

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Post Conviction Relief

RECEIVED

JAN 20 2015

S.C. Supreme Court

APPELLATE CASE NO.: 2014-001649

Michael J. Lackey #340933 Appellant

v.

State of South Carolina Respondent

APPENDIX
VOLUME III

TOMMY A. THOMAS
P.O. Box 88
Irmo, SC 29063
(803) 732-5507
SC Bar No.: 005536
Attorney for Appellant

JOSHUA L. THOMAS, ESQ.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3737
Attorney for Respondent

INDEX

Transcript of Record dated May 17, 2010	1
Indictments and Warrants	1248
PCR Transcript dated March 20, 2014	1257
PCR Application	1430
Return	1437
Memorandum in Support of Post-Conviction Relief	1442
Memorandum of Law in Opposition to Post-Conviction Relief	1447
Order of Dismissal	1453
Letter to The Honorable George C. James, Jr.	1468
Order	1469

1 Q. Uh -- Mr. Johnson, do you understand that you have a
2 right not to -- uh -- or to remain silent.

3 You cannot be compelled to testify
4 -- uh -- uh -- or be a witness against yourself.

5 Do you understand that?

6 A. Yes, Your Honor.

7 Q. That's your Fifth Amendment right. You understand
8 that?

9 A. Yes, Your Honor.

10 Q. And anything that you say in this courtroom could,
11 and probably would, be used against you -- uh -- in your
12 prosecution?

13 Do you understand that?

14 A. Yes, Your Honor.

15 Q. Have you discussed that matter with your attorney?

16 A. I have, Your Honor.

17 Q. Do you wish -- uh -- uh -- wish to invoke the Fifth
18 Amendment?

19 A. I do not.

20 Q. All right. Do you wish to testify?

21 A. I do.

22 THE COURT:

23 Is -- Is that your understanding,

24 Mr. Mullins?

25 MR. MULLINS:

1 It is, Your Honor.

2 THE COURT:

3 Is it pursuant to an agreement
4 with the State of any type?

5 MR. MULLINS:

6 We do not have anything other than
7 the proffer --

8 THE COURT:

9 A proffer?

10 MR. MULLINS:

11 -- saying he should tell the
12 truth, Your Honor.

13 THE COURT:

14 All right. Thank you very much.

15 All right. If you would, Mr.

16 Johnson, come around and take the stand.

17 And I'll remind you, you're under
18 oath.

19 Bring them in.

20 (WHEREUPON: The jury empanelled
21 in the case was escorted back into the courtroom at 1:38
22 PM, May 20, 2010; and was in fact present during the
23 following proceedings.)

24 THE COURT:

25 Ladies and gentlemen of the jury,

1 glad to see you all back.

2 I appreciate your working as -- uh
3 -- so diligently this week -- or -- and today,
4 particularly.

5 Mr. Johnson has been called as a
6 witness. He is on the stand. And he has been previously
7 sworn.

8 MS. LIVESAY:

9 Thank Your Honor.

10 DIRECT EXAMINATION BY MS. LIVESAY:

11 Q. Mr. Johnson, how old are you?

12 A. 22 years of age.

13 Q. Okay. And are you current --

14 THE COURT:

15 Can we put his name on the record,
16 please?

17 MS. LIVESAY:

18 Yes.

19 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

20 Q. Spell your name for the record, Ricky.

21 A. R-i-c-k-y.

22 Q. And what's your last name?

23 A. Johnson.

24 Q. Spell that for the record.

25 A. J-o-h-n-s-o-n.

1 THE COURT:

2 Thank you.

3 MS. LIVESAY:

4 Okay.

5 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

6 Q. And how old are you?

7 A. 22 years of age.

8 Q. Okay. And are you currently working or are you in
9 school?

10 A. I am working. And I am also in school.

11 Q. Okay. Where do you live?

12 A. In Winston-Salem, North Carolina.

13 Q. Okay. Is that where you're from?

14 A. Yes ma'am.

15 Q. Okay. And did you at one time attend Coastal
16 Carolina?

17 A. I did.

18 Q. Okay. And did you attend Coastal around October
19 13th of 2007?

20 A. I did.

21 Q. Okay. Now while you were a student at Coastal,
22 were you charged with armed robbery, burglary first, PWID
23 marijuana and unlawful carrying a pistol?

24 A. I was.

25 Q. And are those charges still pending?

1 A. Yes ma'am

2 Q. Okay. And have you entered into any sort of
3 agreement with the State regarding those charges?

4 A. I have not.

5 Q. Okay. Have you been promised anything in exchange
6 for your testimony?

7 A. I have not.

8 Q. Okay. Has any of your charges been dismissed?

9 A. They have not.

10 Q. Ricky, is that your signature?

11 A. It is.

12 Q. And whose signature is that under yours?

13 A. That's -- uh -- Mr. Bellamy's. He -- uh -- He
14 represented me before Mr. Mullins.

15 Q. Okay. And is this the agreement you signed?

16 A. It is.

17 Q. Okay. Now, does this agreement promise you
18 anything in exchange for your testimony?

19 A. It did not.

20 Q. Okay. And have you entered into any agreements
21 with the State regarding any of those charges?

22 A. I have not.

23 Q. Okay. Now, Mr. Johnson, while your were at Coastal
24 Carolina, who did you live with?

25 A. I had three roommates; Mr. Tynes, Mr. Brown, and

1 John Forsythe (phonetic).

2 Q. Okay. And at that time, were you playing a sport?

3 A. We all played football.

4 Q. Okay. And what year was that that you were in
5 Coastal?

6 A. It was -- uh -- first semester of our sophomore
7 year.

8 Q. Okay. So you had already been one year in college?

9 A. We had.

10 Q. Okay. And do you remember the night of October
11 13th, 2007?

12 A. I do.

13 Q. Okay. And tell the jury what happened that night?

14 A. Uh -- Where do you want me to start; after the game?

15 Q. After the game.

16 A. Okay. We went back to the apartment. Uh --

17 Q. And Mr. Johnson, when you tell us people's names,
18 please use the first and last names, so we're able to
19 identify them.

20 A. All of us went back to the apartment; Mr. Tynes, Mr.
21 Brown, and I think his -- uh -- two friends from Atlanta
22 were already back at the room.

23 Uh -- I guess they were having a
24 little discussion in his room -- you know -- I guess
25 about what happened.

1 I walked in for maybe a couple
2 minutes; walked back out.

3 We left the room.

4 We went to the apartment where the
5 alleged robbery happened.

6 Q. Okay.

7 A. We -- uh -- proceeded to go back to our apartment;
8 but before we got back onto 501, we were pulled over.

9 Q. Now when you were in your apartment, how did -- or
10 you heard discussions.

11 Who -- Who was involved in those
12 discussions?

13 A. I think it was Mr. Tynes, and --

14 Q. What is his first name?

15 A. Mario.

16 Q. Okay. Who else?

17 A. Uh -- I -- I think his two friends from Atlanta were
18 also in there.

19 Uh -- I can't recall anybody else
20 being there.

21 Q. Did you -- Did you hear anything or any discussions
22 regarding a robbery that night?

23 MR. MONCKTON:

24 Your Honor, I have to object the
25 leading.

1 MS. LIVESAY:

2 Your Honor --

3 THE COURT:

4 Just ask him what he heard about
5 -- heard them discussing.

6 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

7 Q. What did you hear about that night?

8 A. I mean, it -- uh -- it was regarding that situation.

9 I -- I mean, I really wasn't listing. I walked in and
10 walked back out. I wasn't in there long.

11 Q. Okay. Who got in the car with you that night?

12 A. All of us got in the car; me and

13 Q. Who is us?

14 A. Me, Mr. Tynes, Mr. Brown, and his two friends from
15 Atlanta.

16 Q. Okay. Are any of the people that got in your car
17 in the courtroom today?

18 A. Yes.

19 Q. Where are they?

20 A. The two Defendants right there, Mr. Tynes and Mr.
21 Lackey.

22 Q. Okay. Were you driving the car?

23 A. I was.

24 Q. I'm going to show him State's evidence marked Number

25 10. Do you recognize that?

- 1 A. Yes.
- 2 Q. And is that your car?
- 3 A. Yes.
- 4 Q. Okay. This the car you drove that night?
- 5 A. It is.
- 6 Q. Okay. So did you see any weapons that night?
- 7 A. I had seen a weapon that night.
- 8 Q. What was that, Ricky?
- 9 A. I did.
- 10 Q. Who had a weapon?
- 11 A. Mr. Tynes had a weapon.
- 12 Q. Okay. And can you remember what that weapon looked
- 13 like?
- 14 A. Uh -- If I can remember correctly, it was a handgun.
- 15 Q. Did anybody else have a weapon that you saw?
- 16 A. Not that I can recall.
- 17 Q. Okay. Now, do you remember how people were dressed
- 18 that night.
- 19 A. I don't remember exactly. But -- you know -- most
- 20 of them had on dark clothing.
- 21 Q. Okay. And how did you know how to get those
- 22 apartments in [REDACTED]?
- 23 A. Uh -- I was given directions.
- 24 Q. Who was giving you the directions?
- 25 A. Mr. Tynes was giving me directions.

1 Q. Okay. Were you following anybody?

2 A. Not that I can recall; no.

3 Q. Okay. Once you got there, what happened?

4 A. Once I got there -- we got at the apartment. They
5 really -- They didn't know which apartment it was.

6 So, I think we went into the wrong
7 parking lot at first.

8 But then, once we -- uh -- We
9 drove around for a little bit.

10 And we saw -- uh -- I can't
11 remember the white boy's name.

12 Uh -- We saw his car. And that's
13 how they knew where -- they still didn't know which
14 building it was; but they knew it was -- the area it was
15 in.

16 So I parked in the parking space
17 and everybody got out but me.

18 Q. Okay. Who got out of the car?

19 A. Mr. Tynes, Mr. Brown, and his two friends from
20 Atlanta.

21 Q. And did you get out of the car?

22 A. I did not.

23 Q. Okay. Did you -- At any point while you were at

24 [REDACTED] did you get out of that car?

25 A. I did not. I may have gotten out to see if they

1 were on their way back; but that's about it.

2 Q. Okay. At any time while you were at that apartment
3 complex, did you enter any of the apartments down there?

4 A. I did not.

5 Q. Okay. How long did you sit in that car?

6 A. Maybe about 15 to 20 minutes.

7 Q. Okay. And what were you doing while you were out
8 in the car?

9 A. I was just sitting there waiting, listening to music.

10 Q. Okay. And who got back in the car with you?

11 A. Everyone got back in the car; Mr. Tynes, Mr. Brown,
12 and his two friends from Atlanta.

13 A. Okay. Was -- Did -- Did anybody say anything when
14 they got back in that car?

15 A. It was a mark -- uh -- some remarks in the backseat
16 made about -- uh -- Mr. Tynes hit someone with a gun.
17 That's about it.

18 Q. Okay. Did you know at that point that they had
19 marijuana in the car?

20 A. I did; because the odor was so strong that I could
21 smell it from the front seat.

22 Q. Okay. Did they make any other comments while they
23 were in that car with you?

24 A. Not that I can recall; no.

25 Q. Okay. And then, what happened next, once they got

1 back in the car?

2 A. We -- uh -- We we're on our way back to the
3 apartment; but before we got on -- back on to 501, the --
4 uh -- policeman pulled us over.

5 Q. Okay. And after the policeman pulled you over, did
6 you see then what was in that car?

7 A. Yes. When they -- uh -- searched all of us and
8 they started pulling all of it out, I did.

9 Q. And how long would you say was between the time you
10 left that apartment and the time you were pulled over?

11 A. It wasn't even 5 minutes.

12 Q. Okay. So, not very long at all?

13 A. Not at all

14 Q. Okay. Did you actually ever make it back on to
15 501?

16 A. We didn't.

17 Q. Okay. Now, between the time you left the apartment
18 and you were pulled over, did anybody get in or out of
19 that vehicle?

20 A. No ma'am.

21 Q. Okay. Did you stop that car at any point from the
22 time you left like [REDACTED] and the time you
23 were pulled over?

24 A. No ma'am.

25 Q. Okay. How long had you lived with Eric Brown and

1 Mario Tynes?

2 A. Just that first semester of our sophomore year.

3 Q. Okay.

4 A. Freshman year, I lived in a different room; but I
5 was always in that room; so --

6 Q. Okay. Now how many times have -- times have you
7 met Joshua Readon and Michael Lackey?

8 A. I think like -- Maybe like once or twice before we
9 had rode down to Atlanta --

10 Q. Okay.

11 A. -- with him.

12 Q. Okay. So you had rode down to Atlanta to visit
13 them?

14 A. I have.

15 Q. Okay. How many times had they, Joshua Readon and
16 Michael Lackey, been up to Coastal Carolina to stay at
17 your apartment?

18 A. That was the first time.

19 Q. Okay. That was the only time they had ever been
20 up?

21 A. Yes.

22 Q. Mr. Johnson, when you rode up in [REDACTED]
23 [REDACTED], was there any doubt in your mind that a
24 robbery --

25 MR. MONCKTON:

1 Object to the leading, Your Honor.

2 MS. LIVESAY:

3 -- that a robbery was going to
4 take place?

5 THE COURT:

6 I'm going to --

7 MS. LIVESAY:

8 Was there --

9 THE COURT:

10 I'm going to let her ask the
11 question.

12 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

13 Q. Was there any doubt in your mind that a robbery was
14 going to take place when you rode up in that apartment?

15 A. There was no doubt in my mind.

16 Q. And is everything you told us today the truth?

17 A. It is.

18 Q. And are you expecting anything in exchange for this
19 testimony?

20 A. I am not.

21 THE COURT:

22 Mr. Monckton?

23 MR. MONCKTON:

24 May it please The Court?

25 MS. LIVESAY:

1 You were through, weren't you, Ms.

2 Livesay?

3 Were you through?

4 MS. LIVESAY:

5 Yes sir. No further questions,

6 Your Honor.

7 THE COURT:

8 Okay.

9 MR. MONCKTON:

10 May it please The Court, Your

11 Honor?

12 CROSS-EXAMINATION BY MR. MONCKTON:

13 Q. Mr. Johnson, you signed a proffer agreement with the

14 State in June of 2008. Do you remember that?

15 A. I do.

16 Q. Did you agree to be truthful with the State?

17 A. I did.

18 Q. Were you completely truthful with the State in your

19 statements made to them and here before this jury today?

20 A. I have been.

21 Q. A hundred percent?

22 A. Yes sir.

23 Q. All right. Is that a copy of your proffer

24 agreement?

25 A. It is.

1 Q. And the basis of this proffer agreement is you're
2 to be completely truthful; right?

3 A. It was.

4 Q. And you testified today with the hope the State will
5 help you down the road; is that correct?

6 A. I did not.

7 Q. You don't think that -- You don't want the State to
8 help you out down the road?

9 A. I don't.

10 Q. You don't? I'm going to show you a copy of your
11 statement, Mr. Johnson.

12 A. Okay.

13 Q. Do you remember giving that statement?

14 A. I do.

15 Q. And you gave that statement to the Solicitor's
16 Office; is that correct?

17 A. Yes sir.

18 Q. And you had your attorney with you?

19 A. I did.

20 Q. And you gave that statement on June the 18th, 2008;
21 is that correct?

22 A. Yes sir.

23 Q. I want you to turn to Page 6.

24 A. (The witness did as instructed.)

25 Q. Line 18. I'm going to read the question of Mr.

1 Davis. I want you to read your answer.

2 Okay. You heard Mario and this
3 individual discussing what?

4 A. Let's see --

5 Q. You're at Line 19.

6 A. Line 19. Buying marijuana from someone else.

7 Q. Buying marijuana from someone else?

8 A. Yes sir.

9 Q. Turn to Page 17.

10 A. (The witness did as instructed.)

11 Q. Line 12. I'm going to read Mr. Davis.

12 All right. When you guys left the
13 house, did you notice they had firearms?

14 What's your answer?

15 A. I answered, "No."

16 Q. Was it customary for Mario to carry his firearm
17 outside the apartment?

18 A. No.

19 Q. You ever seen him carry it outside the apartment
20 before?

21 A. No.

22 Q. Page 21. Line 8.

23 Did they tell you what they were
24 going in there for?

25 A. No. I just -- I knew they were, from earlier. I

1 thought they was going to buy something.

2 Q. Buy what?

3 A. Some marijuana.

4 Q. How much?

5 A. Uh -- I think -- I wasn't sure. I think the
6 conversation a couple weeks ago was -- uh -- or a couple
7 of days ago -- was going in to buy a half a pound.

8 Q. Half pound of marijuana?

9 A. Yes sir.

10 Q. That's what you answered.

11 A. (Nods in the affirmative.)

12 Q. All right. Next line:

13 Okay. Let's back up just a
14 little bit.

15 You heard some conversation a
16 couple of days before about buying a half pound of
17 marijuana?

18 Who did that conversation take
19 place between?

20 A. Mario and his friends.

21 COURT REPORTER:

22 Mario and who?

23 WITNESS:

24 His friends.

25 CROSS-EXAMINATION BY MR. MONCKTON CONTINUED:

1 Q. This kid down from Atlanta?

2 A. No.

3 Q. Was it the gentleman you were telling me about
4 before, the white gentleman?

5 A. Yes.

6 Q. Was it the -- Next page -- Page 22, Line 1:

7 Was that the same conversation
8 when you were at the computer?

9 A. It might have been.

10 Q. You're not sure?

11 A. No, it might have been. I'm not sure.

12 Q. Okay. So when you showed up there, was it your
13 understanding that you were going to go buy some
14 marijuana?

15 A. Yes.

16 Q. All right. I want you to turn to Page 27.

17 A. (The witness did as instructed.)

18 Q. Line 18:

19 How did you know to leave? Did
20 they say: Let's go?

21 A. No; when they were walking.

22 Q. When they got in the car; how did you know to leave?
23 Did they say: Let's go?

24 A. No. They just walked -- They were just walk --

25 Q. I mean, when they got in your, car did you know to

1 leave?

2 How did you know it was time to
3 leave?

4 Did they say: Let's go; or --

5 A. Yeah; that's what they said.

6 Q. Okay. Were all y'all -- Where were y'all headed to
7 after you left the apartment complex?

8 A. Actually we headed to get something to eat and then
9 we were going back to the apartment.

10 Q. Had you told them that?

11 A. Yes; 'cause I didn't -- I didn't think I told them;
12 but I was going to stop anyway. They have no choice. I
13 was driving.

14 Q. Where were you headed --

15 COURT REPORTER:

16 Wait a minute, sir. Have a what?

17 WITNESS:

18 They had no choice. I was
19 driving.

20 CROSS-EXAMINATION BY MR. MONCKTON CONTINUED:

21 Q. Where were you headed to get something to eat?

22 A. Maybe Wendy's. Most of the time, Wendy's or
23 McDonald's; close to school.

24 COURT REPORTER:

25 You need to move up a little

1 toward that mike.

2 CROSS-EXAMINATION BY MR. MONCKTON CONTINUED:

3 Q. So when they came out to your car, they walked up to
4 your car?

5 Is that what you're testifying to
6 today?

7 A. They did.

8 Q. And so after they got back in your car, you were
9 just going to go get something to eat?

10 A. I was thinking about it; yes sir.

11 Q. So after this big robbery, you were just going to
12 ease on down the road and get something to eat.

13 Is that what you testified to?

14 A. Yes.

15 Q. Now, when you gave that statement to the police, and
16 to the Solicitor's Office in June of 2008, that was the
17 truth; wasn't it?

18 A. Yes.

19 Q. But that's not what you testified to here today?

20 A. (No response.)

21 Q. You understand my question?

22 A. No sir, I don't.

23 THE COURT:

24 Was that a question, Mr. Monckton?

25 MR. MONCKTON:

1 Yes sir.

2 CROSS-EXAMINATION BY MR. MONCKTON CONTINUED:

3 Q. That's not what you testified here today, though; is
4 it?

5 A. Yes, it is.

6 Q. In your prior statement, you testified already that
7 you were going to buy some marijuana.

8 And that's what you told the
9 Solicitor's Office and the government as part of your
10 proffer agreement?

11 A. (No response.)

12 Q. Is that right?

13 A. Yes sir.

14 Q. Now, you also said something that I had not heard
15 before; that you were looking for the white dude's car?

16 What white dude is that?

17 A. I'm not sure of his name.

18 Q. You're not sure -- Which white dude are we talking
19 about?

20 A. Uh -- The one that he was having the conversation
21 with when I heard -- overheard the conversation in his
22 room when I was using the computer.

23 Q. So there's a -- We have already heard about another
24 car being there. So there's another -- Your car is
25 there?

1 A. Yes.

2 Q. Right?

3 A. Yes.

4 Q. And we already know that there's another car there
5 being driven by a gentlemen by the name of Tory?

6 Now, who's this other car?

7 A. That may -- That may have been the car.

8 Q. Oh; that may have been the car?

9 A. Yes sir.

10 Q. What car was that?

11 A. If I'm not mistaken, it was a silver Grand Prix; if
12 I'm not mistaken.

13 Q. A silver Grand Prix?

14 A. If I'm not mistaken. I'm not sure.

15 Q. A silver Grand Prix?

16 A. (No response.)

17 Q. But that statement we read out earlier, that's the
18 truth; right?

19 A. Yes sir.

20 Q. What you read here, those were your words on June
21 the 18th; is that correct?

22 A. They are.

23 Q. And they're still your words today; aren't they?

24 A. They are.

25 MR. MONCKTON:

1 Thank you. No further questions.

2 CROSS-EXAMINATION BY MR. WILSON:

3 Q. Mr. Johnson, let me ask you:

4 In your statement, you said that
5 you didn't take any part in planning this? Right?

6 A. No sir; I did not.

7 Q. But that's -- Well, that's what you told the police;
8 right?

9 A. (No response.)

10 Q. In -- In your statement; correct?

11 A. Yes sir.

12 Q. All right. But that's not really true; is it.

13 A. That is the truth.

14 Q. Well, now you knew for a fact -- 'cause you said in
15 your statement earlier that you heard Mario having a
16 conversation with Craig days before the robbery occurred
17 about this whole incident; right?

18 A. I did.

19 Q. Okay. So then you already knew.

20 And then, on the night that this
21 supposedly happened, you're the one who is driving them
22 over there to do it?

23 And you don't consider that that
24 -- you are part of the planning of it?

25 A. No sir.

1 Q. All right. And not only did you do that, but now
2 you also said that at some point you say you saw Mario
3 with a gun in his pants; right?

4 A. Yes sir.

5 Q. And this was the night before you say you went over
6 there; right?

7 A. (No response.)

8 Q. Right?

9 A. Yes sir.

10 Q. Okay. So when you say that you didn't know
11 anything about the planning and you weren't a part of the
12 planning, that ain't really true; is it?

13 A. It is true. I was not a part of the planning.

14 Q. You were not a part of the planning?

15 A. No sir.

16 Q. All right. And let me ask you this:

17 The Windows in that car; do they
18 roll up and down?

19 A. No sir, they do not.

20 Q. They do not.

21 A. No. The only window that worked was the driver's
22 side window.

23 Q. The only window that worked in that car is the
24 driver's side window?

25 A. Yes sir.

1 Q. Is that correct?

2 A. Yes sir.

3 Q. All right. And the other windows won't roll down?

4 A. They do not.

5 Q. They do not?

6 A. No sir.

7 Q. And they didn't roll down that night; did they?

8 A. No sir.

9 Q. And nobody waved any guns out of that car that
10 night; did they?

11 A. No sir; they did not.

12 Q. Because the only person who could have waved a gun
13 out of the window of the car would have been who?

14 A. Would have been me.

15 Q. Would have been you?

16 A. Yeah.

17 Q. All right. And you didn't do that, of course?

18 A. Of course not.

19 Q. Of course not.

20 Now let -- let me ask you:

21 The Solicitor asked you whether
22 anybody got in the car or out of the car after y'all
23 pulled off from the house?

24 That is, the house where the drug
25 situation occurred; right?

1 A. Yes.

2 Q. And you said:

3 Absolutely nobody got in the car
4 or out of the car after everybody got in and y'all pulled
5 off?

6 A. Yes sir.

7 Q. All right. And y'all went straight until you were
8 stopped?

9 A. (No response.)

10 Q. Right? Is that right?

11 A. Yes sir.

12 Q. Is that right?

13 A. Yes sir.

14 Q. Okay. And let me ask you this:

15 Now when -- when -- when you say
16 everybody came back in the car, did you have some cell
17 phones in the car?

18 A. Did I have cellphones in the car?

19 Q. Was anybody -- Was there cell phones in the car?

20 A. Uh --

21 Q. Other than your personal cell phone?

22 A. I'm assuming there were.

23 Q. Well, do -- My question is:

24 Do you know whether or not there
25 were cell phones in the car, other than your personal

1 cell phone?

2 A. Yes.

3 Q. Okay. Who had them?

4 A. I'm not sure who had them.

5 Q. Well, that's what I'm asking you; if you know? And
6 if you don't know, that's fine too.

7 Who had cell phones in the car at
8 the time y'all left the apartment.

9 A. I'm not sure.

10 Q. You don't know?

11 A. I don't.

12 Q. All right. Well, did anybody throw any cell phones
13 out of the window, or any wallets out of the window,
14 after they got in the car?

15 A. No.

16 Q. Okay. Because the windows wouldn't let down in the
17 first; would they?

18 A. No sir.

19 Q. All right. Now you said -- Your testimony was that:

20 You stayed in the car the whole
21 time; right?

22 A. Yes sir.

23 Q. That ain't true, either; is it?

24 A. That is true.

25 Q. No; you actually got out of the car; didn't you?

1 A. (No response.)

2 Q. Isn't that what you told the police?

3 A. (No response.)

4 Q. In your statement; says you got out of the car and
5 walked over to the building; but didn't see the door?

6 A. No, I did not say that.

7 Q. You didn't say that? All right.

8 A. No sir, I didn't.

9 Q. Well, let's go look at your statement on Page 24.

10 Hold on, one second. I'll turn to
11 Page 24 for you.

12 Okay. Here's your statement.

13 I want you to start at -- Excuse
14 me, one second.

15 Let's start -- uh -- at Page --
16 I'm sorry -- at Line 4:

17 And just read -- you read both
18 parts for me; 'cause I don't have a second copy.

19 A. Uh -- That's when I had to take them home and I came
20 over -- and I would come over.

21 So are you in the middle of
22 texting her -- texting when you come back to the car; or
23 -- or what are you doing?

24 No; I was already done.

25 So, okay. I get out to see what

1 was taking them so long.

2 Q. Right.

3 A. You got out the car; stood up. Did you leave the
4 car or stay with the car?

5 I think I walked over to -- uh --
6 the building they -- if I could see of the building they
7 went in.

8 But I didn't see the building they
9 went in.

10 Q. All right. So: I went -- So what do you say then?

11 Go ahead.

12 A. (No response.)

13 Q. So you weren't sure. That's what Davis asked you;
14 right?

15 A. No.

16 Q. Isn't that what you say?

17 A. No. I wasn't sure. So I got back in the car and
18 waited. And maybe about 10 minutes later they came out
19 walking.

20 Q. Okay. So when you say you never got out of the
21 car; that's not true.

22 You actually did get out of the
23 car.

24 And not only did you get out of
25 the car, you actually walked, according to your story, at

1 least over to building?

2 A. I did not walk to the building. I didn't know which
3 building they were in.

4 Q. Well, why would you tell the officer that, if you
5 didn't do it?

6 A. I told him I went to -- beside a building to see if
7 I could realize which one they went in.

8 Q. Uh-huh. But you testified here today that you never
9 got out of the car.

10 A. No, I did say I got out of car; but it was to walk
11 to see if I could see them coming.

12 Q. Oh? Now, you also said that you didn't expect to
13 get any kind of a deal, I think, from the Solicitor;
14 right?

15 A. Yes sir.

16 Q. That's what you said; right?

17 A. Yes sir.

18 Q. And that ain't true either, is it?

19 A. It is true.

20 Q. Now, you're saying that you entered an agreement
21 with the Solicitor, some kind of a proffer or whatever
22 you want to call it to testify; right?

23 A. Yes sir.

24 Q. 'Cause according to you, you didn't do anything?
25 You didn't do anything wrong, according to you; right?

1 A. Yes sir.

2 Q. So why in the world you plead guilty for something
3 you didn't do?

4 MS. LIVESAY:

5 Your Honor, for one:

6 That's facts that are not in
7 evidence; because he hasn't pled guilty.

8 He's already said that there's
9 pending charges. And nothing has happened to those
10 charges.

11 MR. WILSON:

12 He has --

13 THE COURT:

14 Why don't you ask him if he
15 intends to, Mr. Wilson?

16 MR. WILSON:

17 All right, sir. I'll rephrase it.

18 CROSS-EXAMINATION BY MR. WILSON CONTINUED:

19 Q. You signed up with an agreement with the Solicitor
20 in order to do what?

21 What was the purpose in doing it?

22 A. I don't understand the question.

23 A. My question simply is:

24 Why did you sign the proffer
25 agreement with the Solicitor -- with the State?

1 What was the purpose?

2 A. Because I was in a situation where I really had
3 nothing to do with it; but I was stuck --

4 Q. Right. You didn't do anything.

5 A. But I was stuck with the same charges.

6 Q. Right. You didn't do anything. You're innocent;
7 right?

8 A. I think I am.

9 Q. You think you are. But yet, you're here. And you
10 intend to plead guilty; right?

11 Is that what your intentions are?

12 MS. LIVESAY:

13 Your Honor, I don't see how
14 whatever plea negotiations -- or pleas he wants to
15 discuss with his attorney --

16 THE COURT:

17 Mr. Wilson, he may not intend to
18 plead guilty. That hasn't had anything to do with it.

19 Just ask him.

20 MR. WILSON:

21 Well -- Well -- All right, sir.
22 I'll do it that way.

23 CROSS-EXAMINATION BY MR. WILSON CONTINUED:

24 Q. Let me ask you this:

25 What is your intention? You

1 intend to plead guilty?

2 MS. LIVESAY:

3 Your Honor, I don't understand how
4 his intentions are relevant --

5 THE COURT:

6 I'm going to --

7 MS. LIVESAY:

8 -- in this testimony?

9 THE COURT:

10 -- let him answer that question.

11 I'm going to let him ask it?

12 CROSS-EXAMINATION BY MR. WILSON CONTINUED:

13 Q. Do you?

14 A. I do not.

15 Q. You do not? So you intend to have a trial?

16 A. (No response.)

17 Q. Is that right?

18 A. No.

19 Q. No? Well, what -- what do you intend to do?

20 If you're not going to have a
21 trial, and you're not going to plead guilty; you think
22 the charge is just going to go away?

23 A. No; I wasn't expecting it to go away.

24 A. Well, what do you expect?

25 A. I don't know.

1 Q. You don't know.

2 Q. But you're not guilty of anything; right?

3 A. I don't think I am.

4 Q. You don't think you are; 'cause you didn't anything
5 wrong; right?

6 A. I don't think I did.

7 MR. WILSON:

8 All right.

9 I don't have any other questions.

10 MS. LIVESAY:

11 Just a few, Your Honor.

12 THE COURT:

13 All right.

14 REDIRECT EXAMINATION BY MS. LIVESAY:

15 Q. Ricky, do you recognize this copy of your statement?

16 A. I do.

17 Q. Is this the same copy that -- uh -- Mr. Monckton and
18 Mr. Wilson showed you?

19 A. Yes ma'am; it is.

20 Q. Okay. Uh -- Do you recognize Page 37?

21 A. I do.

22 Q. Okay. And on Page 37, did you indicate you had
23 some more information to tell that officer?

24 A. I did.

25 Q. And so they can refer to it, Ricky, let me --

1 because I know they're following along.

2 Did you mention anything about any
3 discussions that night in your statement on Page -- I'm
4 sorry -- so they can read along.

5 I'm referring to Page -- the
6 question's 22; and what's your answer on -- on Line 23?

7 THE COURT:

8 What -- What was the question, Ms.
9 Livesay?

10 You referring to a question and
11 you're --

12 MS. LIVESAY:

13 Did he --

14 THE COURT:

15 -- asking for the answer.

16 MS. LIVESAY:

17 Yes sir.

18 REDIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

19 Q. Did he tell the officer anything about any
20 discussions that were had that night?

21 A. Are you saying right here.

22 Q. Uh-huh.

23 A. Yes; Mario and his two friends from Atlanta.

24 Q. Okay. And --

25 THE COURT:

1 I'm sorry. I couldn't hear him.

2 REDIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

3 Q. Speak up into the mike, Ricky

4 A. Mar -- Yes; Mario and his two friends from Atlanta.

5 Q. Okay. Now looking on Page 13.

6 At that time, did you admit to the
7 officer that you had heard anything about a robbery?

8 A. So -- So they would just -- from right -- You're
9 right here?

10 Q. For the Defense; Line 13.

11 A. So they were just insisting going in there or
12 whatever; that they were going to buy the first time and
13 rob him the next time.

14 Q. Okay. And did you mention anything about a gun?
15 Lines 17, 19, and 21.

16 MR. MONCKTON:

17 Which page, Your Honor?

18 MS. LIVESAY:

19 Page 38, Your Honor.

20 WITNESS:

21 I saw them pull it at the
22 apartment.

23 MS. LIVESAY:

24 Okay.

25 COURT REPORTER:

1 I'm sorry?

2 MS. LIVESAY:

3 Did you indicate who had the gun?

4 COURT REPORTER:

5 Wait a minute. Wait a minute.

6 I'm sorry. I didn't get that.

7 I saw them what?

8 WITNESS:

9 I saw the gun before we left the
10 apartment.

11 REDIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

12 Q. Did you tell the officer who had the gun?

13 A. Mr. Tynes had the gun.

14 Q. Okay. And is this the same statement that you were
15 just reading off of with Mr. Monckton?

16 A. Yes ma'am.

17 Q. Okay. So in this statement, did you tell the
18 officer that Mario Tynes had a gun?

19 A. I did.

20 Q. Okay. Now looking at Page 39, Line 15:

21 Did you hear any discussion in the
22 backseat regarding what had happened -- or what was going
23 to happen in that apartment?

24 MR. MONCKTON:

25 Your Honor, I'm --

1 THE COURT:

2 Are -- Are you reading him a
3 question?

4 I --

5 MS. LIVESAY:

6 Your Honor --

7 THE COURT:

8 I'm not sure exactly what you're
9 doing.

10 MS. LIVESAY:

11 -- the questions are off the
12 transcript.

13 But I can rephrase it, Your Honor.

14 THE COURT:

15 What -- Why don't you read the
16 question and -- and have him give the response, rather
17 than just having him give a response; because I don't
18 know what the question was.

19 MS. LIVESAY:

20 I -- I will, Your Honor.

21 THE COURT:

22 Okay.

23 REDIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

24 Q. When the officer asked you about what you heard on
25 the way to [REDACTED] were you able to answer

1 that question?

2 A. Yes.

3 Q. Okay. And is that your answer on Page 39, Line 14?

4 A. It is.

5 Q. And could you please read that to The Court?

6 MR. MONCKTON:

7 Your Honor, I -- I think --

8 THE COURT:

9 Wait -- Let -- Ms. -- Ms. Livesay,
10 do this:

11 What line are you asking him to
12 read?

13 MS. LIVESAY:

14 Line 39, Your Honor.

15 THE COURT:

16 All right. Read him the question
17 on Line 38.

18 MS. LIVESAY:

19 There's -- There's not a question.

20 It says:

21 What happened next?

22 I would have to read several --

23 He's asking -- Officer Davis is asking him about what was
24 going on --

25 THE COURT:

1 All right. Well -- What happened
2 next? That's fine.

3 I -- I just wanted to know what
4 the question was.

5 Okay. Go ahead.

6 WITNESS:

7 After we left the apartment -- uh
8 -- he was giving me directions. The comment from the
9 backseat -- uh -- which referred to taking the cell
10 phones when they got into the apartment.

11 MS. LIVESAY:

12 Okay.

13 REDIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

14 Q. Now this is your complete statement?

15 A. It is.

16 Q. Okay. And was this statement truthful?

17 A. It was.

18 Q. Okay. And the statement you give today; was that
19 truthful?

20 A. It was.

21 MS. LIVESAY:

22 No further questions, Your Honor.

23 THE COURT:

24 Mr. Monckton?

25 MR. MONCKTON:

1 Yes, sir, Your Honor.

2 RECROSS-EXAMINATION BY MR. MONCKTON:

3 Q. Mr. Johnson, Ms. Livesay just asked you -- on Page
4 13 of your statement -- if y'all talked about a robbery?

5 And you said:

6 Yes.

7 I'm going to ask you to read this
8 to yourself -- Page 13 of your statement -- and tell me
9 if it says anything about a robbery?

10 A. It does.

11 MS. LIVESAY:

12 Your Honor, I think there might be
13 confusion. I asked him about a comment --

14 WITNESS:

15 That was Page 35.

16 MS. LIVESAY:

17 -- on Page 30; not 13.

18 MR. MONCKTON:

19 Your Honor -- On Page 13 --

20 WITNESS:

21 No sir. There's not.

22 RECROSS EXAMINATION BY MR. MONCKTON CONTINUED:

23 Q. There's no mention about a robbery; is there?

24 A. No sir.

25 Q. Now, when I was up here asking you all about your

1 statement, about going to buy marijuana; is that a lie or
2 the truth?

3 A. I was unsure of -- because at first they were going
4 -- I guess -- going to buy it to build the trust from the
5 dude. And then the next time rob him.

6 But I guess they went ahead and
7 robbed him the first time.

8 Q. Well, wait a minute, now. You testified with Ms.
9 Livesay that you knew it was going to be a robbery the
10 whole time.

11 Now, when I ask you about your
12 statement, you say you're not sure.

13 A. I didn't say I was unsure. When I saw a gun, that's
14 when I was pretty positive that they were going to rob
15 him.

16 Q. When you saw a gun?

17 A. (Nods in the affirmative.)

18 Q. Now do you remember -- This is, again, Page 17 of
19 your statement.

20 I'm going to read the question to
21 you.

22 Line 12:

23 All right. When you guys left the
24 house, did you notice they had any firearms?

25 And your answer was?

1 A. My answer was: No.

2 MR. MONCKTON:

3 No.

4 No further questions.

5 THE COURT:

6 Any questions?

7 MR. WILSON:

8 No additional questions.

9 THE COURT:

10 All right. All right?

11 MS. LIVESAY:

12 I've just got one, Your Honor.

13 RE-REDIRECT EXAMINATION BY MS. LIVESAY:

14 Q. This is from your statement, the same statement Mr.
15 Monckton showed you.

16 I'm going to read right off of it.

17 MR. MONCKTON:

18 What page?

19 MS. LIVESAY:

20 Is it safe to say while you all
21 the way over there, you had some --

22 MR. MONCKTON:

23 Your Honor, what page, please.

24 MS. LIVESAY:

25 I'm reading right off his

1 statement, Your Honor.

2 THE COURT:

3 What -- what page?

4 MS. LIVESAY:

5 39, Your Honor.

6 THE COURT:

7 What line?

8 MS. LIVESAY:

9 18.

10 THE COURT:

11 All right.

12 RE-REDIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

13 Q. Is it safe to say while you on the way over there,
14 you had some pretty good idea that a robbery was about to
15 occur?

16 What was your answer on that day;

17 Line 19?

18 A. Yes.

19 Q. And then when he asked you:

20 Okay. And no question is in your
21 mind there?

22 A. No.

23 MS. LIVESAY:

24 Okay.

25 No further questions, Your Honor.

1 MR. MONCKTON:

2 Nothing further, Your Honor.

3 THE COURT:

4 Mr. Wilson?

5 MR. WILSON:

6 Nothing further.

7 THE COURT:

8 All right. Thank you.

9 Any further need for this witness?

10 MS. LIVESAY:

11 No sir, Your Honor.

12 THE COURT:

13 Mr. Monckton?

14 MR. MONCKTON:

15 No sir.

16 THE COURT:

17 Mr. Wilson?

18 MR. WILSON:

19 Nothing, Your Honor.

20 THE COURT:

21 Mr. Johnson, you may step down.

22 Thank you for coming.

23 You are released from your

24 subpoena.

25 MS. LIVESAY:

1 Your Honor, at this time the State
2 rests.

3 THE COURT:

4 All right.

5 Take the jury into their juryroom
6 for just a few minutes, Mr. Roth.

7 (WHEREUPON: The jury empanelled
8 in the case withdrew from the courtroom at 2:20 PM, May
9 20, 2010; and was no longer present during the following
10 proceedings.)

11 THE COURT:

12 All right, gentleman; motions?

13 MR. MONCKTON:

14 Your Honor, at this time, I would
15 move for a directed verdict on behalf of the client -- my
16 client, Mario Tynes, in that:

17 The State has failed to meet their
18 burden of proof on all four counts alleged in the
19 indictment.

20 MR. WILSON:

21 And, Your Honor, just for the sake
22 of brevity, I would join in that motion.

23 And I -- In addition to that, I
24 would also add that we would renew our motions for
25 mistrial based on two previous times that we filed -- we

1 asked for in this trial --

2 THE COURT:

3 All right.

4 MR. WILSON:

5 -- on the grounds --

6 MR. MONCKTON:

7 That's correct, Your Honor. Same
8 position --

9 THE COURT:

10 And -- And I would --

11 MR. MONCKTON:

12 -- as to Defendant Tynes.

13 THE COURT:

14 And I would state that in this
15 case, it's not a matter of whether there's any evidence
16 or the weight of that evidence.

17 There's overwhelming evidence,
18 gentlemen.

19 I am -- uh -- going to deny your
20 -- your motion for a -- a mistrial -- uh -- as to both
21 Defendants; and -- uh -- as to your motion for a directed
22 verdict.

23 All right.

24 The jury's out. I'll give
25 everybody 10 minutes for a break; okay?

1 MR. MONCKTON:

2 Thank Your Honor.

3 THE COURT:

4 A bathroom break; okay.

5 (WHEREUPON: The court was
6 declared in recess at 2:21 PM, May 20, 2010.)

7 (WHEREUPON: The court was called
8 to order by the Bailiff at 2:33 PM, May 20, 2010; and all
9 pertinent parties, along with their counsel, were back
10 and present in the courtroom.)

11 DEPUTY:

12 Order in the court. All Rise.

13 THE COURT:

14 All right.

15 Mr. Tynes and Mr. Lackey, I'm
16 going to ask you to be placed under oath at this time.

17 WHEREUPON: Both Defendants are
18 sworn by the Clerk in open court..

19 THE COURT:

20 All right.

21 I want to explain to both of you
22 gentlemen, your right concerning your right to testify or
23 not testify.

24 If you don't understand anything I
25 say, please let me know.

1 And if you want me to explain
2 anything in a more detailed manner, please let me know.

3 Do you understand that, Mr.
4 Lackey?

5 DEFENDANT LACKEY:

6 Yes sir.

7 THE COURT:

8 Mr. Tynes, do you understand that?

9 DEFENDANT TYNES:

10 Yes sir.

11 THE COURT:

12 Okay.

13 Now we've reached the stage in
14 this trial where you may present your defense.

15 You have the right to claim the
16 protections given to you by the Fifth Amendment to the
17 Constitution of the United States.

18 And this amendment say in part:

19 No person shall be compelled in
20 any criminal case to be a witness against himself.

21 This means that you cannot be
22 required to testify in this case.

23 You have the right to testify on
24 your own behalf, if you choose to do so.

25 However, no one can make you

1 testify.

2 And this is a -- a personal right
3 that no one can waive except you; not even your
4 attorneys.

5 Do you understand that?

6 DEFENDANT TYNES:

7 Yes sir.

8 THE COURT:

9 Mr. Tynes and Mr. Lackey?

10 DEFENDANT LACKEY:

11 Yes sir.

12 THE COURT:

13 All right.

14 If you decide to testify, you'll
15 be subject to the same rules that govern other witnesses.
16 And you may be examined and cross-examined on any
17 relevant matter or issue in this case.

18 In addition, if you have any
19 convictions involving dishonesty or false statements, or
20 for crimes punishable by imprisonment for more than one
21 year, and this court determines that the probative value
22 of admitting this evidence outweighs its prejudicial
23 effect to you, the Solicitor will be able to introduce
24 your record to attack your credibility.

25 If you decide to testify, this

1 decision on your part must be freely, voluntarily, and
2 intelligently made, with knowledge of the protections
3 given you by the Fifth Amendment, and you con -- and the
4 consequences of your decision to testify.

5 Do you understand that? Both of
6 you?

7 DEFENDANT TYNES:

8 Yes sir.

9 DEFENDANT LACKEY:

10 Yes, Your Honor.

11 THE COURT:

12 All right.

13 If you decide not to testify, I
14 will instruct, or tell, these jurors that they cannot
15 give the fact that you did not testify any consideration
16 whatsoever.

17 And that there is to be absolutely
18 no prejudice to you because you did not testify.

19 It is left entirely up to you
20 whether or not to testify.

21 Now you have been talking with
22 your attorneys. You may continue to talk with your
23 attorney, your family, your friends, or anyone else.

24 But the final decision is going to
25 be left entirely up to you.

1 Do you understand what I've
2 explained to you, Mr. Tynes?

3 DEFENDANT TYNES:

4 Yes sir.

5 THE COURT:

6 Mr. Lackey?

7 DEFENDANT LACKEY:

8 Yes sir.

9 THE COURT:

10 Do you have any questions, Mr.
11 Tynes, about what I have explained to you?

12 DEFENDANT TYNES:

13 No sir.

14 THE COURT:

15 how about it, Mr. Lackey?

16 DEFENDANT LACKEY:

17 No sir.

18 THE COURT:

19 Do you have any questions?

20 DEFENDANT LACKEY:

21 No sir.

22 THE COURT:

23 I have -- Have you discussed with
24 your lawyers whether you should testify or not; Mr.
25 Tynes?

1 DEFENDANT TYNES:

2 Yes sir.

3 THE COURT:

4 Okay.

5 Do you wish to talk to your lawyer
6 any more at this time about that?

7 DEFENDANT TYNES:

8 No sir.

9 THE COURT:

10 Do you wish to testify?

11 DEFENDANT TYNES:

12 No sir.

13 THE COURT:

14 All right.

15 Now, Mr. Lackey, let me ask you
16 the same thing.

17 Have you discussed this with your
18 -- your attorney; whether or not you should testify?

19 DEFENDANT LACKEY:

20 Yes sir.

21 THE COURT:

22 All right.

23 Do you wish to talk to him any
24 more about that?

25 Have you had plenty of time to

1 discuss it with him?

2 DEFENDANT LACKEY:

3 I wish to discuss with him a
4 little more.

5 THE COURT:

6 Okay.

7 Go ahead.

8 WHEREUPON: Defendant Lackey
9 confers with his attorney, Mr. Wilson.

10 THE COURT:

11 All right..

12 Mr. Lackey, have you had plenty of
13 time to discuss it with your attorney now?

14 DEFENDANT LACKEY:

15 Yes sir.

16 THE COURT:

17 Do you wish to testify?

18 DEFENDANT LACKEY:

19 Yes sir.

20 THE COURT:

21 Very well, sir. All right.

22 Now, Mr. Lackey and Mr. Tynes, let
23 me advise both of you:

24 If at any time prior to the
25 conclusion of this trial, you decide to change your mind,

1 I want you to completely and fully understand, Mr. Tynes,
2 that I will allow you to testify.

3 Mr. Lackey; that I will not
4 require you to testify.

5 Do you understand that?

6 DEFENDANT TYNES:

7 Yes sir.

8 DEFENDANT LACKEY:

9 Yes sir.

10 THE COURT:

11 You can stay change your minds.

12 And I want you to be fully aware of that; okay?

13 DEFENDANT TYNES:

14 Yes sir.

15 DEFENDANT LACKEY:

16 Yes sir.

17 THE COURT:

18 All right.

19 Please be seated.

20 Uh -- How will we proceed?

21 Uh -- Mr. -- Mr. -- uh --

22 MR. MONCKTON:

23 Monckton.

24 THE COURT:

25 -- Monckton; do you -- do you

1 intend on calling a witness?

