
17 Mr. Ogburn in his opening, after he said Jarvis
18 Gibbs is not the one who robbed the bank and the
19 State can't prove it, he next told you, listen to
20 the ID testimony. Listen to the ID testimony.

21 I submit to you that Mr. Ogburn made that
22 statement. He didn't know Melissa Roberts had
23 recognized his client. He didn't know that Melissa
24 Roberts had gone to high school with him. He
25 didn't know that that restaurant, the River Deck,

1 she had seen him over the years.

2 And finally, Chad Moore. If nothing else, one
3 piece of evidence that gets -- of Chad Moore's that
4 gets beyond all reasonable doubt is that Chad Moore
5 knew that this 4-wheeler was involved in the
6 robbery and was in this pond a full day before Lee
7 Boan or any of the other officers involved in this
8 case knew about it. And the only way he could have
9 known that was because he told -- is because Jarvis
10 Gibbs told Chad Moore.

11 Now, let me be the first to thank you guys.
12 Thank you for being here. Thank you for listening.
13 Thank you for your patience. You have heard the
14 in-and-out and us going up to the bench and side
15 bars and you have been listening to me ramble on
16 for 20, 25 minutes now. Thank you for your
17 patience.

18 Like the judge said earlier in the week, we
19 couldn't do this without you guys. In advance I
20 would also like to thank you for the time and the
21 diligence that you guys will spend back in that
22 jury room going through the evidence and talking
23 about this case and seeking the truth.

24 Now, ladies and gentlemen, I'm about to sit
25 down, and this will be my last opportunity to talk

1 to you. As I said, I will be followed by Mr. Moak
2 and Mr. Ogburn, and the judge will charge you on
3 the law. And then when our jobs are finished is
4 when your job really begins.

5 After you retire to the jury room and you go
6 through each piece of evidence and each one of you
7 has had an opportunity to express your opinions and
8 your beliefs about this case, you'll be asked to
9 return a verdict. And that is a verdict that truth
10 will dictate and that justice demands.

11 Ladies and gentlemen, the State of South
12 Carolina submits to you that that verdict is
13 guilty.

14 The State submits that on July 25th, 2008,
15 Jarvis Gibbs robbed this bank.

16 The State submits that Jarvis Gibbs kidnapped
17 those four tellers who you saw come in here.

18 The State submits that Jarvis Gibbs, while
19 committing a violent crime, that kidnapping, was in
20 possession of a gun.

21 Please listen to anything Mr. Ogburn has to
22 say. And I thank you for your time and patience.

23 MR. OGBURN: May it please the Court, Your
24 Honor?

25 THE COURT: Yes, sir. Proceed.

1 CLOSING STATEMENT

2 MR. OGBURN: Good morning, ladies and
3 gentlemen.

4 THE JURY: Good morning.

5 MR. OGBURN: Let's see if we can move this
6 bike somewhere. It seems to be getting in the way.

7 (Pause.)

8 MR. OGBURN: First of all, thank you for
9 listening to all the testimony. This trial has
10 been long and it just seems like it has been drug
11 out. And it seems like the State has just filled
12 this trial full of clutter. And what I'd like to
13 do is cut through some of that clutter and sort of
14 simplify things.

15 When I appeared before you the first time, I
16 told you, yes, the State has the burden of proof.
17 They have to prove this case beyond a reasonable
18 doubt. And that is a high burden.

19 Mr. Gibbs, he is not required to prove
20 anything.

21 And I told you the issues, when you cut it
22 down, boil it down, the whole issue is identity and
23 whether they can prove the items used in the
24 robbery were connected to Jarvis Gibbs.

25 So let's start off with the witnesses. On the

1 day the robbery happened, a man came in the bank
2 wearing a mask wielding a gun. I'm sure it scared
3 the girls. They were traumatized. He asked for
4 money. He puts the bag over the counter. They put
5 the money in. He leaves. They say it all
6 happened, almost all of them testified that it took
7 less than two minutes.

8 So let's look at some of the things that all
9 four of those girls agree on.

10 All four of them say that they never saw the
11 person's face. They never saw the robber without a
12 mask. That in itself is doubt, is reasonable
13 doubt.

14 What else did they say? Several of them said
15 they saw him put his arm over the counter to put
16 the bag -- in other words, to get the money. No
17 one, none of the four testified that he had any
18 scars, marks or tattoos. He had a short-sleeved
19 shirt on so his arms were exposed. And he put them
20 over the counter. Again, none of the four
21 testified that he had any scars, marks or tattoos.

22 And that is very important, because if Jarvis
23 Gibbs has tattoos, their whole case falls apart.
24 There is no identity.

25 And as far as proof of him having tattoos, he

1 got on the stand and testified that, yes, he did
2 have tattoos.

3 The booking report from the Sheriff's
4 Department or the Police Department says that, yes,
5 he had tattoos.

6 Detective Boan even testified, yes, he had
7 tattoos. And he even testified he took pictures of
8 those tattoos the night he arrested Jarvis Gibbs.

9 But if you notice, the State didn't put those
10 photos in the evidence. They put 30 or 40 photos
11 of the bank, but none of those tattoos, because
12 they don't want you to see those. They want to
13 hide those from you.

14 So, again, if there is tattoos on the
15 burglar's arm or the robber's arm, it is not Jarvis
16 Gibbs.

17 And, again, a big question is, how can people
18 determine the identity without seeing someone's
19 face? And three of the girls were honest and said,
20 we can't recognize him, we never saw his face.

21 And even Ms. Melissa Roberts, she was a little
22 bit of an exception. She even testified she didn't
23 see his face. She never saw the robber without the
24 mask. But then we learn that she has got this
25 special talent, evidently. She said that she could

1 identify people by the shape of their head. I
2 would say there is a lot of doubt there. I don't
3 know of anybody that identifies people by the shape
4 of their head. The face is the important part. It
5 is important.

6 Detective Boan even testified that they didn't
7 do a photo line-up. Why not? Because none of the
8 witnesses saw their face.

9 And then I asked if they used a sketch artist.
10 And, again, he says that is useless because none of
11 the girls saw his face.

12 So, anyway, back to Ms. Roberts. On Monday --
13 you know, Jarvis was arrested Friday afternoon.
14 The only ID they had, the only description they had
15 was a tall black male wearing a white T-shirt, dark
16 pants.

17 Just with that brief description, Detective
18 Boan goes ahead and arrests him, takes him in.

19 Monday morning, Detective Boan goes back to
20 the bank and tells the tellers, yes, we have made
21 an arrest, and we arrested Jarvis Gibbs.

22 And then Melissa pops up, oh, I think I went
23 to school with him, and I think he is the one that
24 did it.

25 So she gets on the stand and I ask her, I

1 said, when did you meet Jarvis Gibbs? When did you
2 meet him in school?

3 In the eighth grade. And she stated she was
4 13 when she met him. And at the time North Central
5 was combined both high school and middle, so there
6 is a possibility they were in school together.

7 I asked her if they were friends, did they
8 hang out together.

9 She said no.

10 And again I asked her how can she identify
11 someone without seeing their face.

12 And again she said, the shape of their head.

13 If she was so good at -- well, let's play the
14 scenario. Let's play it just from her testimony.

15 She testified that she had not seen Jarvis
16 Gibbs for five years. That all of a sudden on a
17 Friday morning somebody comes in wearing a mask
18 wielding a gun and he is there for less than two
19 minutes. You can time the video. I think it is
20 only a minute and a few seconds. Is her ability
21 that good to determine someone's identity by the
22 shape of their head in less than two minutes and
23 them wearing a mask? I don't think so. I think
24 there is a lot of reasonable doubt there.

25 So, anyway, after that she even lays it on a

1 little thicker and says, oh, my parents owned this
2 restaurant, I believe it was the River Deck Saloon
3 and Grill and Jarvis and his parents eat there all
4 the time.

5 Jarvis gets up and testified they have never
6 eaten at that restaurant. He also testified that
7 he dropped out of school in the eighth grade.

8 It was a little hard to establish a connection
9 there when she didn't meet him till eighth grade
10 and he drops out in ninth. So I would submit I
11 don't think her evidence is credible as far as
12 identity. She hasn't seen him in five years, yet
13 would recognize him with a mask on.

14 So let's take a look at some of the other
15 evidence they have from the bank. Oops, they have
16 no evidence from the bank. They have none. You
17 will notice they tried to kind of slide that by
18 you. They never testified to that at trial. The
19 only chance we got to get it in was the last
20 witness, Detective Boan. The State didn't even
21 bring it up.

22 I had to ask the Detective Boan, where are the
23 gloves that were used in the robbery?

24 We don't have them.

25 Where is the mask that was used in the

1 robbery?

2 We don't have them.

3 What about the gun that was used in the
4 robbery?

5 We never found it.

6 What about the money that was taken?

7 Never found it.

8 What about the bag that was used in the
9 robbery?

10 Oops, we didn't find that either.

11 And they even testified they searched the area
12 where Jarvis was staying. And what did they find?
13 No evidence of a robbery.

14 And then I asked Detective Boan on each of
15 these items, what proof, what evidence do you have
16 connecting those items, the glove, the mask, the
17 gun, the bag, the money, what evidence do you have
18 connecting that to Jarvis Gibbs?

19 And he had to admit he had no evidence
20 connecting Jarvis Gibbs to any of the items used in
21 the bank.

22 And then they wanted to make a big spiel and a
23 big show about the bike. They bring it in. And
24 bring Mr. Arthur Macklin in.

25 I'm sure Mr. Macklin proved that he was the

1 owner of the bike. In fact, at one time I think he
2 said he wasn't even sure if that was his bike or
3 not. And I still haven't quite figured that out.

4 But, anyway, both Jarvis testified and both
5 Mr. Macklin testified that Jarvis borrowed the bike
6 from him. So there is no dispute about that.

7 But that was all the proof the bike led to.
8 No one ever connected that bike to the bike used in
9 the robbery.

10 And I finally got Detective Boan to even admit
11 that he had no proof, he had no evidence that that
12 bike was connected or that bike was the same bike
13 that was used in the robbery.