2 I know you just had Mr. Tynes and
3 his mother down as witnesses.

4 MR. MONCKTON:

5 No sir, Your Honor.

6 I do not intend to call any
7 witnesses.

8 THE COURT:

9 Okay. And this is just for
10 scheduling matters.

11 I don't want to hold you to it.

12 MR. MONCKTON:

13 No; I -- At this time, I -- I
14 would like to come back to you. Because I'm not sure
15 what Mr. Wilson's going to put up?

16 THE COURT:

17 All right.

18 Mr. Wilson, do you -- uh -- can
19 you give me some idea as to the number of witnesses you
20 might have?

21 MR. WILSON:

22 The only witness I'm going to call
23 is my Defendant.

24 THE COURT:

25 All right.

1 MR. MONCKTON:

2 And we may wish to revisit after
3 he testifies because we're not real sure --

4 THE COURT:

5 I -- I told your --- your -- your
6 client that they can change their minds.

7 If Mr. Tynes, after Mr. Lackey has
8 testified, decides that he wants to testify, I'll
9 certainly let him do it; okay,

10 Okay.

11 Let's bring the jury in.

12 After Mr. Lackey has testified,
13 we'll have a brief charge conference.

14 I've already provided you with
15 copies of the charge that I think are appropriate at this
16 time. But we'll revisit that.

17 (WHEREUPON: The jury empanelled
18 in the case was escorted back into the courtroom at 2:40
19 PM, May 20, 2010; and was in fact present during the
20 following proceedings.)

21 THE COURT:

22 All right.

23 We're about -- I have the jury
24 back in and we're going to proceed with the Defense.

25 THE COURT:

1 Mr. Monckton?

2 MR. MONCKTON:

3 Nothing at this time, Your Honor.

4 THE COURT:

5 All right.

6 Mr. Wilson?

7 MR. WILSON:

8 If it please The Court, Your
9 Honor?

10 I call Michael Lackey.

11 THE COURT:

12 All right. Mr. Lackey, come
13 around.

14 WHEREUPON: MICHAEL LACKEY WAS DULY
15 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

16 CLERK:

17 Thank you. Please be seated.

18 Please state your full name and
19 spell your last name.

20 WITNESS:

21 Michael Lackey; L-a-c-k-e-y.

22 DIRECT EXAMINATION BY MR. WILSON:

23 Q. Michael, how old are you?

24 A. 21.

25 Q. And where you live?

1 A. Stone Mountain, Georgia.

2 Q. And how long have you lived in Stone Mountain,
3 Georgia?

4 A. Uh -- Since I was in -- uh -- 10th grade.

5 Q. And who do you live with there?

6 A. My mother and my stepfather.

7 Q. Okay. And are you in school now?

8 A. Uh -- Right now at the current time, no; I'm not in
9 school.

10 Q. Okay. And let me ask you back in 2007, if you were
11 in school at that time?

12 A. Yes sir. I was a student at -- uh -- Fort Valley
13 State University.

14 Q. Okay. And -- uh -- And what year were you at that
15 time?

16 A. I was a freshman.

17 Q. All right. Now let me ask you if -- uh -- you know
18 the people who've been talked about in here during the
19 last three -- four days?

20 A. I know some of them.

21 Q. Okay. Well, let's -- First, let's start with
22 Mario?

23 How do you know Mario?

24 A. Uh -- We went to the -- uh -- same high school and
25 played football together.

1 Q. Okay. And what high school was that?

2 A. Stephenson High School in Stone Mountain, Georgia.

3 Q. Okay. And that's how you met him; and that's how
4 you know him?

5 A. Yes sir.

6 Q. All right. And, now, when you played football,
7 what position did you play?

8 A. Cornerback.

9 Q. All right. And what position did Mario play?

10 A. Uh -- He played cornerback and safety.

11 Q. Okay. Now, did you know Eric Brown?

12 A. Uh -- I met Eric Brown through Mario Tynes one
13 previous time. They -- Him and Ricky Johnson, they came
14 down to Georgia to visit one time.

15 Q. Okay. And that's how you met Eric?

16 A. Yes sir.

17 Q. How long was that -- How long ago was that? Uh --
18 Let me ask it this way.

19 How long before it was that you
20 came down here for the homecoming was it that you met --
21 uh -- Eric Brown?

22 A. Uh -- It was like the summer before -- like, the
23 summer before school had just started.

24 Uh -- They were like a year ahead
25 of me.

1 So I was a senior, getting -- just
2 graduating. And they were getting ready to go into their
3 sophomore year in school.

4 Q. So you were still in high school?

5 A. (Nods in the affirmative.)

6 Q. Now, let me ask you about Joshua. Uh -- Do you know
7 Joshua, who testified in here earlier?

8 A. Yes sir, I do.

9 Q. All right. And how did you know Joshua?

10 A. He also went to high school with us and played on --
11 uh -- the football team.

12 Q. Okay. Well now was he the same year as you; or was
13 he ahead or behind you?

14 A. He was also ahead of me one year.

15 Q. Okay. Now what about Ricky -- uh -- Johnson? Do
16 you know Ricky Johnson?

17 A. Uh -- I met him the same time that I met Eric; the
18 one time that they had visited -- uh -- and came to
19 Georgia.

20 Q. Other than the one time that you met Eric and -- and
21 Rick -- and Ricky Johnson in Atlanta -- or in Georgia --
22 uh -- did you ever see them again; other than when you
23 came down here for homecoming?

24 A. No sir; I did not.

25 Q. All right. Now often would you say that you talked

1 on the phone -- or whatever young people do now -- text
2 message with Eric -- uh -- and/or -- uh -- Joshua before
3 -- uh -- October 13th of 2007?

4 A. Uh -- I never contacted -- uh -- Eric Johnson. I
5 didn't even know -- I mean Eric Brown.

6 I didn't even know him like that.

7 Q. Okay.

8 A. Uh -- Josh, he didn't go to school. So, like the
9 summer before, like, he was still in Stone Mountain over
10 there.

11 So, like the summer before I left
12 go to school, I mean, he stayed in the same area; so we
13 hung out sometimes.

14 Q. Okay. So you would see him. But he was not in
15 school at that time?

16 A. No sir; he was not. He had already graduated the
17 previous year.

18 Q. All right. He had graduated from high school or
19 from college?

20 A. From high school.

21 Q. Okay. He had graduated from high school. And he
22 didn't go to college?

23 A. No sir.

24 Q. Okay. And -- Now, let me ask you.

25 Back -- And -- And let's go back

1 to -- uh -- prior to October 13th of 2007.

2 And let's -- let's talk about your
3 trip down here to -- uh -- South Carolina from Atlanta.

4 How was it that you came to come
5 down here?

6 A. Uh -- Well, Mario's freshman year, he had got red-
7 shirted; so he didn't really play.

8 So, it was his sophomore year.
9 And he told me that he was going to be starting.

10 It was, I think, like their first
11 home game; so he wanted me to come.

12 He said that his mom was coming
13 down. And that -- uh -- his girlfriend at the time,
14 Britney Baker, was coming down; and that I could ride
15 with her; and come and see the game.

16 Q. Okay. Did you know at that time that Joshua was
17 coming down also?

18 A. No sir, I did not.

19 Q. Okay. When did you learn that Joshua was also
20 invited and was coming?

21 A. When I got in the car with -- uh -- Brittany Baker.

22 Q. Okay. So when you got in the car with Brittany
23 Baker, that was the first time that you knew that Joshua
24 was actually coming with you -- or coming with here -- to
25 see Mario?

1 A. Yes sir.

2 Q. And y'all were coming to see him play during the
3 homecoming?

4 A. Yes sir.

5 Q. Now let me ask you:

6 During the ride from Atlanta to
7 the time you got to -- to South Carolina, was ever any
8 discussion between you and -- uh -- and Joshua and this
9 young lady -- whatever -- What was her name again?

10 A. Brittany Baker.

11 Q. Brittany Baker. Was there ever any discussion about
12 any robbery?

13 A. No sir. There was not.

14 Q. Was there ever any discussion about marijuana?

15 A. No sir. There was not.

16 Q. Was there ever any discussion about any weapons?

17 A. No sir. There was not.

18 Q. Did you see a weapon on Joshua during the ride from
19 Atlanta to South Carolina?

20 A. No sir; I did not.

21 Q. Now, when you got to South Carolina, where did y'all
22 go?

23 A. Uh -- When we got there, it was kind of late into
24 the night -- early morning.

25 So we just went straight, directly

1 to -- uh -- Mario's apartment.

2 Q. Okay. So the three of you went to Mario's
3 apartment?

4 A. Yes sir.

5 Q. All right. Now did y'all -- When you got there,
6 what did you do?

7 Once you got to Mario's apartment
8 that night or early morning -- and when you say early
9 morning, what time are we speaking of?

10 A. Like, 4:00 -- maybe 5:00 o'clock in the morning.

11 Q. Okay. So when you got there, it was 4:00 or 5:00
12 o'clock on Saturday morning?

13 is that correct?

14 A. Yes sir.

15 Q. All right. So once you got there 4:00 or 5:00
16 o'clock, what did y'all do?

17 Tell me what you did once the
18 three of you got to the house? What did you do?

19 A. Uh -- It was already late. And they had a game the
20 next day. So we just came in me.

21 Me and Josh crashed in the living
22 room on the couch and on the floor.

23 And Brittany slept in the room
24 with Mario.

25

1 Q. Okay. All right. Now, the next morning; let's
2 talk about that.

3 Tell us what happened the next
4 morning when y'all get up whatever time it was that you
5 get up; tell us about that.

6 A. Uh -- The next morning when we got up, we win to the
7 Sports Authority.

8 When we went to the Sports
9 Authority, they went to go get -- uh -- like tape and
10 different things like that for the game; gloves.

11 Uh -- Then after that, we left
12 from there. And we headed back to Mario's apartment.

13 They dropped us off.

14 It was --

15 Q. Now who is they? You said: They dropped us off.
16 Who is they? Who dropped us off?

17 A. Me -- It was -- In the car that went to the Sports
18 Authority, it was me, Mario Tynes, Joshua Readon, Ricky
19 Johnson, and Eric Brown.

20 Q. Okay.

21 A. Eric, Ricky, and Mario dropped me and Josh off back
22 at their apartment; because they had to go -- uh -- to
23 the school like for pregame and things like that to get
24 ready for game.

25 Q. Okay. So they dropped y'all back off; just the two

1 of you?

2 A. Yes sir.

3 Q. All right. And the three of them went to do
4 whatever it is -- the pregame stuff that they need to do?

5 A. Yes sir.

6 Q. All right. Now, what time of day are we talking
7 now?

8 A. Uh -- That was like around 2:00 -- 3:00 o'clock in
9 the middle day.

10 Q. Okay. Now what did you and Joshua do from 2:00
11 o'clock until game time?

12 A. Uh -- We kind of just sat around the house; watched
13 a little TV.

14 Brittany was there.

15 Uh -- Eric, who I believed at the
16 time -- his cousin -- Tory --

17 Q. Uh-huh.

18 A. -- he was there for a little while. But then, he
19 left. Because he had Eric's car keys and stuff like that
20 -- Eric had left in the car -- so he could get around.

21 So for a little while, a lot of us
22 was there. But then, Tory left the house.

23 I don't know exactly where he
24 went.

25 Q. Okay. All right. Now, did -- At some point in

1 time, did you -- did y'all leave the house?

2 Did you and Joshua leave the
3 house?

4 Or did y'all stay there the rest
5 of the day?

6 A. Uh -- We stayed at the house until it was time -- uh
7 -- until it was like a little later on in the daytime;
8 but -- uh -- the game would start like around 7:00 --
9 8:00 o'clock.

10 Q. Now, from 2:00 o'clock when y'all got back from
11 Sports Authority, until 8:00 o'clock, when you say y'all
12 -- or 7:00 o'clock -- or whenever it was that you decided
13 you were going to go to the game, was there ever any
14 discussion between you and Joshua by robbing anybody?

15 A. No sir. There was not.

16 Q. Was there ever any talk about a weapon; a gun of any
17 type?

18 A. No sir. There was not.

19 Q. Did you ever seen a gun of any type in that house,
20 or in that apartment, or on Joshua, during that time?

21 A. No sir. I did not.

22 Q. Now, tell us about the game. What -- What -- What
23 did y'all wear to the game?

24 A. Uh -- It was a pretty cool night. Uh -- I had on a
25 sweatshirt. It was navy blue. And it had like a skull

1 and like some designs and different things on it; some
2 bluejeans, and some tennis shoes.

3 Uh -- And I had on a baseball cap
4 that kind of matched my -- uh -- my hoodie.

5 It was a red Phillies' cap.

6 Uh -- Then, Josh had on some
7 bluejeans, a T-shirt, and like a black and white hoodie.

8 Q. Okay. All right. And now, were you dressed that
9 way when you went to Sports Authority?

10 A. Yes sir. I wore the same things all day.

11 Q. Did you ever change clothes from the time you got up
12 that morning and got dressed?

13 Did you ever change clothes before
14 you were arrested?

15 A. No sir; I did not.

16 Q. Now let me ask you this:

17 After eight o'clock -- or seven
18 o'clock -- whatever time it is -- in the evening -- and
19 y'all were going to the game.

20 Who goes to the game together?

21 A. Me, Josh, and Brittany Baker.

22 Brittany Baker drove her car to --
23 uh -- it's -- uh -- like they have parking lots that you
24 would park in, and then a shuttle would come and pick you
25 up and take you to the actual stadium where the game was

1 being played.

2 Q. Okay. So the -- the three of y'all ride in her
3 car. Then you go and catch the shuttle. And you go to
4 the game?

5 A. Yes sir.

6 Q. All right. Now, at the game, is there any
7 discussion between you and Josh about robbing anybody
8 while y'all at the game?

9 A. No sir.. There was not.

10 Q. Did you see Josh with a gun while y'all were at the
11 game?

12 A. No sir, I did not.

13 Q. All right. During the game, did you get any
14 opportunity to talk to Eric, or Ricky Johnson, or Mario,
15 during the course of the game?

16 A. No sir, I did not.

17 Q. All right. Now y'all were in the bleachers? Is
18 that where y'all were seated?

19 A. Yes sir.

20 Q. All right. Now, let's talk about after the game is
21 over.

22 The game gets over. Tell us what
23 happens next.

24 A. All right. The game' over with. We hop on the
25 shuttle.

1 No. Right after the game, it's
2 like everybody on the field. Mario is down there -- uh
3 -- talking to his mother.

4 So, me, him -- me, Josh, and his
5 girlfriend at the time Brittany Baker, we went down on
6 the field and took some pictures.

7 And we were just talking; having a
8 little conversation.

9 Then their coach called them all
10 over. And they like -- I guess -- had like an end of
11 game prayer.

12 And then they went into the locker
13 room. And we left.

14 Q. Okay. Now, you say: We left. Who is we, again?

15 A. Me, Josh, and Brittany Baker.

16 Q. Okay. The three of you leave? Now, how do y'all
17 get back?

18 Where do you go?

19 When y'all leave the game, where
20 do you go?

21 A. When we leave, we hop on the shuttle. And then we
22 get back in her car. And then, she drives us back to --
23 uh -- Mario, Eric, and Ricky's apartment.

24 Q. Okay. Now does she go to the -- Mario's apartment
25 also?

1 A. Yes sir.

2 Q. Okay. So, when y'all leave there, and y'all go
3 back to the apartment, it's now the three of y'all?

4 Is that right?

5 A. Yes sir.

6 Q. Is there anyone else in the apartment when y'all get
7 back there, other than the three of y'all; you, Josh, and
8 this young lady?

9 A. No sir. At first, when we first got there, there
10 was no one else there. It was just us when we first
11 arrived at the apartment.

12 Q. Okay. So, tell us what happened. Y'all get back
13 to the apartment. Then what?

14 A. We get back to the apartment. And we're chilling;
15 just sitting and waiting for a little while.

16 They had just beat the team, like
17 -- outrageous -- like 50 or 60 to nothing.

18 So after the game, we was going to
19 go out and have some fun; hit a party up or something
20 like that.

21 I'd never been up here. So I was
22 -- you know -- trying to have some fun; because the next
23 day I had to leave and go back to school in Fort Valley.

24 So we were sitting in there,
25 waiting on Mario to come.

1 Eric's cousin, Tory, came in the
2 apartment.

3 When he came into the apartment,
4 he went into Eric's room.

5 Then, he was there maybe 5
6 minutes. And then he left back out.

7 And then it was just me, Josh, and
8 Brittany again.

9 We stayed. We was there alone
10 maybe another 30 minutes before -- uh -- there was a
11 knock on the door.

12 Uh -- When there was a knock on
13 the door, it was Mario.

14 So we let him in.

15 He threw his bags down from like
16 the game or whatever -- threw them in.

17 And then he was like:

18 Uh -- Come on, we going to go get
19 something to eat real quick.

20 And then, we was like:

21 All right.

22 Brittany stayed there; because at
23 the time, I thought that it was -- uh -- Eric and Ricky
24 in the car.

25 But when we got outside, it was

1 only -- uh -- Ricky sitting in the driver's seat.

2 So, Brittany stayed there; because
3 she thought that the car was full. That's why she didn't
4 ride with us when we left to go get something to eat.

5 Q. Okay. So Brittany stayed at the apartment. You and
6 Joshua then went with Mario to the car?

7 A. Yes sir.

8 Q. And Ricky Johnson was already in the car, driving
9 the car?

10 A. Yes sir.

11 Q. All right. Then what?

12 A. Uh -- We were walking out of the apartment. I
13 called "front seat." So, I hopped in the front seat.

14 Mario and Josh hopped in the
15 backseat.

16 So we're riding, talking about the
17 game.

18 Mario was the only one out of his
19 roommates who actually started, or even played that
20 night.

21 So we was just talking about the
22 game.

23 He had a pretty good game.

24 After that -- uh -- we was talking
25 about where we going to go eat.

1 Ricky got a phone call.

2 I guess -- uh -- the phone call
3 was from Eric. That's what he said when he got off the
4 phone.

5 He said:

6 Eric wanted me to come and pick
7 them up real quick. So we gone swing by there real fast,
8 so I can pick him up.

9 And then, we're going to go and
10 get something to eat after that.

11 Q. Okay. Go ahead. So then what?

12 A. After that -- uh -- we were just driving in the car
13 listening to the music on our way to going to pick up
14 Eric.

15 Then, we pulled into an apparent
16 complex.

17 Ricky -- I guess at the time he
18 was trying to call -- uh -- Eric, and find out exactly
19 where in the apartment complex he was.

20 He -- uh -- At first, he didn't
21 pick up the phone. Eric didn't pick up the phone.

22 Ricky had the phone to his ear.

23 And then, he hung it up, like it
24 was only straight to the voicemail.

25 He corded (phonetic) that like two

1 or three times.

2 After that, I guess -- uh -- Eric
3 finally picked up the phone and told him where he was.

4 So Ricky pulled over to that side
5 of the apartment complex. And he backed into a -- uh --
6 into a parking spot.

7 Q. Okay. All right. So, now, when y'all pull up to
8 the apartment complex, who's in the car with you?

9 A. It's Ricky driving, me, Mario, and Josh.

10 Q. The four of you are in the car?

11 A. Yes sir.

12 Q. All right. And are the windows up; or are the
13 windows down?

14 A. The windows were up.

15 Q. Okay. Now, does -- Can you roll the windows down
16 in that car; or could they be rolled down to your
17 knowledge?

18 A. No sir. They could not.

19 Q. All right. Now, when y'all got to -- uh -- Well,
20 let me back up before I -- I go from that point -- from
21 the apartment; and go back to the time when Mario comes
22 in with his bag from the game.

23 When Mario comes to the room, is
24 there anybody else in the apartment other than, you,
25 Josh, and his girlfriend?

1 A. No sir.

2 Q. All right. Was there any guns in sight when y'all
3 -- when y'all were having -- When he comes in and he puts
4 down his bag, is there any gun in sight anywhere in that
5 room?

6 A. No sir.

7 Q. On the drive from the school apartment to wherever
8 it was y'all were going -- Flint Lakes, or whatever the
9 name of the place is -- was there ever any discussion
10 about robbing somebody at that point?

11 A. No sir. There was not.

12 Q. Did y'all ever talk about robbing somebody; or -- or
13 cruising somebody -- or whatever the word was -- cushing
14 somebody or whatever it was.

15 Was there any discussion about
16 that?

17 A. No sir.

18 Q. Okay. Once y'all got to the apartment and you
19 backed in, you said; tell me what happened from that
20 point.

21 A. Uh -- At the time -- uh -- I had noticed that -- uh
22 -- earlier that day that Ricky -- no -- Eric had a cast
23 on one of his hands.

24 I think he had broke his -- his
25 wrist or something like that.

1 That's why he didn't play in the
2 game or whatever.

3 So -- uh -- Ricky was like:

4 I'm going to be right back. I'm
5 fixing to go help Eric grab his bags.

6 Q. Okay. All right. Go ahead. Then what?

7 A. All right. Then after that -- uh -- Ricky left the
8 car running with the radio and everything on.

9 It was -- uh -- me, Josh, and
10 Mario sitting in the car.

11 Uh -- Josh was getting ready to --
12 uh -- smoke a cigarette.

13 But the windows in the car
14 wouldn't let down. So he couldn't blow the smoke out.

15 And I have allergies. So I was
16 like:

17 Bro, can you please -- you know --
18 step out the car and smoke that cigarette, 'cause you
19 know that junk be killing me.

20 Q. All right. Then what? What did he do?

21 A. Then at that time, he was like:

22 All right; I got you, Bro.

23 And he stepped right out of the
24 car and closed the door.

25 Q. Okay. All right. Go ahead. Tell us what

1 happened.

2 A. Uh -- After that -- uh -- I guess Rick was gone
3 maybe all of 5 minutes before -- uh -- they returned back
4 to the car.

5 And Ricky jumped back in the front
6 driver's seat.

7 Eric jumped in the back behind --
8 uh -- Ricky.

9 And Josh got back in the car
10 behind me.

11 Q. Okay. Where was Tory? Did you see him?

12 A. No sir, I did not see Tory that night.

13 Q. Okay. All right. Did you see Craig Collins that
14 night?

15 A. I don't know a Craig Collins.

16 Q. All right. Did you see Justin that night?

17 A. I don't know a Justin.

18 Q. All right. Did you meet them at any point in time
19 while you were down here in South Carolina -- those --
20 those individuals?

21 A. No sir, I did not.

22 Q. All right. Other than Tory?

23 A. Only Tory, 'cause he was staying with Eric at -- uh
24 -- their apartment; just like we was staying with Mario.

25 A. All right. Describe for me -- uh -- Tory?

1 A. Tory's like -- uh -- he was like a light skinned
2 dude; kind of average height. Wasn't to big. Wasn't too
3 small. Kind of like average.

4 Kind of light skin. Maybe a
5 little lighter than my complexion now; or around the same
6 complexion that I am.

7 Q. Okay. All right. Now tell me, once y'all got
8 back in the car -- once everybody was back in the car,
9 what did y'all do then?

10 A. Uh -- When we got out -- When we got back into the
11 car -- uh -- Ricky pulled out of the -- uh -- parking
12 spot. And we drover out of the -- uh -- we were
13 proceeding to drive out the -- uh -- apartment complex.

14 When we drove out of the apartment
15 complex, he turned onto the road. And he was kind of
16 speeding -- going a little fast.

17 Uh -- We was driving down the
18 street.

19 It was a van in front of us. And
20 instead of slowing down, Ricky proceeded to go around the
21 van; like he went around into the next lane over.

22 But it was only a two-lane street.
23 So he turned like he was coming in the on-coming traffic;
24 but there was no cars on that side.

25 He turned the -- He swerved into

1 the other lane. And then, once he passed the van, he
2 swerved back into the right lane.

3 I was in the front seat. And I
4 said:

5 Why are you driving so fast? Why
6 you driving crazy like that?

7 Then, once I made that statement,
8 he kind of slowed down a little bit.

9 Q. Okay. All right. Now how long after y'all are in
10 the car and you're leaving [REDACTED] was it before the
11 police stopped you?

12 A. Maybe two -- three minutes --

13 Q. Okay.

14 A. -- at the most.

15 Q. All right. Now, during that two or three minutes,
16 did anybody throw anything out of the car that you saw?

17 A. No sir.

18 Q. Did anybody open the doors of the car after they get
19 -- after everybody got in and y'all pulled off?

20 A. No sir.

21 Q. When -- You said it was two or three minutes. Now
22 let me go back. And let's go back. And -- And, so I can
23 just ask you straight out.

24 At any point in time, did you go
25 in the home or the apartment of Sean Barrett?

1 A. No sir. I do not know a Sean Barrett is.

2 Q. Did you go into any apartment at Flint Lakes period.

3 A. No sir, I did not.

4 Q. Did you ever have a weapon in your hands; either of
5 these guns that the State has introduced?

6 Have you -- Have you had
7 possession of either of these guns at any point in time
8 during the time that you were in South Carolina?

9 A. No sir; I did not.

10 Q. Did you ever have possession of any of these bags of
11 marijuana while you were here?

12 A. No sir, I did not.

13 Q. Did you ever collect any cell phones and wallets and
14 money while you were here?

15 A. No sir, I did not.

16 Q. From any individuals?

17 A. No sir, I did not.

18 Q. Now let me go and ask you:

19 When y'all were riding along in
20 the police pulled you over, tell us what happened then.

21 A. All right. We're -- uh -- Like I said, Ricky drove.
22 And there was a van in front of us.

23 He kind of swerved around it and
24 got in front of the van.

25 Then after that, he kind of slowed

1 down a little bit.

2 About maybe 30 seconds after that,
3 I seen a white police patrol car riding down in the
4 opposite direction of where we were going.

5 And I made the statement, I said:
6 See, you driving crazy and there
7 go the police right there. They could have pulled us
8 over.

9 As -- We was riding. And then I
10 noticed from looking in the rearview mirror that the
11 white police car had made a U-turn and got behind us.

12 Uh -- It -- He didn't pull us over
13 immediately. He didn't even turn on his lights or
14 nothing like that.

15 He just followed us for maybe a
16 minute.

17 We got to a Kangaroo gas station
18 that was on the left.

19 We pulled into the Kangaroo gas
20 station. And we pulled into a parking space right in
21 front of the gas station.

22 Uh -- Somebody was going to go
23 inside the store.

24 But before anyone could get out
25 the car, the police officer flipped on his lights and he

1 flipped the high-beams on the car.

2 Q. All right. Now once the officer started getting
3 y'all out of the car, let me ask you this:

4 Did they search each of you?

5 A. Yes sir, they did.

6 Q. All right. Did you have any cell phones on your
7 person?

8 A. No sir.

9 Q. All right. And as far as you know, did the police
10 take any cell phones from the car?

11 A. No sir, I do not know of that.

12 Q. Were there any wallets belonging to any of the
13 individuals who were allegedly in the apartment taken
14 from you or from anybody else in the car that you know
15 about?

16 A. No sir.

17 Q. Once the officer searched you, they find any drugs
18 on you -- on your person?

19 A. No sir, they did not.

20 Q. Any weapons on your person?

21 A. No sir, they did not.

22 Q. Any cell phones belonging to anybody on your person?

23 A. No sir, they did not.

24 Q. Any wallets with identification or any other things
25 or credit cards in them that belonged to anybody from the

1 apartment in your possession?

2 A. No sir, they did not.

3 Q. Did they find any in the car to your knowledge?

4 A. No sir, not to my knowledge.

5 Q. Now, let me ask you this. And then I'm going to be
6 finishing.

7 Did you participate in any way in
8 robbing Sean Barrett of his dope?

9 A. No sir; I did not participate in any type of
10 robbery, sir.

11 Q. All right. When you came down here, did you know
12 about Joshua's plan to rob anybody?

13 A. No sir; I did not.

14 Q. Or alleged plan?

15 A. No sir; I did not.

16 MR. WILSON:

17 Answer any questions that the
18 State might have.

19 THE COURT:

20 Ms. Lively?

21 MS. LIVELY:

22 Thank Your Honor.

23 CROSS-EXAMINATION BY MS. LIVELY:

24 Q. All right; Mr. Lackey. How old are you, again?

25 A. I am 21.

1 Q. 21. And how old were you at the time whenever you
2 went there in October of 2007?

3 A. Uh -- I was turning 19 the next week. I was 18 at
4 the time, though.

5 Q. Okay. And you said that you've known -- uh --
6 Mario for a long time; went to high school with him?

7 Is that right?

8 A. I've known him since the 10th grade -- like the
9 summer right after 10th grade.

10 I went to three different high
11 schools.

12 Ninth grade, I went to a school
13 called Jonesboro. Then I went to a school in De -- uh --
14 kalb County called Redan.

15 And then my second part of my
16 temporary year, I switched.

17 And that's when I started going to
18 Stephenson. And that's when I -- uh -- met Mario.

19 Q. Okay. And -- uh --

20 COURT REPORTER:

21 Excuse me a minute. What was that
22 first school's name?

23 WITNESS:

24 Jonesboro High School.

25 COURT REPORTER:

1 No; Reader or something like that?

2 WITNESS:

3 Redan.

4 MS. LIVELY:

5 Okay. All right.

6 CROSS-EXAMINATION BY MS. LIVELY CONTINUED:

7 Q. So, basically then, you knew Mario for quite some
8 time?

9 A. Yes ma'am. About two or three years.

10 Q. All right. And you also knew Joshua Readon for a
11 while too?

12 A. Yes ma'am. About two or three years also.

13 Q. And all of y'all are from Atlanta?

14 A. Uh -- I was only one that was originally from
15 Georgia. Uh -- They were from Miami; but they had moved
16 to the same area.

17 Q. Well, let me rephrase that.

18 All of y'all, from the time that
19 you knew them, had been in the area of Atlanta?

20 A. Yes ma'am.

21 Q. Okay. That's what I'm trying to get at.

22 And Uh -- And all of the three of
23 y'all were pretty close friends? Correct.

24 A. Yes ma'am.

25 Q. Okay. Now whenever you -- uh -- came to CCU for

1 that homecoming game, you rode in the car with Joshua
2 Readon for several hours; correct?

3 A. Yes ma'am. It's like a 5 hour trip from Georgia to
4 get here.

5 Q. Five hour trip. Okay. And -- uh -- And let me ask
6 you this too, before I get to -- to that 5 hour trip.

7 Uh -- Have you ever been around
8 Mario whenever he was smoking weed back then?

9 A. Uh -- We had smoked previously in high school. But,
10 it had been awhile since I had like seen him.

11 "Cause like the football players
12 and stuff, they usually be gone down when they come home
13 so much during the summer 'cause they be having practice
14 and Spring training.

15 So like since he had started
16 school, I hadn't seen him as much as I did when we were
17 in high school.

18 Q. Okay. Mr. Lackey, did you know -- yes or no --
19 that Mario Tynes would smoke weed; yes or no?

20 A. Yes. I -- I knew that in the past that Mario had
21 smoked weed.

22 Q. Okay.

23 A. Yes ma'am.

24 Q. Okay. Now -- uh -- So getting back to the trip now
25 from Atlanta to -- uh -- to here in Horry County.

1 You're in a car for 5 hours --

2 A. Yes ma'am.

3 Q. -- with Joshua Readon.

4 A. Yes ma'am; and Brittany Baker.

5 Q. And Brittany Baker. And Joshua, at no time during
6 that 5 hour trip, told you about a plan with Mario to
7 steal some drugs?

8 A. No ma'am. He did not.

9 Q. Okay. All right. Uh -- So, you -- Was it your
10 belief that y'all were making that first time trip to CCU
11 for a football game?

12 A. Yes ma'am.

13 Q. All right. So let's get to the football game that
14 night then.

15 After the football game -- or even
16 before the football game -- were you ever around for any
17 conversations about -- you know -- you hooking up to get
18 some weed; any -- at any time that weekend?

19 A. No ma'am.

20 Q. All right. So you're saying that there was
21 absolutely no conversations about smoking weed or getting
22 weed the whole weekend?

23 A. No ma'am.

24 Q. All right. Were you in the apartment -- uh --
25 staying with Eric and Mario Tynes that whole weekend?

1 A. No. I had just got there the morning of the game;
2 Saturday morning around 4:00 or 5:00 o'clock.

3 Q. Okay. Well, from that time, 4:00 or 5:00 o'clock,
4 you were there with Eric Brown, Ricky Johnson, and Mario
5 Tynes; correct?

6 A. Yes, from the time I got there to the time they left
7 for the pregame; yes ma'am.

8 Q. Okay. And did you ever, during that time -- Well,
9 let me just say:

10 You said that you never saw any
11 white guy come to the apartment at any time that day?

12 Is that right?

13 A. Yes ma'am; that is correct.

14 Q. Okay. So you do know -- So you're saying you do
15 know Craig Collins?

16 A. No ma'am. I do not know a Craig Collins.

17 Q. That's fine. Well, let's just get back to -- let's
18 just get to the -- uh -- cut to the chase, then.

19 Right before y'all left to go and
20 get something to eat for that night --

21 A. Yes ma'am?

22 Q. You were in that apartment with Mario Tynes, Eric
23 Brown, Ricky Johnson, and -- uh -- Joshua Readon; right?

24 A. No ma'am.

25 Q. No?

1 A. The only people that were inside the apartment that
2 night before we went to go get something to eat, was:
3 me, Joshua, Brittany Baker, and then, Mario came to the
4 door to drop off his bags.

5 Ricky never came inside the house.

6 And Eric never came back inside
7 the house.

8 The only person that had came back
9 inside the house that was staying there that night was
10 Tory.

11 And he came for a second. And
12 then he left back out.

13 Q. Okay. So you're saying that Ricky was -- I guess
14 -- waiting out in the car for all of y'all -- for Mario
15 to jump off his stuff, get you guys, and then y'all were
16 going to head out and get something to eat?

17 A. Yes ma'am.

18 Q. Okay. So, that's what you're saying? They never
19 came inside?

20 A. Not -- uh -- Ricky Johnson. No ma'am, he did not
21 come inside.

22 Q. Did you see any money being -- uh -- handed to
23 anyone? Any large sums of money?

24 A. No ma'am, I did not.

25 Q. You didn't. All right. Uh -- So you get into the

1 car with Ricky Johnson. Mario's in there and Josh
2 Readon.

3 And you said:

4 I called front seat, passenger
5 side.

6 So you get in the front seat?

7 A. Yes ma'am.

8 Q. All right. Now I'm going to ask you this:

9 Was the first time you got out of
10 that vehicle -- out of that passenger seat -- whenever
11 you were asked to get out by the police?

12 A. Yes ma'am. We were stopped at the Kangaroo gas
13 station --

14 Q. Okay. I want to make sure I understand your story.

15 So you're in the front passenger
16 seat. And you never get out at any time whenever y'all
17 stop at that apartment where you think Eric Brown's being
18 picked up?

19 A. No ma'am.

20 Q. All right. Okay. So -- uh -- while you're
21 sitting there, you mentioned that:

22 Ricky actually gets out of the
23 car.

24 I guess he goes to see what's
25 holding up Eric?

1 Is that right?

2 A. No. He didn't -- uh -- go to see what was holding
3 up Eric.

4 He said that -- uh -- he was going
5 to help -- uh -- Eric grab his bag.

6 Q. Because he's got a broken wrist, and he was going to
7 help him out; right?

8 A. Yes ma'am.

9 Q. That's right. Okay. So you're sitting in the
10 front passenger seat; never get out of there.

11 He's going in there.

12 He's going to check on Eric;
13 'cause he wants to help him out, according to what you're
14 saying.

15 And Josh starts to light up a
16 cigarette. And you're allergic. So you tell him:

17 Man, can you please step outside
18 the car..

19 A. Yes ma'am. I have allergies. And the cigarette
20 smoke, it -- it bothers with me -- make's it -- make it
21 kind of hard --

22 Q. I --

23 A. -- for me to breathe.

24 Q. I understand. Okay. So he steps out of the
25 vehicle.

1 Where does he go?

2 A. He steps like -- to the back -- like kind of
3 substantially in the same on the trunk of the car.

4 O. Uh-huh.

5 A. And that's the -- uh -- that's the -- uh -- I don't
6 remember him going anywhere, other than sitting in -- on
7 the trunk of the car smoking a cigarette.

8 Q. So he never even left the -- the car, really?

9 A. Not to my knowledge; no ma'am.

10 Q. Okay. Well, I mean, you said he went and such as
11 the on the back trunk. I mean, if he'd had moved or
12 walked around, wouldn't you have seen him?

13 A. If he would have walked in -- in front of the car;
14 yes ma'am, I would've seen him.

15 Q. Right. And y'all backed into that parking space;
16 didn't you?

17 | A. Yes ma'am.

18 Q. Okay. So we can agree on that, with what Ricky
19 Johnson said. Y'all backed in that parking lot?

20 | A. Yes ma'am.

21 Q. Okay. And Josh Readon is sitting on the back -- uh
22 -- after he's out there smoking a cigarettes; right?

23 A. Yes ma'am.

24 Q. Okay. So then, let me understand:

25 Everybody that's still out --

1 that's out of that -- that car; it's Ricky Johnson, Eric
2 Brown, who you haven't seen yet, and Josh Readon, who is
3 sitting on the back trunk?

4 Is that right?

5 A. Yes ma'am.

6 Q. Okay. Because you and Mario are just sitting there
7 in the car?

8 A. Yes; we were having a -- uh -- conversation about
9 the game; everything that had happened, and what we was
10 going to do later after we picked up Eric and got
11 something to eat.

12 Q. Uh-huh.

13 A. Things like that.

14 Q. Things like that?

15 A. Yes ma'am.

16 Q. Okay. And did -- uh -- And did Rick -- And how
17 long was Josh smoking that cigarette?

18 A. Uh -- Probably like -- The -- He didn't get back
19 into the car until -- uh -- Eric and Ricky jumped back in
20 the car.

21 Q. Okay. So Eric and Ricky jumped back in the car.

22 Now, you say Eric has the big cast
23 on his hand; right?

24 A. Yes ma'am.

25 Q. Okay. So Eric has a cast on his hand. Uh -- And

1 Ricky jumps back into the car?

2 A. Yes ma'am.

3 Q. Did you see them holding anything?

4 A. Uh -- I seen Eric, when he got in the back, it
5 looked like -- you know what I'm saying -- he kind of had
6 a bag or something like that.

7 He kind of just sat it on the
8 floor.

9 I really wasn't paying attention;
10 trying to look and see what it was.

11 I knew that they was football
12 players. And from playing football, you always have like
13 a athletic bag or whatever.

14 Q. Uh-huh.

15 A. So I just -- I just kind of thought that it was just
16 another bag that he -- from the game or whatever --

17 Q. Okay.

18 A. -- that he probably was carrying.

19 Q. All right. That's fine. All right. So he
20 probably had a bag you thought was just an athletic bag?

21 A. Yes ma'am.

22 Q. All right. Well, then -- uh -- when Mr. Ricky gets
23 back in the car right next to you, into the drivers seat,
24 what was he -- what did he have in his hands?

25 A. He didn't have anything in his hands.

1 Q. Didn't have anything in his hands? Okay.

2 But you said Eric had something in
3 his hands; but you just don't know what it was?

4 A. Correct.

5 Q. Okay. Well, then explain something to me.

6 Well, wait a minute. Let me ask
7 you one more thing.

8 Where was Eric sitting in that
9 car?

10 A. He was sitting in the back -- uh -- the backseat.

11 Q. Behind you or behind Ricky?

12 A. He was sitting behind Ricky.

13 Q. Really?

14 A. Yes ma'am.

15 Q. Okay. Well then, if he's sitting in the backseat
16 behind Ricky, who's the driver; you're sitting in the
17 front passenger seat and you had never moved, then I want
18 you to tell me how it was that:

19 Whenever the police pulled over
20 that car, they found all of this under your passenger
21 seat?

22 Can you tell me that?

23 And you never saw it.

24 You said you didn't Ricky --

25 A. Yes ma'am.

1 Q. -- putting anything -- Tell me how they found all
2 that under the passenger seat without you knowing, Mr.
3 Lackey?

4 A. When we were -- When we got pulled over into the --
5 uh -- Kangaroo gas station, in the backseat, there was
6 like some fidgeting going around in the backseat.

7 Q. Uh-huh.

8 A. This is a -- The Crown Vic, as you look at the
9 picture, it's a big car. So it's like a lot of room.

10 It's not like we were smushed, or
11 like Eric couldn't go and put something under my seat, or
12 put something under the other seat.

13 I just know that it was a -- it
14 was some fidgeting going on in the backseat.

15 Q. Uh-huh. Some fidgeting?

16 A. Yes ma'am.

17 Q. Well, you said the Crown Vic is a pretty big
18 vehicle; y'all weren't smushed in there; right?

19 A. Correct.

20 Q. And he's all the way behind Ricky on -- on behind
21 that driver's seat. You're all the way up in the front
22 seat in the passenger.

23 Those are the two most opposite
24 sides of that big vehicle, Mr. Lackey.

25 And you want to say that he was

1 able to stretch with his broken hand to shove all of
2 those bags of marijuana underneath your seat?

3 Is that what you're telling us?

4 Q. He still had a extra free hand; and because -- it's
5 not like it was a SUV or a van.

6 It's a car where three people can
7 sit in the back seat comfortably.

8 And if you're sitting in a
9 backseat of a car, you can still -- if you're sitting
10 behind the driver's side, you can still reach from where
11 you're sitting and -- you know -- reach under like this;
12 or from the other side, reach under and put something
13 under this seat.

14 Q. Well, while he was maneuvering so well with his one
15 able hand to put all the marijuana under there, you're
16 saying he also put the two guns underneath your seat?

17 A. Uh -- I don't know where the guns were found. I --
18 I heard -- From the police report, I heard -- I didn't --
19 I don't -- I don't remember exactly where they said the
20 guns were found.

21 I just remember them saying that
22 -- uh -- they found some marijuana under the seats.

23 Q. Okay. So you never saw any guns?

24 A. No ma'am, I did not.

25 Q. Well, let's -- let's talk about something that we

1 can agree upon.

2 We can agree that you were
3 obviously in town that weekend; right?

4 A. Yes ma'am.

5 Q. We can agree that you did end up going to some [REDACTED]
6 [REDACTED], where you believed Eric Brown was being
7 picked up?

8 But you did go there with Ricky
9 Johnson driving that vehicle; right?

10 A. Yes; it was a apartment complex. I'm not sure of
11 the name of it. It was my first time here.

12 Q. Okay. We can also agree that you testified that
13 you were wearing -- uh -- navy and black clothing?

14 Is that right?

15 A. No ma'am; I never said I was wearing black clothing.

16 Q. You said navy -- I had on some navy hoodies and --
17 uh -- and I wrote down "black."

18 I assumed that you had said
19 something that you were wearing was black.

20 A. No ma'am. I said I had on a -- a navy blue hoodie,
21 with like a skull kind of design on the back, and some
22 paint on the back.

23 And I had on some bluejeans and
24 some -- uh -- gray and blue Nikes.

25 Q. Okay. Maybe I just meant -- So you had on dark

1 clothing,

2 I'm sorry, let me rephrase.

3 It was dark?

4 A. Uh -- My hoodie was dark except for the design.

5 Q. Okay. All right. Uh -- Then -- So that was
6 something else we can agree upon is that your -- your
7 hoodie was dark with a design on it.

8 And then we can also agree that --
9 uh -- whenever you were in that vehicle, that it was all
10 5 of you in that vehicle when it got pulled over?

11 A. Yes ma'am. When we got stopped, it was all 5 of us
12 in --

13 Q. Yes.

14 A. -- the vehicle at that time.

15 Q. And clearly that was you on the video getting out of
16 the vehicle whenever they were pulled over -- when you
17 were pulled over by the police?

18 A. Yes ma'am. That was me in the blue and the red hat.

19 MS. LIVELY:

20 That's all I have, Your Honor.

21 MR. MONCKTON:

22 Just a couple of questions, Your
23 Honor.

24 CROSS-EXAMINATION BY MR. MONCKTON:

25 Q. Ricky, in the -- uh -- you were talking about the

1 video.

2 The gentleman that gets out of the
3 backseat wearing the white sweatshirt; is that Mario?

4 A. Yes sir. That was.

5 Q. Did Mario get out of the car with you at [REDACTED]
6 [REDACTED]?

7 A. I didn't get out the car at [REDACTED]
8 and neither did Mario Tynes.

9 We were in the car talking.

10 And the only person that stepped
11 out of the car was Ricky Johnson.

12 He said that he was going to go
13 and help Eric and Josh. And he said, he was going to
14 smoke a cigarette.

15 And I asked him to step out. And
16 he did.

17 And it was just me and Mario
18 sitting in the car at that time.

19 MR. MONCKTON:

20 No further questions.

21 MR. WILSON:

22 Nothing further, Your Honor.

23 THE COURT:

24 Very well.

25 MS. LIVELY:

1 I have no further questions, Your
2 Honor.

3 THE COURT:

4 You may step down, sir.

5 MR. WILSON:

6 No further testimony.

7 THE COURT:

8 Defense rests?

9 MR. WILSON:

10 Yes sir.

11 THE COURT:

12 All right.

13 Well, ladies and gentlemen, we're
14 at that stage of the case where you will now hear closing
15 arguments for the State.

16 Open and close; or just closing.

17 MS. LIVESAY:

18 I'm ready, Your Honor, whenever
19 everyone else is.

20 THE COURT:

21 All right. You want about 10
22 minutes before closing arguments?

23 MR. MONCKTON:

24 Please, Your Honor.

25 THE COURT:

1 Okay. Take them into their
2 juryroom.

3 MR. MONCKTON:

4 May I approach, Your Honor?

5 THE COURT:

6 Yes.

7 (WHEREUPON: Counsel for each party
8 conferred off the record with The Court at the bench at
9 3:22 PM, May 20, 2010.)

10 (WHEREUPON: The jury empanelled
11 in the case withdrew from the courtroom at 3:22 PM, May
12 20, 2010; and was no longer present during the following
13 proceedings.)

14 THE COURT:

15 All right.

16 MR. MONCKTON:

17 Your Honor, at this time, I would
18 -- at the conclusion of all testimony, I would renew my
19 motion for a directed verdict at this time, Your Honor,
20 with the arguments already previously stated on the
21 record.

22 MR. WILSON:

23 Your Honor --

24 THE COURT:

25 All right, sir. And Mr. Wilson?

1 MR. WILSON:

2 Yes, sir, Your Honor.

3 I would join that motion; and
4 again, add the motions for direct -- for a mistrial.

5 THE COURT:

6 And I'm sure that --

7 MR. MONCKTON:

8 I join in that as well, Your
9 Honor.

10 THE COURT:

11 All right. And for the same
12 reasons I've previously indicated, I would respectfully
13 deny your emotions.

14 Gentlemen, I want to talk about
15 the charge.

16 I've already provided you with a
17 transcript of -- of my charge.

18 The only difference -- and I will
19 -- in that -- is of course, I wanted to put it a specific
20 -- I mentioned "mere presence," but I'd like to put in a
21 specific charge as to "mere presence," which I've
22 provided to the State.

23 And I think Ms. Lively agrees that
24 after this last witness it would certainly be
25 appropriate.

1 Also, I have had this -- uh --
2 this charge -- uh -- a typical identification -- uh --
3 charge.

4 Has there been any identification
5 issues in this trial that would require that?

6 MS. LIVELY:

7 No. The only thing that was
8 brought up by a victim witness was the one that you told
9 the jury they could not -- uh -- consider.