14 Basically we have no evidence here. No
15 evidence that Jarvis went in the bank. And if you
16 find that Jarvis didn't go in the bank, the whole
17 case falls flat. Again, no evidence. No gloves,
18 no mask, no gun. Nobody can identify him at the
19 bank, or at least the only one that can can do so
20 by the shape of his head. And I submit to you, we
21 need a little more than the shape of his head to
22 identify someone.

23 And then they want to make a big deal about
24 Chad Moore. You remember Chad Moore? Chad was the
25 jailhouse snitch. And the case is going pretty bad

1 when you have to bring a jailhouse snitch in to
2 prove your case.

3 The attorneys before me talked about
4 credibility. Look at his credibility. He's been
5 convicted of criminal sexual conduct. He's been
6 convicted of burglary. He's been convicted of
7 strong armed robbery. And currently arrested for
8 bank robbery.

9 And you think Chad Moore came in on the
10 goodness of his heart to testify in this case? No,
11 he is looking for a deal. He is doing anything he
12 can to save his skin and reduce his sentence.

13 Jarvis got up and testified. He testified to
14 all kinds of things, about 4-wheelers, and so
15 forth. And 4-wheelers have nothing to do with
16 whether Jarvis Gibbs went into the bank or not.
17 Again, all that is clutter. All that is
18 distraction.

19 So, anyway, Jarvis got up and we asked him,
20 were you in jail with Chad Moore?

21 He said yes.

22 I said, did you ever talk to him?

23 No.

24 And he also admitted he was in a pod
25 containing eight people. If he was in a pod

1 containing eight people and was talking about bank
2 robbery, where is the other folks? Certainly more
3 than one person heard that. So nobody else came
4 in.

5 Again, I would submit that Chad Moore is just
6 totally unbelievable or has no credibility because of
7 his prior record and because of the fact he is
8 trying to get a deal.

9 They didn't bring too much else evidence in,
10 like say their whole case hinges, like I say, on
11 Melissa Roberts, who can identify people by the
12 shape of their head; and Chad Moore, who is a
13 jailhouse snitch.

14 They even bring in the bloodhounds. And what
15 did the bloodhounds find? Nothing.

16 And I was thinking about the case last night
17 and I wondered why these bloodhounds, dogs that are
18 trained to find scent, couldn't find scent.

19 And then I remembered Detective Boan saying he
20 started the dogs off at the location of the
21 bicycle.

22 And I thought, maybe that is important because
23 if the robber had been there, he would have picked
24 up a scent. But he picked up no scent. So I think
25 that is further proof that that bicycle was not

1 used in the robbery. I think it would have made
2 more sense if they started the dogs scenting at a
3 location where the robber was known to be, as in
4 the bank. If they would have started the dog at
5 the bank, we may have had a different result.

6 They also brought a helicopter in. And,
7 again, it finds nothing.

8 Basically this case is full of nothings. They
9 have no proof. They have no proof that he was
10 actually in that bank.

11 And, again, if you find that he was not in
12 that bank, the case completely falls flat.

13 And I know you have heard reasonable doubt a
14 lot. And, yes, I'm going to go into it a little
15 more.

16 The judge will instruct you about reasonable
17 doubt. And let me tell you some of the things that
18 reasonable doubt is not. It is not whether he
19 could have done it. That doesn't amount to
20 reasonable doubt. It is not that he probably did
21 it. That is not reasonable doubt. It has to be
22 even higher than that. It has to be he did it
23 without any reasonable doubt.

24 And I submit to you in this case the State has
25 failed to do that. They have failed to prove any

1 evidence that he was actually in that bank.

2 Again, where is the gun that he used? Where
3 is the mask? Where is the gloves? Why are the
4 tellers saying there is no tattoos when he is full
5 of tattoos?

6 Again, they have the wrong person. Jarvis
7 Gibbs didn't do this.

8 And the judge will instruct you that if you do
9 not find reasonable doubt in this case that it is
10 your duty -- it is your duty to find him not
11 guilty.

12 Thank you.

13 CLOSING STATEMENT

14 MR. MOAK: Let me start off with one thing. I
15 think this is the definition of reasonable doubt.
16 Okay? You can read it. I can read it out loud.
17 You already heard Mr. Derieg read it. It is a lot
18 of words, okay?

19 A lot of times we try cases here and juries
20 are shown the same blow-up, told the same thing
21 about reasonable doubt. A lot of times they come
22 back and the question is, can you give us another
23 definition of reasonable doubt. They come back
24 out, they are told the same thing.

25 This is the only definition that you are going

1 to hear from the judge, from anybody about the law
2 of what the definition of reasonable doubt is.

3 Do you know why? If you remember in my
4 opening statement I told you, y'all's entire life
5 experiences have been your training to be on this
6 jury. This is one of the examples of what your
7 role as jury is to do. Y'all decide what y'all
8 think is a reasonable doubt. Okay?

9 What a reasonable doubt is, this is what the
10 definition is, but you, in your life experiences,
11 decide what leaves you firmly convinced of the
12 Defendant's guilt, what leaves you hesitant to act.
13 You know? You decide that.

14 An example I will use of that is, you know
15 when last week we had, was it Hurricane Ida, part
16 of it came through and it was raining real bad and
17 it was real cloudy, you couldn't see the sun.

18 You know, one day it got so dark and it was
19 raining, you could have looked up and, man, is the
20 sun up there? That is a doubt. It is not
21 reasonable because everybody knows the sun is
22 there. You know, the clouds cover it up sometimes,
23 but you know the sun is there. And that is an
24 example of a doubt that is not reasonable.

25 It is easier for us to explain doubts that

1 aren't reasonable than to explain to you what a
2 reasonable doubt is, and that is what the problem
3 is. And that is why it is your role to decide
4 that.

5 Now, Mr. Ogburn, I think he said in his
6 closing argument, he asked Detective Boan, I think
7 he just said it again, sounds like he is trying to
8 argue that Mr. Gibbs was arrested and charged with
9 this offense simply because he is a tall black
10 male.

11 And he even asked you to pay attention to what
12 the tellers had to say and pay close attention to
13 them.

14 You heard all the evidence, you heard all the
15 testimony. You heard Detective Boan testify that
16 by the time he got a hold of Mr. Gibbs, he had
17 already talked to Mr. Macklin. They had already
18 found this bike. He had already talked to the
19 owner of the bike. He had already found out from
20 Mr. Macklin that Mr. Gibbs had the bike.

21 He also knew from Mr. Macklin that Mr. Gibbs
22 borrowed the bike 15 to 20 minutes before the
23 police car started swarming the neighborhood. So
24 he already knew that Mr. Gibbs had this bike at the
25 time of the robbery.

1 He also knew from talking to the witnesses,
2 specifically Chad Roberts and Brenda Fannin, that
3 the Defendant -- and you saw it on video -- was on
4 a bike.

5 Also from Brenda Fannin -- and I know y'all
6 are probably tired of seeing this map because it
7 is, you know, we try to get everything in there. I
8 mean, that is the bank. Brenda Fannin says the
9 bike is heading that way. Okay? The bike is found
10 right there. Chad Roberts says he is coming up
11 this way to the bank and he sees a 4-wheeler right
12 there. The bike is there. You've got this shoe
13 print there. You've got the 4-wheeler tracks that
14 are leading away from there.

15 You heard Arthur Macklin testify that James
16 Drakeford is up here at Monroe Street where Gibbs
17 borrowed the bike on a 4-wheeler. 4-wheeler.
18 4-wheeler tracks.

19 Is it a coincidence that the guy that -- they
20 are looking for a guy on a bike, they know he is
21 heading this direction, and a bike is right there?
22 Is that just a coincidence?

23 He also in opening statement said that you
24 weren't going to hear any of the tellers identify
25 him. Melissa Roberts, you saw her. She identified

1 him. She said, that is who robbed me, and I have
2 no doubt in my mind that is who robbed me.

3 And you have seen the video. I'll submit that
4 there is no doubt whatsoever that this bank got
5 robbed, that these tellers were kidnapped, and that
6 the Defendant had that gun and used the gun in the
7 commission of it.

8 The issue is who did it. I agree with that.
9 Now, how are we going to prove that he did it?

10 This is another one of Mr. Derieg's boards.
11 You have got two kinds of evidence. You have got
12 direct and circumstantial.

13 Direct evidence is evidence that, you know,
14 comes from your own senses. You know, an example
15 of direct evidence in this case will be that video.
16 Okay? You can sit and look at it. It is a video
17 of what happened. Okay?

18 And you have got direct evidence and
19 circumstantial evidence.

20 Direct evidence is the testimony of a person
21 who asserts or claims to have actual knowledge of a
22 fact, such as an eyewitness, which would be Brenda
23 Fannin, Keri Gainey, Leah Bailey, Melissa Roberts.
24 And that video.

25 Circumstantial evidence is proof of a chain of

1 facts and circumstances indicating existence of a
2 fact. The law makes no distinction between the
3 weight or value to be given to either direct or
4 circumstantial evidence. Basically the key is
5 proof by a chain of facts and circumstances. Okay?

6 How I normally try to explain what
7 circumstantial evidence is, draw it up. And as
8 y'all can tell, I think when I drew the other
9 thing, my handwriting is not as good as my computer
10 skills. In the middle you have got the circle.
11 That is what you are trying to prove. Okay? And
12 we try to prove guilt. And then you have got your
13 facts around here, like you have a fact, you know,
14 we prove something happened like he had the bike.

15 Now, what direction does that go? Does that
16 point this way, that way, or whatever way? Shoe
17 prints. You know, what direction does that point,
18 this way, that way, or another way?

19 4-wheeler tracks. What direction does that
20 show?

21 Does he match the description? What does that
22 show?

23 Where does he say he is at? Where does that
24 show?

25 And each one of those, you know, you have got

1 to think about these different facts, which is what
2 Mr. Ogburn is calling clutter, you know? What
3 direction do they show?

4 We submit they all point that way. And if
5 they all point towards that, that is how you prove
6 guilt through circumstantial evidence.

7 Now, let's go through these different pieces
8 of evidence.

9 The shoe print. And you're going to have
10 this -- you are going to have the shoes back there.
11 Look at them yourself. I mean, look at this.
12 Y'all can look at it. Do you see that swirl
13 pattern right there? You see that swirl pattern on
14 the shoes? I think a 5-year-old can step in mud
15 and then look at a shoe and tell if that is their
16 shoe print.

17 The SLED agent can't testify because they
18 don't know what size shoe or not, but the SLED
19 agent did testify that this swirl mark and that
20 swirl mark are consistent. I believe she said that
21 will be the left shoe, which would be that one, I
22 think. Okay?

23 I mean, look at that. I want you to really
24 look at that and look at those swirl marks and see
25 if y'all think that that looks like it could be the

1 same shoe print. Okay?

2 We've got a guy that just robbed a bank,
3 riding a bicycle, that direction, towards the guy
4 on a 4-wheeler, the bike is dumped -- is there,
5 that shoe print is there, there is 4-wheeler tracks
6 leaving the scene. Is that a coincidence that
7 those shoes came off of that man? Again,
8 circumstantial evidence.

9 You know, I mean, if it doesn't really point
10 there, it could be coincidence, but when you get
11 all of them together, all the coincidences add up.
12 That is the idea of circumstantial evidence.

13 Also, this bike. Arthur Macklin said this is
14 his bike. Okay? Even yesterday Mr. Gibbs
15 testified -- this is kind of what he said to Lee
16 Boan on July 25th, 2008 -- he left the bike by a
17 fence. This is State's 23. That bike is by a
18 fence. It is by a fence, but that fence is down
19 here. He says that he left the bike by the fence
20 up here. I wonder why he is saying he left the
21 bike that was found right there way up here?
22 Wonder why he doesn't want it anywhere near that
23 location? Just think about it.

24 He admits to having the bike, but he doesn't
25 want to admit where he left it at. He is saying it

1 is up there. He says it is by a fence, which it
2 is, it is just not where it was left -- where it
3 was actually found at.

4 4-wheeler tracks. Okay? Detective Boan
5 testified they had 4-wheeler tracks leaving where
6 the bike was at.

7 Also, go back a little bit. Mr. Ogburn just
8 told you that he thought it was strange that the
9 bloodhounds didn't pick a track up where the bike
10 was at.

11 If you remember what Lee Boan actually
12 testified to, they started the track here at the
13 bank. That is where they did start it. They
14 didn't start it at the bike, they started it at the
15 bank.

16 But, anyway, that is the shoe print is down
17 there.

18 And the 4-wheeler tracks, they are at the
19 bike. Arthur Macklin, who is way up here, who
20 testified on that stand, said that James Drakeford
21 was on the 4-wheeler. There was a 4-wheeler.

22 Chad Roberts, Melissa Roberts' husband, you
23 will see him at the end of the video, he comes in,
24 he was the guy wearing the bandanna I think, he
25 rides a motorcycle, he comes at the end. He says

1 he saw the 4-wheeler right there.

2 Macklin has got James Drakeford on a 4-wheeler
3 with Jarvis when he borrows the bike. Is it a
4 coincidence that the 4-wheeler right there and
5 4-wheeler tracks leaving the bike where it is
6 abandoned at? Again, is it a coincidence or does
7 it point towards guilt?

8 Chad Moore -- and I'm going to go into Chad
9 Moore in depth later -- Chad Moore testified that
10 Jarvis told him that James Drakeford was his
11 partner and he was waiting on him on a 4-wheeler
12 after the robbery.

13 Again, Drakeford is with -- Macklin has
14 Drakeford with Jarvis Gibbs up there. Roberts has
15 a 4-wheeler there. There is 4-wheeler tracks.
16 Again, does all of that point towards guilt or is
17 it a coincidence?

18 And also, Chad Moore. He told the police on
19 July 28th that this 4-wheeler was in a pond, he
20 even said it was a pond up there.

21 Lee Boan testified -- and you see the stamp on
22 the -- the pictures taken, when they got it, see
23 the date and stamp? July 29th. Chad Moore told
24 them about the 4-wheeler, where it was dumped in a
25 pond out there, a full day before they found it.

1 Okay?

2 If Jarvis Gibbs did not talk to Chad Moore,
3 how did he do that? Did he have a crystal ball or
4 something? How did he do that?

5 Now, I'm going in depth on this bike, okay?
6 And you have got a bunch of pictures. I'm not --
7 y'all have seen a lot of them. I'm not going to
8 wave them around like I have done already.

9 When Arthur Macklin testified, I showed him a
10 picture of the bike at the car, patrol car.

11 He said his bike was in the patrol car. We
12 have got a picture of the trunk of the patrol car
13 with the bike. That is his bike.

14 When I showed him this bike, he was hesitant
15 saying that he doesn't remember this and he
16 remembers some rubber there.

17 Look at that picture. I mean, when you get
18 back in the jury room, look at the picture with the
19 bike at the patrol car and look at that bike. You
20 are going to see this bike cable on the bike in the
21 picture and you are going to see there is no rubber
22 thing he was talking about on the picture. Even he
23 eventually agreed that was his bike.

24 And what did he also tell you? He says that
25 Jarvis Gibbs borrowed this bike from him at [REDACTED]

1 [REDACTED] 15 to 20 minutes before the police
2 cars were swarming the neighborhood. Okay?

3 Again, puts Jarvis Gibbs, the Defendant, in
4 possession of the bike during the time of the bank
5 robbery, when Gibbs himself is saying that he
6 dropped the bike back off up there.

7 And, again, the timeline. The Defendant, you
8 know, his timeline on July 25th, 2008, he gets up
9 at 10:30 to 11:00 and then he is saying that he is
10 at the barber shop, leaves the barber shop at
11 11:00, but he has already got rid of the bike. You
12 know?

13 His story on July 25th, 2008, where he said he
14 got up at 10:30 to 11:00, took a shower, came up
15 here, borrowed the bike, got the bike after 11:00.
16 You know, think about why that changed. Okay?

17 He is saying he got the bike after 11:00. The
18 problem with him getting the bike after 11:00 is
19 the police already had the bike at 11:00, so there
20 is no way he could have borrowed it after 11:00
21 o'clock. Okay?

22 Now, a year and four months after the fact,
23 after he has thought about it, after he has heard
24 all the witnesses testify, after he has -- he even
25 said he watched the video of his statement, and he

1 said that his lawyer showed him a piece of paper
2 where the barber shop guy said he saw him, you
3 know? He actually has went over the evidence.
4 That is what he testified to. All of a sudden his
5 timeline has changed. Now he knows he couldn't
6 have had the bike after 11:00. Now he is saying he
7 had the bike back there by 9:00. Okay? Why is he
8 changing that? Okay?

9 Now, going to his version. Okay? July 25th,
10 2008, 10:30 to 11:00 he says he wakes up and takes
11 a shower. He borrows the bike after 11:00, he goes
12 to the barber shop between 11:30, 12:00 or 1:00,
13 stays at the barber shop at least two hours, hears
14 of the robbery there.

15 And, again, this is, you know, talking right
16 now about where he says he is at. Okay?

17 Yesterday he told you that he got up between
18 8:30 and 8:45; goes up there, borrows the bike, has
19 it for around 15 minutes. He also says he has got
20 it back to Arthur Macklin up here by 9:00 o'clock.

21 Then he says he goes to the barber shop, stays
22 about 45 minutes to an hour and leaves the barber
23 shop by 11:00.

24 What is interesting is when he left -- part of
25 the first statement he kept in there is he heard

1 about the robbery at the barber shop.

2 Again, if you leave the barber shop at 11:00,
3 how are you going to hear about the robbery that
4 happens at 11:00, at five till 11:00 at the barber
5 shop? Okay?

6 That is his version of it. You know? If he
7 is innocent and didn't do it, you know, why is his
8 version changing?

9 And that goes to credibility. You know?
10 We've got that board with like reason to -- bias,
11 reason and everything. You know, somebody once
12 told me, if you tell the truth you ain't got to
13 remember nothing, but when you tell a lie, all of a
14 sudden you have to tell another lie to cover it up.
15 And that is what we have got going on here.

16 You saw him on the stand. I even asked him,
17 do you expect the jury to believe you?

18 Do you remember what his answer was? He said,
19 he expects you to weigh the evidence. He didn't
20 say he expected you to believe him.

21 I submit that he was right, he doesn't expect
22 you to believe him. He has had a year and four
23 months to think about this. He has went over the
24 evidence, piece of paper that his lawyer showed him
25 that had him going to the barber shop on it. DVD

1 of his statement, he says he watched that. He has
2 looked at the evidence and went over the evidence,
3 heard the witnesses.

4 And what does he do? He gives a completely
5 different story to what he has seen himself saying
6 on that DVD. A completely different story.

7 And when his lawyer asked him, he was matter
8 of fact, this is what happened, you know, this is
9 what happened. You know?

10 Then I asked him, do you remember talking to
11 Lee Boan at the Police Department and giving a
12 statement?

13 He admitted it.

14 Then I asked him, what time -- did you
15 remember telling him 10:30, 11:00 is when you woke
16 up?

17 He said no, I never said that.

18 I asked him, do you remember telling Lee Boan
19 you took a shower on Garden Street?

20 He said no, I told him I sat down on the
21 porch. That is what he said.

22 I asked him, do you remember telling Lee Boan
23 if you gave Arthur Macklin something for the bike
24 or whether you borrowed it?

25 He said no, I just borrowed it, I didn't give

1 him anything.

2 And when I was asking him this, if you recall,
3 he kept saying, you can check my statements, that
4 is not in my statements. You can check my
5 statements, that is not in my statements.

6 Then I asked him again, do you remember you
7 were on video, they were videotaping you as you
8 were giving the statements?

9 And he said yes.

10 Does that change your answers?

11 Like, no, check my statements.

12 Then I asked him, did you look at your video?

13 And he said yes.

14 Does that change your answer?

15 He said no.

16 And y'all saw that video, y'all heard what he
17 said.

18 After that, and I don't know if you noticed,
19 he still tried to deny making the statements. He
20 said, if that showed me saying it, I guess I did,
21 but he is saying, I don't remember. You know?