10 And then every other I.D. has been
11 through a codefendant.

12 MS. LIVESAY:

13 Right.

14 MS. LIVELY:

15 So, there has --

16 THE COURT:

17 Codefendants, friends, and that
18 sorts of --

19 MS. LIVELY:

20 -- not been any identification
21 issues.

22 MR. MONCKTON:

23 I would agree to take that one
24 out.

25 MR. WILSON:

1 I agree.

2 THE COURT:

3 Okay.

4 MS. LIVELY:

5 Yeah.

6 THE COURT:

7 All right.

8 Uh -- Has there been any evidence
9 of a prior record of any witness?

10 MR. MONCKTON:

11 No sir.

12 MS. LIVELY:

13 No sir.

14 THE COURT:

15 Okay; I'm going to delete that.

16 Uh -- Of course, I'm going to give
17 you a charge on failure of the -- uh -- Defendant to
18 testify; hand of one is hand of all.

19 Uh -- I'm going to follow that.

20 That's where I'm going to insert "mere presence," okay.

21 MS. LIVELY:

22 Okay.

23 THE COURT:

24 Right after hand of one is hand of
25 all.

1 Then, I'm going to give a charge
2 on multiple charges.

3 First degree burglary will follow
4 that.

5 Uh -- Then armed robbery. Y'all
6 have copies of that.

7 These are right out of the charge
8 book.

9 Possession with intent to
10 distribute.

11 Uh -- That's followed by unlawful
12 carrying of a pistol and the jury verdict -- verdict.

13 Is -- Is there any request for a
14 further charge from the Defense?

15 MR. MONCKTON:

16 No sir, Your Honor.

17 THE COURT:

18 Mr. Wilson?

19 MR. WILSON:

20 No sir.

21 THE COURT:

22 Okay.

23 Any -- uh -- re -- uh -- charge
24 for -- uh -- request for a further charge from the State?

25 MS. LIVESAY:

1 No sir.

2 THE COURT:

3 All right.

4 So you know how I'm going to
5 charge. And that should assist you in your arguments.

6 All right. Okay.

7 Let's -- uh -- Let's take -- uh --
8 just a few minutes.

9 And who will argue first?

10 MR. MONCKTON:

11 I'll go first.

12 THE COURT:

13 All right. We'll let --

14 MR. MONCKTON:

15 And if we could start back at
16 twenty till so we can make sure we got everything in.

17 THE COURT:

18 Twenty till. And I -- Yeah. Go
19 ahead and get your witnesses (sic).

20 You want to look at the verdict
21 form?

22 I have a verdict form on each
23 charge for each Defendant that simply says:

24 Guilty or not guilty; circle one.

25 (Laughter erupts in the

1 courtroom.)

2 MS. LIVELY:

3 It's got to be easy for them to
4 find.

5 THE COURT:

6 All right.

7 (WHEREUPON: The court was
8 declared in recess at 3:28 PM, May 20, 2010.)

9 (WHEREUPON: The court was called
10 to order by the Bailiff at 3:39 PM, May 20, 2010; and all
11 pertinent parties, along with their counsel, were back
12 and present in the courtroom.)

13 DEPUTY:

14 Order in the court. All Rise.

15 THE COURT:

16 All right. We're a few minutes
17 early.

18 Anything further?

19 MS. LIVESAY:

20 No sir. Nothing from the State.

21 MR. MONCKTON:

22 No sir, Your Honor.

23 THE COURT:

24 You ready, Mr. Monckton?

25 MR. MONCKTON:

1 Yes, sir, Your Honor.

2 THE COURT:

3 All right, Mr. Hemmingway, if the
4 jury's ready.

5 (WHEREUPON: The jury empanelled
6 in the case was escorted back into the courtroom at 3:40
7 PM, May 20, 2010; and was in fact present during the
8 following proceedings.)

9 THE COURT:

10 All right.

11 Ladies and gentlemen of the jury,
12 we're about to begin our closing arguments.

13 Before we do, just let me make a
14 comment or two to you.

15 First of all, as I said at the
16 beginning of this trial, closing -- neither closing
17 arguments or opening remarks are evidence in the case.

18 The attorneys, as they argue, are
19 permitted to comment on the facts and the law in this
20 case. But the facts will be as you find them from the
21 evidence you have heard from the witness stand.

22 And the law that you will apply
23 will be the law as I give it to you.

24 Once again, their arguments are
25 not evidence. However, it is proper that they -- they

1 comment on the evidence and give your -- you their view
2 of the evidence; okay.

3 Mr. Monckton?

4 MR. MONCKTON:

5 May it please The Court, Your
6 Honor? Ms. Lively and Ms. Livesay.

7 Ladies and gentlemen of the jury,
8 the case is now over as far as testimony.

9 All you get to hear now is what we
10 call closing statements.

11 And I can promise you, you've
12 listened to everything, because I've watched you. And
13 I'm not going to rehash all the testimony.

14 That would insult y'all and it
15 would be extremely boring.

16 But, what I am going to do, is:

17 I'm going to hit on some hi-lights
18 that I think are extremely, extremely important.

19 There's a lot of evidence that
20 came into this case that I didn't object to; pretty much,
21 everything. Because I wanted you to see it all. Because
22 it -- it is, as they say, what it is.

23 Perfect example:

24 This is marijuana. No doubt about
25 it. That's what it is.

1 You get it back there in the
2 juryroom, you can smell it. Ain't no doubt what it is.

3 Guns. They're guns. Ain't no
4 doubt about it. You saw them on the video.

5 You know, one of the most
6 important pieces of evidence in this whole case is, that
7 I wanted you to see, is the video.

8 Why is that video important?

9 All throughout this case, you've
10 heard about dark clothed, black men, in a robbery.

11 That's what everybody's tested to
12 -- testified to.

13 From Sean Barrett, Justin
14 Tresslar, Brooks Lanham, Captain Arnold, and the other
15 roommates at the house.

16 Men in black clothes.

17 If you do anything, watch this.

18 On behalf of Mario Tynes, before
19 you go back and start deciding anything, watch this tape,
20 please.

21 Let me tell you why.

22 Mario Tynes is wearing a white
23 sweatshirt when he's taken out of that police car.

24 He's sitting in the backseat.

25 He's wearing a white sweatshirt.

1 Why is that important?

2 Because, Number One:

3 Everybody that went inside was
4 dressed in dark clothing -- dark clothing.

5 Why else is that important?

6 The State brought in some DNA
7 people. They matched the blood on this gun to Mr. Sean
8 Barrett.

9 I didn't object to that. I said:
10 Come on; bring it in. I don't
11 care.

12 They also did a DNA analysis on
13 all the guns. And the DNA person could only match the
14 guns to one person; Sean Barrett, his blood.

15 You remember what else Sean
16 Barrett said?

17 I was scared to let police
18 officers in my room because there was blood everywhere;
19 all over the wall.

20 Y'all remember that?

21 That's what he testified to.

22 And I asked him, I said:

23 If the person's hitting you in the
24 head with this gun, there would be blood all over them,
25 wouldn't it?

1 Yes.
2 Look at this.
3 You will see Mario Tynes get out
4 of that police car.
5 And you're going to can see it
6 from this angle.
7 He's got his arms up on the police
8 car.
9 Two experienced traffic officers
10 are with him.
11 Look and see if there's any blood?
12 Is there any blood on his
13 sweatshirt?
14 Any blood on him?
15 There's not.
16 Now, the State made a big deal
17 that this crime happened here, and bang, we caught them
18 immediately. Caught them immediately. No time to do
19 anything.
20 Look at that.
21 These are evidence logs. We
22 agreed they should come in. I didn't object to them. I
23 wanted them in.
24 You know why?
25 So I could have this conversation

1 with you right now.

2 How much have we heard about cell
3 phones and wallets being stolen out of Sean Barrett's
4 apartment?

5 We've heard a lot about it.

6 The evidence logs; nothing. Not a
7 thing about any cell phones. Not a thing about anybody's
8 wallet being taken.

9 This case, ladies and gentlemen,
10 is not so much about what you hear. It's about what you
11 don't hear.

12 Now, you heard some crazy things
13 up here.

14 And one of the things y'all get to
15 do is:

16 Y'all get to judge the credibility
17 and believability of every witness that got up there.

18 But we have something unique in
19 this case. I don't get to see it a lot. I had
20 statements. I had a lot of statements.

21 One thing I learned about
22 statements and the truth -- I've got two small kids, and
23 I tell them:

24 If you tell the truth over and
25 over again it doesn't change. But if you tell a lie,

1 it's hard to remember what you said.

2 And most of those people that got
3 up there can't remember a thing about what they said.

4 And I know it was probably boring
5 and a little methodical. But I had to go through and
6 have them read their prior statements over and over
7 again; not that they forgot them. They just couldn't
8 remember what they said the first time around.

9 And every one of those -- their
10 statements are trying to help themselves; okay. They're
11 trying to help themselves.

12 The people in the apartment,
13 specifically Brooks Lanham -- he was the insurance guy
14 that testified.

15 Had a white -- I think he had a
16 white golf shirt on.

17 His roommate, Sean Barrett,
18 sounded like a just -- Sacoley Buff (phonetic) -- or
19 Cheech and Chong movie -- with as much dope as he said he
20 was smoking in that house, and tell us.

21 Yet, his one roommate, Brook:

22 I ain't never seen none of that.
23 I didn't know what was going on.

24 You just allegedly got robbed by
25 four black men with guns and hoodies, and you're not

1 going to call the police?

2 Well, I'll call somebody else to
3 take care of that.

4 Are you kidding me?

5 Doesn't talk to the police, or
6 give a statement to the police -- with his girlfriend,
7 Ms. Arnold -- until he's sure his friend, Sean Barrett,
8 has been given immunity.

9 That's the same day he gave his
10 statement to the police.

11 And remember what Detective Large
12 said -- one of the best Detectives here in the county, if
13 not the best.

14 He said:

15 They brought that statement to me
16 already prepared. And something didn't seem right. So,
17 I had them sign these statements, saying:

18 It's unlawful to give a false
19 statement to the police.

20 You know why?

21 To protect him, 'cause something
22 didn't seem right.

23 So when they take the stand and
24 testify, what do we find out?

25 It was just four black men, busted

1 in here, boom boom, boom boom.

2 Well, gah, they forgot about the
3 big, heavysset guy; Justin Tresslar came in there to -- to
4 do the drug deal.

5 And according to other people, he
6 wasn't the only one there. Tory was there.

7 One of the other witnesses
8 testified that Tory and Craig were already there.

9 You remember that?

10 The guns.

11 You know, we had the SLED Forensic
12 guy, Dan Fres -- he's the one that did the bullet check.
13 I think his name was Frens -- Freese.

14 Anybody that purchases a gun -- I
15 don't care where you are -- there are documents you got
16 to fill out. You got to use a driver license number,
17 home address, social security. They even do a records
18 check on you.

19 Well, I asked -- I think it was
20 Mr. Caulder:

21 Did you find anything of any
22 importance with the registration of the gun?

23 No.

24 Okay. So I let it go.

25 I had the report. I also asked

1 Detective Large?

2 Do you think that Detective Large
3 would have like to have known that -- that either this
4 gun or that gun was registered to a black male who lived
5 here in Conway?

6 To me, that seems important.
7 Track it down. Go talk to that guy. Find out what's
8 going on.

9 But the gun was purchased in
10 December of 2006.

11 This crime occurred October of
12 2007 -- eight -- nine months. To me, that's important.
13 That jumps out at me as something that you don't have.

14 Who else have y'all not heard from
15 today -- or this whole trial?

16 You kind of heard a glimpse of
17 him; but you never read heard from him or saw him; Tory.

18 Tory's a black, light-skinned
19 male, who had money to buy drugs with Justin and Craig,
20 who was Eric's homeboy.

21 Where is he?

22 What happened with him? And why
23 is he not here?

24 One of the good things y'all get
25 to do is:

1 Y'all just don't get to hear
2 statements read to you. You get to see the witnesses on
3 the stand.

4 You know, and this is where you
5 bring some very important to our system; is common sense.

6 That's the most important thing
7 you bring to our system.

8 So we've all had experiences with
9 people. You know, you can tell when somebody doesn't
10 want to be forthright with you; don't want to tell the
11 truth; don't want to say everything.

12 They look up in a face that don't
13 want look at you.

14 If y'all watched Josh Readon
15 testify, every time they asked him a question, he had to
16 look up, like he was trying to remember what he was
17 supposed to say.

18 Even in his testimony, I think he
19 caught the State off guard. Because he testified when he
20 got there, Craig and Tory were already there.

21 And I kind of said, I said:

22 That's the first I've heard that.
23 Craig and Tory were already there.

24 Look at the deals that have been
25 made here.

1 Sean Barrett, by his own
2 admission, dealt 40 to 50 pounds of marijuana at Coastal
3 Carolina; complete utter immunity.

4 Then he gets immunity and he's not
5 even cooperative with the officers.

6 What kind of deal was that?

7 You get immunity?

8 You know, if I bargain for
9 immunity, I'd like to see what I'm buying.

10 It's almost like he got immunity
11 and Detective Large couldn't even get a statement from
12 him. Couldn't even get him to be cooperative? Didn't
13 even help the narcotics office with anything.

14 That doesn't make sense to me.

15 Prefabbed statements already
16 produced; not subject to any interview process.

17 Not calling the police? That
18 doesn't make sense to me.

19 Ricky Johnson, who doesn't think
20 he did anything wrong, testified to something that I
21 think's really important.

22 He goes:

23 I was looking for a Chevy Caprice
24 car. That's the first I've heard about that.

25 We got this car, the Ford LTD,

1 that's Ricky's.

2 We got Eric Brown saying his
3 Cadillac was over there with Justin, Tory, and Craig.

4 Yet, Ricky's looking for another
5 car too; a Chevy Caprice.

6 Well, who's in that car?

7 We've got another vehicle over
8 there with people in it.

9 Ricky Johnson made a deal with the
10 State to proffer with them and be truthful and honest and
11 do whatever he's supposed to do to get whatever deal he's
12 going to get.

13 But he's talking about a
14 completely different vehicle. He's put another group of
15 people at this apartment complex.

16 Who is he protecting?

17 Jack Stewart, one of the early
18 officers in the case, testified. Something struck me he
19 said. He even put it in his report.

20 I go over to pick up evidence; a
21 bullet and a gun, that, he said, Sean Barrett admitted to
22 tampering with.

23 After a while, it starts to sink.
24 The whole thing starts to stink. The whole case starts
25 to stink.

1 You've got all sorts of people
2 here trying to protect their own skins and hides. But
3 they're not being truthful with you.

4 I don't know how many times y'all
5 thought from up there -- or the statement you heard:

6 Well, it's the truth now.

7 Well, it's the truth now because
8 you got the story straight.

9 You know, when they were
10 independently talking to the police, they -- nobody knew
11 what everybody was going to say.

12 So it's all over the place.

13 They tried to get the stories
14 straight.

15 Well, that's what you're for.
16 That's the common sense.

17 Now Mario Tynes, seated right
18 here, is telling you by sitting right there:

19 I didn't do it. I wasn't part of
20 it. I'm not involved. And I'm willing to sit through
21 all this stuff that I know is coming in against me,
22 because I wasn't involved.

23 I didn't do it.

24 And I'm willing to put my life in
25 your hands to judge me, based on all the stuff he's seen

1 -- that you've seen, we've seen -- he still believes he's
2 not involved.

3 And he's telling you as loud as he
4 can by sitting there:

5 I'm not guilty of this.

6 Nobody identified anybody in a
7 white sweatshirt.

8 Maybe they forgot to watch the
9 video before they started working on a story.

10 No blood on this.

11 There should be blood everywhere
12 the way Sean Barrett says he bled.

13 Blood all over the wall.

14 Even Justin Tresslar said:

15 There's blood all over the wall.

16 Everybody that said they saw Sean
17 come downstairs, said:

18 There's blood everywhere.

19 I'm washing my hair; and there's
20 blood, blood, blood.

21 There's no blood on Mario.

22 Now, I'm not going to talk much
23 longer. But there's a term we're going to tell you
24 about:

25 Reasonable doubt.

1 You've heard it on TV.

2 You've seen it everywhere.

3 Basically, all it means --

4 simplest terms:

5 It's a doubt that would cause a
6 reasonable person to hesitate to act.

7 It doesn't mean a hundred percent
8 sure of anything. You can't be.

9 But it says:

10 A doubt which would cause a
11 reasonable person to hesitate to act.

12 I agree, every one of y'all are
13 reasonable.

14 The State agrees every one of
15 y'all are reasonable.

16 We put y'all up there together.

17 We wanted y'all to judge this
18 case.

19 But that is the standard.

20 And you took an oath to follow
21 that standard.

22 You may not like what you heard up
23 there.

24 You may not like drugs.

25 But you still took an oath to

1 judge this case fairly.

2 And if you look at anything,
3 please, I ask you on behalf of my client, to:

4 Take that back in your juryroom,
5 and watch that.

6 And you'll see him get out of the
7 car; and it's a white sweatshirt.

8 Watch it.

9 And I ask you:

10 After you do that, you find my
11 client, Mario Tynes, not guilty.

12 Thank you.

13 THE COURT:

14 Mr. Wilson?

15 MR. WILSON:

16 Thank Your Honor.

17 We've been here two and a half --
18 three days now. So, let me say at the outset, I thank
19 you for the attention that you've given us.

20 When I stood here early on, the
21 only thing I really asked you to do was to pay attention
22 to the victims.

23 And I said to you, that if you did
24 that, that at the end of this trial, that you're going to
25 be in a position to render a verdict that speaks the

1 truth.

2 That's all anybody can ask. I
3 can't ask any more of you than that. And that's the oath
4 that you took.

5 The State can't ask any more of
6 you than that. The Defense can't ask any more of you
7 than that.

8 You have done that. You have
9 listened. You have been very attentive. And we
10 appreciate it. And we thank you.

11 I know that jury service is not
12 easy. It require you to be away from your homes, and
13 from your families, and from your jobs.

14 And nobody wants to have to sit in
15 judgment of his or her fellow man. It's not a
16 comfortable place to be.

17 But I can tell you this:

18 There is no better system than
19 this, that I'm aware of. The system does work.

20 It's not perfect. Because we all
21 are all human. And we all my mistakes. But it does
22 work.

23 Michael Lackey trusts the system
24 to work, which is why we are here today.

25 The State decides what charges to

1 levy, if any, any against a person.

2 A Defendant doesn't get a say in
3 what he's going to be charged with. He gets indicted.
4 And he doesn't get any say in what he's indicted for.

5 The first opportunity that a
6 Defendant has to defend himself is when he comes in here.

7 I said to you at the outset that
8 justice is colorblind. It doesn't matter what color you
9 are. Doesn't matter how rich you are. Doesn't matter
10 how poor you are. Doesn't matter which county or which
11 state you come from.

12 Because what's right is right.
13 And what's wrong is wrong. It doesn't matter. And it
14 shouldn't matter.

15 You know, but what troubles me to
16 some degree is that:

17 The State; it's their
18 responsibility, not just to protect victims, but to
19 protect all citizens. And that includes Defendant's.

20 To make sure that everybody --
21 every citizen is treated fairly and equally. That's the
22 responsibility of the State -- of the government.

23 Now, you tell me:

24 Where is the fairness here?

25 The justice system ought not be

1 about backroom deals, like some political arena.

2 That may be fine for Washington,
3 DC, when the politicians get together and make deals
4 about what we're going to do.

5 But it's not right. And it's not
6 fair when it comes to people's lives.

7 The State has an awesome --
8 awesome amount of power and authority. They can arrest
9 you. They can put you in jail. They can make you post
10 bond, if they give you one. They can indict you; all
11 before you can ever be heard.

12 That is a responsibility that has
13 to be taken seriously by the State when they accept it.

14 Every citizen is entitled to that.

15 That's not a favor. That's not a
16 privilege. It's a right.

17 And let me tell you what's
18 troubling is when the State takes Sean Barrett, when he
19 lies to them, when he obstructs justice, when none of his
20 friends, and cohorts, and buddies, and roommates, will
21 give a statement to the law-enforcement, who's trying to
22 do their duty.

23 These officers didn't ask for
24 this. They were trying to do their job.

25 And what punishment does he get

1 for all things -- And who said "Crime doesn't pay?"

2 What punishment did he get? None.

3 In fact, he get's a reward.

4 Because what do they do?

5 They give him immunity for selling

6 3 pounds of marijuana and for selling it for how long; at

7 least a semester, according to him.

8 Is that right? Is that justice?

9 Is that fair?

10 Let's talk about something else.

11 They charged Michael Lackey. And

12 what they have you believe, is this:

13 That Michael Lackey came down here

14 from Atlanta. Now, even according to his buddies who

15 testified, when he left Atlanta, he didn't know anything

16 about any robbery.

17 Not one single person -- and

18 everybody agrees on one thing; that this was his first

19 time down here. And even the one guys who does say that

20 he was there, he says:

21 When we left Atlanta, he didn't

22 know anything about it.

23 But you know where the key here

24 is, which is where you can help; because you don't have

25 to take anybody's word for it.

1 You don't have to take any
2 Defendant who testifies word for anything.

3 You can look at the physical
4 evidence and answer the question for yourselves.

5 Because their story is this; and
6 they're stuck with it now, because they can't change it.
7 Their story is that:

8 That Michael Lackey was in the
9 house.

10 That Michael Lackey collected
11 wallets, cell phones, and money.

12 That's what they say he did.

13 That was his participation in this
14 crime, according to the State. That's what they say he
15 did.

16 Show me one cell phone.

17 Show me one wallet.

18 Show me one dollar that he had
19 when they arrested him two or three minutes after this
20 robbery occurred.

21 They can't.

22 And that is the fault.

23 The other thing that's important
24 is that:

25 If you will remember, every single

1 witness who testified said those windows would not roll
2 down. Except where? The driver's side.

3 And Ricky Johnson said he was
4 driving, and he never threw anything out the window.

5 That's the State's witness.

6 So you don't have to take my word
7 for it. Because if he took those wallets, and if he took
8 the money, what happened to them? Where are they?

9 You see, the burden of proof is
10 not on Michael Lackey. Because, as I told you at the
11 very beginning:

12 Sometimes it's impossible to prove
13 that you didn't do something.

14 But you know, the good thing in
15 this case is that:

16 These things were not found in
17 this car.

18 The dope was found in the car.

19 The gun was found in the car.

20 No cell phones. No wallets. No
21 other money.

22 Do you know why?

23 Because there was another car.

24 Remember the testimony about
25 Craig, and Justin, and Tory?

1 Remember when they told you that
2 Tory didn't want to give up the money to Craig; and that
3 after the conversation; after he got on the phone; after
4 Craig was asking for him for his money -- or Justin was
5 asking for the money and Tory wouldn't give it up; then
6 Tory got on the phone and called somebody.

7 They talked for several minutes,
8 according to them -- to the witness. And once they
9 talked, then he gave up the money.

10 But they are outside the car; both
11 Justin and Tory.

12 Now, it's after this that the men
13 allegedly go into the apartment.

14 That's why they didn't find the
15 wallets. They searched the wrong car for the wallets.

16 You see, sometimes circumstantial
17 evidence is much stronger than direct testimony. Because
18 the one thing that nobody can do is change the
19 circumstances. And that is that:

20 There were no cell phones found.

21 They can't change that.

22 And if Michael Lackey had taken
23 those cellphones and those wallets, they would've been in
24 the car with the dope and the guns.

25 They can't get around it.

1 Tell them to explain that.

2 Demand that they explain to you
3 how it was that Michael Lackey got the wallets and the
4 cell phones and the money, and it never was found in the
5 car.

6 Because that's their burden of
7 proof.

8 If they want to convict him, as
9 they're asking you to do, then let them prove it. Let
10 them prove it. Because that's what the law requires.

11 And they can't do it. And they
12 haven't done it.

13 Folks, it's troubling when you're
14 about to start a trial. And you heard the testimony.
15 And the State's making deals, trying to get people to say
16 something or testify to something.

17 And people are afraid to go to
18 trial. That's understandable.

19 Who wants to put their faith in
20 somebody else's hands if you can avoid it?

21 You're scared. You're scared.

22 Because you don't know what the
23 outcome is going to be.

24 And remember when Joshua
25 testified; and we asked him:

1 Well, did you plead guilty?

2 No. I pled under North Carolina
3 versus Alford, which is basically a case which says:

4 I'm not saying I'm guilty. But
5 what I am saying, is this:

6 But if I go to trial, I might get
7 convicted. And if I get convicted at trial, I might get
8 substantially more time. So rather than take that risk,
9 I'm willing to plead guilty -- or take a North Carolina
10 versus Alford plea.

11 We call it nolo contendere. No
12 contest; if you will.

13 He says he's got a baby on the
14 way.

15 You know, after -- after the --
16 whatever occurred at Sean Barrett's house -- I think
17 about what else the State has done in this case?

18 Justin -- whatever his name is;
19 he's not charged with anything.

20 Craig Collins says he's supposed
21 to get 18 months or less.

22 Tory, who had the money; never
23 been charged or even heard from.

24 All I ask is that you hold the
25 State to its burden of proof. That's all I ask.

1 That they prove beyond a
2 reasonable doubt. Because that's what the law requires.

3 And His Honor is going to as to
4 the law.

5 If I say something that's
6 inconsistent with what he says, just -- you just
7 disregard what I say; listen to what he says. He's going
8 to tell you what the law is.

9 But I will tell you that my
10 understanding of a reasonable doubt is a doubt, which you
11 as an honest juror -- which you are -- who's seeking the
12 truth would hesitate to act on.

13 And how in the world can you not
14 have a hesitation folks, when those cell phones are not
15 there?

16 Because that's the only thing that
17 could accuse him of doing; is that he collected the cell
18 phones, the wallets, and some money, and ran out the
19 door. Jumped in the car. And the police stopped them
20 two or three minutes later.

21 And I don't care how many
22 witnesses they put in here. It don't matter if they have
23 900 witnesses. They cannot get around that fact. And
24 that's a fact.

25 This boy came down here when he

1 was a college student. And unfortunately, college
2 students do it all the time. I did it when I was in
3 college; go to another school to visit one of my friends
4 who were in school.

5 Of course, for me, it's been a
6 long, long time.

7 But you go to visit another friend
8 who's in college; spent the night. Yeah, you go to some
9 parties; maybe drink some liquor.

10 College students do that all the
11 time. He did that.

12 Now, if you noticed, Joshua wasn't
13 in school at all. Now I don't know what he was doing in
14 Atlanta; and that ain't my business.

15 But he wasn't in college. We know
16 that, because he said so.

17 And we also know, according to
18 him, if you want to believe anything he's got to say, is
19 that:

20 He never discussed it with Lackey
21 as they drove from Atlanta for 5 and a half hours.

22 Now, think about it.

23 If he was going to -- they were
24 going to do a robbery, and he already had set up, and
25 Lackey is going to be involved, you think for a five and

1 a half hour drive down from Con -- from Atlanta to here,
2 that they never going to mention it to each other or talk
3 about it?

4 And he -- And Lackey didn't know
5 about it beforehand, according to him, because he wasn't
6 even there when he says he had the conversation.

7 It doesn't make any sense.

8 But he wanted a deal. And I don't
9 blame him. He wanted a deal. And he got one.

10 And in order to get it, he had to
11 say what they wanted to hear.

12 And he admitted that he had a gun.
13 He told you he had a gun.

14 But that -- You think that that's
15 all they wanted. If they wanted that, they already had
16 him, so then why would they care about that? No.

17 But again, what they can't do is
18 change the facts.

19 You will see all of the evidence
20 over here that's been put into this case -- into this
21 trial.

22 You're going to have it all in
23 your jury room.

24 And think about it.

25 When those officers searched that

1 car that night, think about it. If they would've had had
2 wallets -- 5 black guys in a car -- If they had had
3 wallets with white folks pictures on them, you wouldn't
4 think that that wouldn't be in evidence?

5 Of course it would.

6 But it didn't happen that way.

7 I believe it happened.

8 But it was in the other car.

9 Tory, who you haven't heard from,
10 who the State hasn't bothers to bring in here, or charge
11 for that matter.

12 Maybe that was part of some deal
13 they cut with Eric,, because it was his cousin. I don't
14 know.

15 I simply ask you then -- and I
16 know that I'm being long, and I apologize. But this is
17 important. This is important.

18 There is never going to be a more
19 important date in the life of Michael Lackey than on this
20 day. Because you will literally have his life in your
21 hands.

22 So if I take a few extra minutes
23 of your time, I apologize. And if you want to hold it
24 against somebody, hold it against me. I ask you not to
25 hold it against him.

1 Because I have a responsibility,
2 just like you.

3 But all of us, the State, all of
4 us, should be interested in justice.

5 Justice demands that you find
6 Michael Lackey not guilty.

7 Not because I say that. But
8 because the State has failed to meet its burden and prove
9 him guilty beyond every reasonable doubt.

10 Remember early on, I told you, I
11 said:

12 Would you feel comfortable taking
13 this kind of testimony -- the kind of testimony heard
14 from this witness stand.

15 If you were investing your life
16 savings?

17 If you had worked for 35 years and
18 you were getting ready to retire?

19 And every dime you had in the
20 world, and you were getting ready to invest it, would you
21 want to do it on that kind of testimony, from your
22 broker?

23 Because, if the answer to that is
24 no, then you've got to find Michael Lackey not guilty.

25 Thank you.

1 THE COURT:

2 Ms. Livesay?

3 MS. LIVESAY:

4 Thank Your Honor.

5 Ladies and gentlemen of the jury,

6 I do appreciate your time and attention. And I promise
7 you I'm going to try to make this quick. I know you've
8 been here all day.

9 You've already heard from Mr.
10 Monckton and Mr. Wilson, who are two very terrific
11 attorneys.

12 But what rings very true in this
13 case is actually something that my mom says to me every
14 day. She says:

15 All I want to hear is just the
16 facts.

17 Whenever she's talking to anybody,
18 she always says:

19 All I need is just the facts.

20 And that's all we need in this
21 case to be able to put together what happened that night.

22 Because this is a complicated
23 case. You've heard from Dan DeFreese. You've heard from
24 DNA experts. You've heard from a ton of witnesses in
25 general.

1 So it's very complex.

2 But it all starts with the
3 evidence and the facts of this case.

4 And it all starts with what was
5 recovered out of that car.

6 These two guns were recovered out
7 of the car. These two guns and that marijuana were
8 recovered out of the car.

9 That's where this case starts; is
10 when that traffic stop was made. And these items were
11 found in the car.

12 And then, you start looking
13 closer. Like Alan Large says, you start looking closer
14 at the gun to find out if there's any evidence on the gun
15 to lead us to another clue as to what was going on that
16 night.

17 And he tells you he gave this gun
18 to Robbie Caulder.

19 The reason he gave this gun to
20 Robbie Caulder was to look for blood. That's why. To
21 run what Robbie Caulder told you was a presumptive test
22 to see if there was any blood on this gun.

23 He took it to a CSI crime scene
24 investigator to find out if there was any gun (sic).

25 You know why he took it there?

1 Because it wasn't visible on the
2 gun.

3 That's why he had to run that test
4 he was telling you about, to swab the gun, and do a
5 presumptive test to see if it tested positive for blood;
6 okay.

7 There was no, even, evidence in
8 the beginning that there was blood on the gun until
9 Robbie Caulder swabbed that gun. That's why he swabbed
10 it; okay.

11 The lady from SLED told you who
12 the blood belonged to; Sean Barrett, the victim, who was
13 pistol whipped with this gun.

14 But there was so little blood on
15 this gun. This was the weapon used to pistol-whip that
16 victim. Right here. This is it.

17 This is the weapon that was used.

18 And so little blood was on it,
19 they had to run a CSI test to see if there was blood and
20 who it belonged to.

21 That's how much blood was on the
22 weapon that was used to beat that victim.

23 Now, if there's that much blood on
24 the gun -- this is actual weapon that was used -- why
25 would you assume that there's tons of blood on the

1 Defendant that did it?

2 His body is further away from that
3 victim than this gun is. This gun is striking that
4 victim on the head two or three times, you heard; two or
5 three times, to the point the victim was laying on the
6 ground.

7 Here's what the victim's head
8 looked like. You saw it earlier. Staples in the
9 victim's head.

10 We saw this picture earlier. This
11 is Sean Barrett; the top of his head with those staples
12 in them.

13 And what we know is: This is the
14 gun that was used. And there was not that much blood on
15 this gun for the eye -- the human eye to catch it.

16 And so they ran a CSI test on it.

17 So why would you assume that the
18 guy that did it is going to be covered with blood?

19 He's not folks.

20 That's not how it works.

21 There was some blood on the wall,
22 yes; because that victim's head hit the back of the wall.

23 There was blood on the wall. We
24 never saw that blood.

25 I want you also to look, from this

1 picture, where the injury is. The injury is not in the
2 front of his head. It's towards the back.

3 The back of his head would have
4 had to hit that Defendant for blood to get on that
5 Defendant.

6 There wasn't even enough on the
7 gun.

8 So this was one gun. This was one
9 gun that had the victim's blood on it.

10 And guess where it was found?

11 In a car with who?

12 These two Defendants.

13 That's where the gun was found.

14 It was found in the car with these
15 two guys in that car. We know that.

16 And you know what?

17 I want you to watch the video. I
18 think that video is key.

19 You know why?

20 Because this gun, with the
21 victim's blood on it, was under that gentleman's seat.
22 The guy sitting right over there; it was under his seat.

23 Now Michael Lackey told you about
24 moving in the car, and who was trying to put the drugs
25 under the car.

1 Who was trying to put the guns
2 under the car?

3 The fellow that was sitting in the
4 middle in the back of the car that had the easiest access
5 to put stuff under that passenger seat right in the
6 middle -- there were three guys sitting in the back --
7 right in the middle, closest to that -- under that seat
8 was guess who?

9 Mario Tynes.

10 That's who was sitting there. He
11 was the closest to put a gun or anything under the seat.
12 He was sitting right there.

13 It was not Eric Brown.

14 The second piece of evidence we
15 found in the car was this gun -- this black gun -- the
16 black gun that Joshua Readon told you that looked like
17 the gun he used that night.

18 He told you something else too,
19 that was key evidence.

20 When he walked in, he racked the
21 gun; scared the victims, I'm sure.

22 And then, pointed it at them; and
23 told them:

24 Sit down. Get your money out, and
25 in your cell phones.

1 That's what he told you.

2 He racked that gun. And the
3 bullet came out.

4 The other piece of evidence is the
5 bullet that we got out of the victim's house. This is
6 the bullet that came out of that house, that went to
7 SLED.

8 And you heard from somebody, Dan
9 DeFreese, okay; been working at SLED for 47 years.

10 47 years he's been a SLED.

11 And you know what he is?

12 He's a firearms identification
13 expert.

14 And what does he do?

15 He matches cartridges or bullets
16 to the gun that it came out of.

17 And guess what gun it came out of?

18 It came out this gun.

19 We don't need to wonder what
20 bullet this gun belongs to. We already know.

21 Dan DeFreese told us it was this
22 gun; very unique. The markings were very unique. And it
23 belonged to this gun.

24 This gun, ironically enough, was
25 also in the car with these two gentlemen.

1 And guess which seat it was under?
2 Michael Lackey's seat.

3 And guess who was sitting right in
4 the middle in the back of that Crown Vic that had excess
5 to put that gun right under that passenger seat?

6 Mario Tynes..

7 These are the two guys that were
8 in the car that were closest to these two guns.

9 And one other gentlemen that was
10 sitting right behind Michael Lackey; that was Joshua
11 Readon.

12 He told you he went in there with
13 a gun, and racked it.

14 He was sitting right behind
15 Michael -- Michael Lackey.

16 It would have taken nothing form
17 him to get back in that car and slide that gun right
18 under the seat; nothing.

19 He was sitting right behind the
20 passenger seat.

21 Just like it would have taken --
22 taken Mario Tynes nothing to take this gun and just put
23 it right under that passenger seat.

24 Now there's something else besides
25 the DNA from the victim that was found on the gun.

1 That lady said:

2 There was not a match. I could
3 not figure out -- or I could not find out who the other
4 mixture was on the gun.

5 But, we could figure out this.

6 We took swabs from all 5 guys in
7 that vehicle. Alan Large told you that.

8 And you know what she told you?

9 All of them could be excluded
10 except for one; Mario Tynes.

11 All of those Defendants could be
12 excluded except for Mario Tynes; the guy that was sitting
13 closest to this gun in that vehicle.

14 Everybody else could be excluded,
15 except for him.

16 So, no; we could not find a match.
17 But we know the other four guys in that car were not a
18 match. We know that.

19 Now we know that the marijuana was
20 found under the seat -- a lot of marijuana.

21 Now this 911 tape is important;
22 very important in this case.

23 Because the victims did not call
24 police that night. These victims, that are just trying
25 to railroad Mario Tynes and Michael Lackey, never called

1 the police.

2 Don Gause called the police; a
3 concerned citizen.

4 Now -- But Don Gause isn't charged
5 with a crime?

6 He's not here to make any deals.

7 He's not here to get out of
8 anything.

9 He called 911 because he was
10 concerned.

11 He did not know what was going on.

12 He thought it was weird that 5
13 black guys were running around; jumped into a white Crown
14 Vic with no rims, and spun off.

15 He says -- In fact, on the tape,
16 he said:

17 It looks like they're up to
18 something.

19 He was so concerned, he called
20 911, when he was out there walking his dog. That's how
21 concerned he was.

22 He was the one that got the ball
23 rolling.

24 It wasn't somebody charged with a
25 crime.

1 It wasn't a victim.

2 It wasn't anyone that could
3 benefit from that.

4 It was an innocent bystander.

5 And how did he describe them?

6 Five black guys in a white Crown
7 Vic with no rims and no hubcaps, which ironically,
8 matches the description of this car, which belonged to
9 Ricky Johnson.

10 And it's the same car that was
11 stopped that night with these guys in it; 5 black guys.

12 That was the car that was stopped.

13 So that 911 caller knew something.

14 He was able to give a description
15 of that car and who was inside that car.

16 And he knew something was going
17 on.

18 That's what I car was stopped so
19 quick.

20 Now, Mr. Wilson made a big deal
21 out of:

22 Well, where are all these cell
23 phones?

24 Where is this? Where is that?

25 Well folks, when that car got

1 stopped, it was stopped on a "be on the lookout," because
2 guns were involved.

3 That's what the 911 caller said.

4 He saw a gun. He saw criminal
5 activity going on.

6 And when they pulled over the car,
7 ironically enough, they found guns, and they found
8 marijuana.

9 But at that time, they had no idea
10 that a robbery had taken place.

11 Nobody had called 911 about a
12 robbery.

13 So they had no idea what else to
14 be looking for in that car.

15 They didn't know to be looking for
16 somebody else's cell phone in the car.

17 That car wasn't searched for
18 evidence regarding cell phones.

19 Nobody said anything about
20 wallets.

21 They said:

22 He took money and cell phones.

23 They didn't know, on a regular
24 traffic stop, to be looking for those items.

25 They had already found these

1 items; okay.

2 They were still in the middle of
3 trying to put this case together.

4 It wasn't until, like Alan Large
5 told you, days later when he was able to get the swab
6 from Sean Barrett and compare it to the swab from the
7 gun.

8 That's when the case started
9 coming together.

10 Before that, they had no idea a
11 robbery had taken place.

12 So they didn't really know what
13 evidence to be looking for.

14 They were road officers who were
15 there doing a routine traffic stop.

16 Now, you heard from the victims.
17 And all of them told you the same
18 story.

19 There was two guys downstairs; two
20 guys upstairs.

21 Now there was already enough
22 evidence to know that these guns and all of that
23 marijuana, which, ironically enough, is a lot of
24 marijuana; okay.

25 Even Mr. Wilson said that, and Mr.

1 Monckton.

2 There's no disagreeing that this
3 is a lot of marijuana; okay.

4 But ironically, Michael Lackey had
5 no idea that much marijuana was under his seat; no idea.

6 That makes no sense; okay.

7 The victims told you:

8 Two black guys were downstairs.

9 Two black guys were upstairs. And there were two with
10 guns.

11 Now, who do their stories match?

12 Who do their stories match?

13 They match the exact same story as
14 Eric Brown and Joshua Readon, the other guys in that car
15 that night..

16 Now the Defense wants to make a
17 big deal out of the fact that these guys were proffered.

18 Folks, the crime had holes that
19 needed to be filled.

20 And who better to tell us and to
21 tell you, than the people that were there?

22 They were there.

23 They knew more than anybody about
24 who was doing what.

25 They want to question the

1 credibility of Joshua Readon. And they want to quest --
2 question the credibility of Eric Brown.

3 But both of these guys -- Eric
4 Brown told you.

5 I ran up the stairs first. That
6 black gun that Joshua Readon used, that was my gun. We
7 had planned it before we left.

8 All those guys gave you were
9 incriminating statements on what they did as well.

10 They want to tell you:

11 They're hiding this. They're
12 hiding that from you.

13 If they were going to tell you a
14 story, don't you think they would keep themselves out of
15 it?

16 Don't you think they would tell a
17 story a lot closer to the one that you heard from Michael
18 Lackey.

19 And that would be a story that you
20 would hear from somebody who wanted to save themselves
21 and not tell the truth.

22 But Eric Brown told you:

23 I ran up those steps first. I
24 knew it was going to be a robbery. That was the gun --
25 that black gun that they used -- Joshua Readon used --

1 that was my gun. And then, we got stopped by the police.
2 And I didn't tell the truth because I was afraid.

3 That makes perfect sense.

4 He's in college.

5 He plays football.

6 He's on a scholarship.

7 And he's scared to death.

8 His first reaction was to say:

9 I had nothing to do with it.

10 And that is what he said.

11 But he did tell the truth today.

12 And you also heard from Joshua

13 Readon.

14 So they want to tell you that we
15 made all of these deals. Everybody's getting a deal;
16 great deal.

17 You saw Joshua Readon on the stand
18 today testifying. Did he look like he was getting a
19 great deal to you?

20 He was setting up here in an
21 orange suit and shackles.

22 And after he got done, did walk
23 out that door?

24 No. He walked back into that one.
25 Back into lockup.

1 Did that guy look like somebody
2 that was getting a killer deal to you; sitting there --
3 and I think he was 20 or 21 years old -- in shackles and
4 an orange suit.

5 I don't think that deal is so
6 great that Mr. Wilson and Mr. Monckton want it to look
7 like to you.

8 He told you:

9 I had the gun. I knew it was
10 going to be a robbery. We all knew it was going to be a
11 robbery before we got in that car.

12 And they almost got away with it;
13 except for that 911 caller.

14 And he told you:

15 Myself and Michael Lackey stayed
16 downstairs, while Eric Brown and Mario Tynes ran
17 upstairs.

18 That's something else.

19 That apartment was a three level
20 apartment -- three levels.

21 There was only one bedroom
22 upstairs and one bathroom. And they belonged to Sean
23 Barrett; the guy that had all the money and all of the
24 weed.

25 And Eric Brown and Mario Tynes

1 knew right where to go.

2 They had already thought about
3 this thing and planned it out. And when they get in
4 there, they executed it.

5 None of those people recognized
6 them.

7 Two of them held the people
8 downstairs hostage, while the other two ran up and took
9 what they wanted; that money and that marijuana.

10 Now you're going to hear a charge
11 on "mere presence."

12 That means:

13 If I'm just there and I'm not
14 doing anything, then I'm not guilty. You can't convict
15 me.

16 If I'm just there and I'm not
17 doing anything, I'm not guilty.

18 Let me tell you something, folks:

19 Every one of those Defendants
20 played a role in this case, and in this robbery; everyone
21 of them.

22 When Joshua Readon was holding
23 that gun to those victims, and you heard him say:

24 That girl wouldn't quit screaming.
25 And that's when I racked the gun. She wouldn't quit

1 screaming.

2 While he was down there holding
3 the gun to them -- holding them hostage, Michael Lackey
4 was picking up all their stuff.

5 Folks, that's not "mere presence."

6 Okay. He was an equal part of
7 everything that went on.

8 I highly doubt it would be so easy
9 to take their money and their stuff, without Joshua
10 Readon down there holding that gun on them.

11 That's how they had worked it out.

12 And while they were doing that, he
13 went upstairs -- Mario Tynes and Eric Brown went upstairs
14 and took that marijuana and took that money.

15 So they made a big deal out of
16 Justin and Sean Barrett being this and being that.

17 They walked into a contest with a
18 bunch of people unarmed. Nobody else in the apartment
19 had a weapon. Nobody.

20 They went in there and held up an
21 apartment full of innocent people.

22 Now, is Sean Barrett perfect?

23 No.

24 Ms. Lively told you that right
25 from opening statement. He's not perfect. He was in

1 there selling marijuana.

2 But I'm here to tell you:

3 I highly doubt that he is some big
4 drug lord.

5 But I don't highly doubt that he's
6 up there about selling as much to keep his own habit
7 going.

8 He's not the perfect victim.

9 He's not.

10 I'm not telling you he is. I'm
11 not telling you he didn't do anything wrong.

12 But I'm telling you:

13 When those boys ran in there, not
14 knowing and not caring who was in that condo, and took
15 those two guns, they broke the law.

16 When they broke into that
17 apartment, they broke the law.

18 So when they held those guns on
19 those innocent people who were unarmed in it that
20 apartment and took whatever they could, they broke the
21 law -- burglary first and armed robbery.

22 And when they got caught with that
23 marijuana, that's possession with intent to distribute.

24 They were stealing all that
25 marijuana because they wanted to split it amongst

1 themselves and sell it, just like Mario had been doing
2 this whole entire time.

3 So they got caught with those
4 weapons. They were unlawfully carrying them in that
5 vehicle under the passenger seat.

6 These guys all had planned this
7 out; knew what they were doing; and they all took an
8 equal part.

9 And they were all happy when they
10 thought they were going to benefit from it, until that
11 officer pulled them over.

12 They knew what they were doing.
13 And they put people's lives in jeopardy.

14 When you saw Catherine Arnold up
15 there, there's not any doubt in my mind, that when she
16 told you she thought she was going to die that night,
17 that I believed her.

18 She was shaken. She was crying.
19 She was innocent and unarmed, when these people came in
20 the apartment.

21 I'm not telling you that everybody
22 that testified for us is perfect.

23 But what I'm telling you is:

24 They told you the truth.

25 Some of them still do have pending

1 charges. One of them is currently incarcerated.

2 But today -- today is Michael
3 Lackey's day, and Mario Tynes' day.

4 And like Mr. Wilson told you,
5 today will change their lives. They're on trial today
6 and nobody else.

7 And they broke in that house and
8 they stole that marijuana. They stole money. They took
9 whatever they could from people that were unarmed.

10 I'm going to ask you today to go
11 back; look at the evidence. I want you to look at the
12 evidence.

13 I want you to look at the tape.

14 I want you to see that Mario Tynes
15 was sitting in between two people that were wearing black
16 hoodies.

17 It's hard to see a guy -- one guy
18 in a car full of 5 guys, who is squished in the middle,
19 wearing a white T-shirt or a white sweatshirt.

20 But there's 4 other guys in the
21 car wearing black hoodies.

22 And I want you to pay attention to
23 the fact:

24 When Ricky Johnson got out of that
25 car, he was the only one that had on a black T-shirt --

1 or a black golf shirt.

2 But it was so cold that night,
3 that Michael Lackey had to wear a big, black, hooded,
4 sweatshirt, even though Ricky Johnson had on a short
5 sleeve shirt.

6 Both of the officers that searched
7 that car had on short sleeves.

8 But it was so cold, the rest of
9 them had on big, black, hooded, sweatshirts.

10 I want you to go over all the
11 evidence.

12 And if you believe those men broke
13 into the apartment; held those people at gunpoint; took
14 their money; took that marijuana; then you have to find
15 them guilty of burglary first, armed robbery, unlawful
16 carrying, and possession with intent to distribute.