22 It would be one thing if he started off
23 saying, I said that, but I thought about it, I was
24 confused, this is what really happened. No, he is
25 saying he never said it. He has watched himself on

1 video saying it, he knows he said it, and now he is
2 up here baldly saying, I never said it, knowing
3 that that video is going to come in, knowing that
4 y'all are going to see that. I mean, why should
5 y'all believe him? I mean, what credibility does
6 he have whatsoever?

7 Now, as to Chad Moore. Armed robbery, CSC,
8 burglary, bank robbery. He is not getting invited
9 to my house for Thanksgiving. You know? I mean,
10 he is not the guy you want to see on the street.
11 He is not the guy you want to stop and help you out
12 when you have got a flat tire. I mean, clearly he
13 is not any of those things. He is in trouble. He
14 is in the jail. He is in the jail for a reason.
15 He is in the jail, he had been in the jail five
16 months before this happened before he met with
17 Jarvis Gibbs.

18 Notice when Mr. Ogburn asked Chad Moore whose
19 cell it was. Chad said it was his cell.

20 Ogburn said, okay, it was -- He said, no, I
21 was in there first. What Chad said was he was in
22 that cell first, it is his cell. He didn't say it
23 was the same pod, he said it was his cell.

24 Jarvis, I mean, the Defendant, admits to
25 talking to him. The Defendant says he didn't talk

1 to any -- he didn't talk about the bank robbery to
2 Chad or anyone else. So if he didn't talk to them,
3 how did Chad know that this 4-wheeler was in that
4 pond?

5 And I will submit that the story that the
6 Defendant wants to stick with is he didn't talk to
7 anybody in the pod about the robbery, that kind of
8 goes to how Chad got it from him. Does that --
9 because, you know, he is not saying, I talked to
10 somebody else and they got the story garbled and
11 told it to Chad Moore, he is saying he didn't talk
12 to anybody.

13 So, again, the fact that he knew that this
14 4-wheeler was in that pond the day before they
15 found it shows that Chad Moore, with all the
16 problems he's got, was telling the truth.

17 Arthur Macklin. You know, he actually tried
18 to take the Fifth up here on a couple of questions.
19 You know, he did not want to be here.

20 Once we got done with him, you know, he
21 essentially told the same thing to you that he told
22 to Lee Boan back on July 25th, 2008.

23 And what happened because he talked to Lee
24 Boan and told him the story? He got beat up. He
25 got knocked out. He said his whole face was swole

1 up. He didn't want to be here. He didn't want to
2 get beat up again. He didn't wanted to get hurt.
3 He didn't wanted to get killed.

4 But guess what? He was here. He told the
5 same story. He even said that -- if you remember,
6 I asked him, when I asked him if he wanted to be
7 here, do you remember when he said the Sheriff's
8 Department finally caught up with him to serve him
9 that subpoena to be here? 1:30 Monday morning.
10 You know, he was trying not to get up there.

11 But what did he do? He told the truth. He
12 told the same story, you know. Is the statement
13 consistent? It is the same thing that he told Lee
14 Boan back on July 25th, 2008. That is consistent.

15 Jarvis Gibbs, he has got this running thing
16 where like, you know, his story changes as the wind
17 blows. You know? The truth don't change depending
18 on what circumstance it is. The truth is the
19 truth. And I submit Arthur Macklin was telling the
20 truth.

21 Melissa Roberts. Mr. Ogburn says that Melissa
22 said that, I think I went to school with him. What
23 she said is, I know I went to school with him.

24 And he also tried to say that she didn't see
25 him eating at the restaurant. That is not what she

1 said. She said that the Defendant's family does
2 business with her in-laws that own the River Deck
3 Grill. She never said he ate there. She said she
4 saw him because his family does business with her
5 in-laws, her mother and father-in-law.

6 They claim that Melissa could not have known
7 him because he is two years older. And, you know,
8 two years older, if he is in the correct grade and
9 dropped out in ninth grade, yes, she would be in
10 like the seventh grade. But, you know, we don't
11 know if he was in the correct grade. You know, a
12 lot of students get held back. We don't know how
13 old he was in ninth grade.

14 He did testify that his grandmother finally
15 pulled him out because he kept getting in trouble.
16 That is what he testified to.

17 And, again, Melissa Roberts testified that she
18 already came up with Jarvis Gibbs before Lee Boan
19 even came back and said we have a suspect in
20 custody. If she don't know him, how has she got a
21 name to him? If I don't know who Lee Boan is and I
22 see him do something, how am I going to tell
23 somebody Lee Boan did it if I don't know what his
24 name is? And it just doesn't make sense.

25 Demeanor on the stand. You saw Melissa

1 Roberts testify. You saw that ridiculous mess that
2 happened when I had that podium out there trying to
3 mess with the laptop trying to do it myself. You
4 saw that. You know, she showed you the video. She
5 did it. She showed you the video. She showed
6 everything in there.

7 And what did she show you? She showed you
8 where Mr. Gibbs, the Defendant, stood a couple of
9 days earlier, by that potted plant at her manager's
10 office.

11 She showed you where on the bank video the
12 robber, who she identified as the Defendant, as
13 part of it turns and looks right back where he saw
14 the manager at when he was there a couple of days
15 earlier, when he was there casing the bank out.

16 She showed you on the video where the bike was
17 at. It is clear when he opens that door when he
18 leaves there is a bike there.

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

1 that away as something strange.

2 Leah Bailey even testified that she saw a guy
3 back there, she didn't know him. Again, Melissa
4 knew his name. That is a perfect example.

5 I see Lee Boan do something. Mr. Derieg sees
6 Lee Boan do something. I know who Lee is. Derieg
7 doesn't know who he is. I want to say Lee Boan did
8 it. He is going to say -- he is going to try to
9 describe that is who did it. That is a perfect
10 example. Leah Bailey doesn't know him. Melissa
11 Roberts does.

12 He goes in there, stands in that back corner,
13 looks around, kind of eyeballs where everybody is
14 at, and then leaves. Has no business. Even
15 Mr. Gibbs admits he has no bank account there.
16 What are you going to go in that bank for if you
17 don't have an account, you don't cash a check?

18 So in looking on the video it is kind of
19 strange how in one place where the bank robber
20 looks around is right there where the lady was at
21 when he was in a couple of days before. It is
22 things like that is why Melissa Roberts is
23 identifying him. It is not just that he has a
24 round head.

25 Mr. Ogburn in a lot of these is like he is

1 like he is picking part of why the witness
2 testified, but not the whole thing. But remember
3 what she testified to. Y'all saw her. Do y'all
4 think she is lying? I mean, if y'all think she is
5 lying, I mean, that is your prerogative, but y'all
6 saw her, y'all saw her demeanor, and I'll submit
7 she is telling the truth.

8 And, also, you know, bias and prejudice.
9 There has been no testimony -- Mr. Gibbs is saying
10 she don't even know him. He is not saying she
11 hates him. He is not saying she has a reason to
12 pull his name out of a hat. You know, she got
13 robbed. She wants the guy that robbed her to get
14 prosecuted. What is her reason to pull out
15 somebody else? I mean, her incentive is to get the
16 right guy.

17 And, again, you know, Jarvis Gibbs repeatedly
18 challenged me or challenged us to check his
19 statement: It is not there. And you saw how
20 confident he was until we played his statement.

21 After that, I'll submit to you the only
22 genuine emotion he -- genuine testimony he had
23 really was when he got sort of crying and saying he
24 didn't want -- he didn't want to get convicted.

25 And the reason is, he knows -- he knows. That

1 is why he keeps changing his story. He keeps
2 changing his story to fit what he thinks is going
3 to help him out, because he knows what you know and
4 you know it after hearing all of the testimony from
5 that stand, seeing his video, seeing the bank video
6 and everything, you know just like he does that he
7 did it. He did it.

8 Thank you.

9 THE COURT: All right, ladies and gentlemen,
10 let's take a short break. My instructions to you
11 may take a little bit of time, and it is
12 11:00 o'clock.

13 What I want to do while you are taking your
14 break -- I want you to do -- it is likely we are
15 going to be here over the lunch hour. So we're
16 going to order lunch for you. Ms. McDonald is
17 going to give you some options for lunch. If
18 you'll just take a few minutes and fill that out
19 and we'll, once that is done we'll reconvene and
20 I'll give you my final instructions.

21 Thank you very much. Don't begin to discuss
22 the case yet.

23 (WHEREUPON, the jury retires to the jury
24 room at 11:10 a.m.)

25 THE COURT: We will stand at ease for about

1 ten minutes.

2 (Break.)

3 THE COURT: Is the State ready to proceed?

4 MR. MOAK: Yes, Your Honor.

5 THE COURT: Is the Defense ready to proceed?

6 MR. OGBURN: Ready, Your Honor.

7 (WHEREUPON, the jury came into open
8 court at approximately 11:34 a.m.)

9 THE COURT: All right, ladies and gentlemen,
10 you have now heard all of the testimony in this
11 case, you have heard the arguments for both the
12 State and the Defendant, and you will take with you
13 to the jury room all the evidence in this case that
14 has been introduced.

15 Now, from time to time I have had juries send
16 out a message to me after they go to deliberate and
17 ask me to send them a copy of what I'm about to go
18 over with you. I'm not able to do that. In some
19 states that is done, but it is generally not done
20 in South Carolina.

21 I'm going to explain to you the law as it
22 applies to this case, so I'll ask you to pay close
23 attention.

24 Under our constitution and Code of Laws, only
25 the jury can make findings of fact. I'm not

1 permitted to indicate to you how I might feel about
2 the facts. If I have said or done anything in this
3 case which could indicate to you that I have an
4 opinion concerning the facts in this case, then you
5 should disregard that. You must independently
6 weigh the evidence presented in this trial and
7 render a verdict based solely on that evidence.

8 Now, the same constitution and laws that
9 designate and make you the finders of fact also
10 make me the instructor of the law.

11 If you have some idea as to what the law is or
12 what the law ought to be and it does not agree with
13 what I now tell you the law is, you are obligated
14 under the oath which you have taken to abandon this
15 preconception on your part and accept and apply the
16 law precisely as I now state it to you.