17 And you're going to hear the law
18 from the judge as he reads it.

19 And you're also going to hear what
20 reasonable doubt means.

21 And reasonable doubt is not beyond
22 every doubt.

23 And what you didn't hear from Mr.
24 Wilson and Mr. Monckton is:

25 If you feel firmly convinced that

1 they did these things, then you have to find them guilty.

2 Thank you for your time.

3 THE COURT:

4 Ladies and gentlemen of the jury,

5 I'm going to instruct you as to the law now.

6 And I do something that I -- I

7 don't know any other judges do. It just generates a

8 little bit more work for me. But I think it's very

9 helpful to the jury.

10 The law in this case and every

11 other case is very complex. So I prepare a transcript of

12 my charge on the law, which I provide for you for your

13 use in your deliberations in this case.

14 And I'm going to make that a part

15 of the record and give it to you.

16 However, our chief justice has

17 said that:

18 If I do that, that I must do it

19 verbatim.

20 So you're going to notice that I

21 am reading from my charge. And I hope that it's clear

22 enough for you to follow.

23 I remind you that during this

24 trial, you and I have certain duties to perform.

25 As the trial judge, it's my

1 responsibility to preside over the trial of the case.
2 And I also have the duty to rule on the admissibility of
3 evidence offered during the trial.

4 You are to consider only the
5 competent evidence before you. If there was any
6 testimony ordered stricken from the record in this case
7 during this trial, you must disregard that testimony.

8 You are to consider only the
9 testimony which has been presented from this witness
10 stand, any exhibits which have been made a part of the
11 record in this case, and any stipulations of counsel.

12 I have the additional duty to
13 charge you the law applicable to this case.

14 As presiding judge, I am the sole
15 judge of the law of this case. And it is your duty as
16 jurors to accept and apply the law as I now state it to
17 you.

18 If you have already any idea as to
19 what the law is, or what the law ought to be, and it
20 doesn't agree with what I now tell you the law is, you
21 must abandon this idea. Because you are sworn to accept
22 the law and apply the law exactly as I state it to you.

23 In every case tried in this
24 courtroom before a jury, the jury becomes the sole and
25 exclusive judge of the facts in a case.

1 A trial judge cannot intimate,
2 state, comment on, or make any statement to a jury -- to
3 a trial jury -- about the facts of the case, since you
4 the jury are the sole judge of the facts in this case.

5 You are not to infer from what I
6 have said during the progress of this trial in ruling
7 upon the admissibility of evidence or otherwise, or
8 anything that I say now during the course of this
9 instruction to you, that I have any opinion about the
10 facts in this case.

11 The law does not allow me to have
12 an opinion about the facts in this case. This is a
13 matter solely for you the jury to determine.

14 As jurors, it is your duty to
15 determine the effect, value, weight, and proof of the
16 evidence presented during this trial.

17 The Defendants have pled not
18 guilty to these indictments that I described to you
19 earlier. And that plea, puts the burden on the State to
20 prove the Defendants guilty.

21 A person charged with committing a
22 criminal offense in South Carolina is never required to
23 prove himself innocent.

24 I charge you that it is an
25 important rule of law that the Defendant in a criminal

1 case, no matter what the seriousness of the charge may
2 be, will always be presumed to be innocent of the crime
3 for which the indictment was issued, unless guilt has
4 been proved by evidence satisfying you of that guilt
5 beyond a reasonable doubt.

6 This presumption of innocence does
7 not end when you begin your deliberations; but it
8 accompanies the Defendant throughout the trial until you
9 reach a verdict of guilt based on the evidence satisfying
10 you of that guilt beyond a reasonable doubt.

11 The presumption of innocence is
12 like a robe of righteousness placed about the shoulders of
13 the Defendant, which remains with the Defendant until it
14 has been stripped from the Defendants by evidence
15 satisfying you have the Defendants' guilt beyond a
16 reasonable doubt.

17 The presumption of innocence is
18 not a mere legal theory. It is not a -- just a legal
19 phrase. It is a substantial right to which every
20 Defendant is entitled, unless you the jury are satisfied
21 from the evidence of the Defendant's guilt beyond a
22 reasonable doubt.

23 Now the State has the burden of
24 proving, as I said, the Defendants' guilt beyond a
25 reasonable doubt.

1 Some of you may have served as
2 jurors in civil cases where you were told that it is only
3 necessary to prove that a fact is more likely true than
4 not true; such as by the greater weight, or preponderance
5 of the evidence.

6 In criminal cases, the State's
7 proof must be more powerful than that. It must be beyond
8 a reasonable doubt.

9 Proof beyond a reasonable doubt is
10 proof that leaves you firmly convinced of the Defendant's
11 guilt.

12 There are few things in this world
13 that we know with absolute certainty. And in criminal
14 cases, the law does not require proof that overcomes
15 every possible doubt.

16 If, based on your consideration of
17 the evidence, you are firmly convinced that the
18 Defendants are guilty of the crime charged, you must find
19 the Defendants guilty.

20 A reasonable doubt is the kind of
21 doubt that would cause a reasonable person to hesitate to
22 act. It is a doubt for which you could give a reason.

23 If, on the other hand, you think
24 there is a real possibility that a Defendant is not
25 guilty, you must give the Defendant the benefit of the

1 doubt and find him not guilty.

2 There are two types of evidence
3 which are generally presented during a trial; direct
4 evidence and circumstantial evidence.

5 Direct evidence is testimony of a
6 person who claims to have actual knowledge of a fact,
7 such as an eyewitness. It is evidence which immediately
8 establishes the main fact to be proved.

9 Circumstantial evidence is proof
10 of a chain of facts and circumstances indicating the
11 existence of a fact. It is evidence which immediately
12 establishes collateral facts from which the main fact may
13 be inferred.

14 Circumstantial evidence is based
15 on inference and not upon personal knowledge or
16 observation.

17 The law makes absolutely no
18 distinction between the weight or value to be given to
19 either direct or circumstantial evidence. Nor is a
20 greater degree of certainty required of circumstantial
21 evidence than of direct evidence.

22 You should weigh all of the
23 evidence in the case.

24 After weighing all of the
25 evidence, if you are not convinced of the guilt of the

1 Defendant beyond a reasonable doubt, you must find the
2 Defendant not guilty.

3 The indictments in this -- uh --
4 case -- or the indictments charge the Defendants with
5 burglary in the first-degree, armed robbery, possession
6 with intent to distribute, and unlawful carrying of a
7 pistol.

8 I remind you that the fact that
9 the Defendants were arrested, charged, and indicted in
10 this case is not evidence in this case; and cannot be
11 considered by you as evidence of guilt in this case. Nor
12 does it create any presumption or inference of guilt.

13 This -- These documents are simply
14 the formal, written, instruments, which contain the
15 charges made against the Defendants. It is -- They are
16 the formal documents by which this case is brought to --
17 to This Court.

18 I charge you that there are two
19 Defendants in this case, each of whom is charged with
20 burglary first degree, armed robbery, possession with
21 intent to distribute, and unlawful carrying of a pistol.

22 The case of each Defendant, and
23 the evidence and the law concerning that Defendant,
24 should be considered separately and individually.

25 Your verdict does not have to be

1 the same for both Defendants.

2 The fact that you may find one
3 Defendant guilty or not guilty, should not control your
4 verdict as to the other Defendant.

5 Where more than one person is
6 charged with a crime, if the evidence warrants it, you
7 may convict one and acquit the other; or you may acquit
8 both; or you may convict both.

9 It will depend upon your of your
10 view of the testimony and evidence.

11 You must take each Defendant and
12 consider the evidence as to that Defendant and my
13 instructions to you on the law.

14 You will then write a separate
15 verdict of guilty or not guilty for each individual
16 Defendant as to each indictment.

17 Necessarily, you must determine
18 the credibility of witnesses who have testified in this
19 case. Credibility simply means believability.

20 It becomes your duty as jurors to
21 analyze and evaluate the evidence and determine which
22 evidence convinces you of its truth.

23 In determining the believability
24 of the witnesses who have testified in this case, you may
25 believe one witness over several witnesses, or several

1 witnesses over one witness. You may believe a part of
2 the testimony of a witness and reject the remaining part
3 of the testimony that same witness.

4 You may believe the testimony of a
5 witness in its entirety, or reject the testimony of a
6 witness in its entirety.

7 You may consider whether any
8 witness has exhibited to you any interest, prejudice,
9 bias, or other motive in this case.

10 You all -- also may consider the
11 appearance and manner of a witness while on the witness
12 stand.

13 There have been -- There has been
14 evidence presented that witnesses have made prior
15 statements which are not consistent with the witness's
16 present testimony.

17 You may use this evidence to
18 decide whether to believe the witness -- to believe the
19 witness. You may also use evidence of the earlier,
20 contradictory, statements to determine the truth of those
21 statements.

22 It is up to you to decide whether
23 to believe the earlier statements or the testimony given
24 at trial.

25 If a witnesses is shown to have

1 knowingly testified untruthfully concerning any material
2 matter, you may consider this in determining whether to
3 trust the witness's testimony as to other matters.

4 You may reject all the testimony
5 of that witness, or give all, or part, of the testimony
6 the weight you think it deserves.

7 The rules of evidence ordinarily
8 do not permit witnesses to testify to opinions or
9 conclusions.

10 An exception to this rule exists
11 for the witnesses we call "expert witnesses."

12 A witness who, by education and
13 experience, has become an expert in some art, science,
14 profession, or calling, may state an opinion as to
15 relevant and material matter in which the witness claims
16 to be an expert; and may also state the reasons for the
17 opinion.

18 You should consider any expert
19 opinion received in evidence in this case, and like any
20 other evidence, give it the weight you think it deserves.

21 If you decide that the opinion of
22 an expert witness is not based on sufficient education
23 and experience, or if you conclude that the reasons given
24 by -- in support of the opinions are not sound; or that
25 the opinion is outweighed by other evidence, you may

1 disregard the opinion entirely.

2 An expert's testimony is to be
3 given no greater weight than that of other witnesses
4 simply because the witness is an expert.

5 Further, you are not required to
6 accept an expert's opinion even though it is not
7 contradicted.

8 I instruct you that -- uh -- and
9 emphasize that the fact that one Defendant did not
10 testify is not a fact to be considered by you in any way
11 in your deliberation and in your consideration of the
12 question of guilt or innocence of the Defendant.

13 It must not be considered by you
14 in any manner whatsoever.

15 A defendant has the constitutional
16 right to remain silent. And the assertion of this right
17 must not be considered by you in your deliberations.

18 I repeat:

19 Under your oath, you are to draw
20 -- draw no conclusion whatsoever from the fact that the
21 Defendant in this case did not testify.

22 The fact that this Defendant did
23 not testify should not even be discussed in the jury
24 room.

25 The burden of proof, as I have

1 stated to you, is on the State.

2 The Defendant is not required to
3 prove his innocence. The burden of proof remains on the
4 State to prove guilt beyond a reasonable doubt.

5 If a crime is committed by two or
6 more persons who are acting together in committing a
7 crime, the act of one is the act of all.

8 A person who joins with another to
9 commit an unlawful act is criminally responsible for
10 everything done by the other person which happens as a
11 probable or natural consequence of the acts done in
12 carrying out the common plan and purpose.

13 For example:

14 Uh -- Two people can be guilty of
15 killing another person, when only one of the two had a
16 gun; there was only one bullet; and only one of the two
17 fired the shot that caused the death.

18 If two or more people are together
19 -- acting together, assisting each other in committing
20 this offense, the act of one is the act of all. Or, as
21 it is sometimes said:

22 The hand of one is the hand of
23 all.

24 Prior knowledge that a crime is
25 coming to be com -- is -- is going to be committed,

1 without more, is not sufficient to make a person guilty
2 of that crime.

3 Mere knowledge that another person
4 is going to commit a crime, even if the Defendant is
5 present when the crime is committed, is not sufficient to
6 convict the Defendant as a principal.

7 Guilt as a principal is shown by
8 actual or constructive presence at the scene as a result
9 of prior arrangement.

10 Therefore, a finding of a prior
11 arranged plan, or common scheme, is necessary for a
12 finding of guilt as a principal.

13 The State must prove beyond a
14 reasonable doubt by competent evidence, the theory of
15 "the hand of one is the hand of all.:

16 A principal in a crime is one who,
17 either actually commits the crime, or who is present,
18 aided, abetting, or assisting in committing the crime.

19 When a person does an act in the
20 presence of, and with the assistance of another, the act
21 is done by both:

22 Where two or more acting in a com
23 -- with a common plan or intent are present at the
24 commission of the crime, it does not matter who actually
25 commits the crime. All are guilty. The hand of one is

1 the hand of all.

2 Present at the commission of a
3 crime means: to be sufficiently near to aid and abet and
4 assist in the commission of the crime.

5 However, mere presence at the
6 scene of a crime is not sufficient to convict one as the
7 principal on the theory of aiding and abetting.

8 Intent is also a necessary element
9 for there to have been a common design or intent to
10 commit the crime. And the crime must have been committed
11 pursuant thereto, with the person aiding and abetting by
12 some overt act.

13 Intent means intending to result
14 which actually occurs; not accidentally or involuntarily.

15 Intent may be shown by acts and
16 conduct of the Defendant; and other circumstances from
17 which you may naturally and reasonably infer intent.

18 The State must prove these
19 elements beyond a reasonable doubt.

20 Once again, let me go over "mere
21 presence" for you.

22 Mere presence at the scene is not
23 sufficient to prove someone guilty of a crime. A
24 Defendant's presence where a crime is being committed or
25 mere association with a person who commits a crime, does

1 not make a Defendant an accompish or an aider and
2 abettor of the person committing the crime. The burden
3 is on the State to prove every element of the crime
4 charged.

5 If you find, after reviewing all
6 the evidence, that the State has proved that the
7 Defendant was only present at the scene of the crime, and
8 that they have not proved beyond a reasonable doubt any
9 other participation in the crime, then you must find the
10 Defendant not guilty.

11 The law is that proof of presence
12 at the scene -- uh -- alone, is not sufficient to find
13 someone guilty.

14 These indictments -- or the
15 indictments in this case allege several different
16 offenses against the Defendants.

17 The charges are burglary in the
18 first degree, armed robbery, possession with intent to
19 distribute marijuana, and unlawful carrying of a pistol.

20 Each indictment charges a separate
21 and distinct offense.

22 You must find each indictment --
23 or must decide each indictment separately on the evidence
24 and the law applicable to it, uninfluenced by your
25 decision as to any other indictment.

1 Each Defendant may be convicted or
2 acquitted on any or all of the offenses charged.

3 You will be asked to write a
4 separate verdict of guilty or not guilty for each
5 indictment, and for each Defendant.

6 The Defendants are charged with
7 first-degree burglary.

8 The State must first prove beyond
9 a reasonable doubt that the Defendants entered a dwelling
10 without consent.

11 A dwelling is any building or
12 portion of a building in which a person ordinarily
13 sleeps.

14 A building constructed as a
15 dwelling that has never been occupied cannot be
16 considered a dwelling for the purposes of burglary.

17 But a building is a dwelling, even
18 if the residents are temporarily absent from the
19 building.

20 In order to prove that the
21 Defendant entered the dwelling, the State does not have
22 to show that the Defendant's entire body entered the
23 dwelling.

24 The smallest entry is sufficient.

25 It may be any part of the body,

1 such as a hand, or a foot, or even an instrument, such as
2 a hook.

3 In addition, the State does not
4 have to prove that force was used to gain entry.

5 If a person enters a building by
6 using deception, artifice, trick, or misrepresentation to
7 get consent to enter, this is an entry without consent.

8 Next:

9 The State must prove beyond a
10 reasonable doubt that the Defendant intended to commit a
11 crime, either a felony or a misdemeanor, at the time of
12 the entry.

13 Mere entry into a dwelling without
14 consent is not burglary.

15 If the intent to commit a crime is
16 formed after the entry, it is not burglary.

17 On the other hand, if the
18 Defendant intended to commit a crime at the time of the
19 entry, it is a burglary, even if the intent was abandoned
20 after the entry.

21 It does not matter that the
22 intended crime was not completed.

23 Intent may be shown by acts and
24 conduct of the Defendant, and other circumstances from
25 which you may naturally and reasonably infer intent.

1 Finally, the State must prove
2 beyond a reasonable doubt; number one:

3 When entering, while in the
4 dwelling, or when fleeing, the Defendant, or an
5 accomplice, was on armed with a deadly weapon or
6 explosive.

7 A deadly weapon is an article,
8 instrument, or substance, which is likely to cause death
9 or great bodily harm.

10 Whether an instrument has been
11 used as a deadly weapon depends on the facts and
12 circumstances of each case.

13 The following are examples of
14 instruments which may be deadly weapons:

15 A pistol, a shotgun, a rifle, a
16 dirk, a dagger, a knife, a slingshot, metal knuckles, a
17 razor, gasoline, a fireball, a Molotov cocktail, and
18 lighter fluid.

19 A gun may be a deadly weapon, if
20 it is not operating.

21 Or:

22 When entering, while in the
23 dwelling, or when fleeing, the Defendant or, an accomplice
24 causes physical injury to anyone not participating in the
25 crime.

1 Or; number three:

2 When entering, while in the
3 dwelling, or when fleeing, Defendant or an accompish
4 uses, or threatened to use, a dangerous object.

5 Or; number four:

6 When entering, while in the
7 dwelling, or when fleeing, the Defendant or an accompish
8 displayed what was, or appeared to be, a knife, pistol,
9 revolver, a rifle, shotgun, machine gun, or other
10 firearm.

11 Or; number five:

12 The Defendant entered or remained
13 in the dwelling in the nighttime.

14 Nighttime is the period between
15 sunset and sunrise during which there is not enough
16 daylight to recognize a persons face except by artificial
17 light or moonlight.

18 The defendants are charged with
19 armed robbery.

20 In order to prove this offense,
21 the State must prove beyond a reasonable doubt that the
22 Defendants took personal property from the person or
23 presence of another person.

24 Property in the presence of an --
25 uh -- is in the presence of a person if it is within the

1 persons reach, inspection, observation, or control, so
2 that the person could, if not overcome with violence or
3 prevented by fear, keep possession of his property.

4 The State must also prove beyond a
5 reasonable doubt that the Defendant carried the property
6 away, intending to permanently deprive the owner of the
7 property, and to keep the property for the Defendant's
8 own use.

9 The slightest removal of property,
10 or the complete possession of property, even for an
11 instant, by the Defendant, is sufficient to show a taking
12 and carrying away of property.

13 The taking and carrying away of
14 the property must have been done with violence or by
15 putting the owner of the property in fear of violence.

16 And finally, the State must prove
17 beyond a reasonable doubt that the Defendant was armed
18 with a deadly weapon during the robbery.

19 A deadly weapon is any article,
20 instrument, or substance, which is likely to cause death
21 or great bodily harm.

22 Whether the instrument has been
23 used as a deadly weapon, depends on the facts and
24 circumstances of each case.

25 The following again are examples

1 of instruments which may be deadly weapons:

2 A pistol, a shotgun, a rifle, a
3 dirk, a dagger, a knife, a slingshot, medical -- uh --
4 metal knuckles, a razor, gasoline, a fire bomb, a Molotov
5 cocktail, and lighter fluid.

6 A gun may be a deadly weapon, even
7 if it is not operating.

8 Finally:

9 The Defendants are charged with
10 possession of intent to distribute marijuana.

11 The State must prove beyond a
12 reasonable doubt that the Defendants possessed marijuana
13 with intent to distribute it.

14 To prove possession, the State
15 must prove beyond a reasonable doubt that the Defendants
16 had both the power and in -- the intent to control the
17 disposition or use of the marijuana.

18 Possession may be either actual or
19 constructive.

20 Actual possession means that the
21 marijuana was in the actual physical custody of the
22 Defendant.

23 Constructive possession means that
24 we Defendant had dominion and control, or the right to
25 exercise dominion or control over either the marijuana

1 itself, or the property on which the marijuana was found.

2 Mere presence at the scene where
3 the drugs were found is not enough to prove possession.

4 Actual knowledge of the presence
5 of the marijuana is strong evidence of the Defendants
6 intent to control it's disposition of use -- or use.

7 The Defendant's knowledge and
8 possession may be inferred when a substance is found on
9 the property under the Defendant's control.

10 However, this inference is simply
11 an evidentiary fact to be taken into consideration by
12 you, along with other evidence in the case; and to be
13 given the weight you decide it should have.

14 Two or more persons may have joint
15 possession of a drug.

16 The State must also prove beyond a
17 reasonable doubt that the Defendant intended to
18 distribute the marijuana.

19 Distribute means to either
20 deliver, other than by administering or dispensing, a
21 drug.

22 Intent may be shown by acts and
23 conduct of the Defendant and other circumstances from
24 which you may naturally and reasonably infer intent.

25 In determining whether the

1 Defendant had the intent to distribute the marijuana, you
2 may consider the circumstances surrounding the
3 Defendant's alleged possession.

4 You may consider the amount of the
5 substance alleged to have been possessed, the manner in
6 which it was allegedly possessed, the place where it was
7 allegedly processed, and other factors which you consider
8 to be important.

9 You must find that the Defendant
10 did not -- uh -- intend to have the marijuana solely for
11 his own use.

12 Possession of more than 28 grams
13 or one ounce of marijuana creates an inference that the
14 Defendant possessed the marijuana with intent to
15 distribute it.

16 This inference does not relieve
17 the State from proving beyond a reasonable doubt that the
18 Defendant had the intent to distribute.

19 It's simply an evidentiary fact to
20 be considered into evidence -- or -- excuse me -- to be
21 taken into consideration by you, along with the other
22 evidence in the case, and to be given the weight you
23 decide it should have.

24 The Defendants are charged with
25 the unlawful carrying of a pistol.

1 The State must prove beyond a
2 reasonable doubt that the Defendant carried a pistol
3 about his person, whether concealed or not.

4 A weapon is about the Defendant's
5 person, if it is readily accessible and convenient for
6 immediate use. The pistol need not actually be touching
7 the person of the Defendant.

8 Now, ladies and gentlemen, that is
9 the law of this case.

10 There are two possible verdicts
11 which you may find on each indictment in this case:

12 Guilty or not guilty.

13 There is absolutely no
14 significance in the order of which I state these possible
15 verdicts, or of which I put them on the verdict forms.

16 It's just simply that one has to
17 be stated before the other.

18 Let me advise you that your
19 verdict must be a unanimous one.

20 Now, Ms. Foreperson, I'm going to
21 send you back in your jury room. And once your jury has
22 reached a verdict, you will write the verdict on the
23 verdict form.

24 And I have a verdict form for each
25 charge, for each Defendant.

1 After your deliberations, you will
2 simply circle your verdict and sign -- uh -- where you
3 have indicated -- or where I have indicated.

4 Now, I'm going to have Mr. Roth
5 take you into your juryroom.

6 I'm going to, while you're there,
7 have the attorneys get together all of the exhibits.

8 I am going to have my charge on
9 the law marked by the court recorder as The Court's
10 Exhibit. And I'm going to send that in with you.

11 I'm going to ask you not to begin
12 your deliberations until I send the exhibits in to you.
13 That is your signal to begin your deliberations.

14 I'm going to ask these attorneys
15 -- I'm going to -- I want to be fair to everyone. I'm
16 going to ask them if I have left anything out of my
17 charge.

18 If I have, I will be bringing you
19 back and charging you further.

20 That's why I do not want you to
21 begin your deliberations yet.

22 But if I don't bring you back out,
23 I send in this evidence; then you are to begin your
24 deliberations.

25 Is that clear, Ms. Todd.

1 FOREPERSON TODD:

2 (Nods in the affirmative.)

3 THE COURT:

4 All right.

5 Mr. Roth, if you would, take the
6 jury to the jury room. Segregate the alternates; all
7 right.

8 All right. Thank you very much.

9 Mark that as an exhibit, Mr.

10 Buckner.

11 WHEREUPON: THE JUDGE'S CHARGE ON

12 THE LAW WAS MARKED BY THE COURT REPORTER AS COURT'S

13 EXHIBIT NUMBER 2.

14 (WHEREUPON: The jury empanelled
15 in the case withdrew from the courtroom at 5:19 PM, May
16 20, 2010; and was no longer present during the following
17 proceedings.)

18 THE COURT:

19 Anything further from the State?

20 MS. LIVESAY:

21 No sir.

22 THE COURT:

23 Anything further from the
24 Defendant Tynes?

25 MR. MONCKTON:

1 No -- No sir, Your Honor.

2 THE COURT:

3 Anything further from the

4 Defendant Lackey?

5 MR. WILSON:

6 No sir.

7 THE COURT:

8 All right. Very well.

9 Gentlemen, if you would, please
10 get together; cooperate with each other and get these --
11 uh -- exhibits together.

12 Uh -- Let's round them all up.
13 And we'll have Mr. Roth take them back for the jury to
14 begin its deliberations.

15 WHEREUPON: The Court's
16 instructions were followed and the jury was advised to
17 being deliberating at 5:20 PM.

18 THE COURT:

19 We're at ease.

20 (WHEREUPON: The court was
21 declared in recess at 5:20 PM, May 20, 2010.)

22 (WHEREUPON: The court was called
23 to order by the Bailiff at 6:30 PM, May 20, 2010.)

24 THE COURT:

25 Okay. I just brought you in for

1 one thing. It's -- uh -- 6:30 now. It usually takes us
2 -- uh -- after we have gotten an order from them, at
3 least 45 minutes for -- uh -- the -- uh -- to get any
4 food for the jury.

5 You know, we're looking at
6 probably 7:30 by then.

7 Uh -- Does anybody have any
8 objection to my sending the clerk in and asking the jury
9 if they want us to order dinner for them, and go ahead
10 and do it, if that's the case.

11 MS. LIVELY:

12 That's fine.

13 MS. LIVESAY:

14 No sir.

15 MR. WILSON:

16 No objection, Your Honor.

17 MR. MONCKTON:

18 No objection, Your Honor.

19 THE COURT:

20 All right. Very well. Uh --
21 Heather, if you would, go back and take care of that.
22 See what the jury wants.

23 (WHEREUPON: Meals were provided
24 for the jury during their deliberations.

25 (WHEREUPON: The Court was

1 notified that the jury had reached a verdict at 8:46 PM,
2 May 20, 2010.

3 (WHEREUPON: The court was called
4 to order by the Bailiff at 8:49 PM, May 20, 2010.)

5 BAILIFF:

6 Order in The Court.

7 THE COURT:

8 We have a verdict. Would you get
9 the attorneys for me?

10 Mr. Nobles, has someone sent for
11 the solicitors?

12 DEPUTY:

13 Yes sir.

14 THE COURT:

15 Sam, get everybody who's coming
16 in, in or out; one of the two; okay.

17 THE COURT:

18 Mr. Hemingway getting the
19 defendants?

20 DEPUTY:

21 Yes sir.

22 THE COURT:

23 Okay.

24 (WHEREUPON: All pertinent
25 parties, along with their counsel, were back and present

1 in the courtroom at 8:54 PM, May 20, 2010.)

2 THE COURT:

3 All right.

4 I am informed that we do have a
5 verdict. Uh -- We'll be bringing the jury in, in just a
6 moment.

7 I'm asking security to -- uh --
8 seal the courtroom at this time.

9 I do not have any idea what this
10 verdict is. But I will tell all persons present that I
11 will not tolerate any outbursts or show of emotion in any
12 form or fashion from any person.

13 If you do, I have instructed my
14 deputies to take custody of you. And I will deal with
15 you at a later date.

16 You will be in direct contempt of
17 Court if you do so.

18 So please, if you don't feel that
19 you're able to compose yourself -- uh -- while in the
20 presence of this jury, you need to leave the courtroom at
21 this time.

22 Again, let me stress upon you that
23 I do not know what this verdict will be. But I -- I
24 offer that for everyone in attendance.

25 Is there anyone who needs to move

1 -- to leave?

2 Okay.

3 Mr. Nobles, if you would, bring in
4 this jury.

5 (WHEREUPON: The jury empanelled
6 in the case was escorted back into the courtroom at 8:57
7 PM, May 20, 2010; and was in fact present during the
8 following proceedings.)

9 THE COURT:

10 All right.

11 Ms. Todd, I'm informed that you've
12 reached a verdict. Is that correct?

13 FOREPERSON TODD:

14 Yes sir.

15 THE COURT:

16 Have you reached a unanimous
17 verdict as to each indictment?

18 FOREPERSON TODD:

19 Yes sir.

20 THE COURT:

21 As to each Defendant?

22 FOREPERSON TODD:

23 Yes, Your Honor.

24 THE COURT:

25 All right.

1 Madame Clerk, would you please
2 receive the verdict.

3 You may publish the verdict.

4 CLERK:

5 Indictment Number 2008-GS-26-205,
6 State of South Carolina versus Mario Tynes:

7 As to the charge of unlawful
8 carrying of a pistol, we the jury unanimously find the
9 Defendant guilty.

10 Indictment Number 2008-GS-26-207,
11 State of South Carolina versus Mario Tynes:

12 As to the charge of burglary first
13 degree, we the jury unanimously find the Defendant
14 guilty.

15 Indictment Number 2008-GS-26-208,
16 State of South Carolina versus Mario Tynes:

17 As to the charge of armed robbery,
18 we the jury unanimously find the Defendant guilty.

19 Indictment Number 2008-GS-26-206,
20 State of South Carolina versus Mario Tynes:

21 As to the charge of possession
22 with intent to distribute marijuana, we the jury
23 unanimously find the Defendant guilty.

24 Indictment Number 2008-GS-26-216,
25 State of South Carolina versus Michael Gerard Lackey:

1 As to the charge of unlawful
2 carrying of a pistol, we the jury unanimously find the
3 Defendant guilty.

4 Indictment Number 2008-GS-26-214,
5 State of South Carolina versus Michael Gerard Lackey:

6 As to the charge burglary first
7 degree, we the jury unanimously find the Defendant
8 guilty.

9 Indictment Number 2008-GS-26-215,
10 State of South Carolina versus Michael Gerard Lackey:

11 As to the charge of armed robbery;
12 we the jury unanimously find the Defendant guilty.

13 Indictment Number 2008-GS-26-217,
14 State of South Carolina versus Michael Gerard Lackey:

15 As to the charge of possession
16 with intent to distribute marijuana, we the jury
17 unanimously find the Defendant guilty.

18 Signed by Foreperson Sandra Todd,
19 Juror Number 390.

20 THE COURT:

21 Were all indictments signed by the
22 Forelady?

23 CLERK:

24 Yes sir.

25 THE COURT:

1 All right.

2 Poll the jury. Do a general poll.

3 CLERK:

4 You want to poll individually?

5 THE COURT:

6 No. A general poll.

7 CLERK:

8 Ladies and gentlemen of the jury,
9 if this is your verdict, so signify by raising your right
10 hand.

11 WHEREUPON: All members of the
12 jury raised their right hands to signify their agreement
13 with the verdict.

14 CLERK:

15 Thank you.

16 THE COURT:

17 All right.

18 Any request for the individual
19 polling from the Defendant Tynes?

20 MR. MONCKTON:

21 No sir, Your Honor.

22 THE COURT:

23 From the Defendant Lackey?

24 MR. WILSON:

25 No sir.

1 THE COURT:

2 All right. Very well.

3 Any post-trial motions?

4 MR. MONCKTON:

5 Yes, sir, Your Honor.

6 THE COURT:

7 All right.

8 MR. MONCKTON:

9 Your Honor, at this time the
10 Defendant -- uh -- would move for a judge -- judgment non
11 obstante for the verdict; and also a motion for a new
12 trial on behalf of Defendant Tynes.

13 THE COURT:

14 All right, sir.

15 MR. WILSON:

16 Your Honor, we'd make the same
17 motion on behalf of the Defendant Lackey.

18 THE COURT:

19 All right.

20 And I would respectively deny both
21 motions. There's -- There is ample evidence to support
22 this jury's -- uh -- verdict. In fact, there was
23 overwhelming evidence that would support this jury's
24 verdict.

25 Any reason why sentencing should

1 not take place, Mr. Monckton?

2 MR. MONCKTON:

3 No sir, Your Honor.

4 THE COURT:

5 Mr. Wilson?

6 MR. WILSON:

7 No sir.

8 THE COURT:

9 All right.

10 I will here from the State, first.

11 Ms. Lively?

12 MS. LIVELY:

13 Yes sir, Your Honor.

14 Well, Your Honor, as you know --

15 uh -- originally whenever the State got involved with
16 this case, it came to us..

17 It actually came to -- uh -- Ms.

18 Livesay, first.

19 Uh -- Very serious charges.

20 The State knew that we had an
21 uphill battle in regards to our -- the victims in the
22 case.

23 But the bottom line was that our
24 Horry County PD did an excellent job in obtaining the
25 evidence that linked these two individuals, as well as

1 the other individuals, clearly in the case.

2 So, Your Honor, the State feels
3 like we bent over backwards with making very reasonable
4 offers so that we would not have to go forward in this
5 trial.

6 Uh -- We had to put This Court and
7 ourselves through all of this time in bringing people
8 from SLED.

9 This was something that we really
10 feel like we had to do. We had to present everything to
11 the jury because of the seriousness of the charges.

12 So, Your Honor, we feel at this
13 time that The Court should consider the fact that -- uh
14 -- we truly did try to give these guys some type of an
15 option other than going to trial in this matter.

16 And -- uh -- we are asking This
17 Court to place a substantial sentence on these Defendants
18 because these are serious charges.

19 They went into those -- that home
20 armed. They went in there with a plan. They injured
21 someone.

22 These guns were obviously had --
23 uh -- bullets in them. Someone could have very well been
24 seriously injured or killed.

25 THE COURT:

1 Someone was --

2 MS. LIVELY:

3 Serious --

4 THE COURT:

5 -- injured.

6 MS. LIVELY:

7 There's -- That's true. Exactly.

8 So when you take the totality of
9 the circumstances, one of the things that we didn't bring
10 up to the jury; but one of things myself and Ms. Livesay
11 would talk about is:

12 If any of those other people in
13 that house pulled a weapon, I think we would've had
14 someone dead for sure.

15 Uh -- It was a high tense
16 situation.

17 You heard from Catherin Arnold,
18 who I believe to be truly someone who was in the wrong
19 place at the wrong time; and how -- She reacted as I
20 would've reacted.

21 So Your Honor, I'm asking This
22 Court to take all of that into consideration, as well as
23 the jury's very clear verdict on the overwhelming
24 evidence, which Your Honor knew about from the beginning
25 of this case in imposing a sentence.

1 And we've -- we've met with these
2 -- these guys two or three times. I believe even maybe
3 Defendant Tynes had even been arraigned a couple of
4 times. And we thought he was going to take the plea.

5 Because we really did, knowing
6 that they don't have a prior record, and knowing their
7 original circumstances, wanted to try and be fair to
8 these Defendants.

9 So we believe the jury --

10 THE COURT:

11 Well, you still want to be fair to
12 them, don't you.

13 MS. LIVELY:

14 And we still want to -- always
15 wanted to be fair; because they're young, and because of
16 the fact they had no prior record, and the fact that they
17 came -- they were in school.

18 So that's reason why we feel like
19 we've been over backwards.. But they've put us in a
20 position where the only thing we could do was to give
21 them a trial, which is what they have every right and are
22 entitled to.

23 So, Your Honor -- uh --

24 THE COURT:

25 Just a moment?

1 WHEREUPON: The Court noticed that
2 The Defendant Lackey began to turn pale, with his eyes
3 fluttering, and began to show other signs of a possible
4 seizure in the courtroom. He was immediately attended
5 by his counsel, his family, and court deputies.

6 THE COURT:

7 All right. We're at ease for a
8 few minutes; okay.

9 MS. LIVELY:

10 Yes sir.

11 THE COURT:

12 Ladies and gentlemen of the jury,
13 let me tell you that you have performed your duty
14 admirably.

15 You have listed intensively.

16 This is a difficult case, even
17 though there, in my view, was overwhelming evidence.

18 You have taken over three hours to
19 deliberate. I believe that you worked diligently on this
20 case. But your job is over.

21 I am going to impose sentence this
22 evening whenever we can do so.

23 However, I will not make you stay
24 here because of the late hour.

25 You are entitled to leave if you

1 wish.

2 If you wish to stay, you may stay.

3 It's entirely up to you.

4 If you wish to leave at this time,
5 I'll provide security for you to get your vehicles and
6 you can leave.

7 Is there any juror who would like
8 to leave?

9 WHEREUPON: All jurors indicated
10 they would like to leave.

11 THE COURT:

12 Okay; any of you who want to
13 leave, may leave; okay. Thank you.

14 (WHEREUPON: The entire jury
15 empanelled in the case withdrew from the courtroom at
16 9:06 PM, May 20, 2010; and was no longer present during
17 the following proceedings.)

18 THE COURT:

19 All right.

20 We're at ease. Please get me, Mr.
21 James, whenever it's time.

22 DEPUTY:

23 Yes sir.

24 THE COURT:

25 Whenever the Defendant can come

1 back in.

2 DEPUTY:

3 Yes sir.

4 WHEREUPON: The Court left the
5 courtroom, and paramedics were called to attend to the
6 Defendant Lackey.

7 WHEREUPON: The Court returned and
8 took the bench again at 9:20 PM, May 20, 2010.

9 THE COURT:

10 All right.

11 We've got the attorneys. I really
12 don't think we need the two Defendants back in.

13 It's my understanding that Mr.
14 Lackey is going to be transported to Conway Medical
15 Center.

16 Uh -- Is that correct, Mr. Wilson?

17 MR. WILSON:

18 Yes sir. That's correct, Your
19 Honor.

20 THE COURT:

21 Mr. -- uh -- uh -- Monckton, you
22 want to defer sentencing of your client as well?

23 MR. MONCKTON:

24 Yes, sir, Your Honor.

25 THE COURT:

1 All right.

2 I want y'all back in here at 9:00
3 in the morning.

4 Mr. Nobles, what -- He -- He's in
5 custody.

6 What's -- What -- uh --
7 arrangements has to be -- have to be made for him at
8 Conway medical Center?

9 I mean, what -- what do you do?

10 DEPUTY:

11 Your Honor, we've got a Detention
12 Officer and one of our deputies will be going there to
13 have him checked.

14 I spoke briefly with the -- uh --
15 EMS. At that particular point, they thought he might
16 just be hyperventilating and caused himself to pass out
17 due to they hyperventilation.

18 But they wanted to check him out
19 and be sure.

20 We couldn't get an adequate
21 reading because he was shaking from the blood pressure --

22 THE COURT:

23 Okay. I -- I'm worried about if
24 they admit him? What do you --

25 DEPUTY:

1 Uh -- We'll keep somebody with
2 him.

3 THE COURT:

4 Okay. All right.

5 Uh -- I will -- uh -- be back at
6 9:00 o'clock in the morning.

7 Ms. Livesay, were there -- uh -- I
8 -- I hadn't gotten to it yet. But I was going to ask if
9 they're any victims?

10 MS. LIVESAY:

11 Yes, Your Honor. Those victims
12 have already left, and do not wish to be present for
13 sentencing.

14 THE COURT:

15 All right.

16 Okay; in the morning at 9:00
17 o'clock.

18 MR. WILSON:

19 Thank Your Honor.

20 MS. LIVESAY:

21 Thank Your Honor.

22 MR. MONCKTON:

23 Thank Your Honor.

24 (WHEREUPON: The court was
25 declared in recess at 9:21 PM, May 20, 2010.)

1 (WHEREUPON: The court was called
2 to order by the Bailiff at 9:04 AM, May 21, 2010; and all
3 pertinent parties, along with their counsel, were back
4 and present in the courtroom.)

5 BAILIFF:

6 Order in the court. All Rise.

7 THE COURT:

8 All right. All right.

9 All right. (Tapping on the bench
10 in order to gain everyone's attention.)

11 All right.

12 Let the record reflect that we are
13 all back in the courtroom this morning.

14 We have the Defendants present and
15 the attorneys; and we're going to proceed with the
16 sentencing.

17 Any reason not to, Mr. Monckton?

18 MR. MONCKTON:

19 No sir, Your Honor.

20 THE COURT:

21 Any reason not to, Mr. -- uh --

22 MR. WILSON:

23 No sir, Your Honor.

24 THE COURT:

25 -- Wilson?

1 WHEREUPON: One of the female
2 family members in the courtroom begins to weep and wail
3 in a very loud manner; then begins to speak.

4 UNIDENTIFIED SPEAKER:

5 I'm okay. I'm okay. Yes. Yes.
6 I'm sorry. I'm sorry.

7 THE COURT:

8 All right, Mr. Hemingway, we -- we
9 just can't have that, though.

10 The court reporter's going to have
11 to be able to take down what I say and what the attorneys
12 say; okay.

13 DEPUTY:

14 Okay.

15 UNIDENTIFIED SPEAKER:

16 I'm sorry.

17 THE COURT:

18 All right.

19 Ms. Lively, I believe you were
20 interrupted somewhat during your presentation.

21 Uh -- You -- You can continue
22 that.

23 I believe you had told me that the
24 victims had been notified and did not care to be present.

25 That was the last thing you said.

1 MS. LIVELY:

2 Absolutely, Your Honor.

3 And at this point -- uh -- I
4 believe I've put enough on the record.

5 The Court has heard so much about
6 this case from before we started all the way through. So
7 at this point -- uh -- we're just satisfied to ask The
8 Court to just obviously use your discretion in -- uh --
9 sentencing these two Defendants.

10 Thank you.

11 THE COURT:

12 All right.

13 Mr. Monckton, will you go first in
14 mitigation?

15 MR. MONCKTON:

16 Yes, sir, Your Honor.

17 THE COURT:

18 All right.

19 MR. MONCKTON:

20 Just beg your indulgence.

21 WHEREUPON: Mr. Monckton fills out
22 documents related to sentencing.

23 THE COURT:

24 Ms. -- uh -- Lively, did you
25 prepare sentencing sheets?

1 MS. LIVELY:

2 That's what they're signing, Your
3 Honor.

4 THE COURT:

5 All right.

6 MS. LIVELY:

7 And I'll offer them up.

8 THE COURT:

9 All right.

10 THE COURT:

11 I do note that all these
12 indictments have been true-billed.

13 MS. LIVELY:

14 That's correct, Your Honor.

15 These are Defendant Tynes. These
16 are Defendant Lackey, Your Honor.

17 THE COURT:

18 All right. Okay.

19 Mr. Monckton, you are prepared?

20 MR. MONCKTON:

21 Yes, sir, Your Honor.

22 THE COURT:

23 All right, sir.

24 MR. MONCKTON:

25 May it please The Court?

1 Your Honor, just as part of an
2 outline of what I planned to do -- uh -- I'm going to
3 have some family members speak first.

4 THE COURT:

5 Very well.

6 MR. MONCKTON:

7 I'm going to have Mr. Tynes, who
8 wishes to address The Court. And then, I'll have some
9 closing remarks.

10 THE COURT:

11 All right.

12 Please have your family members
13 come forward. And put their names on the record, please;
14 and what relationship they might have to the Defendant.

15 COURT REPORTER:

16 If you would, put her by the mike?

17 MS. CAROLYN TYNES:

18 (Weeping profusely.) I'm sorry.

19 THE COURT:

20 Did you put your name on the
21 record?

22 MS. CAROLYN TYNES:

23 It's Carol -- Carolyn Tynes.

24 (Weeping and inaudible.)

25 THE COURT:

1 What relationship do you have to
2 the Defendant?

3 MS. CAROLYN TYNES:

4 I'm -- I'm -- I'm Mario's oldest
5 aunt.

6 THE COURT:

7 Okay.

8 MS. CAROLYN TYNES:

9 And -- And I helped raised Mario
10 with Tracy. And -- uh -- we tried to ask Mario to take
11 the plea; because we are very, very, very, close family.
12 And none of us have ever experienced anything like this
13 in this family.

14 This is devastating. And all of
15 the kids at home are devastated by this.

16 And -- uh -- in my line of work,
17 in journalism, I mess with students, so I'm always
18 talking to students about making something constructive
19 of their lives.

20 And I always do. And I always
21 make sure that I try to make a difference. And there's
22 no difference with my daughter or with my nephew.

23 And I just -- I -- I -- I know
24 that you got to punish him. I -- I -- I just beg that
25 you just don't -- just -- just -- just be fair; and --

1 and just think about all of us.

2 We are -- We are his family. And
3 as large as we are; and as many nieces and nephews as I
4 have, we -- we have never -- this is -- this is -- This
5 is horrible.

6 This is the stuff that I write
7 about. This is stuff I read about. And this is just
8 horrible. And I just beg that you just -- just keep in
9 mind that we're all prepared to embrace Mario.

10 We all -- We love him. We're not
11 going to -- This doesn't change anything. This doesn't
12 change anything.

13 We just ask you to just take that
14 into consideration.

15 And if you could just -- just
16 apply the -- the minimum, that's -- that's all we ask.

17 And I -- I thank the ladies too.
18 But we -- We just -- We've never been through this before
19 in our lives.

20 THE COURT:

21 Thank you.

22 MS. CAROLYN TYNES:

23 Thank you.

24 UNIDENTIFIED SPEAKER:

25 Good morning, Your Honor.

1 THE COURT:

2 Yes ma'am?

3 MS. TAMMY FERGUSON:

4 My name is Tammy Ferguson.

5 COURT REPORTER:

6 I'm sorry, ma'am.

7 THE COURT:

8 Pardon. We can't hear you.

9 MS. TAMMY FERGUSON:

10 Tammy Ferguson. I'm Mario's aunt.

11 I have lost my father and my

12 sister. And this is still the most difficult time of my

13 life, ever. (Begins to weep loudly and profusely.)

14 I asked Mario -- I pleaded with

15 Mario to take a plea; so we did not have to go through --

16 (weeping and trying to speak but not speaking

17 intelligibly.)

18 COURT REPORTER:

19 I'm sorry. I'm not hearing you.

20 MS. TAMMY FERGUSON:

21 I am so sorry. (Still weeping

22 profusely and loudly.)

23 We just tried to come and support

24 him as a family.

25 But this is not what we wanted him

1 to do. We implored him to take a plea.

2 I just beg that you would take my
3 family into consideration. And we --- we will continue to
4 support him with our love as best we can.

5 We really hope that we will have a
6 time again that we can have Mario back into our home.
7 And I just implore you to please have mercy on him during
8 your sentencing.

9 Thank you.

10 THE COURT:

11 Yes ma'am.

12 MS. TRACY TYNES:

13 Good morning.

14 THE COURT:

15 Yes ma'am?

16 MS. TRACY TYNES:

17 My name is Tracy Tynes. And I'm
18 Mario's mother.

19 THE COURT:

20 Times?

21 MS. TRACY TYNES:

22 Tynes; T-y-n-e-s.

23 THE COURT:

24 Oh, Tynes.

25 MS. TRACY TYNES:

1 Yes.

2 THE COURT:

3 Okay. I'm sorry.

4 MS. TRACY TYNES:

5 Yes. Yes sir.

6 Uh -- I'm Mario's mother.

7 Uh -- Mario is my only child.

8 And -- uh -- Mario and I had many
9 conversations about taking a plea.

10 I probably begged Mario every day
11 to please take a plea.

12 I told Mario:

13 I know that he didn't think that I
14 could handle him being away from me.

15 And I said to him:

16 Mario, I'd rather give you up for
17 a portion of time, than to lose you for so many years.

18 And what I've done every day -- I
19 wasn't sitting back there because I didn't want him to
20 accept the plea.

21 I was sitting behind him because
22 I'm his mother. And -- And I love him more than anything
23 and anyone in the world. He means the world to me.

24 I -- I was here with Mario -- I --

25 I met with coaches when they came to my home -- when many

1 coaches came to my home -- to -- to talk to Mario about
2 scholarships.

3 Mario was not just an -- an
4 athlete. He was also a very good student.

5 He's a very caring person.

6 He's a very compassionate person.

7 He loves his family.

8 Everybody in the family says to
9 me:

10 Don't tell the other person, but
11 Mario is my favorite nephew.

12 Because he's -- He's just very
13 loving.

14 The circumstances that we find
15 ourselves in today are unlike anything we could have ever
16 expected; especially me as a mother, because I know how I
17 raised Mario. And I know my values.

18 And I know I've always tried to
19 share my values with Mario. So this is very unusual.

20 But what I'm asking you today,
21 Judge, I'm asking you for mercy.

22 I'm asking you not only on behalf
23 of myself, but for my mother, who I begged not to come;
24 because I knew this would be too difficult for her.

25 For family we have in Iraq.

1 For family -- For family back in
2 Miami and New York.

3 For my brother in the military in
4 Korea.

5 I'm begging for mercy.

6 And I apologize to This Court. I
7 apologize.

8 I -- I -- I thank Billy, but I -- I
9 apologize to everybody for what -- for why we're here.

10 For what everybody's going
11 through, I apologize.

12 And -- And what I'm asking today
13 is for some mercy on Mario.

14 He was 19 when this incident
15 occurred.

16 He's always made a lot of good
17 decisions in his life. And I was always extremely proud
18 of Mario.

19 So what I did this week was -- was
20 stand behind him, even while I begged him every day.

21 We had a very tearful moment on
22 Monday night. I was on my knees screaming and hollering
23 at the hotel; because I wanted Mario to take that plea.

24 I did.

25 But he didn't.

1 So I'm asking today for your
2 mercy.

3 I've already asked for God's mercy
4 on Mario. But I'm asking you for mercy as his mother.

5 He is my only child. And I just
6 thank you for -- for hearing me --

7 THE COURT:

8 Yes ma'am.

9 MS. TRACY TYNES:

10 -- this morning. Thank you.

11 THE COURT:

12 Glad to do it.

13 MR. MONCKTON:

14 Thank Your Honor.

15 Uh -- At this time, my client
16 would like to address The Court.

17 DEFENDANT TYNES:

18 Mario Tynes.

19 THE COURT:

20 All right, Mr. Tynes.

21 DEFENDANT TYNES:

22 Not once did I say anything;
23 because I never wanted to throw anybody else under the
24 bus and throw -- and -- and slam at anybody's name.

25 But from day one, I knew I was

1 wrong.

2 I know I made mistakes. I know I
3 did a lot of stuff that's out of my character; but I know
4 I -- I know you have to sentence me and do what you have
5 to do.

6 But, I ask that you just show some
7 kind of mercy on -- on my life; because I was a football
8 player in school. And I never did nothing like this
9 before.

10 But I never wanted to hurt anybody
11 else family, and bring anybody else down with me just to
12 free myself.

13 And I ask that you forgive me for
14 all my wrongdoing. (Begins to weep and speak haltingly
15 and inaudibly.)

16 COURT REPORTER:

17 I'm sorry. I didn't get the last
18 part.

19 THE COURT:

20 What was the last --

21 MR. MONCKTON:

22 He said to let him come home with
23 his family.

24 DEFENDANT TYNES:

25 Let me come home to my family one

1 day. And you'll never see me in a courtroom again.

2 (Turning toward his family.)

3 And I just ask that y'all forgive
4 me for being here.

5 THE COURT:

6 All right, sir.

7 All right, Mr. Monckton?

8 MR. MONCKTON:

9 Yes, sir, Your Honor.

10 As you know -- uh -- the evidence
11 in this case was overwhelming. Uh -- And you heard from
12 the family.

13 Uh -- I can tell The Court there
14 were numerous discussions -- uh -- specifically Monday --
15 that became quite emotional.

16 Uh -- I never want to see -- uh --
17 a young man go to jail -- uh -- by making a bad decision.

18 He made two bad decisions, Your
19 Honor.

20 He made a bad decision in October
21 of 2007. And he made an even worse decision in my
22 opinion, Monday -- uh -- by going to trial.

23 But that is his right.

24 And I will say something, Your
25 Honor, that's tough to say as a lawyer; but I'm begging

1 The Court to protect Mario from himself.

2 If Your Honor sentences him, in
3 accordance with the statute, to even a minimum sentence,
4 it's 15 years.

5 Mario is 22 years old now. And
6 under that law, he would have to serve at least 12 and a
7 half years before he's released; released; not paroled;
8 released.

9 That would put him in his mid-
10 thirties before he's even released. He would serve at
11 least a third of his life in prison at that point.

12 I know you are aware of what the
13 plea offer was early on Monday.

14 I know that Your Honor has to
15 sentence him beyond that; because he does not get the
16 benefit of the State's offer.

17 Uh -- Unfortunately he put them
18 through a trial. And I apologize to them today on his
19 behalf.

20 Uh -- I think the family has
21 apologized to them; and know that they've gone above and
22 beyond what they need to do in this case, Your Honor.

23 I would just ask you in sentencing
24 that you consider his age, the fact that he will be
25 spending such a substantial amount of time in jail.

1 Your Honor is aware of the terms
2 of the plea offer early in the case. And I don't think
3 they need to be mentioned here.

4 I just ask that Your Honor have
5 mercy on Mario and, Your Honor, protect him from himself.

6 Uh -- You know, he did not want to
7 admit these things. He did not testify.

8 And I would just ask Your Honor to
9 have mercy on him, his family. But do justice to the
10 State, as well.

11 I mean, he needs to be punished.
12 Ain't no doubt about it.

13 He's been convicted of a crime
14 that carries a potential life sentence. And I ask Your
15 Honor to sentence him with mercy, keeping in mind his
16 age; but also doing justice to yourself, Your Honor.

17 Thank you.

18 THE COURT:

19 Thank you, sir

20 Now, Mr. Wilson?

21 MR. WILSON:

22 Yes, sir, Your Honor.

23 THE COURT:

24 How will you proceed?

25 MR. WILSON:

1 Your Honor, if I could, I would
2 like to -- wanted you to hear from the family first.

3 THE COURT:

4 I'll be happy to.

5 Please have them place their name
6 on the record. And I would like to know the
7 relationship.

8 MR. WILSON:

9 I will. Yes sir.

10 MS. YOLANDA DOZIER:

11 Good morning, Judge.

12 My name --

13 MR. WILSON:

14 Speak right into that microphone.

15 MS. YOLANDA DOZIER:

16 Good morning, Judge.

17 My name is Yolanda Dozier. I am
18 the mother of Michael Lackey.

19 THE COURT:

20 Okay.

21 MS. YOLANDA DOZIER:

22 And -- uh -- I stand this morning
23 first of all -- uh -- apologizing to -- uh -- you, the
24 prosecutors -- uh -- to -- uh -- Attorney Wilson and his
25 staff -- uh -- to the State of South Carolina -- uh --

1 for -- uh -- my son's -- uh -- activity here while in
2 your State.

3 Uh -- We have a -- I have -- uh --
4 raised Michael -- uh -- most of his life -- uh -- by
5 myself. I was a single parent until about six years ago.

6 And -- uh -- I myself am a pastor.
7 And my husband is also.

8 I have -- uh -- raised -- uh --
9 Michael with morals and values -- uh -- to trust God in
10 all things.

11 And even at the beginning of -- uh
12 -- this event -- uh -- when I received the first phone
13 call that my son had been arrested, I as a mother was
14 devastated.

15 I have never ever been in -- uh --
16 a position like I am in today.

17 Uh -- Michael has never ever been
18 in trouble. I have never even received a phone call from
19 school about Michael.

20 He has always been an outstanding
21 young man.

22 Yes, he did make a mistake on
23 October the 13th, 2007. And he made a mistake to come to
24 trial.

25 But I ask you, Judge, for your

1 mercy.

2 I have prayed for -- have been
3 praying for the mercy of God, and the favor of God, that
4 God would give me favor with Him; and to give me also
5 favor with man.

6 Uh -- I just ask that you would
7 take in consideration, Michael is my only son.

8 Uh -- Me and Michael are so much
9 alike, in ways. And I thought -- Last night when I left,
10 I thought about when I come home in the evening and
11 Michael is there, he's always kissed me on my head. And
12 he always asks me:

13 Mom, how was your day?

14 For him to be away for so many
15 years, and such a lengthy time, I know that there's some
16 -- that's something that I will miss tremendous --
17 tremendously.

18 But I ask you Judge that -- uh --
19 have mercy on our son.

20 Take into consideration, please,
21 that he has never been in trouble before a day in his
22 life.

23 Uh -- I just beg for your mercy,
24 today.

25 Thank you.

1 MS. TAHISHA MADDOX:

2 My name is Tahisha Mattox.

3 I'm Michael's sister.

4 Uh -- I'm the old --

5 THE COURT:

6 What was the last name?

7 MS. TAHISHA MADDOX:

8 Maddox; M-a-d-d-o-x.

9 I am -- uh -- my mom's oldest
10 child.

11 And -- uh -- I want to first just
12 -- uh -- apologize to you, Judge, the -- uh --
13 prosecutors, and -- uh -- everybody here in this
14 courtroom for even having to be here under these type of
15 circumstances.

16 Uh -- I just ask for your mercy on
17 Michael and -- uh -- for my mom. She loves my brother
18 dearly.

19 And it's just -- it's just so hard
20 for her.

21 And -- uh -- I just -- uh -- I
22 prayed, and I asked for God's mercy. And we just ask for
23 your mercy.

24 Thank you.

25 THE COURT:

1 Thank you.

2 MR. CHARLES DOZIER:

3 Uh -- My name is Charles Dozier.

4 I'm Michael's -- uh -- stepfather.

5 I'd like to first just say -- uh

6 -- Your Honor, I'd like to apologize as well.

7 We had a nice conversation with
8 Michael on Monday about taking a plea.

9 And -- uh -- of course, he didn't
10 do that. And it -- uh -- hurt us pretty bad.

11 But, like my wife stated, that I
12 had the pleasure of -- uh -- marrying her six years ago;
13 and had a opportunity to -- uh -- get to know Michael;
14 fine, fine, young man; really is.

15 It really floored us when we got
16 that phone call that he had been in trouble.

17 He too played football. And he
18 was in college at the time; and a very intelligent kid;
19 very loving; very thoughtful.

20 You know, he would kiss me on my
21 head like he do his mom. Just a very, very, kind guy.

22 And I beg for your mercy this
23 afternoon. -- This morning, I'm sorry.

24 I beg that -- that you would be
25 real kind and considerate when it comes to that, Judge.

1 I understand that he made a
2 mistake and he must pay for it.

3 We're big believer in our family
4 in paying for whatever you done and -- and owning up to
5 your mistakes.

6 I think it's one of the first
7 things if manhood that young men follow.

8 They just young. And they have
9 not had an opportunity yet to really start to live life.

10 But I just beg for The Court's
11 mercy on the behalf of Michael Lackey. And I apologize
12 to everybody in the State of South Carolina; to everybody
13 that had to be here this week; the jurors; everybody.

14 I'm pretty sure everybody could
15 have something better to do.

16 But I just ask you, Judge, please
17 show mercy, please.

18 MR. WILSON:

19 Judge, let me say that -- to Ms.
20 Livesay and to Ms. Lively:

21 I think that throughout this
22 process, to be fair to them, they have been very fair to
23 us from the very beginning.

24 THE COURT:

25 Let me just say this, Mr. Wilson.

1 MR. WILSON:

2 Yes sir.

3 THE COURT:

4 Uh -- The prosecutors in this
5 case, I must say, have asked -- acted admirably.

6 You were with me yesterday -- uh
7 -- after the -- uh -- the sentence was rendered where
8 they unilaterally asked me not to get the maximum
9 sentence in this case --

10 MR. WILSON:

11 Yes sir.

12 THE COURT:

13 -- and to consider youth.

14 MR. WILSON:

15 Yes sir.

16 THE COURT:

17 I don't think there could ever
18 have been a case -- I've never experienced that in the
19 years that I stood in your shoes right here today.

20 MR. WILSON:

21 Yes sir.

22 THE COURT:

23 We had a prosecutor who was -- uh
24 --- fair.

25 And I also want to say to -- to

1 everyone here today, that you and Mr. Monckton have -- uh
2 -- risen to the highest level of -- uh -- of the practice
3 of law.

4 Uh -- I'm proud to have -- have
5 practiced with you. I'm proud of you. I'm proud you're
6 a member of the Horry County bar.

7 MR. WILSON:

8 Thank you.

9 THE COURT:

10 You have done everything that you
11 could possibly do for this Defendant.

12 And you took a case where there
13 was overwhelming evidence and you were able to make
14 something out of it.

15 At least, this jury was out for
16 three and a half hours.

17 I want to commend you for your
18 work; and the -- the prosecutors in this.

19 MR. WILSON:

20 Thank Your Honor.

21 THE COURT:

22 Okay.

23 MR. WILSON:

24 Your Honor, let me say to Ms.
25 Lively and to Ms. Livesay; because throughout this

1 process, they -- In fact, they would seek us out to try
2 to get us to work out a plea, which is really unusual.
3 But they did. They made every effort to try to resolve
4 this without a trial.

5 And the family of Michael, we met
6 time after time. We talked about this. We discussed it.

7 I -- I explained to him:

8 We really don't have any realistic
9 chance at trial. You -- We need to take the plea.

10 But, the final answer -- the final
11 decision is always for the Defendant.

12 And I told his mother, and I told
13 his father, that we can't make him take it. That it has
14 to be his decision.

15 Because if he -- if we force him
16 to take it and then he gets and -- and starts serving
17 that time, then he's going to always wonder whether or
18 not we made him do the right thing.

19 So it has to be his decision.

20 That's always been my philosophy.

21 It still is, you know.

22 And in spite of all of our
23 discussing with him, he decided this is what he wanted to
24 do.

25 You can tell from the witness

1 stand, he's a very bright young man. Very intelligent.
2 Very articulate. Uh -- Bright in school. Good football
3 player.

4 Had everything that a child could
5 want. He had a good family, who loves him; who supports
6 him; who takes care of him -- uh -- who was there for him
7 throughout everything.

8 And -- But sometimes young people
9 get on the wrong track, for whatever reason.

10 And he had never been in one bit
11 of trouble ever until he came down here on that
12 particular day.

13 Why he decided to go along with
14 it, I don't know. I don't know why. I don't know. I
15 don't -- I can't explain it to you.

16 And I don't even know that he
17 could explain it to you; but he did. And as a result of
18 that, he's here before His Honor.

19 And you know, I'm also grateful --
20 and I know he's grateful -- that nobody was more
21 seriously hurt than Mr. Barrett was.

22 Because if they had been, then we
23 could be here for a death penalty trial as opposed to --
24 you know -- simply burglary -- well not simply, but
25 burglary first degree and armed robbery which are serious

1 charges in and of themselves.

2 But it could have been a lot more
3 serious if the gun had been fired, and somebody had been
4 hit and died, it would have been tremendously more
5 serious.

6 So we're grateful for that, that
7 it's not more serious. And we're grateful, Your Honor,
8 that nobody was more seriously hurt than Mr. Barrett was.

9 And -- And -- And -- And
10 regardless, we understand. We do. We understand that no
11 matter whether Mr. Barrett was a dope dealer or not does
12 not give somebody the right to enter your home.

13 Your home has to be a sacred
14 place. We understand that.

15 And we understand that you have a
16 job to do; and that you must do your duty, just like we
17 tried to do ours throughout this trial. We understand
18 that.

19 What we do ask is, is that:

20 We know that -- or I believe --
21 based on everything that I know about Michael from my two
22 and half years of representing him, is that he's a good
23 kid.

24 He did make some horrible,
25 horrible, decisions. One, when he went with these guys

1 on that fateful day in October; and again when he decided
2 not to take the plea offer that the State had offered
3 him.

4 Both were bad decisions.

5 But you know, I think about my own
6 life. And I think about decisions that I've made as a
7 young man. And sometimes I didn't make -- always make
8 the right decisions.

9 Fortunately, it didn't work out as
10 bad for me as it worked out for him. But I know that
11 there were times when I made decisions that didn't turn
12 out right; and that they weren't the right decisions.

13 But somehow I made it by. I got
14 by with those decisions.

15 Well, when you get older, you --
16 you can understand better the decision-making process.
17 And you can see the pitfalls.

18 When you're 18 and 19, you can't
19 see them as clearly. And you think you can do whatever
20 you want to do. And you can get away with whatever you
21 going to get away with.

22 And -- And just throughout this
23 trial, when we were listening to all those witnesses who
24 were testifying here.

25 They were talking about how they

1 were smoking drugs in -- in school; and using the school
2 money.

3 All those are just foolish
4 decisions that young teenagers make.

5 It -- It's not -- And it's not
6 uncommon.

7 Not to excuse what they did;
8 because going into that home with weapons and assaulting
9 people is wrong. It's wrong. And I don't care who does
10 it. It doesn't make it right. It's wrong.

11 And it could have turned out a lot
12 worse.

13 I will say to you, Your Honor,
14 this, with Michael:

15 I honestly believe that when he
16 gets through this, that he will be a better person; and
17 that he will not be back before His Honor or any other
18 judge for any kind of criminal conduct.

19 Because I believe that he has a
20 good core. I honestly do.

21 And I will say to you, Your Honor,
22 too, that:

23 Throughout this process, that --
24 and -- and I know the hand of one is the hand of all --
25 but, if you -- even based on all the testimony that was

1 had -- of all the people who were involved, that he was
2 probably the least involved, if -- if you listen to what
3 everybody says.

4 Uh -- And because the only thing
5 that I've heard that he did -- the only thing -- which is
6 still wrong, and still make him a participant in the
7 crime, is, is that:

8 He collected the cell phones and
9 the wallets, and the money, or whatever it was, when they
10 got in the car.

11 That's the only thing that anybody
12 has ever testified that he did that I'm aware of.

13 Uh -- He never had a weapon.

14 He never hit anybody.

15 He never did anything other than
16 he participated, which was -- in and of itself, made him
17 a participant.

18 And the hand of one is the hand of
19 all. And that's, I think, what the jury believed.

20 Uh -- And, you know, I just ask
21 you, Your Honor, to have mercy.

22 You know, I join with Billy --
23 with Mr. Monckton. I join with the family of -- of -- of
24 Mr. Lackey.

25 And -- And we ask you, we implore

1 you, we beg you, to have mercy on these young people.

2 They do. They have a lot of good
3 in them. They have a lot of life ahead of them.

4 And we just ask you to give them
5 an opportunity to have that life.

6 MR. WILSON, JR:

7 Your Honor, if I may?

8 THE COURT:

9 Yes sir.

10 MR. WILSON JR:

11 Uh -- Just a couple of things.

12 One -- I've learned so much.

13 One is being in the trial watching
14 Senior, watching Billy, watching Candace and Nancy; as a
15 young lawyer, I tell you:

16 This has been an excellent tried
17 case.

18 Uh -- I've learned a lot.

19 I grew up also a lot during this
20 trial.

21 I'll also say:

22 This young man, as I've known him,
23 is really good person. He really is. And I just wanted
24 to say that.

25 But I know he also wants to speak

1 to The Court, Judge.

2 He asked me to -- uh -- give up
3 the microphone and let them talk.

4 THE COURT:

5 All right, Mr. Lackey?

6 DEFENDANT LACKEY:

7 Hello, Judge.

8 THE COURT:

9 All right, Mr. Lackey.

10 DEFENDANT:

11 I just want to -- uh -- I want to
12 say I'm sorry to everybody; to the Judge -- to The Court;
13 to my family and friends.

14 Uh -- I just come asking for
15 mercy.

16 And I just put my faith in God.
17 And I know that whatever the outcome comes, that he's
18 going to help me get through this.

19 And I just ask that you don't just
20 take our lives away; and give us another chance to -- to
21 come back home, and live with our families, and continue
22 to live our lives; and not just take all of that away
23 from us.

24 Thank you. That's all I have to
25 say.

1 THE COURT:

2 All right.

3 Anything further, Mr. Monckton?

4 MR. MONCKTON:

5 No sir, Your Honor. I think --

6 THE COURT:

7 Anything further, Mr. -- uh --

8 Wilson?

9 MR. WILSON:

10 No sir, Your Honor.

11 THE COURT:

12 All right.

13 Mr. -- uh -- Misterys -- uh --

14 Lackey and Tynes, would you please stand.

15 Mr. Lackey and Mr. Tynes, let me

16 -- let me say that this case is a study in bad decisions.

17 Terrible decisions were made

18 concerning this activity.

19 I can see -- I mean, I -- I

20 actually can see how you would minimize the -- uh --

21 severity of going and -- uh -- and robbing a -- uh -- a

22 drug dealer.

23 Let me tell you though, that this

24 offense -- and you have been convicted of burglary in the

25 first-degree.

1 Burglary in the first-degree
2 carries up to a life sentence in this State.

3 And I would imagine that your
4 attorneys have probably told you why burglary would carry
5 a life sentence -- burglary in the first degree.

6 It involves the use of a weapon
7 while entering a dwelling. It's specific to a dwelling.
8 It involves the entering of a dwelling in the nighttime.

9 The reason that our legislature
10 has imposed such a -- a -- a terrible sentence for this
11 kind of activity -- uh -- is obvious.

12 And this is not one of our
13 sentences that were left over from the common law. This
14 was part of the re-revamping of our -- our -- our
15 criminal offenses in the last 10 or 15 years.

16 When you commit burglary in the
17 first degree, you enter a home, where it is likely -- and
18 under circumstances where it is likely that you will
19 encounter an occupant.

20 And it is likely that a
21 confrontation will occur. And it is likely that someone
22 will lose their life, whether it's you or the occupant of
23 that home.

24 You were given an opportunity not
25 to plead to that very serious offense, as were your

1 codefendants.

2 You made a terrible decision again
3 by not accepting the opportunity to plea to a series of
4 -- uh -- charges that would not include burglary in the
5 first three.

6 I am aware of the efforts made by
7 the State to protect -- and this is so unusual -- but in
8 this case, the Solicitors in this case tried to protect
9 all of you because of your youth, and the fact that this
10 was an aberration. You did not have prior criminal
11 records.

12 But you rejected that.

13 And let me tell you this:

14 I would not penalize anyone for
15 going to trial. I do not penalize you for going to
16 trial. That is your constitutional right. It is one of
17 the most precious rights that we have as citizens; and
18 that is to go to trial.

19 However, it has been -- and I'm
20 sure your attorneys have told you -- the custom of The
21 Court -- and it is statutorily the custom of the federal
22 courts -- to give credit for acceptance of
23 responsibility.

24 And that is always a key factor in
25 -- uh -- a -- a -- a sentencing situation.

1 I want you to think about what you
2 have done here today to your families.

3 You seem to have wonderful
4 families.

5 The folks have been here. They
6 have been in this trial from the get-go. They've tried
7 to encourage you to -- to do the right thing -- uh -- in
8 this case.

9 And I think they did so with an
10 eye towards trying to protect you.

11 They have stood by you. They tell
12 me that they're going to step by you -- stand by you.

13 You are not the typical Defendants
14 that I have come before me in situations like this..

15 Typically, I'm looking for gang --
16 or I'm seeing gang affiliations. I'm seeing prior --
17 prior records. I'm seeing a history of -- of families
18 that are involved in this kind of activities.

19 That's not the case here.

20 Your mothers tell me that you're
21 the only person in their families who have ever had this
22 kind of a problem -- who have been in the criminal
23 process.

24 You are obviously provided with
25 the opportunities of life that would of -- have assured

1 under normal circumstances, your success.

2 You were given the opportunity to
3 go to college; although I understand that many -- or at
4 least Mr. Tynes received a scholarship. And that was
5 because of his outstanding efforts as an athlete.

6 I can appreciate that.

7 But nevertheless, you had a family
8 that supported you, encouraged you, and -- and instilled
9 in you the -- the desire to -- to get a college education
10 -- uh -- and to -- uh -- to ex -- to excel.

11 You have committed acts that have
12 -- are having devastating affects on your family; and
13 will continue to do so.

14 This is, I said, a very serious
15 situation.

16 You went into that house with
17 guns.

18 You went into it knowing that
19 there were people in there; and not caring whether it was
20 a drug dealer or some innocent person who was there
21 simply because it was homecoming weekend and they were
22 visiting.

23 You went in to get marijuana, an
24 illegal substance; not just money.

25 You committed an armed robbery.

1 You are so lucky that this
2 prosecutor -- or these prosecutors -- did not char -- uh
3 -- choose to charge you with five counts of kidnapping,
4 in addition to what you're facing -- probably still could
5 do it -- carrying substantial sentences as well.

6 You could have been charged with
7 assault with intent to kill or assault of a high and
8 aggravated nature for the pistol whipping of one of the
9 -- the victims.

10 You have been so lucky in this
11 thing; not only for -- because of your families' support
12 -- because of the way the Solicitor's Office has treated
13 you.

14 This is a case that just, under
15 normal circumstances, cries out for me to give you
16 somewhere between 30 years and life.

17 That's what it -- That's what it
18 -- it -- it cries out for.

19 But I am going to consider your
20 youth, obvious immaturity, Mr. Tynes. I'm certainly
21 going to consider the fact that you have stayed out of
22 trouble; that you do not have any prior records.

23 I'm going to consider the fact
24 that you are working towards a college education. I hope
25 that you'll finish that at -- at -- at some time.

1 You know, when you -- when you
2 enter prison -- and you know -- and your attorneys have
3 told you -- that I must sentence you to prison.

4 Burglary carries 15 years as a
5 minimum mandatory; and armed robbery 10.

6 You know that I'm going to have to
7 send you to prison. There's no question about that.

8 When you enter the prison system,
9 you have a choice.

10 You can go to the -- to the -- uh
11 -- or attend the -- uh -- school of career criminals.
12 And you can come out with all the tools that you need to
13 become a career criminal. And you can spend a
14 substantial part of the balance of your life in prison --
15 in and out -- as I have seen, and Mr. Wilson has seen,
16 and Mr. Monckton has seen over and over and over.

17 Isn't that right, Mr. Wilson?

18 MR. WILSON:

19 Yes sir.

20 THE COURT:

21 Isn't that right, Mr. Monckton?

22 MR. MONCKTON:

23 That's correct, Your Honor.

24 THE COURT:

25 Or you can take advantage of

1 what's was happening -- uh -- to you.

2 You going in under a no-parole
3 situation. So many Defendants who go in under that
4 circumstance do not avail themselves of any programs that
5 are available in the prison system.

6 They don't feel they have to take
7 a job in the -- in the system. They don't feel that
8 they have to do anything. They don't have to develop and
9 grow during their incarceration.

10 And statistically, it has been
11 shown over the last 15 years since we've had no-parole
12 sentences, that those who do that, and do not
13 participate, have a recidivism rate of about 50 percent
14 higher than those who do.

15 It gives me absolutely no pleasure
16 to sentence you.

17 This is the situation that I -- I
18 hate. It's the worst thing about my job.

19 I have boys that Mr. Wilson and
20 Mr. Moncton will tell you that are exactly -- one's a
21 little older -- but I have one that's exactly your age.

22 And I could imagine what it would
23 be like to have to -- uh -- sit there and list -- and
24 watch a judge sentence him.

25 I would imagine it would give the

1 judge some consternation.

2 And it doesn't give me any
3 pleasure. I hate this part of it. But I am bound to do
4 something.

5 I cannot give you the absolute
6 minimum in this situation.

7 But I believe, as Ms. Lively and
8 -- and -- and Ms. Livesay have told me, that this case
9 just does not call -- or that these circumstances -- for
10 a great sentence over that.

11 So I am going to sentence you as
12 follows:

13 For the unlawful carrying of a
14 pistol, you're each sentenced to 1 year incarceration in
15 the South Carolina Department of Corrections.

16 For the possession of marijuana
17 with intent to distribute, you're each sentence to 5
18 years incarceration in the South Carolina Department of
19 Corrections.

20 For the armed robbery, you're --
21 each of you are sentenced to a period of incarceration
22 for 10 years.

23 For the burglary in the first
24 degree, each of you are sentenced to incarceration for a
25 period of 18 years.

1 The sentences are to run
2 concurrently.

3 Make the best of your situation,
4 gentlemen.

5 Good luck to you.

6 MR. WILSON:

7 Thanks very much, Your Honor.

8 MR. MONCKTON:

9 Thank Your Honor.

10 THE COURT:

11 All right.

12 MS. LIVELY:

13 Thank Your Honor.

14 MS. LIVESAY:

15 Thanks Your Honor.

16 WHEREUPON: There being nothing
17 further, this matter was concluded at 9:31 AM, May 21,
18 2010.

19

20

21

22

23

24

25

CERTIFICATE

I, the undersigned, H. Eugene Buckner, CVR, Official Court Reporter at Large in and for the State of South Carolina, do hereby certify that the foregoing proceeding was taken on the 18th, 19th, 20th and 21st day of May, 2010;

That the within judicial proceedings are, to the best of my ability, an accurate and verbatim transcription of the hearing;

I further certify that I am neither Counsel nor Solicitor to any of the parties in said suit, nor interested in the event of the cause.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18th day of September, 2009.

H. Eugene Buckner

H. EUGENE BUCKNER, CVR
OFFICIAL COURT REPORTER AT LARGE
15TH JUDICIAL DISTRICT
STATE OF SOUTH CAROLINA

T. LARGE, HCPD

C DOCKET NO. 2008-GS-26-214

WITNESSES

THE STATE OF SOUTH CAROLINA

COUNTY OF Horry
87608-01 NL

COURT OF GENERAL SESSIONS

JANUARY TERM 2008

THE STATE

vs.

ARREST WARRANT NO.

J318278 DOA: 10/22/07

NAME: MICHAEL JERROD LACKEY

CDR: 0079 16-11-0311

DOB:
SSN:

ACTION OF GRAND JURY

James Wilson
Foreman of Grand Jury

VERDICT

JAN 24 2008

ATTORNEY: RALPH WILSON

INDICTMENT FOR:

BURGLARY 1ST DEGREE

ORIGINAL

Foreman of Petit Jury Date:

J. GREGORY HEMBREE, SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT FOR:

BURGLARY FIRST DEGREE

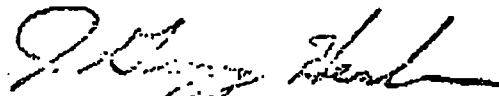
At a Court of General Sessions, convened on January 24, 2008, the Grand Jurors of Horry County present upon their oath:

BURGLARY, 1ST DEGREE

CDR: 0079 16-11-0311

That MICHAEL JERROD LACKEY, along with co-defendants, did in Horry County on or about October 13, 2007, enter the dwelling of SEAN BARRETT located at [REDACTED], Myrtle Beach, South Carolina, without consent and with the intent to commit a crime therein and the defendant did so in the nighttime, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

JUN-14-2011 08:28 From: HUNNY CLERK UJMKI B435136001 10:510001341331 1250

T. LARGE, HCPD

WITNESSES

ARREST WARRANT NO.

J318279 DOA: 10/19/07

CDR: 0139 16-11-0330(A)

ACTION OF GRAND JURY

Jamie Hembree
Foreman of Grand Jury JAN 24 2008

VERDICT

Foreman of Petit Jury Date:

DOCKET NO. 2008-GS-26-215

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY
87927 NL

COURT OF GENERAL SESSIONS

JANUARY TERM 2008

THE STATE

VS.

NAME: MICHAEL JERROD LACKEY

DOB:

SSN:

ATTORNEY: RALPH WILSON

INDICTMENT FOR:

ARMED ROBBERY

ORIGINAL

J. GREGORY HEMBREE, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR:

COUNTY OF HORRY)

ARMED ROBBERY

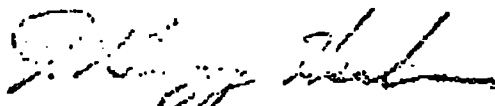
At a Court of General Sessions, convened on January 24, 2008, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That MICHAEL JERROD LACKEY, along with co-defendants, did in Horry County on or about October 13, 2007 while armed with a deadly weapon, to wit: a handgun, take and carry away personal property of SEAN BARRETT from or in the immediate presence of SEAN BARRETT with intent to deprive SEAN BARRETT of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

M. COOPER, HCPD

WITNESSES

ARREST WARRANT NO.

J318255 DOA: 10/14/07

CDR: 0044 16-23-0020, 0050 (AY2)

ACTION OF GRAND JURY

TRUE BILL

James Wilburn
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date:

C DOCKET NO. 2008-GS-26-216

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY
87531-03 NL

COURT OF GENERAL SESSIONS

JANUARY TERM 2008

THE STATE

vs.

NAME: MICHAEL JERROD LACKEY B/M

DOB:
SSN:

ATTORNEY: RALPH WILSON

INDICTMENT FOR:

UNLAWFUL CARRYING OF A PISTOL

Original
J. GREGORY HEMBREE, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT FOR:
UNLAWFUL CARRYING OF A PISTOL

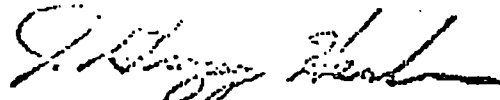
At a Court of General Sessions, convened on January 24, 2008, the Grand Jurors of Horry County present upon their oath:

UNLAWFUL CARRYING OF A PISTOL

(CDR: 0044 16-23-0020, 0050 (A)(2)

That MICHAEL JERROD LACKEY, did in Horry County, on or about the October 13, 2007, carry about the person two (2) pistols, to wit: a Ruger 9mm pistol and a Hi-Point 380 pistol, such carrying not being authorized by law, in violation of Section 16-23-20, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR

M. COOPER, HCPD

WITNESSES

ARREST WARRANT NO. _____

J318246 DOA: 10/14/07

CDR: 0186 44-53-0370 (b)(2)

ACTION OF GRAND JURY

TRUE BILL

James H. Wilson
Foreman of Grand Jury

VERDICT

Foreman of Petit Jury Date:

DOCKET NO.

2008-GS-26-

217

THE STATE OF SOUTH CAROLINA

COUNTY OF

HORRY

87531-03

NL

COURT OF GENERAL SESSIONS

JANUARY

TERM

2008

THE STATE

vs.

NAME:

MICHAEL JERROD LACKEY B/M

DOB:

SSN:

ATTORNEY:

RALPH WILSON

INDICTMENT FOR:

POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA

ORIGINAL

J. GREGORY HEMBREE, SOLICITOR

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT FOR:
POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA

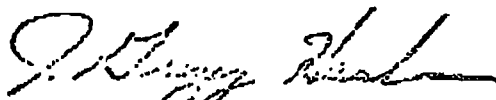
At a Court of General Sessions, convened on January 24, 2008, the Grand Jurors of Horry County present upon their oath:

POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

CDR: 0186 44-53-0370(b)(2)

That MICHAEL JERROD LACKEY did in Horry County, on or about October 13, 2007 possess with intent to distribute, dispense or deliver a quantity of Marijuana, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, and in violation of Section 44-53-0370(b)(2), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

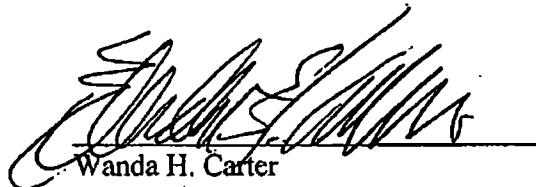


SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

June 22nd, 2011

A handwritten signature in black ink, appearing to read "Wanda H. Carter", is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

001257

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) CASE NO: 2012-CP-26-9094
3 PCR HEARING

4 **B E F O R E:** The Honorable George C. James
5 March 20, 2014

6
7 MICHAEL LACKEY,
8 Claimant/Applicant,
9 vs.
10 STATE OF SOUTH CAROLINA,
11 Respondent.

 **ORIGINAL**

12
13 **APPEARANCES:**

14 Tommy A. Thomas, Esq.
15 For the Claimant/Applicant.
16

17 Joshua L. Thomas, Esq.
18 For the Respondent.
(Office of the Attorney General)
19
20
21

22 Court Reporter:
23 Natalie Dahl, RPR
24
25

001258

I N D E X

WITNESSES

PAGE

MICHAEL LACKEY

Direct-Examination by Mr. T. Thomas..... 8
Cross-Examination by Mr. J. Thomas..... 35

YOLANDA DOZIER

Direct-Examination by Mr. T. Thomas..... 41

CHARLES DOZIER

Direct-Examination by Mr. T. Thomas..... 42
Cross-Examination by Mr. J. Thomas..... 45

RALPH WILSON, ESQ.

Direct-Examination by Mr. J. Thomas..... 45
Cross-Examination by Mr. T. Thomas..... 65
Redirect Examination by Mr. J. Thomas..... 70
Recross Examination by MR. T. Thomas..... 71

EXHIBITS

(NO EXHIBITS WERE MARKED OR ADMITTED)

P R O C E E D I N G S

CALL OF CASE

1 THE COURT: We're on the record now with Michael
2 Lackey versus State, 2012-CP-26-9094. Mr. Thomas.

3 MR. J. THOMAS: Thank you, Your Honor. This is a
4 January 2008 indictment for possession with intent to
5 distribute marijuana, carrying a pistol unlawfully,
6 armed robbery and burglary first degree. Mr. Lackey
7 was represented by Ralph Wilson. It went to trial in
8 May 17 through 21st, 2010, and he was convicted as
9 indicted. The Honorable Larry B. Hyman, Junior
10 sentenced him to five years on the PWID charge, one
11 year on the pistol, ten years on armed robbery and 18
12 years on the burglary first all to run concurrent.

13 An appeal was filed perfected by Wanda Carter on
14 the Office of Public Defense. It was an Anders appeal
15 and dismissed by the Court of Appeals in an
16 unpublished opinion 2012-UP-257. Mr. Tommy Condents
17 (phonetic) filed this PCR on Mr. Lackey's behalf on
18 November 27, 2012 alleging ineffective assistance of
19 counsel, and State is ready to proceed.

20 THE COURT: Okay. Mr. Tommy Thomas, you
21 represent Mr. Lackey?

22 MR. T. THOMAS: I do.

23 THE COURT: Are you ready to proceed?

24 MR. T. THOMAS: I am. Just a little simple
25 factual situation in this case. There were a number

CALL OF CASE

001260

1 of codefendants. Michael Lackey -- this was in Horry
2 County. There was a traffic stop, Your Honor.
3 Pursuant to that traffic stop, an amount of marijuana
4 and a gun were seized, and these individuals were
5 charged.

6 At a later date, law enforcement put together
7 what they consider a connection between this stop and
8 an armed robbery, burglary first, that occurred at
9 another location on the same day, and then that
10 situation -- basically there was a robbery of a drug
11 dealer and an amount of marijuana was taken from them.
12 There was a trial. Three codefendants went to trial.
13 One of the codefendants during the trial decided to
14 accept a plea, and he testified. Two of the
15 codefendants, one including Mr. Lackey, went through
16 the trial and were found guilty by the jury and
17 sentenced.

18 THE COURT: Total of three codefendants?

19 MR. T. THOMAS: There were three codefendants,
20 Your Honor, and he's one of them.

21 If it pleases the Court, just for the Court's
22 consideration, this is an ineffective assistance of
23 counsel case. Some of the issues, which of course
24 there may have been something else that developed at
25 trial, but that I have seen is counsel's failure to

CALL OF CASE

00261

1 file a motion to sever, and to seek an individual
2 trial for Mr. Lackey.

3 Also, Your Honor, we feel that counsel may have
4 been ineffective in failing to establish an alternate
5 sequence of events. I assume the theory of the
6 defense in this case would have been that Mr. Lackey
7 was not involved. He's contended that he was not
8 guilty, and that there was another scenario with other
9 individuals who could have been involved and
10 perpetrated this crime, which was presented to some
11 extent at trial, but my client feels like that could
12 have been further developed, and he was ineffective in
13 failing to do that.

14 Also, there were several plea offers made, and
15 beginning, I believe, at ten years, there was a plea
16 offer made of 12 years prior to trial in the
17 courtroom, and we would allege that counsel was
18 ineffective for failure to advise properly my client
19 in regards to that plea offer.

20 THE COURT: Did he advise him of the ten?

21 MR. T. THOMAS: He advised him of the 10, Your
22 Honor, and of the 12; however, the client is going to
23 testify that he didn't completely understand the
24 component of the offer.

25 Also, he was asserting that he was not guilty.

CALL OF CASE

1 There was an Alford plea, I believe, that was given by
2 one of the codefendants that went to trial. He was
3 never advised about the possibility of an Alford plea,
4 which would have alleviated the hurdle of him taking
5 the stand and admit to something that he has always
6 contended that he didn't do. That was never explained
7 to the client, Your Honor.

8 Lastly, Your Honor, there was -- he actually --
9 my client testified. He would claim that there was
10 ineffective assistance of counsel in that he was not
11 properly advised in regards to the risk of him
12 testifying at trial. He had contended that he did not
13 want to testify, and I think the decision was made at
14 the last moment, and he feels like he was not properly
15 advised by counsel.

16 THE COURT: So he intended all along not to
17 testify.

18 MR. T. THOMAS: Not to testify, Your Honor.
19 Then, at the end of this case, which the court -- of
20 course in the transcript it appears to me that the
21 testimony was not beneficial to him. It created an
22 inconsistency between he and the codefendant, and the
23 other witnesses and also the third codefendant who
24 actually took a plea and testified. I think it
25 created a problem for him, Your Honor, because no

CALL OF CASE

1 longer was the story between he and the codefendant,
2 Mr. Tine (phonetic), consistent. They became somewhat
3 inconsistent.

4 THE COURT: Okay.

5 MR. T. THOMAS: All right.

6 THE COURT: So you have those four basic grounds?

7 MR. T. THOMAS: Those four. The other one that
8 we talked about prior was that he feels like counsel
9 was not effective in showing discrepancies in
10 statements that the witnesses who did testify, they
11 had given a number of statements, and those statements
12 were inconsistent, and actually testimony is elicited
13 at trial that they lied, didn't tell the truth, in
14 prior statements. He feels that counsel should have
15 done a better job in bringing out those
16 inconsistencies.

17 THE COURT: So those were codefendants' pretrial
18 statements?

19 MR. T. THOMAS: Yes, sir. Actually, there were
20 some of the witnesses' pretrial statements. There was
21 a number of other individuals who could have been
22 charged in this case, and they were not. Then became
23 state witnesses, and they were statements that were
24 given by these witnesses prior to trial that, to some
25 extent, were completely inconsistent with what they

MICHAEL LACKEY - DIRECT EXAMINATION

001264

1 said at court.

2 THE COURT: Okay.

3 MR. T. THOMAS: If it pleases the Court, we'll
4 call Mr. Lackey to the stand.

5 (MICHAEL LACKEY, having been duly sworn,
6 testified as follows:)

7 THE CLERK: State your name and spell your last.

8 THE WITNESS: Michael Lackey, L-A-C-K-E-Y.

9 DIRECT-EXAMINATION

10 BY MR. T. THOMAS:

11 Q Mr. Lackey, you are currently serving time with
12 South Carolina Department of Corrections?

13 A Yes, sir.

14 Q What kind of sentence are you serving?

15 A An eighteen-year sentence for burglary first, ten
16 years for armed robbery, five years for unlawful -- I
17 mean five years for PWID marijuana, and a year for
18 unlawful carrying of a pistol.

19 Q And all of these are concurrent?

20 A Yes, sir.

21 Q You were charged and found guilty with burglary
22 first?

23 A Yes, sir.

24 Q You understand that burglary first carries 15 to
25 life?

MICHAEL LACKEY - DIRECT EXAMINATION

- 1 A Yes, sir.
- 2 Q You are asking for a new trial today?
- 3 A Yes, sir.
- 4 Q You and I discussed it and you understand that
- 5 should the Court grant you a new trial, you
- 6 potentially could go back and be tried again?
- 7 A Yes, sir.
- 8 Q And that you would be facing up to life
- 9 imprisonment?
- 10 A Yes, sir.
- 11 Q Are you willing to run that risk?
- 12 A Yes, sir.
- 13 Q You want to go forward today?
- 14 A Yes, sir.
- 15 Q Mr. Lackey, where are you housed?
- 16 A Lee Correctional Facility.
- 17 Q And when is your max out, do you know?
- 18 A 2026.
- 19 Q And how old were you at the time of this
- 20 incident?
- 21 A Eighteen years old.
- 22 Q And are you from South Carolina?
- 23 A No, sir.
- 24 Q Where are you from?
- 25 A Stone Mountain, Georgia.

MICHAEL LACKEY - DIRECT EXAMINATION

001266

1 Q Why were you in Horry County?

2 A I was in Horry County because a friend of mine,
3 he was the starting quarterback for Coastal Carolina.
4 He told me he was getting ready to start football, and
5 it was homecoming and he wanted me to see him play.

6 Q That is why you were here?

7 A Yes, sir.

8 Q You were not going to Coastal?

9 A No, sir.

10 Q Since you have been incarcerated, have you been
11 taking programs?

12 A Yes, sir.

13 Q I know there is one that your family was proud of
14 you for, which one is that?

15 MR. J. THOMAS: Objection, relevance.

16 THE COURT: Overruled.

17 A I completed the Second Chance Program that they
18 started at Lee County.

19 Q All right. Okay. Now, Mr. Lackey, let me take
20 you back in time. When were you arrested?

21 A October 14, 2007.

22 Q And did you -- were you out on bond?

23 A Yes, sir.

24 Q What kind of bond did you get?

25 A I'm not sure what the bond was. I know I was on

MICHAEL LACKEY - DIRECT EXAMINATION

1 bond.

2 Q During that period of time -- so you were out on
3 bond and able to meet with your attorney?

4 A Yes, sir.

5 Q Mr. Wilson?

6 A Yes, sir.

7 Q Was he retained or appointed?

8 A Retained.

9 Q And what did you do in regards to preparing this
10 case? Did you meet with Mr. Wilson?

11 A Yes, I had met with him a couple of times.

12 Q And when you met, did you go through the facts of
13 the situation?

14 A Yeah, for the most part. A good little bit.

15 Q And do you know if a private investigator was
16 hired?

17 A No, sir.

18 Q Were you -- it was your contention that you were
19 not guilty of this crime?

20 A Correct.

21 Q And did you discuss this with your attorney?

22 A Yes, sir.

23 Q Did you look at the discovery? Do you know what
24 I mean by "discovery"?

25 A I think like the paperwork that come from the

MICHAEL LACKEY - DIRECT EXAMINATION

001268

1 Solicitor's Office?

2 Q The evidence they had against you.

3 A Yes, sir.

4 Q And did you go through that discovery with your
5 attorney?

6 A I went through some of it with him. For the most
7 part, he sent it to me and I went through it. Some of
8 the stuff he felt like was valid, we went over some of
9 it. I ain't go through everything with him, like page
10 for page or dissect it with him and go through
11 everything with him, but when we met, he did bring
12 some of the stuff up about some of the statements and
13 things like that.

14 Q Okay. You said he sent it to you. Did you get
15 permission to go back to Georgia?

16 A Yes, sir.

17 Q So you were in Georgia?

18 A Yes, sir.

19 Q You were in college?

20 A Yes, sir.

21 Q In Georgia?

22 A Yes, sir.

23 Q Did you know what kind of case the State had,
24 good case, bad case?

25 A I mean, from what I read, I read a lot of

MICHAEL LACKEY - DIRECT EXAMINATION

1 inconsistent statements from other people that -- my
2 codefendants, from the supposed victims from all
3 different kinds of people that they said was involved
4 in the case. I seen multiple statements from all of
5 them.

6 Q Who testified against you at trial?

7 A Eric Brown.

8 Q Who is Eric?

9 A That was one of my codefendants. That is
10 Mario -- he played football with Mario.. He went to
11 Coastal.

12 Q Which one was the one that took the plea at
13 trial?

14 A Joshua Reeder.

15 Q So you said Eric was a codefendant; was he
16 charged in this case?

17 A Yes. When we -- the night we got pulled over, he
18 was. The night that we got pulled over, it was me,
19 Mario, Josh, Eric and Ricky. They were Mario's
20 roommates. They played on the football team with him.