17 The Defendant in this case, as you know, has
18 been charged with entering a bank with the intent
19 to steal, also known as bank robbery, kidnapping
20 and use of a firearm during the commission of a
21 violent crime.

22 I remind you that the fact that the Defendant
23 was arrested, charged and indicted in this case is
24 not evidence in this case. It cannot be considered
25 by you as evidence of guilt in this case, nor does

1 it create any presumption or inference of guilt.

2 These documents are simply the legal formal
3 documents which contain the charges against the
4 Defendant.

5 The indictments in this case -- where are
6 they? Who has got the indictments?

7 (Clerk hands indictments to judge.)

8 THE COURT: As I explained to the full jury
9 panel back on Monday, that on or about July 25th,
10 2008, the Defendant did commit the crime of bank
11 robbery by entering First Palmetto Bank with intent
12 to steal, that is, the Defendant did use deadly or
13 threat of force with a deadly weapon by pointing a
14 handgun at the bank tellers in order to deprive the
15 victims of money or U.S. currency.

16 The second charge alleges that on or about
17 July 25th, 2008, the Defendant, Jarvis Gibbs, did
18 unlawfully seize, confine, decoy, kidnap, or abduct
19 or carry away four bank tellers by any means
20 whatsoever without the authority of law.

21 And the third charge is that on or about the
22 same day, the Defendant, Jarvis Gibbs, did possess
23 and display a firearm or visibly display such a
24 weapon during the commission or attempted
25 commission of a violent crime.

1 So those are what the indictments allege.

2 Now, Mr. Gibbs has pled not guilty to these
3 indictments, and that plea puts the burden on the
4 State to prove the Defendant guilty.

5 As I told you earlier, a person charged with
6 committing a criminal offense in South Carolina is
7 never required to prove himself or herself
8 innocent.

9 I charge you that this is an important rule of
10 law that the Defendant in a criminal trial, no
11 matter how serious the charge may be, will always
12 be presumed to be innocent of the charge for which
13 the indictment was issued unless guilt has been
14 proven by evidence satisfying you of that guilt
15 beyond a reasonable doubt.

16 This presumption of innocence does not end
17 when you begin your deliberations, but it
18 accompanies the Defendant throughout the trial
19 until you reach a verdict of guilt based on
20 evidence satisfying you of that guilt beyond a
21 reasonable doubt.

22 The presumption of innocence, again, is not a
23 mere legal theory. It is not just a legal phrase.
24 It is a substantial right to which every Defendant
25 is entitled, unless you, the jury, are satisfied

1 from the evidence of the Defendant's guilt beyond a
2 reasonable doubt.

3 The State is not required to prove the guilt
4 of the Defendant beyond all doubt or beyond every
5 doubt, but beyond a reasonable doubt.

6 Well, what is a reasonable doubt at law? A
7 reasonable doubt is the kind of doubt that would
8 cause a reasonable person to hesitate to act.

9 Let me repeat that. A reasonable doubt is the
10 kind of doubt that would cause a reasonable person
11 to hesitate to act, or to do something.

12 The State has the burden of proving the
13 Defendant beyond a reasonable doubt -- the guilt of
14 the Defendant beyond a reasonable doubt. And some
15 of you may have served as jurors in civil cases
16 where you were told it is only necessary to prove
17 that a fact is more likely true than not true, such
18 as by the greater weight or preponderance of the
19 evidence.

20 In criminal cases, however, the State's proof
21 must be more powerful than that. It must be beyond
22 a reasonable doubt. To think that a Defendant is
23 probably guilty or the circumstances are suspicious
24 is not enough.

25 Proof beyond a reasonable doubt is proof that

1 leaves you firmly convinced of the Defendant's
2 guilt.

3 Now, there are very few things in this world
4 we know with absolute certainty. And in criminal
5 cases the law does not require proof that overcomes
6 every possible doubt.

7 If based on your consideration of the evidence
8 you are firmly convinced that the Defendant is
9 guilty, you must find the Defendant guilty.

10 If, on the other hand, you think there is a
11 real possibility that the Defendant is not guilty,
12 then you must give the Defendant the benefit of the
13 doubt and find him not guilty.

14 Now, generally there are two types of evidence
15 which are generally presented during a trial:
16 Direct evidence and circumstantial evidence.

17 Direct evidence is the testimony of a person
18 who claims to have actual knowledge of a fact, such
19 as an eyewitness. It is evidence which immediately
20 establishes the main fact to be proved.

21 Circumstantial evidence, on the other hand, is
22 proof of a chain of facts or circumstances
23 indicating the existence of some fact. It is
24 evidence which immediately establishes collateral
25 facts from which the main fact may be inferred.

1 Circumstantial evidence is based on inference,
2 in other words, and not on personal knowledge or
3 observation.

4 The law makes absolutely no distinction
5 between the weight or value to be given to either
6 direct or circumstantial evidence, nor is a greater
7 degree of certainty required of circumstantial
8 evidence than of direct evidence.

9 You should weigh all of the evidence in this
10 case, and after weighing all of the evidence if you
11 are not convinced of the guilt of the Defendant
12 beyond a reasonable doubt, you must find the
13 Defendant not guilty.

14 Now, necessarily, you must determine the
15 credibility of the witnesses who have testified in
16 this case. Credibility simply means believability.
17 It becomes your duty as jurors to analyze and to
18 evaluate the evidence and determine which evidence
19 convinces you of its truth.

20 In determining believability of witnesses who
21 testified in this case, you may believe one witness
22 over several witnesses or several witnesses over
23 one witness. You may believe a part of the
24 testimony of a witness and reject the remaining
25 part of the testimony of the same witness. You may

1 believe the testimony of a witness in its entirety
2 or reject the witness's testimony in its entirety.
3 You may consider whether any witness has exhibited
4 to you any interest or bias or prejudice or other
5 motive in this case. And you may consider the
6 appearance and manner of the witness while on the
7 witness stand.

8 These considerations you do not exercise
9 arbitrarily. Your objective, ladies and gentlemen,
10 is to seek the truth, regardless of its source.
11 And in doing so, in exercising your mental
12 processes and determining what you consider to be
13 true, the law simply requires that you exercise
14 your good judgment, your common sense, your sense
15 of logic and reason, and your experiences in life,
16 and then apply these attributes of ability to the
17 evidence and determine what you, the jury, consider
18 to be the truthful evidence and to this state of
19 facts as determined by you.

20 You will then take and apply the law as it is
21 now stated to you and thus arrive at a true verdict
22 in this case.

23 Now, normally our Rules of Evidence do not
24 permit witnesses -- and I would say lay
25 witnesses -- to testify as to opinions or

1 conclusions. An exception to this rule exists for
2 witnesses we call expert witnesses.

3 A witness who by education and experience has
4 become expert in some art or science or profession
5 or calling may offer and state an opinion to you as
6 to relevant and material matter in the case in
7 which the witness claims to be an expert and may
8 also state the reasons for that opinion.

9 However, you should consider any expert
10 opinion received in this case like any other
11 evidence. Give it the weight you think it
12 deserves.

13 If you decide the opinion of an expert witness
14 is not based on sufficient education and experience
15 or if you conclude that the reasons given in
16 support of the opinion are not sound or that the
17 opinion is outweighed by other evidence, you may
18 disregard that opinion entirely.

19 An expert witness's testimony, in other words,
20 is to be given no greater weight than that of other
21 witnesses simply because the witness is an expert.

22 Now, an issue in this case for you to decide
23 is the identification of the Defendant as the
24 person who committed the crime charged. The State
25 has the burden of proving identity beyond a

1 reasonable doubt. You must be satisfied beyond a
2 reasonable doubt of the accuracy of the
3 identification of the Defendant before you may
4 convict the Defendant.

5 Identification testimony is an expression of
6 belief or impression by a witness. You must
7 determine the accuracy of the identification of the
8 Defendant. You must consider the believability of
9 each identification witness in the same way as any
10 other witness.

11 You may consider whether the witness had an
12 adequate opportunity to observe the offender at the
13 time of the offense. This will be affected by
14 things like how long or short a time is available,
15 how far or close the witness was, the lighting
16 conditions, and whether the witness had the chance
17 to see or know the person in the past.

18 Once again, I instruct you that the burden of
19 proof on the State extends to every element of the
20 crime charged. And this specifically includes the
21 burden of proving beyond a reasonable doubt the
22 identity of the Defendant as the person who
23 committed the crime.

24 If after examining the testimony you have a
25 reasonable doubt as to the accuracy of the

1 identification of the Defendant, you must find the
2 Defendant not guilty.

3 Now, a person who has a past criminal record
4 is competent to testify during a trial. A past
5 record does not affect the ability of that witness
6 to testify. A past record may only be considered
7 by you, if at all, in determining the witness's
8 believability. Remember, you are the sole judges
9 of the facts in the case and of the believability
10 of any and all of the witnesses.

11 You have heard evidence that the Defendant was
12 convicted of a crime other than the one for which
13 the Defendant is now on trial. This evidence also
14 may be considered by you if you conclude it is true
15 only in deciding whether the Defendant's testimony
16 is believable, and for no other purpose.

17 You must not consider the Defendant's prior
18 record as any evidence of his guilt of the charge
19 we are trying today.

20 Now, in order to establish criminal liability,
21 criminal intent is required. For example, the
22 mental state required to be proven by the State for
23 a particular crime might be some purpose or some
24 specific intent, knowledge of certain facts or
25 recklessness.

1 Criminal intent must be proven by the State
2 beyond a reasonable doubt. Criminal intent is
3 always a matter that must be determined by the jury
4 from the circumstances surrounding the situation.

5 There is no way to prove intent to a
6 mathematical certainty. There is no way medical
7 science can dissect a person's brain and determine
8 what the person had in mind, so the law says that
9 criminal intent may be inferred from the
10 circumstances shown to have existed at the time and
11 place. This is how you make a determination of
12 whether or not the element requiring intent was
13 present.

14 Criminal intent is a mental state, a conscious
15 wrongdoing. It is up to you to determine what the
16 Defendant intended to do based on the circumstances
17 shown to have existed.