21 Q And in the car, where were you sitting in the
22 car?

23 A In the front passenger's seat.

24 Q And the car was stopped and there were drugs that
25 were found in the car?

MICHAEL LACKEY - DIRECT EXAMINATION

1 A Yes, sir.

2 Q And a gun that was found in the car?

3 A Yes, sir.

4 Q Was it found in the front seat or back?

5 A Backseat.

6 Q Did you know that those items were there?

7 A No, sir, I did not.

8 Q Now, did you talk to your attorney about what I
9 would call a "theory of defense"? Did you talk to him
10 about how he would present you and what he thought
11 your defense was going to be?

12 A He basically asked me what happened, which I
13 explained to him, and that is basically how he went
14 forward with the case. For the most part, he told me
15 to take the plea, take the plea, just take a plea.
16 Even though it was so much inconsistency and the stuff
17 that the people in the statements were saying that my
18 involvement in this crime was, there was no evidence
19 of it, he still told me that you should just go take a
20 plea instead of trial. I felt if I didn't do nothing
21 wrong, and I have so much ahead of me, I was in
22 college, ain't never been in trouble before in my
23 life, not even a traffic ticket, nothing, so why would
24 I throw my life away? I'm a young kid in college.
25 Why would I get a plea and get locked up for something

MICHAEL LACKEY - DIRECT EXAMINATION

001271

1 I didn't do?

2 Q That was the problem for you throughout this,
3 wasn't it?

4 A Yes, sir.

5 Q And Mr. Wilson advised you and kept telling you
6 you should take a plea?

7 A Yes, sir.

8 Q I think the initial plea offer was ten years; is
9 that correct?

10 A Yes, sir.

11 Q And then at trial it became a 12-year plea?

12 A Yes, sir.

13 MR. T. THOMAS: Your Honor, I'll refer to Page 22
14 -- 23, I'm sorry, beginning at Line 22.

15 THE COURT: 22 on the record of the appeal?

16 MR. T. THOMAS: Transcript page, Your Honor.

17 THE COURT: All right.

18 MR. T. THOMAS: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes, sir.

21 Q I'll bring your attention to Line 23, read that
22 to yourself.

23 A "Do you understand this"?

24 Q Yeah.

25 A Do you understand this Solicitor's offer to

MICHAEL LACKEY - DIRECT EXAMINATION

001272

1 dismiss burglary first and that gun charge and allow
2 you to plead to armed robbery and PWID marijuana with
3 a 12-year recommendation is good for --

4 THE COURT: All right. My Page 22 doesn't say
5 that.

6 MR. T. THOMAS: I have Page 23, Your Honor, of
7 the transcript.

8 THE COURT: You said Page 22.

9 MR. T. THOMAS: Sorry, Your Honor, 23.

10 THE COURT: I got it.

11 MR. T. THOMAS: Beginning Line 22.

12 THE COURT: All right.

13 MR. T. THOMAS: Yes, sir, and I think it goes
14 over to Page 24.

15 THE COURT: I'm with you.

16 Q So there was an offer of 12 years, and they'll
17 dismiss burglary first?

18 A Yes, sir.

19 Q Did you understand that plea?

20 A No. I just understood they was going to dismiss
21 the burglary first and give me 12 years.

22 Q Did you talk -- what was your understanding if
23 you accepted the 12? Would you serve 12?

24 A Yeah. I never been locked up before. I never
25 been in any kind of trouble with the law in my life.

MICHAEL LACKEY - DIRECT EXAMINATION

1 I've never been in a pair of handcuffs until that
2 night. So, I mean, all I knew is you do 12 years --
3 you get 12 years, that is the time you do. Didn't
4 know no kind of statutes of how they run the time or
5 nothing. I'm not from South Carolina.

6 Q Like 85 percent?

7 A Yeah. I'm not from South Carolina. I don't have
8 no family or nothing up here. This is my first time
9 ever coming to South Carolina was that day, so I had
10 no previous knowledge and no one that had been in the
11 situation with law enforcement or anything like that
12 in South Carolina.

13 Q So you would have -- did Mr. Wilson tell you that
14 you would serve less than the 12?

15 A No. He just told me what the plea was and asked
16 if I wanted to take it.

17 Q Now, the other problem was that you had contended
18 all along you were not guilty of this crime?

19 A Yes, sir.

20 Q Did you know that there was a way that you could
21 have plead under North Carolina versus Alford?

22 A No, sir, I never had any knowledge of that before
23 my trial. The only time I found out about that was
24 after I had already got convicted and I was already in
25 prison trying to go back over my case and learn the

MICHAEL LACKEY - DIRECT EXAMINATION

1 stuff about, you know, the system and the different
2 laws. I started going through the library and I
3 started figuring out different things.

4 Q Had you known that you could have pled to this
5 and not have to admit your guilt, would you have done
6 that?

7 A Yeah.

8 Q And that was why you didn't accept that plea?

9 A That's correct.

10 Q Now, did you talk to counsel about trying to
11 sever these cases, and what I mean is trying your case
12 separate?

13 A Yes, sir.

14 Q And did he make a motion to separate your trial?

15 A No, sir.

16 Q You had asked him to do that?

17 A Yes, sir, I did. My mother also did, too. She
18 asked him also. She sent him an E-mail and all of
19 those things asking him to give me my own trial
20 separate from everyone else.

21 Q And you feel like you were prejudiced by having
22 to try your case with everybody else?

23 A Yes, sir.

24 Q Now, in going through Mr. Wilson about what
25 evidence that they had against you, what evidence did

MICHAEL LACKEY - DIRECT EXAMINATION

1 they have against you?

2 A Only evidence that they really had against me was
3 my codefendants' statements, which was all of them
4 were lies. All of them had been given more than at
5 least two statements. All of the statements were
6 different. They said that my involvement in the crime
7 was that I supposedly took these people's wallets and
8 cell phones, and when we got arrested that night,
9 which they said was 2 miles or two minutes from
10 wherever this incident happened at, they never found
11 any cell phones, never found any wallets, any of that.
12 The supposed victims of the crime, all of them was
13 white, and there is nothing but black males in the
14 car. So they pulled us over and opened a wallet and
15 see an ID with a white male or white woman's face in
16 it, it's going to throw up a red flag, but there was
17 never any wallets or cell phones ever discovered in
18 that car.

19 Around the scene of the crime when the -- when
20 they sent SLED officers to the victim's house, I think
21 it was -- I can't remember his name, but to the
22 victim's house, they never found any wallets or cell
23 phones around in the area, anything like that.

24 Q So none of that was ever discovered?

25 A No, sir.

MICHAEL LACKEY - DIRECT EXAMINATION

1 Q And Mr. Tine, who was a codefendant, he didn't
2 testify at trial?

3 A No, sir.

4 Q But you testified at trial?

5 A Yes, sir.

6 Q Now, you and I discussed this when I asked you
7 what happened with this. You said that you believe
8 that there were other folks involved in this crime?

9 A Yes, sir.

10 Q Who were those people?

11 A I know that Eric, he had -- he said it was his
12 cousin, but later on it was found out it wasn't really
13 a cousin, it was a close friend of his that he went to
14 high school with, a dude named Torrie. If you look
15 through the transcript, you'll see Torrie's name come
16 up more than mine. Torrie was never brought forth.
17 He was never indicted to come to court or anything to
18 show up or make a statement or anything like that in
19 his trial. They said that he was supposedly the dude
20 that they gave this money to, and he drove this dude,
21 Craig, and another dude named Justin to these
22 apartments, which he's supposedly Eric's cousin, and
23 he was supposedly in a white vehicle the same night
24 that we were in Eric's car.

25 Q What kind of vehicle were you in?

MICHAEL LACKEY - DIRECT EXAMINATION

001277

1 A I was in a white, old school Crown Vic.

2 Q And Eric testified at trial?

3 A Yes, sir.

4 Q How about Ricky?

5 A Yes, sir.

6 Q Who was Ricky?

7 A Ricy is Mario and Eric's other roommate. He
8 played on the football team with them.

9 Q There was another gentleman named Torrie?

10 A Yes, sir.

11 Q Did you talk to your attorney about these
12 individuals?

13 A Yes, sir.

14 THE COURT: Which individuals?

15 MR. T. THOMAS: About Eric, Ricky and Torrie?

16 THE WITNESS: Yes, sir.

17 Q Did you talk to him about it was your contention
18 that these people had something involved -- they were
19 involved in this case?

20 A Yes, sir. I explained to them that I found out
21 that they all went to the same high school together,
22 they were all friends, and Torrie had been living down
23 there in the apartment with Eric and Ricky for months
24 before we even came down there for the game. He was
25 already down there. When I got there that night, he

MICHAEL LACKEY - DIRECT EXAMINATION

1 was already down there. He was living with them, but
2 when all of this stuff happened, he never came to
3 court or nothing. They never put anything for him to
4 be asked to testify -- come to court to testify or any
5 kind of statement, nothing like that.

6 Q And I know this gets somewhat complicated, but
7 there was another vehicle there?

8 A Yes. They say that it was another vehicle there
9 that was a silver Pontiac that was there the same
10 night that one of the other dudes -- during the trial,
11 they brought it forward. They said it was this other
12 car, silver Pontiac, that was there the same night in
13 the same area that they said had something going on.
14 I didn't know nothing about it until they brought it
15 up in trial about a whole other car.

16 Q How about the white Cadillac?

17 A I just knew that -- when I heard about the white
18 Cadillac -- the white Cadillac, I know that that was
19 Eric's car. Earlier that day, when we went to the
20 Sports Authority, that is the car we drove in. I know
21 when we went and left for the game, they went inside
22 Eric's car and -- not Eric's car, but inside Ricky's
23 car, the same car we got pulled over in, and Eric left
24 Torrie, his car.

25 Q All right. Where is the location we're talking

MICHAEL LACKEY - DIRECT EXAMINATION

1 about where the drug dealer was robbed?

2 A Some apartment complex.

3 Q Now, it is your contention that -- what did you
4 think when you got in the car and -- because you were
5 at that location, right?

6 A Yes, sir.

7 Q I think there is testimony at trial -- actually
8 that you were -- that you remained in the car?

9 A Yes, sir.

10 Q Now, what did you think you were going to that
11 location for?

12 A I mean, after the game it was homecoming weekend
13 for Coastal, so after the game we was going -- all get
14 something to eat and go to a party. I didn't know
15 where I was, so I'm just in the car just going. I
16 know that they had friends and different stuff. They
17 had been there a year, they were sophomores, so they
18 didn't live on the campus, they lived in apartments
19 around the campus. I was in college, so I know how it
20 is with different apartments and things like that
21 around the area that is close to a college that the
22 college students go to. They have parties and
23 different things like that. So when I got in the car,
24 I'm just thinking we're going to eat and having fun.
25 They won the game, and Mario played good, so we're

MICHAEL LACKEY - DIRECT EXAMINATION

1 going to do what they do after football games, go and
2 have a party. That is what college kids do.

3 Q You don't know any of these people other than
4 Mario; is that right?

5 A No. I met Eric and Ricky one time before. They
6 came to Atlanta one time with them the summer before
7 for a couple of days, that is the only time I met them
8 or anything.

9 Q So I guess the question would be did you sit down
10 with Mr. Wilson to develop that theory of defense and
11 that there was a whole possibility of another thing
12 transpiring that was completely outside of your
13 knowledge?

14 A No. I told him that -- I told him I had nothing
15 to do with it. I didn't know what happened. I know
16 we went to these apartments and this dude got out and
17 we left the apartments and we get pulled over. I
18 never been in South Carolina. I wasn't here for 24
19 hours and I was in handcuffs.

20 Q Why didn't you know there was drugs and a gun in
21 the backseat of the car?

22 A We just went and picked up Ricky -- not Ricky
23 Eric. We was in Ricky's car. We picked up Eric.

24 Q And Eric is the same person that testified
25 against you?

MICHAEL LACKEY - DIRECT EXAMINATION

1 A Yes. Eric is the same one who had the multiple
2 statements and continued to lie over and over again.
3 He had four, five statements. He was still giving
4 statements two weeks before my trial started.

5 Q And who did the white Cadillac belong to? Eric?

6 A Yes, it is belonged to Eric.

7 Q So Eric is in the backseat with guns and drugs?

8 A Uh-huh.

9 Q And the white Cadillac was Eric's, and Eric
10 testified against you?

11 A Uh-huh.

12 Q What happened to Eric?

13 A Eric got YOA sentence, youth offender sentence.

14 Q Now, was any of that established at trial? Were
15 you able through Mr. Wilson to establish your role in
16 this as to what you are telling us today and these
17 explanations as to how you could be there and not know
18 what was going on?

19 A No. I told -- I explained it to them, how I had
20 nothing to do with this situation, how I just came
21 down from Atlanta from Georgia to come and just watch
22 a football game to see a friend play. I had other
23 friends at different colleges that played football.
24 We all played football together. I had no idea of any
25 illegal thing going on. Like I say, I've never been

MICHAEL LACKEY - DIRECT EXAMINATION

1 in trouble a day in my life. My parents, they are
2 ministers. That is not the type -- that is not how I
3 was brought up, that is not how I was raised.

4 Q Which flows back into your decision in regards
5 to --

6 A Exactly. Why I felt I didn't want to say I'm
7 guilty of something that I did not do. I'm not going
8 to say that, I did this. I'm not going to throw
9 myself in prison for a crime I know I didn't commit,
10 and I have to sit in the prison cell every day and
11 know I'm sitting here for a crime I know I didn't do.

12 Q Let's talk about your agreement to testify. You
13 indicated to me that all along that the decision was
14 for you not to testify?

15 A Uh-huh.

16 Q Did you reach that with your attorney, you and he
17 talked about that?

18 A Yeah. We talked like towards the last day of
19 trial about whether I wanted to testify or not, and I
20 said I didn't want to testify, I didn't want to
21 testify. He asked me more about it and he said, Well,
22 you know, they might want to hear your side of the
23 story. If you don't testify then, you know, this,
24 that and the other. So I was like all these people
25 putting all of these allegations saying I'm this and

MICHAEL LACKEY - DIRECT EXAMINATION

1 trying to make me look like this bad person that came
2 from out of town to come and rob these people and
3 commit all of these crimes, but nobody gets to hear
4 nothing from me. So, like, at the same time I didn't
5 want to take the stand because I really ain't know the
6 full extent how everything could affect my trial. I
7 really -- like I say, I had no knowledge because I
8 never was in a situation like this before.

9 So when Ralph came, if you look in the
10 transcript, when they are asking us, well -- Mario, do
11 you want to take the stand, and they stopped and asked
12 me, and then I stopped and I talked to my attorney
13 again, like the third or fourth day. I talked to him
14 about the same thing, and he asked me -- he say, Well,
15 do you want to testify? Do you want to testify? Do
16 you want to testify? I felt like he was pushing me to
17 a point to tell me it would be -- help you more if you
18 testified if you tell them -- give them your side of
19 the story and tell them this so they can go by
20 something from you instead of letting the evidence or
21 lack thereof determine whether I was guilty or not of
22 this crime.

23 Q Let me ask these questions, and stop me if you
24 don't understand. You and I talked about this. You
25 are saying Mr. Wilson didn't lay an adequate

MICHAEL LACKEY - DIRECT EXAMINATION

1 foundation in regards to your side of the story in
2 regards to Eric and these other two folks being -- I
3 beg the Court's indulge -- Eric, Ricky and Torrie?

4 A Yes, sir.

5 Q So you feel that once you testified that there
6 were some misfit of your testimony because there was
7 no foundation laid in regards to what you were
8 claiming --

9 A Exactly. Before I even made my statement --
10 prior to me making my statement, there was nothing
11 laid down to the point of all of these other people
12 and all of these other sequence of events and all of
13 the other vehicles and other people that were there.
14 Some of them were not even charged with nothing. Some
15 of them were not even asked to appear in court, that
16 they say played a big factor in this trial. People
17 whose name came up in this trial more than mine, and
18 they never received anything. Certain people in my
19 trial, they only came forth after they were granted
20 immunity or different things. They never came forth
21 on their own and say this is what happened to me, that
22 is the whole situation that went down, nothing like
23 this. The only reason that they came forward and they
24 made certain statements and different things up, even
25 victims -- even though the victims never seen me,

MICHAEL LACKEY - DIRECT EXAMINATION

1 never know me, they never -- didn't know who I was, he
2 asked, Do you know my client, and he said, No, I've
3 never seen him before in my life. But at the same
4 time you got people that he is telling you, Yeah, I
5 known this person or I done seen this person before,
6 but they can't say that about me because I was never
7 inside their apartment.

8 Q This testimony was all over the place?

9 A Exactly.

10 Q Because you had the victim who was himself
11 dealing in drugs?

12 A Correct.

13 THE COURT: What was his name?

14 THE WITNESS: Shawn -- Shawn -- that's his name,
15 Shawn Barrett.

16 Q That's right, yeah. And the -- so everybody was
17 saying everything they could for their own purposes?

18 A Exactly. After Shawn -- they gave Shawn
19 immunity -- after Shawn gave (sic) immunity, then two
20 of his friends came with prefabricated statements and
21 they brought them to the SLED office or the police
22 office, whichever it is, and they gave them to the
23 detective, and the detective say himself he thought it
24 was strange that they came and gave him the statements
25 that was already prefabricated. He didn't ask them to

MICHAEL LACKEY - DIRECT EXAMINATION

1 sit down and rewrite a statement in front of them or
2 anything. You can sit at home in front of each other
3 and say I'm going to say this and you put that in
4 yours and go over it. He's going to get immunity for
5 selling this amount of drugs, or whatever crimes he
6 might have committed, and now we are going to come
7 forth and say this was this and all of this stuff
8 happened. He never made them write a statement again
9 in front of them or nothing like that. He just
10 accepted the statements.

11 Q And, unfortunately, when you testified, your
12 story came across as being all over the place as well?

13 A Exactly.

14 Q Okay. Now, you felt like -- you and I discussed
15 this. You don't think Mr. Wilson was very effective
16 in his -- basically in impeaching the testimony of the
17 other witnesses?

18 A Correct.

19 Q You actually gave me page numbers for me to look
20 at?

21 A Correct.

22 MR. T. THOMAS: Your Honor, for judicial
23 efficiency, we indicated to the Court and I can give
24 these page numbers to the Court rather than going
25 through them page by page.

MICHAEL LACKEY - DIRECT EXAMINATION

1 THE COURT: All right.

2 Q Michael, you had said you are not saying that he
3 didn't attempt to impeach these witnesses, you just
4 felt --

5 A He didn't go far enough into the details and
6 really try to assert himself and bring these things
7 forward. He touched on them, but for the most part,
8 if you look through the trial, for every witness that
9 was brought up, for the most part, Mario's lawyer is
10 the one that really took the front. He's the one that
11 really led the trial in his way. That was one of the
12 reasons why I wanted my own trial, so that my lawyer
13 can concentrate on defending me and it's not no
14 folks -- nobody else. It's about me, because it is
15 about my life is at stake. I'm not facing a
16 shoplifting charge or J-walking or something that I
17 can pay a ticket or fine and disappear, I'm facing
18 something that these people can tell I have to spend
19 the rest of my life in prison, and I felt that for me
20 -- for me to be facing life in prison, he didn't
21 assert and point out these details that these
22 different witnesses and different people that was
23 taking the stand, the statements that they were
24 making, not just on the stand, but the statements that
25 they had written before.

MICHAEL LACKEY - DIRECT EXAMINATION

1 Q I know you and I talked and there was something
2 that you wanted me to put on record in regards to the
3 indictments?

4 A Yes, sir.

5 MR. T. THOMAS: Your Honor, I think that is part
6 of the Court's package.

7 THE COURT: It is.

8 Q Tell me the objections you had to the indictments
9 both to the Grand Jury and the front page of the
10 indictment.

11 A For the indictments, none of them are -- even
12 though it says I have a true bill, none of the
13 indictments was sent to the clerk's office to have a
14 time stamp on them, on none of my indictments. Out of
15 all four charges I got, none of them went to the
16 clerk's office to get a proper stamp on them. All
17 they have is a "true billed" stamp on them. It says
18 for the Court to try you or bring you in for a trial,
19 that your indictment is supposed to have a time stamp
20 on them that shows that they were actually, you know,
21 presented to the judge and that they were sent to the
22 clerk's office and that they stamped them, that the
23 paperwork that you are sending is official, it isn't
24 nothing that we can just make a stamp made and stamp
25 it and say this is a true billed indictment, it went

MICHAEL LACKEY - DIRECT EXAMINATION

1 to the Solicitor's Office and got the Solicitor's
2 stamp on it.

3 Q You think that the description of the crime is
4 vague as well?

5 A Exactly. It doesn't -- on the -- it says --
6 basically it puts out the definition of these crimes
7 are. It doesn't say exactly what I did. It doesn't
8 say that he -- say if I was to have robbed a bank, it
9 doesn't say he entered this bank at this time with
10 this weapon. It doesn't say any of the things that my
11 -- that the victims or anybody else -- it doesn't
12 state any facts in it. The only things it does is it
13 has my name and definition of the charge.

14 Q This is legal research you've done since being
15 incarcerated?

16 A Yes, sir.

17 Q You felt it was important that you wanted to
18 present that to the Court?

19 A Yes, sir.

20 Q You and I talked about this question, and I'm not
21 suggesting anything. Is it -- this is your day in
22 court, you waited a long time to be here today. Is
23 there anything else you would like to bring to
24 attention of the Court or anything you may feel like I
25 forgot to bring up on your behalf?

MICHAEL LACKEY - DIRECT EXAMINATION

1 A I just want to talk about a couple more
2 statements. Like, I felt that they never really
3 brought forth the probable cause in our case because
4 the police statements that they wrote that was written
5 at night, the statements that they -- you know when
6 they do their paperwork, once they pull over a person
7 and put in the paperwork, when they came in here for
8 trial, the things that they said contradicted the
9 stuff they had that was on the paperwork from the
10 night that the crime took place -- or the stop took
11 place of who found this, who found that, why they
12 pulled us over, why did they put us in handcuffs, who
13 found this, did they put us in handcuffs before they
14 found this stuff.

15 There was a lot of inconsistencies, and it was
16 found out that two officers -- one of the officers was
17 right outside of those first double doors the whole
18 time that the other officer was on trial -- while he
19 was on the stand. He was right there in those doors
20 where he could hear everything that his partner was
21 saying in the trial and hear his inconsistencies, so
22 when he came forth, he was able to clean up the mess
23 that he had -- had previously brought forth.

24 Q Objection was made to that; is that right?

25 A Yeah, and the objection was made to it.

MICHAEL LACKEY - CROSS-EXAMINATION

1 Q Anything else that you would like to --

2 A No, sir.

3 MR. T. THOMAS: Your Honor, we have nothing
4 further.

5 THE COURT: All right. Mr. Thomas.

6 MR. J. THOMAS: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. J. THOMAS:

9 Q You did have an opportunity to review discovery
10 with Mr. Wilson?

11 A Yes, sir.

12 Q And you did have a chance to give him your
13 version of events?

14 A Yes, sir.

15 Q And the version of events you gave him and that
16 you gave the Court today, all of that is consistent
17 with the testimony you gave at trial, isn't it?

18 A Yes, sir.

19 Q So you told us the same story that you told the
20 jury that day?

21 A Yes, sir.

22 Q You said you and Mr. Wilson discussed your
23 defenses to this charge, these charges?

24 A Yeah. I met with him about two, three times over
25 the time that I was out on bond.

MICHAEL LACKEY - CROSS-EXAMINATION

1 Q As far as the plea offers go, you were aware of
2 the ten-year offer?

3 A Yes, sir.

4 Q And the 12-year offer?

5 A Yes, sir.

6 Q And you discussed those with Mr. Wilson, didn't
7 you?

8 A Yes, sir. He told me what the plea offer was,
9 but he never, like, explained to me -- now that I be
10 in prison for almost four years, now I know that it's
11 different sentences. You can have a mandatory
12 sentence, you can have 85 percent sentence, you can
13 get 65 percent sentence. It is different sentences
14 that you could get with any amount of time that you
15 get depending on -- you know, they can tell you you
16 have ten years mandatory, or they could tell you you
17 have ten years violent, 85, ten years violent, 65.
18 They could tell you that you gotten ten years
19 non-violent, 65. All of those things are different.
20 All he came and told me is that they offer you a plea
21 for ten years.

22 Q But he did explain to you beforehand that
23 burglary first carries 15 years to life?

24 A Yes, sir.

25 Q And he explained all the other charges, what they

MICHAEL LACKEY - CROSS-EXAMINATION

1 carried in terms of the maximum sentences?

2 A Yes, sir.

3 Q You were in the courtroom when Mr. Reardon
4 (phonetic), Josh Reardon, pled guilty?

5 A Yes, sir.

6 Q And you heard him say that he was pleading guilty
7 under Alford, North Carolina versus Alford?

8 A No. I heard him say he was taking the plea
9 offered to him the day before, the day before our
10 trial started. They came and said we're going to give
11 you one last chance to accept the plea, 12 years and
12 you all can go and talk with your family and decide if
13 you want to -- you all want to take the plea or not.
14 They gave us a time period and let them know if we
15 wanted the plea or not. The next morning when we came
16 here and time to start the trial, they said Josh was
17 taking the plea. That's all I knew, that he took a
18 plea. I didn't -- I never heard of the Alford or
19 whatever. I think he said Alford law, you can say
20 that I'm not guilty of this crime -- I'm not saying
21 I'm guilty of the crime, that I did this, but I'm
22 saying the time that I'm facing is more serious than
23 what I'm pleading out to. That plea was never brought
24 forth to me or that I could plea to something like
25 that. It was always either you are going to plead

MICHAEL LACKEY - CROSS-EXAMINATION

1 guilty or not guilty. I had no knowledge that that
2 even existed.

3 Q But it was your decision to decline the plea
4 offered to you?

5 A Yes, sir.

6 Q Regarding the cell phones and wallets that you
7 said were never found in the car, Mr. Wilson brought
8 that out to the jury, he argued that the phones and
9 wallets were never found?

10 A He pointed it out.

11 Q And he also pointed out that there was this
12 fellow, Torrie, that was never called to trial and
13 never brought up with charges?

14 A He also brought that up too, but he also did not
15 go take it upon himself to find this dude and get a
16 private investigator and make sure this dude is here
17 when I go to trial, because they are saying that he
18 played this -- he played this big part in this whole
19 scheme that went out. He was supposedly the person
20 that took this money and supposed to have taken Justin
21 and this other dude Craig to this location, and he
22 drove them there in Eric's car, which was his best
23 friend or cousin, however you want to put it, and now
24 he's nowhere to be found.

25 Q And Mr. Wilson also argued that, that there were

MICHAEL LACKEY - CROSS-EXAMINATION

1 other people that were involved in the robbery?

2 A He said that it was certain people that -- I say
3 it was people that was -- I ain't going to say that he
4 said -- I know that he asked them about, well, who is
5 this Torrie fellow, why isn't -- where is he, how come
6 he was never brought forth to trial or how come he was
7 never questioned, or something like that. He didn't
8 go into depth of, you know, trying to figure out why
9 they never tracked this man down and asked him or
10 question him. He never took it upon himself -- never
11 got a private investigator or anything to track this
12 dude down and find out.

13 Q In your version of events, you rode over to the
14 apartment complex with Ricky, Eric and Mario and Josh?

15 A No. It was me, Ricky, Josh and Mario, not Eric.

16 Q You were going to pick Eric up, though?

17 A Yes, sir.

18 Q And you told the jury that you never left the
19 car, and I believe also that Mario never left the car?

20 A Correct.

21 Q And that came from you, not from any of the other
22 witnesses?

23 A That's correct.

24 Q Do you remember the judge explaining to you that
25 it was your decision whether or not you were going to

MICHAEL LACKEY - CROSS-EXAMINATION

001296

1 testify?

2 A Yeah, I remember him saying that. But I know
3 that I hired this lawyer -- my mother paid this lawyer
4 for him to have my best interest at heart, and I don't
5 know the law. He went to law school. He practiced
6 law for years and years and years. He done trials and
7 trials and went to court multiple times. So if I feel
8 like this is what he thinks is best for me to do in
9 the case to help me to beat this case, then I'm going
10 to listen. You are going to listen to somebody that
11 has been through something that you haven't done.
12 They can help you maneuver your way through it, and
13 you are going to take heed to that instead of acting
14 like they don't know what they talking about, because
15 it's someone that had been through it multiple times
16 before.

17 MR. J. THOMAS: Thank you. I think that is all I
18 have.

19 THE COURT: Redirect examination?

20 MR. T. THOMAS: Nothing further, Your Honor.

21 THE COURT: You can step down. Thank you, sir.

22 MR. J. THOMAS: If I could ask for a five-minute
23 break?

24 (A recess was taken.)

25 THE COURT: If it pleases the Court, we call

YOLANDA DOZIER - DIRECT EXAMINATION

1 Ms. Dozier to the stand.

2 (YOLANDA DOZIER, having been duly sworn,
3 testified as follows:)

4 THE CLERK: State your full name and spell
5 your last.

6 THE WITNESS: Yolanda Dozier, D-O-Z-I-E-R.

7 DIRECT-EXAMINATION

8 BY MR. T. THOMAS:

9 Q Ms. Dozier, how are you related to Mike Lackey?

10 A I'm his mother.

11 Q And you are here today to tell the truth?

12 A Yes, sir.

13 Q And you understand that there are certain
14 penalties for not telling the truth?

15 A Yes, sir.

16 Q And you are here to tell the truth today?

17 A Yes, sir.

18 Q Ms. Dozier, you had an opportunity to communicate
19 with Michael's attorney?

20 A Yes.

21 Q And did you talk with him about trying to
22 separate these cases?

23 A Yes, I did. What I did is I sent an E-mail to
24 his office asking, first of all, if Michael could go
25 to trial by himself, because we had never been in this

CHARLES DOZIER - DIRECT EXAMINATION

1 situation like this before, so I didn't know if he
2 could or if he could not. In doing so, I never got a
3 response back in regards to that E-mail.

4 Q Were you present in the courtroom with the trial?

5 A Yes, sir.

6 Q Do you know if he tried to have the cases
7 separated?

8 A Not to my knowledge.

9 Q He did not try to have it separated?

10 A No, not to my knowledge.

11 MR. T. THOMAS: No further questions.

12 MR. J. THOMAS: No cross, Your Honor.

13 THE COURT: Thank you. You may step down.

14 MR. T. THOMAS: We call his step-dad, Mr. Dozier.

15 (CHARLES DOZIER, having been duly sworn,
16 testified as follows:)

17 THE CLERK: State your name and spell your last
18 name for the Court.

19 THE WITNESS: Charles Dozier, last name
20 D-O-Z-I-E-R.

21 DIRECT-EXAMINATION

22 BY MR. T. THOMAS:

23 Q Mr. Dozier, how are you related to Michael
24 Lackey?

25 A His step-father.

CHARLES DOZIER.- DIRECT EXAMINATION

001299

1 Q All right, sir. And you understand you are not
2 to reward anybody with your testimony?

3 A Yes, sir.

4 Q You are here to tell the truth?

5 A Yes, sir.

6 Q And that is what you intend to do, tell the
7 truth?

8 A Yes, sir.

9 Q Now, you indicated that you were present and had
10 some involvement in regards to the guilty plea that
11 was offered?

12 A Yes.

13 Q You had an opportunity to talk to his attorney
14 about it?

15 A Yes.

16 Q And you were there in the courtroom when the --
17 the 12-year offer was made?

18 A Yes.

19 Q And did you understand that you had until the end
20 of the day to make a decision?

21 A Yes.

22 Q What happened, if anything? Did you have an
23 opportunity to discuss that with Michael?

24 A Yes, I did.

25 Q In those discussions, what was your understanding

CHARLES DOZIER - DIRECT EXAMINATION

1 about what the offer was?

2 A To the best of our knowledge, we thought it was
3 12 years, he was going to do 12 years.

4 Q Day for day?

5 A Day for day.

6 Q Now, you've heard the testimony today by Michael.
7 Was it also your understanding that one of the holdups
8 was his admission to guilt?

9 A Yes.

10 Q And he didn't want to admit to something that I
11 felt he did not do?

12 A That's right.

13 Q Did you ever have an opportunity or did counsel
14 ever bring to your attention or Michael's attention
15 that an Alford plea could have been done?

16 A No, not to my knowledge.

17 Q Prior to -- just recently, did you know what an
18 Alford plea was?

19 A No, I did not.

20 Q And no one ever knew that there was a possibility
21 he could have accepted that plea and pled without
22 having to admit guilty in this case?

23 A Right.

24 Q And do you believe that that was the reason why
25 the plea offer wasn't accepted?

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 A Yes, I do.

2 MR. T. THOMAS: No further questions.

3 THE COURT: Cross-examination?

4 MR. J. THOMAS: Just one question.

5 CROSS-EXAMINATION

6 BY MR. J. THOMAS:

7 Q Were you in the courtroom when Josh Reardon pled?

8 A Yes, I was.

9 MR. J. THOMAS: Thank you.

10 THE COURT: Anything else, Mr. Thomas?

11 MR. J. THOMAS: No, Your Honor.

12 THE COURT: Thank you. You can step down.

13 MR. T. THOMAS: We rest.

14 THE COURT: All right. Mr. Thomas.

15 MR. J. THOMAS: We call Ralph Wilson to the
16 stand.

17 (RALPH WILSON, having been duly sworn,
18 testified as follows:)

19 THE CLERK: State your name.

20 THE WITNESS: Ralph J. Wilson, P I L S O N.

21 DIRECT-EXAMINATION

22 BY MR. J. THOMAS:

23 Q Good afternoon, Mr. Wilson.

24 A Good afternoon.

25 Q We probably did this, but I'll go ahead and do it

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 again. Could you explain to the Court your experience
2 handling criminal law.

3 A Yes, sir. I graduated law school in 1977. I
4 went to work at legal aid about a year,
5 year-and-a-half and then I went to the Horry County
6 Public Defender's Office. I stayed there from, I
7 think; '81, maybe, until I think '86. I was chief
8 public defender -- chief deputy defender when I left
9 there. I left there and went to the 15th Judicial
10 Circuit Solicitor's Office as the chief deputy
11 solicitor for the 15th Judicial Circuit. I think that
12 was in late '87, early '88. I stayed there until '91
13 or '90 when I got elected to my first term as the
14 elected solicitor. I did that for two consecutive
15 terms, and then went back into private practice in
16 1999.

17 Q Were you retained or appointed?

18 A Retained.

19 Q What kind of motions did you file in terms of
20 discovery?

21 A We have standard motions that we file that we do
22 in every case, every criminal case. We did, in fact,
23 receive discovery in this case from the State.

24 Q And what was the substance of your conversations
25 with Mr. Lackey about that discovery?

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 A What I do -- because I found it works better --
2 what I do, especially when clients live out of state
3 or out of town, I package up the entire discovery that
4 I receive from the Solicitor and I mail it to them. I
5 do that so that they will have a chance in the privacy
6 of their own home or at their leisure to read and
7 review it, and then I schedule an appointment for them
8 to come in and sit down with me and go over it. I did
9 that in this particular case.

10 Q How many meetings did you have with Mr. Lackey?

11 A I don't know. I would think maybe four. I don't
12 know. Thereabouts. Not including the final during
13 the course of the trial, because we met every day
14 during the course of the trial, and the trial lasted
15 three days, I think right at three days. So before
16 that, I think we met maybe three, four times.

17 Q Could you briefly give us an overview of what the
18 State's theory of the case was?

19 A The State's theory of the case was, essentially,
20 that these four or five individuals actually went to
21 Mr. Barrett's home and that they went there with a gun
22 and that this was supposed to have been a pre-planned
23 event, that there had been planning of this event and
24 that they went there with a gun and with the specific
25 purpose to rob Mr. Barrett of his drugs and money, and

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 that they did do that and they carried that plan out.
2 That is what their position was. So they then charged
3 them with burglary first degree, armed robbery as a
4 result of this, and then PWID with the marijuana.

5 Q In your discussions with Mr. Lackey, what theory
6 of defense did you develop?

7 A Well, Mr. Lackey was really in a different
8 category than the other four individuals in the sense
9 that, one, he had no criminal history. In addition to
10 that, the witnesses, including his codefendants'
11 testimony, was essentially was that Mr. Lackey, while
12 he was present, that he picked up the cell phones and
13 the wallets and gathered them. The problem for the
14 State was that there was no evidence to support that.
15 Throughout this entire process they never produced one
16 cell phone or one wallet, which Mr. Lackey was
17 supposed to have garnered from this event. So when
18 the police stopped them, which was only minutes after
19 the alleged robbery and burglary, Mr. Lackey was in
20 the vehicle. There had been no indication that the
21 vehicle stopped anywhere along the way or there was
22 anything thrown out of the window. When the police
23 stopped them, there was still no cell phones or
24 anything in the car.

25 So his position was always, to me anyway, that he

RALPH WILSON, ESQ. - DIRECT EXAMINATION

001305

1 was not guilty, that he did not commit this crime,
2 that he didn't participate in any way in the crime and
3 that he never left the vehicle, that was essentially
4 his statement to me.

5 Q What sort of independent investigation did you do
6 to support that theory?

7 A Well, there were problems almost immediately with
8 that theory. The codefendants, which is what got us
9 in trouble, is that the codefendants involved in all
10 of this started making statements.

11 Now, there were multiple conflicting stories told
12 by numerous different participants in this event,
13 including Mr. Barrett who was probably the worse
14 offender in the whole process, and he was the victim.
15 The codefendants started giving conflicting statements
16 throughout. So there was just all of these
17 conflicting stories about who did what and when and
18 how and who was present when it happened. It was all
19 over the place about who did what. You know, that
20 lasted right on up until the -- we got ready for
21 trial.

22 Now, the last codefendant, to take a plea, I
23 think, which I think was Mr. Reardon, I think it was,
24 the day that we came in, we had -- we had multiple --
25 I wouldn't say multiple, but two offers, as I

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 remember, for pleas. I guess I'm maybe getting ahead
2 of where you want me to go.

3 Q That's all right.

4 A We had two offers, which are the only two offers
5 that I'm aware of. There was a ten-year offer and a
6 12-year offer. The ten-year offer came way back.
7 That was offered to us. I discussed that with Mr.
8 Lackey -- with the defendant, and with his family.
9 Every situation when I have an offer I sit down with
10 them and with the family and we went through it. I
11 don't just do that with him, I do that with every
12 single case I do. I always ask the defendant, you
13 know, before I make a decision, look, do you want your
14 family here when we have this discussion, because it
15 is a lot of pressure for a defendant to sit there and
16 discuss, especially at his age, whether he wants to go
17 to jail for ten years. That is a major, major
18 decision. I include the family in that, generally, if
19 the defendant is okay with that. I did that in this
20 particular case.

21 I sat down and went through with it, answered any
22 questions that they had about it, explained to them.
23 In terms of how much time he would serve, if he says
24 that I told him he probably would serve ten years,
25 he's probably right, because that is probably what I

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 would tell him. If you get ten years, I can't tell
2 you you will get out in eight-and-a-half. I'll tell
3 you it is a violent crime and under the 8 percent
4 rule, but I can't tell you you'll get out in
5 eight-and-a-half or seven years, because you may not.
6 The Department of Corrections will decide when you get
7 out based on that 85 percent, and I'm not telling the
8 defendant you are going to get out in
9 eight-and-a-half, because at eight-and-a-half years
10 and two months his family is going to be on my
11 doorstep saying, You told us he was going to get out.
12 I have had it happen, and so I don't do it. I tell
13 them if you get ten years, you can expect to serve ten
14 unless something changes or occurs. So I probably did
15 tell him if he got ten years he could look to serve
16 ten years.

17 With the 12-year sentence, that 12-year
18 sentence -- the Solicitor made us that offer because
19 we were begging, me. I went to the Solicitor because
20 I was concerned about going to trial. I knew that if
21 we went to trial, and if those codefendants came and
22 testified, there is a good likelihood he could get
23 convicted. That is always the case when you have
24 multiple codefendants and they turn state's evidence.
25 That was a situation that we found ourselves in,

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 multiple codefendants were going to come in and put
2 him at the scene and put him participating in this
3 crime.

4 Now, none of the victims could say this
5 gentleman -- that this defendant was actually a
6 participant. They didn't know who the people were.
7 They just knew it was four black guys dressed in dark
8 clothing. The problem for us was you had all of these
9 codefendants who knew him and said that he was
10 participating.

11 Now, in terms of -- again, I don't want to run
12 on, so I'll stop and let you ask me a question because
13 I don't know where you want to go.

14 Q Is there anything else you would like to say?

15 A Just so -- once we started -- and we always, as
16 far as I know, we always planned to go to trial.
17 There was never a point where I was told I'm going to
18 plead guilty, you know, work something out so I don't
19 have to say that I'm guilty. That conversation never
20 happened. I was always told that he was not guilty,
21 he wasn't going to plead guilty to something he wasn't
22 going to do. There was no interest in Alford or
23 anything else. That never existed, and the first I
24 heard of that was today in this court.

25 The whole thing with the trial and about him

RALPH WILSON, ESQ. - DIRECT EXAMINATION

001309

1 testifying -- just let me address that issue, because
2 apparently there was issue about whether or not he
3 wanted to testify or didn't want to testify. My
4 general rule with every defendant that I represent is
5 I do not want to put a defendant on a witness stand.
6 Bad things tend to happen when they get up there, for
7 whatever reason. They get nervous and can't do it, or
8 a criminal history and they can't do it, or the
9 Solicitor traps them into some version of facts that
10 are inconsistent with what the truth might be or what
11 my defense might be. It is just not a good plan.

12 In this particular case, when we started to talk
13 about him testifying, we always knew that Mario Tine
14 could not testify. Mario had a criminal history, he
15 couldn't testify. That was never in doubt. The night
16 before this happened, I had a conversation with this
17 defendant and with his family, because my concern was
18 that what he was going to do was say that Mario was
19 not -- that Mario got out of the car, but stayed at
20 the car the entire time. The problem with that theory
21 is that that is inconsistent with what everybody else
22 was saying, which means that the jury would then have
23 a clear picture of trying to decide if this defendant
24 was telling the truth or if all the accumulative other
25 people were telling the truth. There were supposed to

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 be four men in the house. If you listen to what he
2 said, there only would have been two or three,
3 depending who else is in the car, if Eric is in the
4 car. There only would have been three people able to
5 be in the house. That never was going to work. There
6 was clearly four people in the house; two upstairs,
7 two downstairs.

8 Now the question is who is the two upstairs, who
9 is the two downstairs? If the defendant had testified
10 that he stayed in the car, but that Mario left, then
11 his version of the facts would have been very
12 consistent with the facts in general. I had this
13 conversation with him. Why he testified -- I'm not
14 saying what he said wasn't true, I'm not saying that.
15 I'm telling you theoretically it was inconsistent with
16 what everybody else was saying, which is what got us
17 in trouble and got him convicted, I think.

18 Q As far as the alternate theory about another car
19 with other perpetrators in it, where did you get that
20 from? What was the basis for that?

21 A There was some indication that there was some car
22 supposed to have been there at some point in time.
23 There was never -- that I'm aware of -- any real proof
24 of that, and the evidence didn't support it. The
25 problem we had was this. When the police stopped the

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 car that these four or five defendants were in, the
2 problem was that they found a gun. The gun had blood
3 on it. The blood was consistent with that of Shawn
4 Barrett, the victim in this case. Shawn Barrett
5 reported that marijuana had been stolen from him.
6 There was marijuana in the car found at that time.
7 The report was that there were four hooded, black men
8 in the house. There were four, hooded black men in
9 the car. There was one male who didn't have on a
10 black shirt, and I'm thinking it was Eric, but I'm not
11 sure, I can't remember which one, but there was one
12 who was supposed to be in the middle in the back who
13 did not have --

14 THE COURT: So when the police stopped the car,
15 there were five men in the car?

16 THE WITNESS: That's my understanding, yes, sir.
17 Four of them supposedly had on black hoodies. So that
18 was a huge problem, because, you know, trying to
19 explain -- so the problem would have been that if we
20 had testified -- if our defendant testified that he
21 was the only one in the car -- because clearly one
22 person stayed in the car, I don't think there was ever
23 a question about it. That was a consistent defense.
24 As long as we could put him in that car, and he would
25 have been the reasonable person to stay in the car

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 because he didn't have a record, never been involved
2 in anything like this, wasn't down here when all of
3 this went down or when the planning was going forward,
4 but when he tried to drag Mario along with him and
5 said he wasn't involved, the jury wasn't going to buy
6 it, and I knew that that night before we started this
7 trial and talked about that.

8 Q In terms of the trial itself, who was Mr. Tine's
9 attorney?

10 A Mr. Tine -- I think --

11 Q Billy Monckton?

12 A Correct.

13 Q Any particular reason why it seems like
14 Mr. Monckton went first?

15 A No, except that is how the judge did it. You
16 know, he said one of you have to go first and I'll be
17 consistent with it, so he ended up going first.

18 Q Why didn't you move for severance?

19 A Because, really, there was absolutely no basis
20 for severance, there really is not. Look, I would
21 like a severance in every case simply because, you
22 know, you don't want to ever have a trial with another
23 codefendant if you can avoid it. If you have some
24 conflict, that is one thing and you can point out. I
25 have -- there is nothing that I could point to that

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 would have been a conflict with these two defendants
2 going to trial together. When we started out, it was
3 going to be three defendants. As it turned out, there
4 were only two that went to trial, but there was no
5 legal basis for it, no basis for a severance.

6 I don't remember -- I'm not saying that I wasn't
7 sent an E-mail, I don't know. I don't know. I'm not
8 going to deny that an E-mail was sent to me. I never
9 got it, but even if I had, I would have said, you
10 know, I don't think that there is any legal basis for
11 that, and so I can't justify it. I have to have some
12 ground for it when I make it. I didn't have any.
13 There was no grounds for it.

14 Q Did you discuss severance at all with Mr. Lackey?

15 A I can't sit here and say I honestly recall that.
16 I don't know. I would have thought that I would have,
17 but if you ask me honestly can I say that I did, no, I
18 don't have a specific recollection of having done
19 that, no.

20 Q As far as the testimony at trial goes, is it fair
21 to say that all of the witnesses' testimony at trial
22 was fairly consistent with each other?

23 A Yeah. By the time they got to trial, yeah. It
24 wasn't up until that point, but, yeah, by the time
25 they got to trial, yeah, the testimony was fairly

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 consistent about four black males coming in and --
2 with a gun, two upstairs and two downstairs, one got
3 the cell phones -- yes, it was fairly consistent by
4 the time we got to trial.

5 Now, granted you, prior to that there had been
6 multiple, multiple statements by various defendants
7 about what happened. In fact, Mr. Barrett wasn't even
8 cooperative in the very beginning with law
9 enforcement. The only reason he did, I think, is his
10 mom came down and drug him over there and made him
11 give a statement.

12 Q If you recall, briefly off the top of your head,
13 what was the inconsistencies of those statements?

14 A Oh, boy, that is a tall order. For instance,
15 Mr. Barrett's original statement was, I think, that he
16 didn't even know who it was that robbed him or how
17 they were dressed. Again, I don't remember all of the
18 details, I just remember that they were all over the
19 place with these theories, with these stories, you
20 know, about what they said happened. None of them --
21 you have to understand that the victims all knew that
22 there was drug activity going on in the house so they
23 were all reluctant to be forthright, so they were
24 trying to hide stuff because they didn't want to get
25 in trouble because they knew that they were at a place

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 that was involved with drugs.

2 Q And is it fair to say that on cross-examination
3 of all of these witnesses you -- did you attempt to
4 impeach those with the prior statements?

5 A I did, yes, sir.

6 Q What could you have done further to impeach them?

7 A Nothing. I mean, unfortunately, the Court is
8 going to let you go so far with impeaching. Once you
9 ask about the statement and say, yeah, I did not tell
10 the truth about that, then you are kind of precluded
11 after that from dragging it out and going back into
12 all of the details when the person already admitted
13 they lied or didn't tell the whole truth or they had
14 inconsistencies.

15 Q As far as Mr. Tine's version of the events, was
16 there any other way you could have gotten that
17 information before the jury, other than having him
18 testify?

19 A Mr. Tines?

20 Q Sorry, Mr. Lackey.

21 A No. That was the other thing. You know, I
22 wanted him to be in the car by himself. That is what
23 I wanted. Obviously, you can't tell the witness what
24 to say, and I'm not going to do that, but I made it
25 clear before we went to trial that four people were in

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 the house, there was no way we could get around it.

2 If there are five people in the car, that leaves one.

3 So if you try to make two outside the car, then you

4 have problems, and that is where we were. As I said,

5 we had that discussion in detail.

6 Q So fair to say the only way to get his version in
7 front of the jury was have him testify?

8 A No other way I knew of.

9 Q As far as your closing arguments to the jury, did
10 you bring all of that out?

11 A I did. I talked about all of the
12 inconsistencies, how we got to this point and the fact
13 that there was really no physical evidence to support
14 the fact that Mr. Lackey did anything. There really
15 wasn't. I honestly believed that he would have gotten
16 found not guilty had he not said that Mr. Tine stayed
17 by the car with him. I honestly think he would have
18 been found not guilty.

19 Q What, if anything, was wrong with the indictment
20 in this case?

21 A Nothing.

22 MR. J. THOMAS: Beg the Court's indulgence for a
23 second.

24 (A brief pause in the proceedings.)

25 Q Final question. Ultimately, I know you talked

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 about your discussions about plea agreements and going
2 to trial. Ultimately, whose decision was it to
3 decline those plea agreements?

4 A Absolutely his. Absolutely his.

5 MR. J. THOMAS: Thank you.

6 MR. T. THOMAS: If it pleases the Court.

7 CROSS-EXAMINATION

8 BY MR. T. THOMAS:

9 Q Mr. Wilson, you said the theory of defense in
10 this is that he did remain in the car?

11 A Yes, sir.

12 Q And that was consistent with what he had been
13 saying all along?

14 A Absolutely was, yes, sir.

15 Q He testified that at first, I guess, in
16 consultation with you, that there was a tentative
17 decision of him not to testify; is that correct?

18 A As I said to you -- as I said to the attorney
19 general just a second ago, my general rule is that I
20 don't like putting defendants on the witness stand.
21 I'm sure I told him that, and I'm sure I told his
22 parents that at the outset of this process. I tell
23 every defendant that, so I know I would have said that
24 to them. I didn't change my mind until the end. When
25 we got to the end of the process and going to trial, I

1 knew that there was no other way for us to get his
2 side of this story into evidence. I sat down with him
3 that night before and we talked about it. I also
4 talked to him about not -- what would happen if he
5 included Tine in his version of the facts, because we
6 couldn't -- it wouldn't work, so, yeah.

7 Q So you knew about the possibility he would
8 testify that he and Tine were both in the car?

9 A The night before, yes, sir.

10 Q Night before, okay. So you still felt that it
11 was necessary to put him up on the stand?

12 A If we were going to get the fact that he remained
13 in the car, yes, and that he never left the car. That
14 is what his story has been to me from day one, that he
15 never left that car and that he didn't do anything and
16 didn't know anything -- you know, be frank with you,
17 not that it matters, I believed him, and I still do.
18 I believe him. You know, I just wish he had stuck
19 with that and not tried to help his buddy, I do. I'm
20 sorry, I wish he hadn't.

21 Q And in talking with him about the state's
22 evidence, I guess the problem that you had really was
23 the codefendants who would testify?

24 A Yes, sir.

25 Q And in looking at the transcript the statements

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 are all over the place?

2 A Yes, sir.

3 Q Everybody is trying to save --

4 A Their skin. They were trying to get a deal and
5 save their own selves as best they could. They would
6 have sold him down the drain and anybody else, I'm
7 sure, to get a deal. That is not unusual in this
8 process, unfortunately.

9 Q Were you able to determine if there was something
10 else going on with Eric and these other -- Torrie and
11 the other people? What were you able to determine?

12 A I mean, I know that they were friends so they had
13 a relationship, yes. You know, but all of these
14 fellows had relationships, pretty much. Mr. Lackey
15 had a relationship with Mario, Mr. Tines, which is why
16 he was down here, but he came down, I think, with
17 Josh. Josh rode down with them. So they are all
18 interconnected. The question is more of to what
19 degree. Who is closer to whom? I don't know the
20 answer to all of that. They were all -- they all knew
21 each other, but they weren't all like buddies, because
22 three of them were football players and here at
23 Coastal. Mr. Lackey was in Georgia somewhere, so he
24 was just coming down with a girlfriend to go to
25 Mario's game, that was his buddy. So, yeah, I

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 understand they were all friendly and friends, and
2 some of them had closer relationships than others.

3 Q I guess if the State believed that this was all
4 pre-planned, then, you know, it became a question of
5 who was involved in the pre-planning?

6 A Yes, sir.

7 Q And whether or not you had a different group of
8 folks, including Eric, out there floating around that
9 nobody else knew about?

10 A There was never any evidence that Mario -- sorry,
11 Mr. Lackey was a part of the pre-planning. There was
12 never any evidence of that, that I'm aware of. In
13 fact, if I'm not mistaken, Joshua testified that he
14 was not. The whole time they rode down from Atlanta
15 there was no conversation about it. There was
16 supposed to be no conversation in the car that night.
17 So there is nothing in the record that I'm aware of
18 that ever suggested that Mr. Lackey knew about the
19 robbery before they got there.

20 Q Which is consistent with what he was saying all
21 along?

22 A No question about that. Yes, sir. You are
23 right, yes, sir.

24 Q Do you think two -- who was this fellow Torrie?
25 Were you able to determine his role?

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 A No, sir. Listen, let me say this, did I hear
2 Torrie's name bantered about, yeah. Did I make a fuss
3 during closing argument? Yeah. Was I going to find
4 Torrie and have him say my client did something? No,
5 I'm not doing that. I'm not buying a pig in a poke,
6 and I'm not going to go look for trouble. We had
7 enough trouble, and we had enough codefendants who
8 were already testifying against this defendant. The
9 last thing you want to do is find another one to help
10 out, and that is what would have happened, you know.

11 Did we hire an investigator to track this guy
12 down to testify? In fact, the State didn't even try
13 to get him, and I think, if I'm not mistaken, they at
14 least were talking about trying to charge him at one
15 point. They never did, as far as I know.

16 Q What did this case look like at the beginning?
17 Did it change shape in regards to what you thought the
18 State could prove and couldn't as it developed?

19 A No, not really. I don't think that it changed
20 that much, because I think the case was kind of
21 defined when the police stopped the vehicles and found
22 all five in the car, with the drugs and with the gun.

23 The gun was the center piece, because the gun had
24 Mr. Barrett's blood on it, which made a direct
25 connection to the house.

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 Q You all objected to that and tried to keep that
2 out?

3 A Sure. Yes. Yes.

4 Q Saying no probable cause for them to search the
5 car and, of course, it was ruled against?

6 A Yes. Yes.

7 Q Now, in evaluating the case, you felt like there
8 was -- if it went to trial, there was a substantial
9 risk of being convicted?

10 A There is always a substantial risk any time you
11 go to trial I tell my clients, two things can happen,
12 one is bad. Any time you go to trial there is a
13 substantial risk. If Mr. Lackey had simply talked
14 about what he did and stayed away from everything
15 else, we probably wouldn't have this conversation
16 today, I believe that.

17 Q You feel that strongly about it?

18 A I do. I just don't see where there was anything
19 -- I think what happened is -- this is my two cents
20 and a dollar-and-a-half will get you a cup of coffee,
21 but my position is that I think -- what I think is
22 that the jury -- when I -- when he tried to say that
23 Mr. Tine didn't go into the house, the jury didn't
24 believe that because then that would destroy everybody
25 else's story that there were four men in the house,

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 okay. Because we had the gun and the marijuana, which
2 came from the house. It's kind of crazy to say, oh,
3 well, none of us went into the house. You can't make
4 that argument and be serious and think that a jury is
5 going to buy it.

6 I honestly believe that based on everything that
7 I knew about it going into the trial, yeah, there was
8 a substantial risk, but I honestly thought that if he
9 had testified, look, the other four got out of the car
10 where they went and what they did, I don't know. I
11 stayed in the car, they came back and three minutes
12 later the police stopped us. Yeah, I think he would
13 have gotten off, I do.

14 Q Let me ask you about the plea offers. Do you
15 think because he -- I mean, even today he just says
16 that he didn't do this?

17 A Yes, sir.

18 Q Was that a hinderance regarding him accepting a,
19 quote on quote, guilty plea?

20 A Sorry?

21 Q Was the fact that he was unwilling to stand up
22 and say I did this --

23 A No, sir.

24 Q Was that a problem with accepting the plea?

25 A No, sir. No, sir. Look, if he would have -- if

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 he had told me, look, I want to take a plea, I want to
2 get this behind me, but I don't want to say I'm
3 guilty, then, yeah, I would have gone to the Solicitor
4 and asked will you let me do the Alford, agree or
5 consent. Now, when the charge is this serious, a lot
6 of times they say, no, we wouldn't agree. But I would
7 have gone to them and done my best to convince them to
8 do it. Honestly, I think they might have done it.

9 Q The other guy?

10 A Yeah. That is my point.

11 THE COURT: Somebody else entered an Alford plea?

12 THE WITNESS: Yes, sir. Reardon.

13 MR. T. THOMAS: Yes, the third codefendant went
14 to trial, stopped and he did an Alford plea.

15 THE COURT: Okay.

16 Q You remember if you ever discussed with Michael
17 an Alford plea? Do you know if he knew about it?

18 A I just answered that for the attorney general. I
19 can't honestly sit here and say I have a specific
20 recollection of having done that, I just do not have a
21 recollection of it. I wish I could say I did, but I
22 don't. I don't have a recollection of it. I would
23 tell you that knowing me, if we discussed pleas, I
24 probably did it. If you asked me do I have a specific
25 recollection of having done it, I would have to say I

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 do not have a specific recollection, no, I do not.

2 Q If that was the hang-up in regards to I don't
3 want to step up and say I didn't do something I didn't
4 do, could it have potentially solved it if he could
5 have entered the Alford?

6 A If he said to me, yes, look, I really want to
7 take this, but I don't want to say I'm guilty, you
8 know, yeah, I would have definitely told him, look,
9 let me do this, go to the Solicitor and see if I can
10 get you an Alford plea, and I clearly would have done
11 that without question, no doubt.

12 MR. T. THOMAS: I beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 (A brief pause in the proceedings.)

15 MR. T. THOMAS: Let me beg the Court's
16 indulgence. I want to look at my notes real fast.

17 THE COURT: Sure. Take your time.

18 (A brief pause in the proceedings while Mr. T.
19 Thomas and Mr. Lacey converse.)

20 Q Final question. You and I talked about it on the
21 phone a couple days ago, you just don't believe the
22 Court would have granted the sever?

23 A The sever?

24 Q Yes.

25 A No, sir. No, sir.

RALPH WILSON, ESQ. - REDIRECT EXAMINATION

1 Q You did not make a motion for severance?

2 A I did not, no, sir.

3 (A brief pause in the proceedings while Mr. T.
4 Thomas and Mr. Lackey converse.)

5 MR. T. THOMAS: No further questions.

6 MR. J. THOMAS: Briefly, Your Honor.

7 REDIRECT-EXAMINATION

8 BY MR. J. THOMAS:

9 Q During cross-examination you said that you
10 discussed with Mr. Lackey -- or you stated that there
11 was never any evidence on the part of pre-planning.
12 What discussion did you have with him about maybe the

13 hand of one, hand of all and the mere presence theory?

14 A Yes, sir. That was the problem. We did discuss
15 that. We discussed the hand of one is the hand of
16 all. Whenever two or more people engage in criminal
17 activity, one is equally guilty as the other if they
18 are there, and other than just being present, they are
19 just as guilty. If he was there and if he

20 participated in any way, picking up the wallets,
21 opening the door, standing guard, whatever, he would
22 be just as guilty as the people who actually had the
23 gun and took the drugs.

24 Q You also said you didn't go out looking for
25 Torrie because you thought that would be trouble. Is

RALPH WILSON, ESQ. - RECROSS EXAMINATION

1 it fair to say that you made that a strategic
2 decision?

3 A Yes. Yes. That was clearly not something I
4 wanted to do.

5 Q You'll ask you -- maybe -- do you recall the
6 judge giving a charge about joint defendants and how
7 they were to be convicted separately?

8 A Yes. Yes. I'm sorry, I was trying to remember.

9 Q And I can refresh your recollection.

10 A I'm good. It's been a while.

11 THE COURT: Anything else?

12 RECROSS-EXAMINATION

13 BY MR. T. THOMAS

14 Q I apologize. When you said that, I was just
15 looking in the charges. Do you know if "mere
16 presence" was charged?

17 A I don't know. I don't know. I honestly don't
18 know.

19 Q That would have been consistent that he was in
20 the car and would have been the opposite of hand of
21 one, hand of all. He was there literally for the
22 ride?

23 A Yeah. If he -- I would probably agree with that,
24 that if he was there in the car and he was not a part
25 of any planning or whatever, then that would come

THE COURT AND ATTORNEYS

1 under mere presence.

2 Q That would fit with your theory of defense that
3 he was not involved?

4 A Yeah.

5 Q I can't remember -- I don't remember seeing it.
6 I just don't know if you knew if you asked for it?

7 A I don't remember asking for it. I know generally
8 in most cases it is -- the judge includes it in the
9 charge. I would be shocked if it were not in there,
10 but I don't remember offhand.

11 MR. T. THOMAS: Thank you.

12 THE COURT: Anything else, Mr. Thomas?

13 MR. J. THOMAS: Not from Mr. Wilson, no, sir.

14 THE COURT: Thank you. You can step down. Next
15 witness.

16 MR. WILSON: May I be excused?

17 MR. J. THOMAS: That is all from the State.

18 THE COURT: Are you going to have any reply?

19 MR. T. THOMAS: No, Your Honor.

20 THE COURT: You are free to go.

21 MR. WILSON: Thank you.

22 THE COURT: Anybody need a break? Ready to go
23 forward?

24 MR. T. THOMAS: I'm ready.

25 THE COURT: Before I forget, what would have been

001329

THE COURT AND ATTORNEYS

1 the basis for a severance? I guess I have not read
2 the transcript entirely, but the codefendants who
3 turned or decided to plead, if there had been a
4 separate trial, they would have testified at your
5 client's trial?

6 MR. T. THOMAS: Correct.

7 THE COURT: The other non-defendant witnesses
8 would have all testified?

9 MR. T. THOMAS: Yes, sir.

10 THE COURT: What would have been the legal basis
11 for severance?

12 MR. T. THOMAS: Your Honor, and those are
13 problems I think that would have been dealt with at
14 the time. I guess, you know, I don't --

15 THE COURT: There was no Bruton issues? Because
16 we have had the recent line of cases that talk about
17 severances aren't to be denied just for judicial
18 economy, that we need to look at Bruton issues more
19 closely. There was no redacted statements of
20 non-testifying codefendants?

21 MR. J. THOMAS: No, sir. No, sir.

22 MR. T. THOMAS: I think -- and my client felt
23 strongly, especially the family, they should be tried
24 separately. Our position is that he should have at
25 least asked the Court for them to be separated.

THE COURT AND ATTORNEYS

1 THE COURT: For purposes of proving prejudice,
2 you would have to show that the severance motion more
3 than likely would have been granted?

4 MR. T. THOMAS: That's correct. And I think that
5 could potentially have been difficult.

6 THE COURT: If you want to give me your closing
7 comments, that is fine, or we can take a recess if you
8 want to get your thoughts together, that is fine.

9 MR. T. THOMAS: Your Honor, I'll be glad to do it
10 now.

11 THE COURT: Okay.

12 MR. T. THOMAS: It is a really complicated case
13 in that you have multiple testimonies, multiple people
14 who have all various degrees of interest in this case
15 and self-serving interest in this case. Counsel
16 testified that he felt like the case didn't change,
17 you know. The evaluation of the State's case was that
18 it was strong from the beginning and that he felt like
19 if the codefendants were going to testify, it would be
20 extremely difficult for my client to prevail at trial.

21 I would suggest to the Court that I don't think
22 that they completely understood that, that he
23 completely understood that danger and the fact -- and
24 I've seen this in other cases where, you know, there
25 is a strong line running through in regards to --

THE COURT AND ATTORNEYS

001331

1 well, you know, I have been raised this way, that if I
2 didn't do it, I shouldn't step up and say I did
3 something I haven't done. Mr. Wilson does say he
4 doesn't remember talking about the Alford plea, which,
5 to me, based upon the testimony presented today, and
6 especially from the step-father, that would have
7 solved the problem. If the hang-up was the fact that
8 he didn't want to stand before the Court and take a,
9 quote, end quote, guilty plea and admit he was guilty
10 of this charge, which appears to be the basis for
11 this, he would have accepted the 10 or the 12.

12 The step-father said he had an opportunity to
13 speak with him in the hotel that night. They
14 discussed it, and again the problem was I don't want
15 to admit to something I didn't do. We have an
16 indication of prejudice because the Court allowed the
17 third codefendant to take an Alford plea.

18 THE COURT: Was Mr. Lackey in the courtroom when
19 that happened?

20 MR. T. THOMAS: He was, but I think it's hard to
21 impose upon him the knowledge of what Alford involves
22 by just saying -- whether he was paying attention or
23 just mere presence and whether or not he understood
24 what was going on. I think it takes more than that.
25 I think it takes counsel sitting down and describing

THE COURT AND ATTORNEYS

1 to him -- because we've all had problems with that in
2 the past as far as getting a client to understand what
3 you are saying, the basis of Alford. I'm saying I'm
4 not guilty, however, I'm afraid if I go to court there
5 is a likelihood I'll be convicted.

6 So I think it is hard. I heard that argument,
7 and I think it is hard to say that that solves the
8 problem just because of the fact he was in the
9 courtroom when the Alford plea was given. I think it
10 creates the opposite situation in that it potentially
11 shows the prejudice of the situation, because if we
12 didn't have that, we would be trying to figure out
13 whether or not the Court would have taken it.

14 THE COURT: Well, I know that there is -- first
15 of all, there has to be a bargain. From what I've
16 heard, the bargain was the dismissal of the other
17 charges?

18 MR. T. THOMAS: Yes, sir, which would be the most
19 serious, the burglary first.

20 THE COURT: It can't be just a good deal. The
21 bargain has to be, typically, more than something --
22 more than a recommendation for a lower time.

23 How about the fact that the prosecutor might say
24 I'll drop the other charges if he pleads, but it is
25 not an Alford, can a prosecutor do that?

THE COURT AND ATTORNEYS

001333

1 MR. T. THOMAS: I think a prosecutor could do
2 that, and what I think is unique about this situation
3 is that we have something to look to. If you look to
4 Mr. Reardon's plea, he was going up to trial on the
5 same charges. He had the armed robbery, burglary
6 first and the other two charges. Obviously, the
7 Alford plea was allowed or consented to by the
8 Solicitor's Office and accepted by the Court.

9 THE COURT: Did any of the codefendants put Mr.
10 Lackey in the apartment, or was he outside?

11 MR. T. THOMAS: No, I think that -- I believe
12 Eric did, Your Honor.

13 THE COURT: Eric did what?

14 MR. T. THOMAS: I think Eric did put Mr. Lackey
15 in, because there was testimony in the record about
16 him being present and taking the cell phones and the
17 wallets.

18 THE COURT: Okay.

19 MR. T. THOMAS: So there was testimony to that
20 fact.

21 THE COURT: It sounds like one of your primary
22 points of emphasis is the failure to explain the
23 availability of an Alford?

24 MR. T. THOMAS: I think it is. Of all the issues
25 we have, a lot of them are standard post-relief

THE COURT AND ATTORNEYS

1 issues, but if one stands out, it is the plea.

2 THE COURT: There are cases about failure to
3 convey Alford, period.

4 MR. T. THOMAS: Yes.

5 THE COURT: Any cases where an appellate court
6 anywhere has addressed the failure to advise a client
7 of the availability of an Alford plea or nolo plea or
8 no contest plea?

9 MS. THOMAS: I don't know, but I would be more
10 than happy to look.

11 THE COURT: Do you know, Mr. Thomas?

12 MR. J. THOMAS: I'm not familiar, but I could do
13 a quick search.

14 MR. T. THOMAS: If you step back and look at it,
15 I think all the testimony is consistent with -- and
16 even Mr. Wilson said, for whatever it is worth, that
17 he believed Mr. Lackey in that he was literally taken
18 for the ride. He came down to see his friend, was in
19 car, he was in the front seat rather than the
20 backseat, the drugs and pistol were found in the
21 backseat. There was testimony that Eric was in the
22 car and they all get in, which is consistent with his
23 story. He is still sitting in the front seat, they
24 get in and he doesn't know what is in the backseat.

25 I think that all of that, even what the attorney

THE COURT AND ATTORNEYS

1 is saying, is consistent with him being mere presence.

2 THE COURT: I don't mind saying that I find
3 Mr. Lackey's testimony to be extremely credible, I do.
4 You know, you take into account his demeanor, his
5 demeanor is about as good as you can get for somebody.
6 He's polite, his story never wavered. He said, look,
7 I didn't do it, I didn't know what they were going up
8 there to do. The problem is that the PCR stage, law
9 says it doesn't matter what I think about whether or
10 not he's guilty or not. I can't revisit that. What
11 I'm looking for is, as you know, failure to perform in
12 accordance with professional norms; if so, was there
13 prejudice.

14 MR. T. THOMAS: Yes, sir.

15 THE COURT: I don't think the severance angle is
16 going to get you anywhere. Lawyers aren't supposed to
17 move for severance because the defendant's parents
18 want them to; that is not grounds for relief. There
19 is no Bruton issue available, so I think severance
20 would be a problem. The Alford, advising him of the
21 availability of such a plea, you know, there may or
22 may not be case law on that.

23 MR. T. THOMAS: I think that is the strongest
24 issue. The other thing that fits together, you know,
25 about whether or not there is an alternative --

THE COURT AND ATTORNEYS

1 THE COURT: Four people.

2 MR. T. THOMAS: Alternative events going on that
3 doesn't involve my client.

4 THE COURT: Was there DNA testimony at the trial
5 that the blood on the gun in this car matched that --
6 and I say "matched," but there is a difference in
7 science. "consistent with" and "matching" is two
8 different things to scientists. Blood is consistent
9 with my blood, because it is blood. Was there
10 testimony at the trial of one in four quadrillion that
11 it was somebody else other than Shawn Barrett?

12 MR. T. THOMAS: There was testimony, and what was
13 unusual about it was that the DNA evidence excluded
14 everyone. The problem -- except for Mario Tine. It
15 didn't excluded Mario, but what the testimony was --
16 and they objected to it and it came in any way -- was
17 the fact that they couldn't say that it matched, and
18 they couldn't say whether or not that it included him
19 or excluded him.

20 THE COURT: So it really was a non-event?

21 MR. T. THOMAS: In the middle. The difference
22 was that he was excluded, and Mario was not. But he
23 wasn't included.

24 THE COURT: Mr. Wilson testified that there was
25 testimony that the blood was consistent, and the word

THE COURT AND ATTORNEYS

001337

1 "consistent" was --

2 MR. J. THOMAS: If I can clarify, I think we --
3 and I hate to interrupt, but the blood on the gun was
4 consistent with the victim.

5 THE COURT: "Consistent," what does that mean?
6 That is what I want to know. It may not make a
7 difference, but being consistent with is not the same
8 to a DNA analyst as a match?

9 MR. T. THOMAS: I don't know. I looked at it
10 from the other side, whether or not it was -- DNA
11 matched with the codefendant, Mr. Tine.

12 MR. J. THOMAS: Your Honor, I can direct you to
13 Page 778 of the transcript starting on Line 8, and it
14 probably goes before that, but that is just what I
15 pulled up now. There was a 1 in 17 quintillion chance
16 that the blood belonged to the victim, Shawn Barrett.

17 THE COURT: Then it wasn't his. It belonged to
18 somebody else?

19 MR. J. THOMAS: The blood belonged to the victim.

20 MR. T. THOMAS: I think it belonged to the
21 victim.

22 THE COURT: It says 1 in 17 quintillion that it
23 belonged to Shawn Barrett? If there is a 1 in 17
24 quintillion chance that it belongs to me, I dare to
25 say it doesn't belong to -- I have to look back at

THE COURT AND ATTORNEYS

1 that testimony. I was trying to pay attention to Mr.
2 Wilson when you were talking about it and find it at
3 the same time, and I made it to Page 774.

4 MR. T. THOMAS: The part I concentrated on is
5 further down on that page, Line 23, it says, Who are
6 the individuals who you are able to exclude, and it
7 was Ricky Johnson, Eric Brown and Michael Lackey. It
8 talks about they were not able to exclude Mario Tine,
9 but not able to include him either, over on 779.

10 THE COURT: Of course, I'll go with what is in
11 this record, I'll have to read it.

12 I guess, if you could, provide me with case law
13 on the issue of whether or not counsel is deficient in
14 failing to advise a client of the availability of an
15 Alford or no contest, nolo plea, that type of thing.
16 That might be helpful. Because it is apparent that
17 Mr. Wilson didn't tell him about it, but, in effect,
18 he said it didn't come up to him in his mind because
19 if he had told me, hey, I want to take this deal, I
20 just don't want to say I did it, then that is a
21 layman's way of saying I want to plead under Alford,
22 they just didn't know it.

23 So we look for commonsense in the law, and that
24 is based on a layman being able to understand it, and
25 we know how that works sometimes. Again, if you find

THE COURT AND ATTORNEYS

001339

1 me cases, if there are any, I would appreciate that.

2 MR. T. THOMAS: I'll be glad to.

3 THE COURT: Anything else you have, Mr. Thomas?

4 MR. T. THOMAS: No, Your Honor.

5 THE COURT: Mr. Thomas for the State, anything in
6 closing?

7 MR. J. THOMAS: If I could briefly run down each
8 of the allegations. I believe we went over all -- the
9 motion to sever. Mr. Wilson testified there was no
10 grounds for it. I asked him if the judge gave an
11 instruction about a joint trial so there was no
12 prejudice.

13 THE COURT: Is that in there? I assume it is, it
14 is common -- or it is required.

15 MR. J. THOMAS: It is. It is on Page 1166, Line
16 18.

17 THE COURT: In other words, you can convict them
18 all, acquit them all or convict some and acquit the
19 rest and your verdict on one doesn't control your
20 verdict on the other.

21 MR. J. THOMAS: That is essentially what it says.
22 Failure to further establish an alternate theory,
23 I think he testified he presented his theory to the
24 jury. He testified he had strategic reason for not
25 investigating this Torrie gentleman.

THE COURT AND ATTORNEYS

1 Failure to advise regarding the plea offer, I
2 think we've been over that and, obviously, we're going
3 to present case law on that.

4 Failure to advise the risk of testifying, I think
5 testimony from Mr. Wilson was they went over
6 everything regarding that.

7 Failure to effectively cross-examine, he said
8 there was nothing else he could have done to bring out
9 more inconsistencies.

10 The indictment issue, I think there is no
11 evidence.

12 THE COURT: It came up earlier today, there is no
13 law that says the clerk of court has to time stamp an
14 original indictment. That is a certified copy for the
15 lawyers that typically has it, but it is not required.

16 MR. T. THOMAS: I know Mr. Lackey has been doing
17 research on his own, and that is why he wanted us to
18 present that. I don't know of anything that requires
19 that. It appears to be stamped that says "true
20 billed," and then there is a date stamp to the right
21 of that.

22 THE COURT: Yes, sir.

23 MR. T. THOMAS: If it pleases the Court, could
24 I -- and I apologize for not knowing the answer to
25 this -- look into whether or not mere presence was

THE COURT AND ATTORNEYS

1 charged?

2 THE COURT: You can, but you also need to look to
3 make sure even though it might not have been charged,
4 that it was like a segregated section of the charge.
5 In the hand-of-one charge there is typically the
6 equivalent of a mere presence charge, but I'll
7 certainly let you search through the transcript, and
8 let me know about that.

9 MS. THOMAS: Thank you.

10 THE COURT: As far as time frames, today is
11 March 20, so if you could get me your memoranda, if
12 you choose to do that, by next Friday; is that okay?

13 MR. T. THOMAS: That is fine.

14 THE COURT: That would be April, what, 3rd?

15 MR. J. THOMAS: That sounds right -- no, 28th.

16 THE COURT: March 28th, okay.

17 MR. T. THOMAS: Playing the Blue Grass
18 March 28th, Your Honor.

19 THE COURT: You need more time?

20 MR. T. THOMAS: No, I'm fine.

21 MR. J. THOMAS: You'll accept similar from the
22 State?

23 THE COURT: Certainly. Thank you.

24 (Whereupon, the proceedings concluded.)

25

1
2 CERTIFICATE OF REPORTER
3

4 State of South Carolina)

5 County of Horry)
6

7 I, Natalie Dahl, Official Court Reporter for the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the matter of the captioned case,
12 relative to appeal, in the Court of General Sessions
13 for Horry County, South Carolina, on the 20th day of
14 March, 2014.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 August 28th, 2014
19

20
21 

22 Natalie Dahl, RPR

23 Court Reporter
24
25

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.

Michael Jerrod Lackey,

Appellant.

Appeal From Horry County
Larry B. Hyman, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-257
Submitted April 2, 2012 – Filed May 2, 2012

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, and Senior
Assistant Deputy Attorney General Salley W. Elliott,

all of Columbia; and Solicitor J. Gregory Hembree,
of Conway, for Respondent.

PER CURIAM: Michael Jerrod Lackey appeals his convictions of first-degree burglary, armed robbery, unlawful carrying of a pistol, and possession of marijuana with intent to distribute, arguing the circuit court erred in allowing an accomplice to testify for the State in a jail uniform. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

PIEPER, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) CASE NO: 2012-CP-26-9094
3 PCR HEARING

4 -----
5 **B E F O R E:** The Honorable George C. James
6 March 20, 2014
7 -----

8 MICHAEL LACKEY,
9 Claimant/Applicant,
10 vs.

ORIGINAL

11 STATE OF SOUTH CAROLINA,
12 Respondent.
13 -----

14 **APPEARANCES:**

15 Tommy A. Thomas, Esq.
16 For the Claimant/Applicant.

17 Joshua L. Thomas, Esq.
18 For the Respondent.
19 (Office of the Attorney General)

20
21
22 Court Reporter:

23 Natalie Dahl, RPR
24
25

~~001060346~~

I N D E X

WITNESSES

PAGE

MICHAEL LACKEY

Direct-Examination by Mr. T. Thomas.....	8
Cross-Examination by Mr. J. Thomas.....	35

YOLANDA DOZIER

Direct-Examination by Mr. T. Thomas.....	41

CHARLES DOZIER

Direct-Examination by Mr. T. Thomas.....	42
Cross-Examination by Mr. J. Thomas.....	45

RALPH WILSON, ESQ.

Direct-Examination by Mr. J. Thomas.....	45
Cross-Examination by Mr. T. Thomas.....	65
Redirect Examination by Mr. J. Thomas.....	70
Recross Examination by MR. T. Thomas.....	71

EXHIBITS

(NO EXHIBITS WERE MARKED OR ADMITTED)

P R O C E E D I N G S

CALL OF CASE

001262

1 of codefendants. Michael Lackey -- this was in Horry
2 County. There was a traffic stop, Your Honor.
3 Pursuant to that traffic stop, an amount of marijuana
4 and a gun were seized, and these individuals were
5 charged.

6 At a later date, law enforcement put together
7 what they consider a connection between this stop and
8 an armed robbery, burglary first, that occurred at
9 another location on the same day, and then that
10 situation -- basically there was a robbery of a drug
11 dealer and an amount of marijuana was taken from them.
12 There was a trial. Three codefendants went to trial.
13 One of the codefendants during the trial decided to
14 accept a plea, and he testified. Two of the
15 codefendants, one including Mr. Lackey, went through
16 the trial and were found guilty by the jury and
17 sentenced.

18 THE COURT: Total of three codefendants?

19 MR. T. THOMAS: There were three codefendants,
20 Your Honor, and he's one of them.

21 If it pleases the Court, just for the Court's
22 consideration, this is an ineffective assistance of
23 counsel case. Some of the issues, which of course
24 there may have been something else that developed at
25 trial, but that I have seen is counsel's failure to

CALL OF CASE

~~001261~~
~~001347~~

1 THE COURT: We're on the record now with Michael
2 Lackey versus State, 2012-CP-26-9094. Mr. Thomas.

3 MR. J. THOMAS: Thank you, Your Honor. This is a
4 January 2008 indictment for possession with intent to
5 distribute marijuana, carrying a pistol unlawfully,
6 armed robbery and burglary first degree. Mr. Lackey
7 was represented by Ralph Wilson. It went to trial in
8 May 17 through 21st, 2010, and he was convicted as
9 indicted. The Honorable Larry B. Hyman, Junior
10 sentenced him to five years on the PWID charge, one
11 year on the pistol, ten years on armed robbery and 18
12 years on the burglary first all to run concurrent.

13 An appeal was filed perfected by Wanda Carter on
14 the Office of Public Defense. It was an Anders appeal
15 and dismissed by the Court of Appeals in an
16 unpublished opinion 2012-UP-257. Mr. Tommy Condents
17 (phonetic) filed this PCR on Mr. Lackey's behalf on
18 November 27, 2012 alleging ineffective assistance of
19 counsel, and State is ready to proceed.

20 THE COURT: Okay. Mr. Tommy Thomas, you
21 represent Mr. Lackey?

22 MR. T. THOMAS: I do..

23 THE COURT: Are you ready to proceed?

24 MR. T. THOMAS: I am. Just a little simple
25 factual situation in this case. There were a number

CALL OF CASE

1 file a motion to sever, and to seek an individual
2 trial for Mr. Lackey.

3 Also, Your Honor, we feel that counsel may have
4 been ineffective in failing to establish an alternate
5 sequence of events. I assume the theory of the
6 defense in this case would have been that Mr. Lackey
7 was not involved. He's contended that he was not
8 guilty, and that there was another scenario with other
9 individuals who could have been involved and
10 perpetrated this crime, which was presented to some
11 extent at trial, but my client feels like that could
12 have been further developed, and he was ineffective in
13 failing to do that.

14 Also, there were several plea offers made, and
15 beginning, I believe, at ten years, there was a plea
16 offer made of 12 years prior to trial in the
17 courtroom, and we would allege that counsel was
18 ineffective for failure to advise properly my client
19 in regards to that plea offer.

20 THE COURT: Did he advise him of the ten?

21 MR. T. THOMAS: He advised him of the 10, Your
22 Honor, and of the 12; however, the client is going to
23 testify that he didn't completely understand the
24 component of the offer.

25 Also, he was asserting that he was not guilty.

CALL OF CASE

1 There was an Alford plea, I believe, that was given by
2 one of the codefendants that went to trial. He was
3 never advised about the possibility of an Alford plea,
4 which would have alleviated the hurdle of him taking
5 the stand and admit to something that he has always
6 contended that he didn't do. That was never explained
7 to the client, Your Honor.

8 Lastly, Your Honor, there was -- he actually --
9 my client testified. He would claim that there was
10 ineffective assistance of counsel in that he was not
11 properly advised in regards to the risk of him
12 testifying at trial. He had contended that he did not
13 want to testify, and I think the decision was made at
14 the last moment, and he feels like he was not properly
15 advised by counsel.

16 THE COURT: So he intended all along not to
17 testify.

18 MR. T. THOMAS: Not to testify, Your Honor.
19 Then, at the end of this case, which the court -- of
20 course in the transcript it appears to me that the
21 testimony was not beneficial to him. It created an
22 inconsistency between he and the codefendant, and the
23 other witnesses and also the third codefendant who
24 actually took a plea and testified. I think it
25 created a problem for him, Your Honor, because no

1 longer was the story between he and the codefendant,
2 Mr. Tine (phonetic), consistent. They became somewhat
3 inconsistent.

4 THE COURT: Okay.

5 MR. T. THOMAS: All right.

6 THE COURT: So you have those four basic grounds?

7 MR. T. THOMAS: Those four. The other one that
8 we talked about prior was that he feels like counsel
9 was not effective in showing discrepancies in
10 statements that the witnesses who did testify, they
11 had given a number of statements, and those statements
12 were inconsistent, and actually testimony is elicited
13 at trial that they lied, didn't tell the truth, in
14 prior statements. He feels that counsel should have
15 done a better job in bringing out those
16 inconsistencies.

17 THE COURT: So those were codefendants' pretrial
18 statements?

19 MR. T. THOMAS: Yes, sir. Actually, there were
20 some of the witnesses' pretrial statements. There was
21 a number of other individuals who could have been
22 charged in this case, and they were not. Then became
23 state witnesses, and they were statements that were
24 given by these witnesses prior to trial that, to some
25 extent, were completely inconsistent with what they

1 said at court.

2 THE COURT: Okay.

3 MR. T. THOMAS: If it pleases the Court, we'll
4 call Mr. Lackey to the stand.

5 (MICHAEL LACKEY, having been duly sworn,
6 testified as follows:)

7 THE CLERK: State your name and spell your last.

8 THE WITNESS: Michael Lackey, L-A-C-K-E-Y.

9 DIRECT-EXAMINATION

10 BY MR. T. THOMAS:

11 Q Mr. Lackey, you are currently serving time with
12 South Carolina Department of Corrections?

13 A Yes, sir.

14 Q What kind of sentence are you serving?

15 A An eighteen-year sentence for burglary first, ten
16 years for armed robbery, five years for unlawful -- I
17 mean five years for PWID marijuana, and a year for
18 unlawful carrying of a pistol.

19 Q And all of these are concurrent?

20 A Yes, sir.

21 Q You were charged and found guilty with burglary
22 first?

23 A Yes, sir.

24 Q You understand that burglary first carries 15 to
25 life?

MICHAEL LACKEY - DIRECT EXAMINATION

~~001267~~
001352

1 A Yes, sir.

2 Q You are asking for a new trial today?

3 A Yes, sir.

4 Q You and I discussed it and you understand that
5 should the Court grant you a new trial, you
6 potentially could go back and be tried again?

7 A Yes, sir.

8 Q And that you would be facing up to life
9 imprisonment?

10 A Yes, sir.

11 Q Are you willing to run that risk?

12 A Yes, sir.

13 Q You want to go forward today?

14 A Yes, sir.

15 Q Mr. Lackey, where are you housed?

16 A Lee Correctional Facility.

17 Q And when is your max out, do you know?

18 A 2026.

19 Q And how old were you at the time of this
20 incident?

21 A Eighteen years old.

22 Q And are you from South Carolina?

23 A No, sir.

24 Q Where are you from?

25 A Stone Mountain, Georgia.

MICHAEL LACKEY - DIRECT EXAMINATION

~~001268~~

1 Q Why were you in Horry County?

2 A I was in Horry County because a friend of mine,
3 he was the starting quarterback for Coastal Carolina.
4 He told me he was getting ready to start football, and
5 it was homecoming and he wanted me to see him play.

6 Q That is why you were here?

7 A Yes, sir.

8 Q You were not going to Coastal?

9 A No, sir.

10 Q Since you have been incarcerated, have you been
11 taking programs?

12 A Yes, sir.

13 Q I know there is one that your family was proud of
14 you for, which one is that?

15 MR. J. THOMAS: Objection, relevance.

16 THE COURT: Overruled.

17 A I completed the Second Chance Program that they
18 started at Lee County.

19 Q All right. Okay. Now, Mr. Lackey, let me take
20 you back in time. When were you arrested?

21 A October 14, 2007.

22 Q And did you -- were you out on bond?

23 A Yes, sir.

24 Q What kind of bond did you get?

25 A I'm not sure what the bond was. I know I was on

MICHAEL LACKEY - DIRECT EXAMINATION

~~0011289~~
001354

1 bond.

2 Q During that period of time -- so you were out on
3 bond and able to meet with your attorney?

4 A Yes, sir.

5 Q Mr. Wilson?

6 A Yes, sir.

7 Q Was he retained or appointed?

8 A Retained.

9 Q And what did you do in regards to preparing this
10 case? Did you meet with Mr. Wilson?

11 A Yes, I had met with him a couple of times.

12 Q And when you met, did you go through the facts of
13 the situation?

14 A Yeah, for the most part. A good little bit.

15 Q And do you know if a private investigator was
16 hired?

17 A No, sir.

18 Q Were you -- it was your contention that you were
19 not guilty of this crime?

20 A Correct.

21 Q And did you discuss this with your attorney?

22 A Yes, sir.

23 Q Did you look at the discovery? Do you know what
24 I mean by "discovery"?

25 A I think like the paperwork that come from the

1 Solicitor's Office?

2 Q The evidence they had against you.

3 A Yes, sir.

4 Q And did you go through that discovery with your
5 attorney?

6 A I went through some of it with him. For the most
7 part, he sent it to me and I went through it. Some of
8 the stuff he felt like was valid, we went over some of
9 it. I ain't go through everything with him, like page
10 for page or dissect it with him and go through
11 everything with him, but when we met, he did bring
12 some of the stuff up about some of the statements and
13 things like that.

14 Q Okay. You said he sent it to you. Did you get
15 permission to go back to Georgia?

16 A Yes, sir.

17 Q So you were in Georgia?

18 A Yes, sir.

19 Q You were in college?

20 A Yes, sir.

21 Q In Georgia?

22 A Yes, sir.

23 Q Did you know what kind of case the State had,
24 good case, bad case?

25 A I mean, from what I read, I read a lot of

MICHAEL LACKEY - DIRECT EXAMINATION

1 inconsistent statements from other people that -- my
2 codefendants, from the supposed victims from all
3 different kinds of people that they said was involved
4 in the case. I seen multiple statements from all of
5 them.

6 Q Who testified against you at trial?

7 A Eric Brown.

8 Q Who is Eric?

9 A That was one of my codefendants. That is
10 Mario -- he played football with Mario. He went to
11 Coastal.

12 Q Which one was the one that took the plea at
13 trial?

14 A Joshua Reeder.

15 Q So you said Eric was a codefendant; was he
16 charged in this case?

17 A Yes. When we -- the night we got pulled over, he
18 was. The night that we got pulled over, it was me,
19 Mario, Josh, Eric and Ricky. They were Mario's
20 roommates. They played on the football team with him.

21 Q And in the car, where were you sitting in the
22 car?

23 A In the front passenger's seat.

24 Q And the car was stopped and there were drugs that
25 were found in the car?

MICHAEL LACKEY - DIRECT EXAMINATION

1 A Yes, sir.

2 Q And a gun that was found in the car?

3 A Yes, sir.

4 Q Was it found in the front seat or back?

5 A Backseat.

6 Q Did you know that those items were there?

7 A No, sir, I did not.

8 Q Now, did you talk to your attorney about what I
9 would call a "theory of defense"? Did you talk to him
10 about how he would present you and what he thought
11 your defense was going to be?

12 A He basically asked me what happened, which I
13 explained to him, and that is basically how he went
14 forward with the case. For the most part, he told me
15 to take the plea, take the plea, just take a plea.
16 Even though it was so much inconsistency and the stuff
17 that the people in the statements were saying that my
18 involvement in this crime was, there was no evidence
19 of it, he still told me that you should just go take a
20 plea instead of trial. I felt if I didn't do nothing
21 wrong, and I have so much ahead of me, I was in
22 college, ain't never been in trouble before in my
23 life, not even a traffic ticket, nothing, so why would
24 I throw my life away? I'm a young kid in college.
25 Why would I get a plea and get locked up for something

MICHAEL LACKEY - DIRECT EXAMINATION

~~001273~~

1 I didn't do?

2 Q That was the problem for you throughout this,
3 wasn't it?

4 A Yes, sir.

5 Q And Mr. Wilson advised you and kept telling you
6 you should take a plea?

7 A Yes, sir.

8 Q I think the initial plea offer was ten years; is
9 that correct?

10 A Yes, sir.

11 Q And then at trial it became a 12-year plea?

12 A Yes, sir.

13 MR. T. THOMAS: Your Honor, I'll refer to Page 22

14 -- 23, I'm sorry, beginning at Line 22.

15 THE COURT: 22 on the record of the appeal?

16 MR. T. THOMAS: Transcript page, Your Honor.

17 THE COURT: All right.

18 MR. T. THOMAS: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes, sir.

21 Q I'll bring your attention to Line 23, read that
22 to yourself.

23 A "Do you understand this"?

24 Q Yeah.

25 A Do you understand this Solicitor's offer to

MICHAEL LACKEY - DIRECT EXAMINATION

~~001274~~

1 dismiss burglary first and that gun charge and allow
2 you to plead to armed robbery and PWID marijuana with
3 a 12-year recommendation is good for --

4 THE COURT: All right. My Page 22 doesn't say
5 that.

6 MR. T. THOMAS: I have Page 23, Your Honor, of
7 the transcript.

8 THE COURT: You said Page 22.

9 MR. T. THOMAS: Sorry, Your Honor, 23.

10 THE COURT: I got it.

11 MR. T. THOMAS: Beginning Line 22.

12 THE COURT: All right.

13 MR. T. THOMAS: Yes, sir, and I think it goes
14 over to Page 24.

15 THE COURT: I'm with you.

16 Q So there was an offer of 12 years, and they'll
17 dismiss burglary first?

18 A Yes, sir.

19 Q Did you understand that plea?

20 A No. I just understood they was going to dismiss
21 the burglary first and give me 12 years.

22 Q Did you talk -- what was your understanding if
23 you accepted the 12? Would you serve 12?

24 A Yeah. I never been locked up before. I never
25 been in any kind of trouble with the law in my life.

MICHAEL LACKEY - DIRECT EXAMINATION

~~001275~~

1 I've never been in a pair of handcuffs until that
2 night. So, I mean, all I knew is you do 12 years --
3 you get 12 years, that is the time you do. Didn't
4 know no kind of statutes of how they run the time or
5 nothing. I'm not from South Carolina.

6 Q Like 85 percent?

7 A Yeah. I'm not from South Carolina. I don't have
8 no family or nothing up here. This is my first time
9 ever coming to South Carolina was that day, so I had
10 no previous knowledge and no one that had been in the
11 situation with law enforcement or anything like that
12 in South Carolina.

13 Q So you would have -- did Mr. Wilson tell you that
14 you would serve less than the 12?

15 A No. He just told me what the plea was and asked
16 if I wanted to take it.

17 Q Now, the other problem was that you had contended
18 all along you were not guilty of this crime?

19 A Yes, sir.

20 Q Did you know that there was a way that you could
21 have plead under North Carolina versus Alford?

22 A No, sir, I never had any knowledge of that before
23 my trial. The only time I found out about that was
24 after I had already got convicted and I was already in
25 prison trying to go back over my case and learn the

MICHAEL LACKEY - DIRECT EXAMINATION

~~001270~~

1 stuff about, you know, the system and the different
2 laws. I started going through the library and I
3 started figuring out different things.

4 Q Had you known that you could have pled to this
5 and not have to admit your guilt, would you have done
6 that?

7 A Yeah.

8 Q And that was why you didn't accept that plea?

9 A That's correct.

10 Q Now, did you talk to counsel about trying to
11 sever these cases, and what I mean is trying your case
12 separate?

13 A Yes, sir.

14 Q And did he make a motion to separate your trial?

15 A No, sir.

16 Q You had asked him to do that?

17 A Yes, sir, I did. My mother also did, too. She
18 asked him also. She sent him an E-mail and all of
19 those things asking him to give me my own trial
20 separate from everyone else.