18 Now, I don't want to be repetitive, but there
19 are multiple charges in this case. The indictments
20 in this case allege several different offenses
21 against the Defendant, to include entering the bank
22 with intent to steal, kidnapping, use of a firearm
23 during the commission of a violent crime.

24 Now, each indictment charges a separate and
25 distinct offense. You must decide each indictment

1 separately on the evidence in the law applicable to
2 it uninfluenced by your decision as to any other
3 indictment.

4 The Defendant may be convicted or acquitted on
5 any or all of the offenses charge. You'll be asked
6 to write a separate verdict of guilty or not guilty
7 for each indictment.

8 What is entering a bank with intent to steal?
9 Well, this is what Section 16-11-380 of our Code of
10 Laws says.

11 If the Defendant is charged with entering a
12 bank with intent to steal, which is also known as
13 bank robbery, the State must prove beyond a
14 reasonable doubt that the Defendant entered the
15 bank with the intent to steal money either by
16 force, intimidation or threats.

17 What is kidnapping? It is a violation of
18 Section 16-3-910. The Defendant is charged with
19 kidnapping. The State must prove beyond a
20 reasonable doubt that the Defendant knowingly and
21 unlawfully seized, confined, inveigled -- and I
22 will explain that term in a minute -- decoyed,
23 kidnapped, abducted or carried away another person
24 without authority of law.

25 To seize means to take hold of suddenly or

1 forcibly.

2 Confine means to limit, restrict or enclose
3 within bounds, imprison or keep in or shut in.

4 Inveigle means to lure, entice, or lead astray
5 by false representations, promises or other
6 deceitful means.

7 Decoy means to lure. Decoy is something to
8 entice a person into a trap.

9 Kidnap is to remove a person against his will
10 by unlawful force or by fraud.

11 Abduct means to carry off secretly or by force
12 for an illegal purpose.

13 And carry away obviously means to remove.

14 Now, the State does not have to prove that the
15 Defendant did all of these things. Instead, if you
16 find beyond a reasonable doubt that the Defendant
17 did any of these things, you may find the Defendant
18 guilty of kidnapping.

19 Something done without the authority of law is
20 something which the law does not sanction, permit,
21 allow, condone or provide justification for.

22 Kidnapping does not have to be for any
23 personal or monetary gain or for any illegal
24 purpose, but may be for any reason whatsoever.

25 The Defendant is also charged with possession

1 of a weapon during the commission of or attempt to
2 commit a violent crime. This is a violation of
3 Section 16-23-490. The State must prove beyond a
4 reasonable doubt that the Defendant was in
5 possession of a firearm or visibly displayed what
6 appeared to be a firearm during the commission of a
7 violent crime.

8 Firearm means a machine gun or automatic
9 rifle, revolver, pistol, or any weapon which is
10 designed to or may be readily converted to expel a
11 projectile.

12 In order to find the Defendant guilty of
13 possession of a weapon during the commission of a
14 violent crime, you must first find the Defendant
15 guilty of either committing a violent crime or
16 attempting to commit a violent crime. And
17 kidnapping is a violent claim.

18 Now, ladies and gentlemen, I further charge
19 you that any punishment provided by law to the
20 offense or offenses charged in the indictments is a
21 matter exclusively within the province of this
22 Court and should never be considered by you, the
23 jury, in any way whatsoever in arriving at a fair
24 and impartial verdict as to the guilt or innocence
25 of the Defendant. I am required to declare the law

1 as I have done through these instructions to help
2 and guide you to a just and lawful verdict.

3 Whether some of these instructions will apply
4 will depend on what you find to be the facts. The
5 fact that I have instructed on various subjects in
6 this case must not be taken by you as indicating an
7 opinion of this Court as to what you should find to
8 be the facts or as to which party is entitled to
9 your verdict.

10 Your verdict must represent the considered
11 judgment of each juror. In order to return a
12 verdict, in other words, it is necessary that each
13 juror agree. Your verdict must be unanimous, in
14 other words. All 12 of you must agree on a
15 verdict. Your verdict cannot be based on sympathy
16 or passion or prejudice or emotion or any other
17 consideration that is not in evidence in this case.

18 Remember at all times that you are not
19 partisans favoring one party over the other. You
20 are judges, judges of the facts, whose sole
21 interest is to seek the truth from the evidence in
22 this case.

23 Now, Mr. Foreman, I have prepared a verdict
24 form. Hopefully it is very simple to read or to
25 understand. And I'll just go over it with you

1 briefly.

2 First: We, the jury, by unanimous consent, on
3 the charge of entering a bank with the intent to
4 steal, find the Defendant, Jarvis Gibbs, guilty or
5 not guilty.

6 We, the jury, by unanimous consent, on the
7 charge of kidnapping, find the Defendant, Jarvis
8 Gibbs, guilty or not guilty.

9 And we, the jury, by unanimous consent, on the
10 charge of use of a firearm during the commission of
11 a violent crime, find the Defendant, Jarvis Gibbs,
12 guilty or not guilty.

13 Once you have completed the verdict form you
14 will sign it, date it, you will knock on the jury
15 room door and we will receive your verdict.

16 Now, I'm going to ask you to retire to the
17 jury room, but I'm going to ask you do not begin
18 your deliberations until you have received all the
19 evidence.

20 In other words, we are going to bring you the
21 bicycle and we're going to bring you the pictures
22 and we're going to bring you everything that has
23 been introduced into evidence in this case.

24 Once you receive all of the evidence and the
25 verdict form, you can begin your deliberations.

1 Your meal has been ordered. I expect it will be
2 here, what, 30 minutes or so?

3 THE CLERK: Yes, sir.

4 THE COURT: So if you want to take a break and
5 not deliberate while you eat, that is fine, or you
6 can do it. It is up to you. You can enjoy your
7 lunch and deliberate at the same time or take a
8 break, however you choose to do it, Mr. Foreman.

9 All right, ladies and gentlemen, I now ask you
10 to retire to the jury room and do not begin your
11 deliberations until you have received all the
12 evidence in the case.

13 THE BAILIFF: Alternates?

14 THE COURT: Just send them out in the hall.

15 (WHEREUPON, the jury retires to the jury
16 room at 11:56 a.m.)

17 THE COURT: Objections to the charge from the
18 State?

19 MR. MOAK: Nothing from the State, Your Honor.

20 THE COURT: From the Defense?

21 MR. OGBURN: None from the Defense, Your
22 Honor.

23 THE COURT: Double check the evidence, please,
24 and make sure everything is here.

25 MR. MOAK: I already checked it.

1 THE COURT: You have already checked it? Mr.
2 Ogburn, have you reviewed the evidence?

3 MR. OGBURN: Yes, Your Honor, I reviewed it
4 earlier today.

5 THE COURT: All right. Go ahead and take
6 them.

7 (WHEREUPON, the exhibits were taken to
8 the jury and the jury instructed to
9 begin deliberations at 11:58 a.m.)

10 THE COURT: Any objection to excusing the
11 alternates?

12 MR. MOAK: None from the State, Your Honor.

13 MR. OGBURN: No, Your Honor.

14 THE COURT: I need the alternates.

15 THE BAILIFF: Okay, sir.

16 (Alternates return to courtroom.)

17 THE COURT: All right, gentlemen, Mr. 109?

18 JUROR 109: Yes, sir.

19 THE COURT: And Number 60?

20 JUROR 60: (Nods affirmatively.)

21 THE COURT: Obviously everybody has survived
22 this trial and we don't need your services.

23 I do want to tell you, though, the reason we
24 pull alternates is because it happens many, many
25 times that somebody's car breaks down, somebody

1 gets sick, somebody in the middle of the trial
2 realizes they know something about it or know some
3 of the people involved, and we have to call on
4 alternates to sit and make the decision.

5 But obviously that didn't happen this time, so
6 I'm going to dismiss you now. Ms. McDonald says
7 she has ordered you lunch and you can pick it up at
8 the Camden House of Pizza if you would like to do
9 so.

10 But I do want to thank you for sitting here
11 and being a part of this trial and witnessing the
12 trial. I hope it has been somewhat educational for
13 you. It is sort of the way we do business up here.

14 By completing your jury service this week, it
15 does exempt you for the next two calendar years if
16 you do get called again, but I hope if you get
17 called again you would be willing to come and sit
18 and serve and maybe get -- may get to sit on a jury
19 next time, and I hope that would be your attitude
20 and you would be willing to come and sit and serve.

21 But, anyway, thank you very much for your
22 time, your service. Your service is very important
23 to this whole system. We can't do without you. I
24 expressed that before.

25 So thank you very much. You are now

1 dismissed.

2 JUROR 109: I've got a question.

3 THE COURT: Yes, sir.

4 JUROR 109: So we can't sit and watch the
5 rest?

6 THE COURT: Yes, sir. Yes, sir. This is a
7 public courtroom.

8 JUROR 60: That is what we had planned on
9 doing.

10 THE COURT: It is a public courtroom and your
11 lunch will be here. And they can take you
12 somewhere where you can eat your lunch, and then
13 you can come back in. Yes, sir, you are perfectly
14 welcome to stay.

15 JUROR 60: Thank you.

16 THE COURT: As I say, it is a public
17 courtroom. And thank you very much.

18 JUROR 60: Thank you.

19 (WHEREUPON, the alternates were excused.)

20 (Break.)

21 THE COURT: Counsel, approach the bench
22 please.

23 (WHEREUPON, a bench conference was
24 held.)

25 THE COURT: Counsel, the jury has informed the

1 Court that they have got a verdict -- they have
2 reached a verdict.

3 Is the State ready to receive the verdict?

4 MR. MOAK: Yes, Your Honor.

5 THE COURT: Is the Defense ready to receive
6 the verdict?

7 MR. OGBURN: Yes, Your Honor.

8 THE COURT: Wait a minute. Hold on. Where is
9 the clerk?

10 THE BAILIFF: She is on the way. I told her.

11 THE COURT: Wait until we get the clerk here.

12 (Clerk enters courtroom.)

13 THE COURT: All right, bring the jury in.

14 (WHEREUPON, the jury came into open
15 court at approximately 1:45 p.m.)

16 THE COURT: Mr. Foreman, has the jury reached
17 a verdict?

18 THE FOREMAN: We have, Your Honor.

19 THE COURT: Hand it to the bailiff, please.

20 (Foreman hands verdict form to bailiff,
21 who hands it to the clerk, who hands it
22 to the Court.)

23 (Court views verdict form.)

24 THE COURT: Ms. McDonald? The clerk will
25 publish the verdict, please.

1 THE CLERK: Thank you, Your Honor.

2 State of South Carolina, County of Kershaw.

3 State of South Carolina versus Jarvis Dequan Gibbs.

4 Indictment 2008-GS-28-1548, 1555, 1556.

5 We, the jury, by unanimous consent, on the
6 charge of entering a bank with intent to steal,
7 find the Defendant, Jarvis Dequan Gibbs, guilty.

8 We, the jury, by unanimous consent, on the
9 charge of kidnapping, find the Defendant, Jarvis
10 Dequan Gibbs, guilty.

11 We, the jury, by unanimous consent, on the
12 charge of use of firearm during the commission of a
13 violent crime, find the Defendant, Jarvis Dequan
14 Gibbs, guilty.

15 It is signed by the foreperson.

16 Mr. Foreman, and ladies and gentlemen of the
17 jury, if these are your verdicts, please signify by
18 raising your right hand.

19 (Jury complies.)

20 (Defendant's mother crying loudly.)

21 THE COURT: Take the lady out, please.

22 DEFENDANT'S MOTHER(on the way out of
23 courtroom): No! No! It is because he is a black
24 man. No! He is not guilty! He is not guilty! He
25 is not guilty! I know he is not guilty!

1 THE COURT: Do you desire to poll the jury?

2 MR. OGBURN: Yes, Your Honor.

3 THE COURT: Please poll the jury.

4 DEFENDANT'S MOTHER(screaming in the hallway):

5 He is not guilty! It is just because he is a black
6 man! He is not guilty! He is not guilty!

7 THE COURT: Please poll the jury.

8 THE CLERK: Thank you, Your Honor.

9 Number 8?

10 THE COURT: You can keep your seat.

11 THE CLERK: Were these your verdicts?

12 JUROR 8: Yes, ma'am.

13 THE CLERK: Are these still your verdicts?

14 JUROR 8: Yes, ma'am.

15 THE CLERK: Thank you.

16 Number 128?

17 JUROR 128: Yes, ma'am.

18 THE CLERK: Were these your verdicts?

19 JUROR 128: Yes, ma'am.

20 THE CLERK: Are these still your verdicts?

21 JUROR 128: Yes, ma'am.

22 THE CLERK: Thank you.

23 Number 97?

24 THE COURT: Where is 97? Oh.

25 THE CLERK: Were these your verdicts?

1 JUROR 97: Yes, ma'am.
2 THE CLERK: Are they still your verdicts?
3 JUROR 97: Yes, ma'am.
4 THE CLERK: Thank you.
5 Number 47? Were these your verdicts?
6 JUROR 47: Yes, ma'am.
7 THE CLERK: Are they still your verdicts?
8 JUROR 47: Yes, ma'am.
9 THE CLERK: Thank you.
10 Number 25? Were these your verdicts?
11 JUROR 25: Yes, ma'am.
12 THE CLERK: Are they still your verdicts?
13 JUROR 25: Yes, ma'am.
14 THE CLERK: Thank you.
15 Number 59? Were these your verdicts?
16 JUROR 59: Yes, ma'am.
17 THE COURT: Are they still your verdicts?
18 JUROR 59: Yes, ma'am.
19 THE CLERK: Thank you.
20 Number 132? Are these your verdicts -- were
21 these your verdicts?
22 JUROR 132: Yes, ma'am.
23 THE CLERK: Are they still your verdicts?
24 JUROR 132: Yes, ma'am.
25 THE CLERK: Thank you.

1 Number 130? Were these your verdicts?
2 JUROR 130: Yes, ma'am.
3 THE CLERK: Are they still your verdicts?
4 JUROR 130: Yes, ma'am.
5 THE CLERK: Thank you.
6 Number 56? Were these your verdicts?
7 JUROR 56: Yes, ma'am.
8 THE CLERK: Are they still your verdicts?
9 JUROR 56: Yes, ma'am.
10 THE CLERK: Thank you.
11 Number 15? Were these your verdicts?
12 JUROR 15: Yes, ma'am.
13 THE CLERK: Are they still your verdicts?
14 JUROR 15: Yes, ma'am.
15 THE CLERK: Thank you.
16 Number 103? Were these your verdicts?
17 JUROR 103: Yes, ma'am.
18 THE CLERK: Are they still your verdicts?
19 JUROR 103: Yes, ma'am.
20 THE CLERK: Thank you.
21 Number 11? Were these your verdicts?
22 JUROR 11: Yes, ma'am.
23 THE CLERK: Are they still your verdicts?
24 JUROR 11: Yes, ma'am.
25 THE CLERK: Thank you.

1 Number 109? Excuse me, that was an alternate.

2 Your Honor, the jury has been polled.

3 THE COURT: Has everybody been polled?

4 THE CLERK: Yes, sir.

5 THE COURT: All right, ladies and gentlemen,
6 that will conclude your service on this case.

7 Now, the remaining portion of this trial
8 consists of the sentencing of the Defendant. We
9 are here in Kershaw County, most of South Carolina,
10 we are, because of time and our case load, we are
11 forced to go ahead and sentence Defendants once the
12 jury has spoken, and we will do that in just a few
13 minutes. There is some paperwork that needs to be
14 completed before that is done. But I want to tell
15 you that you are welcome to stay for that. A lot
16 of times jurors like to stay and see what sentence
17 is imposed by the Court.

18 I will tell you that just for your information
19 that kidnapping carries a penalty of up to from
20 zero to 30 years in jail. The use of a firearm in
21 the commission of violent crime carries a penalty
22 of up to five years -- or carries a penalty of five
23 years. And entering a bank with intent to steal or
24 bank robbery carries a penalty also up to 30 years.

25 The process we will use is the State will

1 present such evidence as they have on the
2 Defendant's prior record and anything else they
3 wish to offer. And the Defendant will then have an
4 opportunity to offer what they think may be
5 appropriate in mitigation.

6 What is the matter?

7 MR. MOAK: We are getting the paperwork.

8 THE COURT: Oh. Just have a seat, please. So
9 that process will take about 10 or 15 minutes. You
10 are welcome to stay, but by the same token you are
11 welcome to go.

12 If you choose to leave, I want to thank you
13 for your service this week. It may have taken a
14 little longer than we anticipated, but I noticed
15 that you were always very conscientious and very
16 attentive to everything, not only what the
17 attorneys said, but the witnesses and when I gave
18 you my instructions, that sort of thing.

19 So you have done a service to the community,
20 you have done a service to the judicial system here
21 in our county, and I want to thank you.

22 You are free to go now. I will tell you that
23 you do have an exemption for the next two years if
24 you wish to exercise that exception from jury
25 service, but we hope that if you are called again

1 you'll be willing to come and sit and help us
2 decide these matters.

3 These matters have to be decided in our
4 community and it takes jurors who are willing to
5 come and sit and listen and intelligently apply the
6 law to the case and come to a decision.

7 I told the rest of your jury panel, I will say
8 it again, you are invaluable to this system. The
9 system can do without me, it can do without these
10 attorneys, but it can't do without you. You are
11 such an important part of the entire judicial
12 system in this country that your role is written
13 into the constitution. And I hope you realize
14 that, how important your role is in helping us
15 resolve these matters and being willing to accept
16 jury service.

17 So you are now dismissed if you wish to. You
18 may want to go back to the jury room, and
19 Ms. McDonald will be able to give you a work
20 permission slip or work slips if you need them.

21 If you wish to come back into the courtroom,
22 the bailiff will, once we get ready to do the
23 sentencing, the bailiffs will escort you back into
24 the courtroom and you can witness that process, if
25 you wish to do so. But if not, you are free to go.

1 Thank you very much, ladies and gentlemen.

2 (Jury excused at 1:53 p.m.)

3 THE COURT: All right, you are getting your
4 sentencing sheets?

5 MR. DERIEG: Ron is going to get those now.

6 THE COURT: We will stand at ease for about
7 ten minutes.

8 (Break.)

9 THE COURT: Mr. Ogburn, bring your client,
10 please.

11 (Defendant steps up.)

12 THE COURT: Mr. Moak?

13 MR. MOAK: Your Honor, you have heard the
14 facts, you have heard the testimony, so I don't
15 feel like I have to readdress what happened.

16 His prior record of convictions, he has an
17 August 14th, '97 conviction for purse snatching.
18 It is an inactive YOA sentence that appears was
19 revoked in 1999, Your Honor.

20 THE COURT: Revoked? He did what?

21 MR. MOAK: It says initially, YOA, a five-year
22 YOA, not to -- actually it says YOA, (5)(c), not to
23 exceed three years, suspended upon two years'
24 probation and restitution in the amount of \$300.

25 Then in 1999 it has got him listed, a hit for

1 the Reception and Evaluation Center in Columbia,
2 which normally means they hit the Department of
3 Corrections. It says YOA, (5)(c), not to exceed
4 six years. So I'm reading that to mean he got a
5 suspended Y in '98 and was revoked and a Youthful
6 Offender sentence was imposed in '99.

7 Then in 2003 he had a public disorderly
8 conduct conviction.

9 In 2004, a driving under suspension, open
10 container.

11 Later in 2004, it looks like he had a driving
12 under suspension, open container, operating an
13 uninsured motor vehicle and some other traffic
14 offense, all got 30 days, went to the Department of
15 Corrections for, looks like four consecutive 30-day
16 sentences, Your Honor.

17 There is another separate public disorderly
18 conduct in 2004 in Richland County.

19 The Camden Police Department, he got an open
20 container in 2005.

21 A shoplifting conviction in Camden also in
22 2005.

23 And June 17th, 2008, which is a month before
24 this, he got hit for DUI and DUS. It looks like
25 was convicted of both of those.

1 I'm looking at it. It looks like he got time
2 served. And the court date, it looks like he was
3 probably in jail for these offenses when he was
4 sentenced for that.

5 And that is his record of convictions, Your
6 Honor.

7 I believe our office, with the City of Camden,
8 we're requesting for as lengthy a sentence as
9 possible.

10 We have Leah Bailey, who was one of the bank
11 tellers that was robbed, she is the one who had the
12 gun put in her particular face, I believe she
13 wishes to address the Court.

14 THE COURT: Yes, ma'am, I'll be glad to hear
15 from you.

16 MS. BAILEY: I just want to make sure that the
17 person that did this is put away because that was
18 traumatizing, and I fear for my life working in
19 that part of town because that stuff, that, I mean,
20 happens. We're scared every day that it is going
21 to happen again. And we don't want whoever is
22 doing this to be out to do it to anybody else.
23 Because I still have nightmares about it. And the
24 other girl up there still has nightmares about
25 this. And I just don't want it to happen again any

1 time soon -- or to anybody.

2 THE COURT: All right.

3 MR. MOAK: That is what we have, Your Honor.

4 THE COURT: Mr. Ogburn?

5 MR. OGBURN: Well, Your Honor, his prior
6 record is not that extensive. He doesn't have any
7 major crimes, basically just purse snatching and
8 the shoplifting. And we would ask Your Honor to
9 show any mercy possible on this young man.

10 THE COURT: All right. Mr. Gibbs, do you have
11 anything you want to say?

12 THE DEFENDANT: No, sir.

13 THE COURT: When -- what was his date of
14 arrest? I need to know how long he has been
15 incarcerated.

16 MR. OGBURN: Your Honor, he was incarcerated
17 approximately 14 months. The date of arrest would
18 have been the date of the incident.

19 MR. MOAK: July 25th, 2008, would be the date
20 of arrest.

21 THE COURT: I thought there was something
22 about made bond.

23 MR. MOAK: He was arrested and released at
24 some point. Lieutenant Harden from the jail is
25 here.

1 LIEUTENANT: I would have to check that. I
2 don't have the information with me. I can check
3 the actual date.

4 THE COURT: Well, he gets credit for all that
5 time.

6 LIEUTENANT: Yes, sir.

7 THE COURT: I mean, if he is going to the
8 Department of Corrections, this needs to go with
9 him.

10 LIEUTENANT: Yes, sir, we will make sure of
11 that.

12 THE COURT: All right. Well, it needs to go
13 with the sentencing sheets.

14 LIEUTENANT: Yes, sir.

15 THE COURT: I get it back all the time from
16 the Department of Corrections disputes between the
17 inmate and the Department of Corrections all the
18 time. I really need it to be accurate. He knows
19 exactly what it is.

20 And just for the record, Mr. Ogburn, since
21 kidnapping is a crime which would make a Defendant
22 eligible to be listed on the sexual offender
23 registry, I am going to make it a part of this
24 sentence that this conviction did not involve
25 anything with a sexual nature and that his name is

1 not to be placed on the sexual offender registry.

2 That gets to be a problem with kidnapping very
3 frequently down the road.

4 MR. OGBURN: Yes. Thank you, Your Honor.

5 THE COURT: All right, Mr. Gibbs, on your
6 possession of a weapon during the commission of a
7 violent crime, the sentence of the Court is that
8 you be committed to the State Department of
9 Corrections for a period of five years.

10 On your kidnapping charge and your entering a
11 bank with intent to steal charge, the sentence of
12 the Court is you be committed to the State
13 Department of Corrections for a period of 18 years.
14 Both sentences to run concurrent -- all sentences
15 to run concurrent. And you are to be given credit
16 for time served.

17 Good luck to you, sir.

18 MR. OGBURN: Thank you, Your Honor.

19 MR. MOAK: I did not hear you. Was the
20 weapons charge concurrent or consecutive?

21 THE COURT: Yes, sir, all three are
22 concurrent.

23 MR. MOAK: Okay.

24 THE COURT: Mr. Rogers? Any further business
25 from this Court?

1 MR. ROGERS: Yes, Your Honor.

2 THE COURT: Ladies and gentlemen, that
3 concludes this case. Thank you very much.

4 MR. MOAK: Your Honor, the five-year weapons
5 charge, are you sure it can be run concurrent?

6 THE COURT: Yes, sir.

7 MR. OGBURN: Okay.

8 THE COURT: You can doublecheck me on it.

9 (WHEREUPON, the proceedings were concluded.)
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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

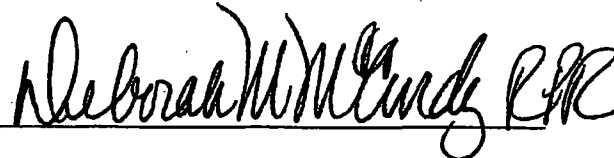
STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Deborah M. McCurdy, 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 the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Kershaw County, South Carolina, on the 17th to 19th days of November, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 4, 2010



Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Jarvis Dequan Gibbs,

Appellant.

Appeal From Kershaw County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2011-UP-511
Submitted November 1, 2011 – Filed November 28, 2011

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Senior Assistant Attorney General Harold M.

Coombs, Jr., all of Columbia; and Solicitor Daniel E. Johnson, of Columbia, for Respondent.

PER CURIAM: Jarvis Dequan Gibbs appeals his convictions for entering a bank with intent to steal, kidnapping, and using a firearm during the commission of a violent crime. Gibbs argues the trial court erred in allowing testimony about his statement to the police that he offered twenty dollars' worth of crack cocaine to borrow a bicycle because the testimony was unduly prejudicial and placed his character at issue. We affirm.¹

"The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id. "Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result." Id. at 212, 631 S.E.2d at 267. "[A]n insubstantial error not affecting the result of the trial is harmless where 'guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached.'" Id. (citation omitted).

Here, competent evidence established Gibbs's guilt beyond a reasonable doubt. Arthur Macklin, the owner of the bicycle, testified, and Gibbs admitted, Gibbs borrowed Macklin's bicycle the morning of the robbery. Melissa Roberts, a bank teller, testified she recognized the bank robber as Gibbs despite his mask. Two witnesses testified the bank robber left the bank on a bicycle. The police later found the bicycle abandoned next to a shoe print having the same outsole design of the shoe Gibbs was wearing the morning of the robbery. Gibbs admitted to Chad Moore, a person incarcerated in the Kershaw County Detention Center, he robbed the bank on a bicycle and escaped in a four-wheeler abandoned thereafter. A police detective testified the bicycle, when found, was laying down on tracks from a four-wheeler and the police discovered an abandoned four-wheeler after talking to Moore. Therefore, because competent evidence of Gibbs's guilt

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

was presented at trial, Gibbs's convictions will not be set aside even if the statement was admitted in error. See Pagan, 369 S.C. at 212, 631 S.E.2d at 267 ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result.").

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.



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**ATTORNEY GENERALS
OFFICE**

The South Carolina Court of Appeals

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December 15, 2011

REMITTITUR

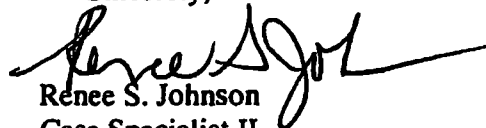
The Honorable Joyce McDonald
515 Walnut St
PO Box 1557
Camden, SC 29020-8557

Re: The State v. Gibbs, Jarvis Dequan
2008-GS-28-01555 2008-GS-28-01556, 2009-GS-28-01548

Dear Ms. McDonald:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,


Renee S. Johnson
Case Specialist II

VAG/rj

cc: Appellate Defender Robert M. Pachak
Jarvis Gibbs #255871
Senior Assistant Attorney General Harold M. Coombs, Jr.

SC Attorney General
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DEC 16 2011

Referred to

H. Coombs

Answered

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF York)James Dequan Gibbs 755571)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

FILED FOR RECORD
2012 MAR 26 AM 9:
JUDGE: H. J. H. H. H.
CLERK OF COURT
KERSHAW COUNTY, S.C.

APPLICATION FOR

POST-CONVICTION RELIEF

2012 - CP - 28 - 317

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence York County Court House (Comdase)
3. Name(s) of co-defendant(s) (if any) James Dequan Gibbs
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008 - GS - 28 - 01555
 - (b) 2008 - GS - 28 - 01556
 - (c) 2008 - GS - 28 - 01548
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) (November 19th 2009)
 - (b) kidnapping charge & entering a bank with the intent to steal (Concurrent)
(Prison for both charges)

ATTEST True, Correct & Certified
Revised 3/2003
Copy of Original on File in this
Court

James Dequan Gibbs
Clerk of Court Kershaw County

- (c) possession of a weapon during the commission of a violent crime (concurrent)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. denied _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 23, 2011 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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2012 MAR 26 AM 9:12
JUDGE DONALD
CLERK OF COURT
BERSHAW COUNTY, S.C.

FILED FOR RECORD

2012 MAR 26 AM 9:12

JOYCE HODON AND
CLERK OF COURT
KESHAW COURTHOUSE

(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 witnesses reasonable and diligently shows the first prong of my claim of ineffective counsel. My lawyer Mr. S. Michael [redacted] did not function as he guaranteed me the defendant under the 6th Amendment. This deficient performance only prejudiced my defense, being my witness would have shown that I was at the barbecue shop during the time of the crime at hand. This I stated in my motion of Discovery in which my lawyer never investigated. Also it was stated that the owner of the pond (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 or would have shown that Chad Moore As Detective Lee Bean statements were prejudiced under oath. Because Detective Bean stated the Chad Moore lead them to the 4 wheeler this shows that Chad Moore statements were coherent.

(B) Identification of object to Melissa Roberts in court identification. She, Melissa Roberts stated that she was never taken to a live up or giving 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 incorrect identification. This also shows that this counsels performance was deficient and deprived me the defendant a fair trial. This shows that my counsels representation fell below an objective standard of reasonableness under prevailing professional norms.

JOYCE HODDHALD
CLERK OF COURT
Kershaw County, S.C.

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