21 Q And you feel like you were prejudiced by having
22 to try your case with everybody else?

23 A Yes, sir.

24 Q Now, in going through Mr. Wilson about what
25 evidence that they had against you, what evidence did

MICHAEL LACKEY - DIRECT EXAMINATION

~~001277~~
001362

1 they have against you?

2 A Only evidence that they really had against me was
3 my codefendants' statements, which was all of them
4 were lies. All of them had been given more than at
5 least two statements. All of the statements were
6 different. They said that my involvement in the crime
7 was that I supposedly took these people's wallets and
8 cell phones, and when we got arrested that night,
9 which they said was 2 miles or two minutes from
10 wherever this incident happened at, they never found
11 any cell phones, never found any wallets, any of that.
12 The supposed victims of the crime, all of them was
13 white, and there is nothing but black males in the
14 car. So they pulled us over and opened a wallet and
15 see an ID with a white male or white woman's face in
16 it, it's going to throw up a red flag, but there was
17 never any wallets or cell phones ever discovered in
18 that car.

19 Around the scene of the crime when the -- when
20 they sent SLED officers to the victim's house, I think
21 it was -- I can't remember his name, but to the
22 victim's house, they never found any wallets or cell
23 phones around in the area, anything like that.

24 Q So none of that was ever discovered?

25 A No, sir.

1 Q And Mr. Tine, who was a codefendant, he didn't
2 testify at trial?

3 A No, sir.

4 Q But you testified at trial?

5 A Yes, sir.

6 Q Now, you and I discussed this when I asked you
7 what happened with this. You said that you believe
8 that there were other folks involved in this crime?

9 A Yes, sir.

10 Q Who were those people?

11 A I know that Eric, he had -- he said it was his
12 cousin, but later on it was found out it wasn't really
13 a cousin, it was a close friend of his that he went to
14 high school with, a dude named Torrie. If you look
15 through the transcript, you'll see Torrie's name come
16 up more than mine. Torrie was never brought forth.
17 He was never indicted to come to court or anything to
18 show up or make a statement or anything like that in
19 his trial. They said that he was supposedly the dude
20 that they gave this money to, and he drove this dude,
21 Craig, and another dude named Justin to these
22 apartments, which he's supposedly Eric's cousin, and
23 he was supposedly in a white vehicle the same night
24 that we were in Eric's car.

25 Q What kind of vehicle were you in?

MICHAEL LACKEY - DIRECT EXAMINATION

1 A I was in a white, old school Crown Vic.

2 Q And Eric testified at trial?

3 A Yes, sir.

4 Q How about Ricky?

5 A Yes, sir.

6 Q Who was Ricky?

7 A Ricy is Mario and Eric's other roommate. He
8 played on the football team with them.

9 Q There was another gentleman named Torrie?

10 A Yes, sir.

11 Q Did you talk to your attorney about these
12 individuals?

13 A Yes, sir.

14 THE COURT: Which individuals?

15 MR. T. THOMAS: About Eric, Ricky and Torrie?

16 THE WITNESS: Yes, sir.

17 Q Did you talk to him about it was your contention
18 that these people had something involved -- they were
19 involved in this case?

20 A Yes, sir. I explained to them that I found out
21 that they all went to the same high school together,
22 they were all friends, and Torrie had been living down
23 there in the apartment with Eric and Ricky for months
24 before we even came down there for the game. He was
25 already down there. When I got there that night, he

1 was already down there. He was living with them, but
2 when all of this stuff happened, he never came to
3 court or nothing. They never put anything for him to
4 be asked to testify -- come to court to testify or any
5 kind of statement, nothing like that.

6 Q And I know this gets somewhat complicated, but
7 there was another vehicle there?

8 A Yes. They say that it was another vehicle there
9 that was a silver Pontiac that was there the same
10 night that one of the other dudes -- during the trial,
11 they brought it forward. They said it was this other
12 car, silver Pontiac, that was there the same night in
13 the same area that they said had something going on.
14 I didn't know nothing about it until they brought it
15 up in trial about a whole other car.

16 Q How about the white Cadillac?

17 A I just knew that -- when I heard about the white
18 Cadillac -- the white Cadillac, I know that that was
19 Eric's car. Earlier that day, when we went to the
20 Sports Authority, that is the car we drove in. I know
21 when we went and left for the game, they went inside
22 Eric's car and -- not Eric's car, but inside Ricky's
23 car, the same car we got pulled over in, and Eric left
24 Torrie, his car.

25 Q All right. Where is the location we're talking

MICHAEL LACKEY - DIRECT EXAMINATION

1 about where the drug dealer was robbed?

2 A Some apartment complex.

3 Q Now, it is your contention that -- what did you
4 think when you got in the car and -- because you were
5 at that location, right?

6 A Yes, sir.

7 Q I think there is testimony at trial -- actually
8 that you were -- that you remained in the car?

9 A Yes, sir.

10 Q Now, what did you think you were going to that
11 location for?

12 A I mean, after the game it was homecoming weekend
13 for Coastal, so after the game we was going -- all get
14 something to eat and go to a party. I didn't know
15 where I was, so I'm just in the car just going. I
16 know that they had friends and different stuff. They
17 had been there a year, they were sophomores, so they
18 didn't live on the campus, they lived in apartments
19 around the campus. I was in college, so I know how it
20 is with different apartments and things like that
21 around the area that is close to a college that the
22 college students go to. They have parties and
23 different things like that. So when I got in the car,
24 I'm just thinking we're going to eat and having fun.
25 They won the game, and Mario played good, so we're

~~001382~~
001367

MICHAEL LACKEY - DIRECT EXAMINATION

1 going to do what they do after football games, go and
2 have a party. That is what college kids do.

3 Q You don't know any of these people other than
4 Mario; is that right?

5 A No. I met Eric and Ricky one time before. They
6 came to Atlanta one time with them the summer before
7 for a couple of days, that is the only time I met them
8 or anything.

9 Q So I guess the question would be did you sit down
10 with Mr. Wilson to develop that theory of defense and
11 that there was a whole possibility of another thing
12 transpiring that was completely outside of your
13 knowledge?

14 A No. I told him that -- I told him I had nothing
15 to do with it. I didn't know what happened. I know
16 we went to these apartments and this dude got out and
17 we left the apartments and we get pulled over. I
18 never been in South Carolina. I wasn't here for 24
19 hours and I was in handcuffs.

20 Q Why didn't you know there was drugs and a gun in
21 the backseat of the car?

22 A We just went and picked up Ricky -- not Ricky
23 Eric. We was in Ricky's car. We picked up Eric.

24 Q And Eric is the same person that testified
25 against you?

MICHAEL LACKEY - DIRECT EXAMINATION

1 A Yes. Eric is the same one who had the multiple
2 statements and continued to lie over and over again.
3 He had four, five statements. He was still giving
4 statements two weeks before my trial started.

5 Q And who did the white Cadillac belong to? Eric?

6 A Yes, it is belonged to Eric.

7 Q So Eric is in the backseat with guns and drugs?

8 A Uh-huh.

9 Q And the white Cadillac was Eric's, and Eric
10 testified against you?

11 A Uh-huh.

12 Q What happened to Eric?

13 A Eric got YOA sentence, youth offender sentence.

14 Q Now, was any of that established at trial? Were
15 you able through Mr. Wilson to establish your role in
16 this as to what you are telling us today and these
17 explanations as to how you could be there and not know
18 what was going on?

19 A No. I told -- I explained it to them, how I had
20 nothing to do with this situation, how I just came
21 down from Atlanta from Georgia to come and just watch
22 a football game to see a friend play. I had other
23 friends at different colleges that played football.
24 We all played football together. I had no idea of any
25 illegal thing going on. Like I say, I've never been

MICHAEL LACKEY - DIRECT EXAMINATION

1 in trouble a day in my life. My parents, they are
2 ministers. That is not the type -- that is not how I
3 was brought up, that is not how I was raised.

4 Q Which flows back into your decision in regards
5 to --

6 A Exactly. Why I felt I didn't want to say I'm
7 guilty of something that I did not do. I'm not going
8 to say that, I did this. I'm not going to throw
9 myself in prison for a crime I know I didn't commit,
10 and I have to sit in the prison cell every day and
11 know I'm sitting here for a crime I know I didn't do.

12 Q Let's talk about your agreement to testify. You
13 indicated to me that all along that the decision was
14 for you not to testify?

15 A Uh-huh.

16 Q Did you reach that with your attorney, you and he
17 talked about that?

18 A Yeah. We talked like towards the last day of
19 trial about whether I wanted to testify or not, and I
20 said I didn't want to testify, I didn't want to
21 testify. He asked me more about it and he said, Well,
22 you know, they might want to hear your side of the
23 story. If you don't testify then, you know, this,
24 that and the other. So I was like all these people
25 putting all of these allegations saying I'm this and

1 trying to make me look like this bad person that came
2 from out of town to come and rob these people and
3 commit all of these crimes, but nobody gets to hear
4 nothing from me. So, like, at the same time I didn't
5 want to take the stand because I really ain't know the
6 full extent how everything could affect my trial. I
7 really -- like I say, I had no knowledge because I
8 never was in a situation like this before.

9 So when Ralph came, if you look in the
10 transcript, when they are asking us, well -- Mario, do
11 you want to take the stand, and they stopped and asked
12 me, and then I stopped and I talked to my attorney
13 again, like the third or fourth day. I talked to him
14 about the same thing, and he asked me -- he say, Well,
15 do you want to testify? Do you want to testify? Do
16 you want to testify? I felt like he was pushing me to
17 a point to tell me it would be -- help you more if you
18 testified if you tell them -- give them your side of
19 the story and tell them this so they can go by
20 something from you instead of letting the evidence or
21 lack thereof determine whether I was guilty or not of
22 this crime.

23 Q Let me ask these questions, and stop me if you
24 don't understand. You and I talked about this. You
25 are saying Mr. Wilson didn't lay an adequate

MICHAEL LACKEY - DIRECT EXAMINATION

1 foundation in regards to your side of the story in
2 regards to Eric and these other two folks being -- I
3 beg the Court's indulge -- Eric, Ricky and Torrie?

4 A Yes, sir.

5 Q So you feel that once you testified that there
6 were some misfit of your testimony because there was
7 no foundation laid in regards to what you were
8 claiming --

9 A Exactly. Before I even made my statement --
10 prior to me making my statement, there was nothing
11 laid down to the point of all of these other people
12 and all of these other sequence of events and all of
13 the other vehicles and other people that were there.
14 Some of them were not even charged with nothing. Some
15 of them were not even asked to appear in court, that
16 they say played a big factor in this trial. People
17 whose name came up in this trial more than mine, and
18 they never received anything. Certain people in my
19 trial, they only came forth after they were granted
20 immunity or different things. They never came forth
21 on their own and say this is what happened to me, that
22 is the whole situation that went down, nothing like
23 this. The only reason that they came forward and they
24 made certain statements and different things up, even
25 victims -- even though the victims never seen me,

MICHAEL LACKEY - DIRECT EXAMINATION

1 never know me, they never -- didn't know who I was, he
2 asked, Do you know my client, and he said, No, I've
3 never seen him before in my life. But at the same
4 time you got people that he is telling you, Yeah, I
5 known this person or I done seen this person before,
6 but they can't say that about me because I was never
7 inside their apartment.

8 Q This testimony was all over the place?

9 A Exactly.

10 Q Because you had the victim who was himself
11 dealing in drugs?

12 A Correct.

13 THE COURT: What was his name?

14 THE WITNESS: Shawn -- Shawn -- that's his name,
15 Shawn Barrett.

16 Q That's right, yeah. And the -- so everybody was
17 saying everything they could for their own purposes?

18 A Exactly. After Shawn -- they gave Shawn
19 immunity -- after Shawn gave (sic) immunity, then two
20 of his friends came with prefabricated statements and
21 they brought them to the SLED office or the police
22 office, whichever it is, and they gave them to the
23 detective, and the detective say himself he thought it
24 was strange that they came and gave him the statements
25 that was already prefabricated. He didn't ask them to

MICHAEL LACKEY - DIRECT EXAMINATION

1 sit down and rewrite a statement in front of them or
2 anything. You can sit at home in front of each other
3 and say I'm going to say this and you put that in
4 yours and go over it. He's going to get immunity for
5 selling this amount of drugs, or whatever crimes he
6 might have committed, and now we are going to come
7 forth and say this was this and all of this stuff
8 happened. He never made them write a statement again
9 in front of them or nothing like that. He just
10 accepted the statements.

11 Q And, unfortunately, when you testified, your
12 story came across as being all over the place as well?

13 A Exactly.

14 Q Okay. Now, you felt like -- you and I discussed
15 this. You don't think Mr. Wilson was very effective
16 in his -- basically in impeaching the testimony of the
17 other witnesses?

18 A Correct.

19 Q You actually gave me page numbers for me to look
20 at?

21 A Correct.

22 MR. T. THOMAS: Your Honor, for judicial
23 efficiency, we indicated to the Court and I can give
24 these page numbers to the Court rather than going
25 through them page by page.

MICHAEL LACKEY - DIRECT EXAMINATION

~~001289~~
001374

1 THE COURT: All right.

2 Q Michael, you had said you are not saying that he
3 didn't attempt to impeach these witnesses, you just
4 felt --

5 A He didn't go far enough into the details and
6 really try to assert himself and bring these things
7 forward. He touched on them, but for the most part,
8 if you look through the trial, for every witness that
9 was brought up, for the most part, Mario's lawyer is
10 the one that really took the front. He's the one that
11 really led the trial in his way. That was one of the
12 reasons why I wanted my own trial, so that my lawyer
13 can concentrate on defending me and it's not no
14 folks -- nobody else. It's about me, because it is
15 about my life is at stake. I'm not facing a
16 shoplifting charge or J-walking or something that I
17 can pay a ticket or fine and disappear, I'm facing
18 something that these people can tell I have to spend
19 the rest of my life in prison, and I felt that for me
20 -- for me to be facing life in prison, he didn't
21 assert and point out these details that these
22 different witnesses and different people that was
23 taking the stand, the statements that they were
24 making, not just on the stand, but the statements that
25 they had written before.

MICHAEL LACKEY - DIRECT EXAMINATION

1 Q I know you and I talked and there was something
2 that you wanted me to put on record in regards to the
3 indictments?

4 A Yes, sir.

5 MR. T. THOMAS: Your Honor, I think that is part
6 of the Court's package.

7 THE COURT: It is.

8 Q Tell me the objections you had to the indictments
9 both to the Grand Jury and the front page of the
10 indictment.

11 A For the indictments, none of them are -- even
12 though it says I have a true bill, none of the
13 indictments was sent to the clerk's office to have a
14 time stamp on them, on none of my indictments. Out of
15 all four charges I got, none of them went to the
16 clerk's office to get a proper stamp on them. All
17 they have is a "true billed" stamp on them. It says
18 for the Court to try you or bring you in for a trial,
19 that your indictment is supposed to have a time stamp
20 on them that shows that they were actually, you know,
21 presented to the judge and that they were sent to the
22 clerk's office and that they stamped them, that the
23 paperwork that you are sending is official, it isn't
24 nothing that we can just make a stamp made and stamp
25 it and say this is a true billed indictment, it went

MICHAEL LACKEY - DIRECT EXAMINATION

~~001291~~ 76

1 to the Solicitor's Office and got the Solicitor's
2 stamp on it.

3 Q You think that the description of the crime is
4 vague as well?

5 A Exactly. It doesn't -- on the -- it says --
6 basically it puts out the definition of these crimes
7 are. It doesn't say exactly what I did. It doesn't
8 say that he -- say if I was to have robbed a bank, it
9 doesn't say he entered this bank at this time with
10 this weapon. It doesn't say any of the things that my
11 -- that the victims or anybody else -- it doesn't
12 state any facts in it. The only things it does is it
13 has my name and definition of the charge.

14 Q This is legal research you've done since being
15 incarcerated?

16 A Yes, sir.

17 Q You felt it was important that you wanted to
18 present that to the Court?

19 A Yes, sir.

20 Q You and I talked about this question, and I'm not
21 suggesting anything. Is it -- this is your day in
22 court, you waited a long time to be here today. Is
23 there anything else you would like to bring to
24 attention of the Court or anything you may feel like I
25 forgot to bring up on your behalf?

1 A I just want to talk about a couple more
2 statements. Like, I felt that they never really
3 brought forth the probable cause in our case because
4 the police statements that they wrote that was written
5 at night, the statements that they -- you know when
6 they do their paperwork, once they pull over a person
7 and put in the paperwork, when they came in here for
8 trial, the things that they said contradicted the
9 stuff they had that was on the paperwork from the
10 night that the crime took place -- or the stop took
11 place of who found this, who found that, why they
12 pulled us over, why did they put us in handcuffs, who
13 found this, did they put us in handcuffs before they
14 found this stuff.

15 There was a lot of inconsistencies, and it was
16 found out that two officers -- one of the officers was
17 right outside of those first double doors the whole
18 time that the other officer was on trial -- while he
19 was on the stand. He was right there in those doors
20 where he could hear everything that his partner was
21 saying in the trial and hear his inconsistencies, so
22 when he came forth, he was able to clean up the mess
23 that he had -- had previously brought forth.

24 Q Objection was made to that; is that right?

25 A Yeah, and the objection was made to it.

MICHAEL LACKEY - CROSS-EXAMINATION

1 Q Anything else that you would like to --

2 A No, sir.

3 MR. T. THOMAS: Your Honor, we have nothing
4 further.

5 THE COURT: All right. Mr. Thomas.

6 MR. J. THOMAS: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. J. THOMAS:

9 Q You did have an opportunity to review discovery
10 with Mr. Wilson?

11 A Yes, sir.

12 Q And you did have a chance to give him your
13 version of events?

14 A Yes, sir.

15 Q And the version of events you gave him and that
16 you gave the Court today, all of that is consistent
17 with the testimony you gave at trial, isn't it?

18 A Yes, sir.

19 Q So you told us the same story that you told the
20 jury that day?

21 A Yes, sir.

22 Q You said you and Mr. Wilson discussed your
23 defenses to this charge, these charges?

24 A Yeah. I met with him about two, three times over
25 the time that I was out on bond.

MICHAEL LACKEY - CROSS-EXAMINATION

1 Q As far as the plea offers go, you were aware of
2 the ten-year offer?

3 A Yes, sir.

4 Q And the 12-year offer?

5 A Yes, sir.

6 Q And you discussed those with Mr. Wilson, didn't
7 you?

8 A Yes, sir. He told me what the plea offer was,
9 but he never, like, explained to me -- now that I be
10 in prison for almost four years, now I know that it's
11 different sentences. You can have a mandatory
12 sentence, you can have 85 percent sentence, you can
13 get 65 percent sentence. It is different sentences
14 that you could get with any amount of time that you
15 get depending on -- you know, they can tell you you
16 have ten years mandatory, or they could tell you you
17 have ten years violent, 85, ten years violent, 65.
18 They could tell you that you gotten ten years
19 non-violent, 65. All of those things are different.
20 All he came and told me is that they offer you a plea
21 for ten years.

22 Q But he did explain to you beforehand that
23 burglary first carries 15 years to life?

24 A Yes, sir.

25 Q And he explained all the other charges, what they

1 carried in terms of the maximum sentences?

2 A Yes, sir.

3 Q You were in the courtroom when Mr. Reardon
4 (phonetic), Josh Reardon, pled guilty?

5 A Yes, sir.

6 Q And you heard him say that he was pleading guilty
7 under Alford, North Carolina versus Alford?

8 A No. I heard him say he was taking the plea
9 offered to him the day before, the day before our
10 trial started. They came and said we're going to give
11 you one last chance to accept the plea, 12 years and
12 you all can go and talk with your family and decide if
13 you want to -- you all want to take the plea or not.
14 They gave us a time period and let them know if we
15 wanted the plea or not. The next morning when we came
16 here and time to start the trial, they said Josh was
17 taking the plea. That's all I knew, that he took a
18 plea. I didn't -- I never heard of the Alford or
19 whatever. I think he said Alford law, you can say
20 that I'm not guilty of this crime -- I'm not saying
21 I'm guilty of the crime, that I did this, but I'm
22 saying the time that I'm facing is more serious than
23 what I'm pleaing out to. That plea was never brought
24 forth to me or that I could plea to something like
25 that. It was always either you are going to plead

MICHAEL LACKEY - CROSS-EXAMINATION

1 guilty or not guilty. I had no knowledge that that
2 even existed.

3 Q But it was your decision to decline the plea
4 offered to you?

5 A Yes, sir.

6 Q Regarding the cell phones and wallets that you
7 said were never found in the car, Mr. Wilson brought
8 that out to the jury, he argued that the phones and
9 wallets were never found?

10 A He pointed it out.

11 Q And he also pointed out that there was this
12 fellow, Torrie, that was never called to trial and
13 never brought up with charges?

14 A He also brought that up too, but he also did not
15 go take it upon himself to find this dude and get a
16 private investigator and make sure this dude is here
17 when I go to trial, because they are saying that he
18 played this -- he played this big part in this whole
19 scheme that went out. He was supposedly the person
20 that took this money and supposed to have taken Justin
21 and this other dude Craig to this location, and he
22 drove them there in Eric's car, which was his best
23 friend or cousin, however you want to put it, and now
24 he's nowhere to be found.

25 Q And Mr. Wilson also argued that, that there were

MICHAEL LACKEY - CROSS-EXAMINATION

1 other people that were involved in the robbery?

2 A He said that it was certain people that -- I say
3 it was people that was -- I ain't going to say that he
4 said -- I know that he asked them about, well, who is
5 this Torrie fellow, why isn't -- where is he, how come
6 he was never brought forth to trial or how come he was
7 never questioned, or something like that. He didn't
8 go into depth of, you know, trying to figure out why
9 they never tracked this man down and asked him or
10 question him. He never took it upon himself -- never
11 got a private investigator or anything to track this
12 dude down and find out.

13 Q In your version of events, you rode over to the
14 apartment complex with Ricky, Eric and Mario and Josh?

15 A No. It was me, Ricky, Josh and Mario, not Eric.

16 Q You were going to pick Eric up, though?

17 A Yes, sir.

18 Q And you told the jury that you never left the
19 car, and I believe also that Mario never left the car?

20 A Correct.

21 Q And that came from you, not from any of the other
22 witnesses?

23 A That's correct.

24 Q Do you remember the judge explaining to you that
25 it was your decision whether or not you were going to

MICHAEL LACKEY - CROSS-EXAMINATION

~~0-11298~~
001583

1 testify?

2 A Yeah, I remember him saying that. But I know
3 that I hired this lawyer -- my mother paid this lawyer
4 for him to have my best interest at heart, and I don't
5 know the law. He went to law school. He practiced
6 law for years and years and years. He done trials and
7 trials and went to court multiple times. So if I feel
8 like this is what he thinks is best for me to do in
9 the case to help me to beat this case, then I'm going
10 to listen. You are going to listen to somebody that
11 has been through something that you haven't done.
12 They can help you maneuver your way through it, and
13 you are going to take heed to that instead of acting
14 like they don't know what they talking about, because
15 it's someone that had been through it multiple times
16 before.

17 MR. J. THOMAS: Thank you. I think that is all I
18 have.

19 THE COURT: Redirect examination?

20 MR. T. THOMAS: Nothing further, Your Honor.

21 THE COURT: You can step down. Thank you, sir.

22 MR. J. THOMAS: If I could ask for a five-minute
23 break?

24 (A recess was taken.)

25 THE COURT: If it pleases the Court, we call

YOLANDA DOZIER - DIRECT EXAMINATION

1 Ms. Dozier to the stand.

2 (YOLANDA DOZIER, having been duly sworn,
3 testified as follows:)

4 THE CLERK: State your full name and spell
5 your last.

6 THE WITNESS: Yolanda Dozier, D-O-Z-I-E-R.

7 DIRECT-EXAMINATION

8 BY MR. T. THOMAS:

9 Q Ms. Dozier, how are you related to Mike Lackey?

10 A I'm his mother.

11 Q And you are here today to tell the truth?

12 A Yes, sir.

13 Q And you understand that there are certain
14 penalties for not telling the truth?

15 A Yes, sir.

16 Q And you are here to tell the truth today?

17 A Yes, sir.

18 Q Ms. Dozier, you had an opportunity to communicate
19 with Michael's attorney?

20 A Yes.

21 Q And did you talk with him about trying to
22 separate these cases?

23 A Yes, I did. What I did is I sent an E-mail to
24 his office asking, first of all, if Michael could go
25 to trial by himself, because we had never been in this

CHARLES DOZIER - DIRECT EXAMINATION

1 situation like this before, so I didn't know if he
2 could or if he could not. In doing so, I never got a
3 response back in regards to that E-mail.

4 Q Were you present in the courtroom with the trial?

5 A Yes, sir.

6 Q Do you know if he tried to have the cases
7 separated?

8 A Not to my knowledge.

9 Q He did not try to have it separated?

10 A No, not to my knowledge.

11 MR. T. THOMAS: No further questions.

12 MR. J. THOMAS: No cross, Your Honor.

13 THE COURT: Thank you. You may step down.

14 MR. T. THOMAS: We call his step-dad, Mr. Dozier.

15 (CHARLES DOZIER, having been duly sworn,
16 testified as follows:)

17 THE CLERK: State your name and spell your last
18 name for the Court.

19 THE WITNESS: Charles Dozier, last name
20 D-O-Z-I-E-R.

21 DIRECT-EXAMINATION

22 BY MR. T. THOMAS:

23 Q Mr. Dozier, how are you related to Michael
24 Lackey?

25 A His step-father.

CHARLES DOZIER - DIRECT EXAMINATION

1 Q All right, sir. And you understand you are not
2 to reward anybody with your testimony?

3 A Yes, sir.

4 Q You are here to tell the truth?

5 A Yes, sir.

6 Q And that is what you intend to do, tell the
7 truth?

8 A Yes, sir.

9 Q Now, you indicated that you were present and had
10 some involvement in regards to the guilty plea that
11 was offered?

12 A Yes.

13 Q You had an opportunity to talk to his attorney
14 about it?

15 A Yes.

16 Q And you were there in the courtroom when the --
17 the 12-year offer was made?

18 A Yes.

19 Q And did you understand that you had until the end
20 of the day to make a decision?

21 A Yes.

22 Q What happened, if anything? Did you have an
23 opportunity to discuss that with Michael?

24 A Yes, I did.

25 Q In those discussions, what was your understanding

1 about what the offer was?

2 A To the best of our knowledge, we thought it was
3 12 years, he was going to do 12 years.

4 Q Day for day?

5 A Day for day.

6 Q Now, you've heard the testimony today by Michael.
7 Was it also your understanding that one of the holdups
8 was his admission to guilt?

9 A Yes.

10 Q And he didn't want to admit to something that I
11 felt he did not do?

12 A That's right.

13 Q Did you ever have an opportunity or did counsel
14 ever bring to your attention or Michael's attention
15 that an Alford plea could have been done?

16 A No, not to my knowledge.

17 Q Prior to -- just recently, did you know what an
18 Alford plea was?

19 A No, I did not.

20 Q And no one ever knew that there was a possibility
21 he could have accepted that plea and pled without
22 having to admit guilty in this case?

23 A Right.

24 Q And do you believe that that was the reason why
25 the plea offer wasn't accepted?

RALPH WILSON, ESQ. - DIRECT EXAMINATION

~~001303~~

1 A Yes, I do.

2 MR. T. THOMAS: No further questions.

3 THE COURT: Cross-examination?

4 MR. J. THOMAS: Just one question.

5 CROSS-EXAMINATION

6 BY MR. J. THOMAS:

7 Q Were you in the courtroom when Josh Reardon pled?

8 A Yes, I was.

9 MR. J. THOMAS: Thank you.

10 THE COURT: Anything else, Mr. Thomas?

11 MR. J. THOMAS: No, Your Honor.

12 THE COURT: Thank you. You can step down.

13 MR. T. THOMAS: We rest.

14 THE COURT: All right. Mr. Thomas.

15 MR. J. THOMAS: We call Ralph Wilson to the
16 stand.

17 (RALPH WILSON, having been duly sworn,
18 testified as follows:)

19 THE CLERK: State your name.

20 THE WITNESS: Ralph J. Wilson, P I L S O N.

21 DIRECT-EXAMINATION

22 BY MR. J. THOMAS:

23 Q Good afternoon, Mr. Wilson.

24 A Good afternoon.

25 Q We probably did this, but I'll go ahead and do it

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 again. Could you explain to the Court your experience
2 handling criminal law.

3 A Yes, sir. I graduated law school in 1977. I
4 went to work at legal aid about a year,
5 year-and-a-half and then I went to the Horry County
6 Public Defender's Office. I stayed there from, I
7 think; '81, maybe, until I think '86. I was chief
8 public defender -- chief deputy defender when I left
9 there. I left there and went to the 15th Judicial
10 Circuit Solicitor's Office as the chief deputy
11 solicitor for the 15th Judicial Circuit. I think that
12 was in late '87, early '88. I stayed there until '91
13 or '90 when I got elected to my first term as the
14 elected solicitor. I did that for two consecutive
15 terms, and then went back into private practice in
16 1999.

17 Q Were you retained or appointed?

18 A Retained.

19 Q What kind of motions did you file in terms of
20 discovery?

21 A We have standard motions that we file that we do
22 in every case, every criminal case. We did, in fact,
23 receive discovery in this case from the State.

24 Q And what was the substance of your conversations
25 with Mr. Lackey about that discovery?

1 A What I do -- because I found it works better --
2 what I do, especially when clients live out of state
3 or out of town, I package up the entire discovery that
4 I receive from the Solicitor and I mail it to them. I
5 do that so that they will have a chance in the privacy
6 of their own home or at their leisure to read and
7 review it, and then I schedule an appointment for them
8 to come in and sit down with me and go over it. I did
9 that in this particular case.

10 Q How many meetings did you have with Mr. Lackey?

11 A I don't know. I would think maybe four. I don't
12 know. Thereabouts. Not including the final during
13 the course of the trial, because we met every day
14 during the course of the trial, and the trial lasted
15 three days, I think right at three days. So before
16 that, I think we met maybe three, four times.

17 Q Could you briefly give us an overview of what the
18 State's theory of the case was?

19 A The State's theory of the case was, essentially,
20 that these four or five individuals actually went to
21 Mr. Barrett's home and that they went there with a gun
22 and that this was supposed to have been a pre-planned
23 event, that there had been planning of this event and
24 that they went there with a gun and with the specific
25 purpose to rob Mr. Barrett of his drugs and money, and

RALPH WILSON, ESQ. - DIRECT EXAMINATION ~~001306~~

1 that they did do that and they carried that plan out.

2 That is what their position was. So they then charged
3 them with burglary first degree, armed robbery as a
4 result of this, and then PWID with the marijuana.

5 Q In your discussions with Mr. Lackey, what theory
6 of defense did you develop?

7 A Well, Mr. Lackey was really in a different
8 category than the other four individuals in the sense
9 that, one, he had no criminal history. In addition to
10 that, the witnesses, including his codefendants'
11 testimony, was essentially was that Mr. Lackey, while
12 he was present, that he picked up the cell phones and
13 the wallets and gathered them. The problem for the
14 State was that there was no evidence to support that.
15 Throughout this entire process they never produced one
16 cell phone or one wallet, which Mr. Lackey was
17 supposed to have garnered from this event. So when
18 the police stopped them, which was only minutes after
19 the alleged robbery and burglary, Mr. Lackey was in
20 the vehicle. There had been no indication that the
21 vehicle stopped anywhere along the way or there was
22 anything thrown out of the window. When the police
23 stopped them, there was still no cell phones or
24 anything in the car.

25 So his position was always, to me anyway, that he

RALPH WILSON, ESQ. - DIRECT EXAMINATION

~~001307~~

1 was not guilty, that he did not commit this crime,
2 that he didn't participate in any way in the crime and
3 that he never left the vehicle, that was essentially
4 his statement to me.

5 Q What sort of independent investigation did you do
6 to support that theory?

7 A Well, there were problems almost immediately with
8 that theory. The codefendants, which is what got us
9 in trouble, is that the codefendants involved in all
10 of this started making statements.

11 Now, there were multiple conflicting stories told
12 by numerous different participants in this event,
13 including Mr. Barrett who was probably the worse
14 offender in the whole process, and he was the victim.
15 The codefendants started giving conflicting statements
16 throughout. So there was just all of these
17 conflicting stories about who did what and when and
18 how and who was present when it happened. It was all
19 over the place about who did what. You know, that
20 lasted right on up until the -- we got ready for
21 trial.

22 Now, the last codefendant, to take a plea, I
23 think, which I think was Mr. Reardon, I think it was,
24 the day that we came in, we had -- we had multiple --
25 I wouldn't say multiple, but two offers, as I

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 remember, for pleas. I guess I'm maybe getting ahead
2 of where you want me to go.

3 Q That's all right.

4 A We had two offers, which are the only two offers
5 that I'm aware of. There was a ten-year offer and a
6 12-year offer. The ten-year offer came way back.
7 That was offered to us. I discussed that with Mr.
8 Lackey -- with the defendant, and with his family.
9 Every situation when I have an offer I sit down with
10 them and with the family and we went through it. I
11 don't just do that with him, I do that with every
12 single case I do. I always ask the defendant, you
13 know, before I make a decision, look, do you want your
14 family here when we have this discussion, because it
15 is a lot of pressure for a defendant to sit there and
16 discuss, especially at his age, whether he wants to go
17 to jail for ten years. That is a major, major
18 decision. I include the family in that, generally, if
19 the defendant is okay with that. I did that in this
20 particular case.

21 I sat down and went through with it, answered any
22 questions that they had about it, explained to them.
23 In terms of how much time he would serve, if he says
24 that I told him he probably would serve ten years,
25 he's probably right, because that is probably what I

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 would tell him. If you get ten years, I can't tell
2 you you will get out in eight-and-a-half. I'll tell
3 you it is a violent crime and under the 8 percent
4 rule, but I can't tell you you'll get out in
5 eight-and-a-half or seven years, because you may not.
6 The Department of Corrections will decide when you get
7 out based on that 85 percent, and I'm not telling the
8 defendant you are going to get out in
9 eight-and-a-half, because at eight-and-a-half years
10 and two months his family is going to be on my
11 doorstep saying, You told us he was going to get out.
12 I have had it happen, and so I don't do it. I tell
13 them if you get ten years, you can expect to serve ten
14 unless something changes or occurs. So I probably did
15 tell him if he got ten years he could look to serve
16 ten years.

17 With the 12-year sentence, that 12-year
18 sentence -- the Solicitor made us that offer because
19 we were begging, me. I went to the Solicitor because
20 I was concerned about going to trial. I knew that if
21 we went to trial, and if those codefendants came and
22 testified, there is a good likelihood he could get
23 convicted. That is always the case when you have
24 multiple codefendants and they turn state's evidence.
25 That was a situation that we found ourselves in,

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 multiple codefendants were going to come in and put
2 him at the scene and put him participating in this
3 crime.

4 Now, none of the victims could say this
5 gentleman -- that this defendant was actually a
6 participant. They didn't know who the people were.
7 They just knew it was four black guys dressed in dark
8 clothing. The problem for us was you had all of these
9 codefendants who knew him and said that he was
10 participating.

11 Now, in terms of -- again, I don't want to run
12 on, so I'll stop and let you ask me a question because
13 I don't know where you want to go.

14 Q Is there anything else you would like to say?

15 A Just so -- once we started -- and we always, as
16 far as I know, we always planned to go to trial.
17 There was never a point where I was told I'm going to
18 plead guilty, you know, work something out so I don't
19 have to say that I'm guilty. That conversation never
20 happened. I was always told that he was not guilty,
21 he wasn't going to plead guilty to something he wasn't
22 going to do. There was no interest in Alford or
23 anything else. That never existed, and the first I
24 heard of that was today in this court.

25 The whole thing with the trial and about him

1 testifying -- just let me address that issue, because
2 apparently there was issue about whether or not he
3 wanted to testify or didn't want to testify. My
4 general rule with every defendant that I represent is
5 I do not want to put a defendant on a witness stand.
6 Bad things tend to happen when they get up there, for
7 whatever reason. They get nervous and can't do it, or
8 a criminal history and they can't do it, or the
9 Solicitor traps them into some version of facts that
10 are inconsistent with what the truth might be or what
11 my defense might be. It is just not a good plan.

12 In this particular case, when we started to talk
13 about him testifying, we always knew that Mario Tine
14 could not testify. Mario had a criminal history, he
15 couldn't testify. That was never in doubt. The night
16 before this happened, I had a conversation with this
17 defendant and with his family, because my concern was
18 that what he was going to do was say that Mario was
19 not -- that Mario got out of the car, but stayed at
20 the car the entire time. The problem with that theory
21 is that that is inconsistent with what everybody else
22 was saying, which means that the jury would then have
23 a clear picture of trying to decide if this defendant
24 was telling the truth or if all the accumulative other
25 people were telling the truth. There were supposed to

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 be four men in the house. If you listen to what he
2 said, there only would have been two or three,
3 depending who else is in the car, if Eric is in the
4 car. There only would have been three people able to
5 be in the house. That never was going to work. There
6 was clearly four people in the house; two upstairs,
7 two downstairs.

8 Now the question is who is the two upstairs, who
9 is the two downstairs? If the defendant had testified
10 that he stayed in the car, but that Mario left, then
11 his version of the facts would have been very
12 consistent with the facts in general. I had this
13 conversation with him. Why he testified -- I'm not
14 saying what he said wasn't true, I'm not saying that.
15 I'm telling you theoretically it was inconsistent with
16 what everybody else was saying, which is what got us
17 in trouble and got him convicted, I think.

18 Q As far as the alternate theory about another car
19 with other perpetrators in it, where did you get that
20 from? What was the basis for that?

21 A There was some indication that there was some car
22 supposed to have been there at some point in time.
23 There was never -- that I'm aware of -- any real proof
24 of that, and the evidence didn't support it. The
25 problem we had was this. When the police stopped the

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 car that these four or five defendants were in, the
2 problem was that they found a gun. The gun had blood
3 on it. The blood was consistent with that of Shawn
4 Barrett, the victim in this case. Shawn Barrett
5 reported that marijuana had been stolen from him.
6 There was marijuana in the car found at that time.
7 The report was that there were four hooded, black men
8 in the house. There were four, hooded black men in
9 the car. There was one male who didn't have on a
10 black shirt, and I'm thinking it was Eric, but I'm not
11 sure, I can't remember which one, but there was one
12 who was supposed to be in the middle in the back who
13 did not have --

14 THE COURT: So when the police stopped the car,
15 there were five men in the car?

16 THE WITNESS: That's my understanding, yes, sir.
17 Four of them supposedly had on black hoodies. So that
18 was a huge problem, because, you know, trying to
19 explain -- so the problem would have been that if we
20 had testified -- if our defendant testified that he
21 was the only one in the car -- because clearly one
22 person stayed in the car, I don't think there was ever
23 a question about it. That was a consistent defense.
24 As long as we could put him in that car, and he would
25 have been the reasonable person to stay in the car

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 because he didn't have a record, never been involved
2 in anything like this, wasn't down here when all of
3 this went down or when the planning was going forward,
4 but when he tried to drag Mario along with him and
5 said he wasn't involved, the jury wasn't going to buy
6 it, and I knew that that night before we started this
7 trial and talked about that.

8 Q In terms of the trial itself, who was Mr. Tine's
9 attorney?

10 A Mr. Tine -- I think --

11 Q Billy Monckton?

12 A Correct.

13 Q Any particular reason why it seems like
14 Mr. Monckton went first?

15 A No, except that is how the judge did it. You
16 know, he said one of you have to go first and I'll be
17 consistent with it, so he ended up going first.

18 Q Why didn't you move for severance?

19 A Because, really, there was absolutely no basis
20 for severance, there really is not. Look, I would
21 like a severance in every case simply because, you
22 know, you don't want to ever have a trial with another
23 codefendant if you can avoid it. If you have some
24 conflict, that is one thing and you can point out. I
25 have -- there is nothing that I could point to that

1 would have been a conflict with these two defendants
2 going to trial together. When we started out, it was
3 going to be three defendants. As it turned out, there
4 were only two that went to trial, but there was no
5 legal basis for it, no basis for a severance.

6 I don't remember -- I'm not saying that I wasn't
7 sent an E-mail, I don't know. I don't know. I'm not
8 going to deny that an E-mail was sent to me. I never
9 got it, but even if I had, I would have said, you
10 know, I don't think that there is any legal basis for
11 that, and so I can't justify it. I have to have some
12 ground for it when I make it. I didn't have any.
13 There was no grounds for it.

14 Q Did you discuss severance at all with Mr. Lackey?

15 A I can't sit here and say I honestly recall that.
16 I don't know. I would have thought that I would have,
17 but if you ask me honestly can I say that I did, no, I
18 don't have a specific recollection of having done
19 that, no.

20 Q As far as the testimony at trial goes, is it fair
21 to say that all of the witnesses' testimony at trial
22 was fairly consistent with each other?

23 A Yeah. By the time they got to trial, yeah. It
24 wasn't up until that point, but, yeah, by the time
25 they got to trial, yeah, the testimony was fairly

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 consistent about four black males coming in and --
2 with a gun, two upstairs and two downstairs, one got
3 the cell phones -- yes, it was fairly consistent by
4 the time we got to trial.

5 Now, granted you, prior to that there had been
6 multiple, multiple statements by various defendants
7 about what happened. In fact, Mr. Barrett wasn't even
8 cooperative in the very beginning with law
9 enforcement. The only reason he did, I think, is his
10 mom came down and drug him over there and made him
11 give a statement.

12 Q If you recall, briefly off the top of your head,
13 what was the inconsistencies of those statements?

14 A Oh, boy, that is a tall order. For instance,
15 Mr. Barrett's original statement was, I think, that he
16 didn't even know who it was that robbed him or how
17 they were dressed. Again, I don't remember all of the
18 details, I just remember that they were all over the
19 place with these theories, with these stories, you
20 know, about what they said happened. None of them --
21 you have to understand that the victims all knew that
22 there was drug activity going on in the house so they
23 were all reluctant to be forthright, so they were
24 trying to hide stuff because they didn't want to get
25 in trouble because they knew that they were at a place

RALPH WILSON, ESQ. - DIRECT EXAMINATION

1 that was involved with drugs.

2 Q And is it fair to say that on cross-examination
3 of all of these witnesses you -- did you attempt to
4 impeach those with the prior statements?

5 A I did, yes, sir.

6 Q What could you have done further to impeach them?

7 A Nothing. I mean, unfortunately, the Court is
8 going to let you go so far with impeaching. Once you
9 ask about the statement and say, yeah, I did not tell
10 the truth about that, then you are kind of precluded
11 after that from dragging it out and going back into
12 all of the details when the person already admitted
13 they lied or didn't tell the whole truth or they had
14 inconsistencies.

15 Q As far as Mr. Tine's version of the events, was
16 there any other way you could have gotten that
17 information before the jury, other than having him
18 testify?

19 A Mr. Tines?

20 Q Sorry, Mr. Lackey.

21 A No. That was the other thing. You know, I
22 wanted him to be in the car by himself. That is what
23 I wanted. Obviously, you can't tell the witness what
24 to say, and I'm not going to do that, but I made it
25 clear before we went to trial that four people were in

RALPH WILSON, ESQ. - DIRECT EXAMINATION

~~001318~~

1 the house, there was no way we could get around it.

2 If there are five people in the car, that leaves one.

3 So if you try to make two outside the car, then you

4 have problems, and that is where we were. As I said,

5 we had that discussion in detail.

6 Q So fair to say the only way to get his version in

7 front of the jury was have him testify?

8 A No other way I knew of.

9 Q As far as your closing arguments to the jury, did
10 you bring all of that out?

11 A I did. I talked about all of the
12 inconsistencies, how we got to this point and the fact
13 that there was really no physical evidence to support
14 the fact that Mr. Lackey did anything. There really
15 wasn't. I honestly believed that he would have gotten
16 found not guilty had he not said that Mr. Tine stayed
17 by the car with him. I honestly think he would have
18 been found not guilty.

19 Q What, if anything, was wrong with the indictment
20 in this case?

21 A Nothing.

22 MR. J. THOMAS: Beg the Court's indulgence for a
23 second.

24 (A brief pause in the proceedings.)

25 Q Final question. Ultimately, I know you talked

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 about your discussions about plea agreements and going
2 to trial. Ultimately, whose decision was it to
3 decline those plea agreements?

4 A Absolutely his. Absolutely his.

5 MR. J. THOMAS: Thank you.

6 MR. T. THOMAS: If it pleases the Court.

7 CROSS-EXAMINATION

8 BY MR. T. THOMAS:

9 Q Mr. Wilson, you said the theory of defense in
10 this is that he did remain in the car?

11 A Yes, sir.

12 Q And that was consistent with what he had been
13 saying all along?

14 A Absolutely was, yes, sir.

15 Q He testified that at first, I guess, in
16 consultation with you, that there was a tentative
17 decision of him not to testify; is that correct?

18 A As I said to you -- as I said to the attorney
19 general just a second ago, my general rule is that I
20 don't like putting defendants on the witness stand.
21 I'm sure I told him that, and I'm sure I told his
22 parents that at the outset of this process. I tell
23 every defendant that, so I know I would have said that
24 to them. I didn't change my mind until the end. When
25 we got to the end of the process and going to trial, I

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 knew that there was no other way for us to get his
2 side of this story into evidence. I sat down with him
3 that night before and we talked about it. I also
4 talked to him about not -- what would happen if he
5 included Tine in his version of the facts, because we
6 couldn't -- it wouldn't work, so, yeah.

7 Q So you knew about the possibility he would
8 testify that he and Tine were both in the car?

9 A The night before, yes, sir.

10 Q Night before, okay. So you still felt that it
11 was necessary to put him up on the stand?

12 A If we were going to get the fact that he remained
13 in the car, yes, and that he never left the car. That
14 is what his story has been to me from day one, that he
15 never left that car and that he didn't do anything and
16 didn't know anything -- you know, be frank with you,
17 not that it matters, I believed him, and I still do.
18 I believe him. You know, I just wish he had stuck
19 with that and not tried to help his buddy, I do. I'm
20 sorry, I wish he hadn't.

21 Q And in talking with him about the state's
22 evidence, I guess the problem that you had really was
23 the codefendants who would testify?

24 A Yes, sir.

25 Q And in looking at the transcript the statements

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 are all over the place?

2 A Yes, sir.

3 Q Everybody is trying to save --

4 A Their skin. They were trying to get a deal and
5 save their own selves as best they could. They would
6 have sold him down the drain and anybody else, I'm
7 sure, to get a deal. That is not unusual in this
8 process, unfortunately.

9 Q Were you able to determine if there was something
10 else going on with Eric and these other -- Torrie and
11 the other people? What were you able to determine?

12 A I mean, I know that they were friends so they had
13 a relationship, yes. You know, but all of these
14 fellows had relationships, pretty much. Mr. Lackey
15 had a relationship with Mario, Mr. Tines, which is why
16 he was down here, but he came down, I think, with
17 Josh. Josh rode down with them. So they are all
18 interconnected. The question is more of to what
19 degree. Who is closer to whom? I don't know the
20 answer to all of that. They were all -- they all knew
21 each other, but they weren't all like buddies, because
22 three of them were football players and here at
23 Coastal. Mr. Lackey was in Georgia somewhere, so he
24 was just coming down with a girlfriend to go to
25 Mario's game, that was his buddy. So, yeah, I

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 understand they were all friendly and friends, and
2 some of them had closer relationships than others.

3 Q I guess if the State believed that this was all
4 pre-planned, then, you know, it became a question of
5 who was involved in the pre-planning?

6 A Yes, sir.

7 Q And whether or not you had a different group of
8 folks, including Eric, out there floating around that
9 nobody else knew about?

10 A There was never any evidence that Mario -- sorry,
11 Mr. Lackey was a part of the pre-planning. There was
12 never any evidence of that, that I'm aware of. In
13 fact, if I'm not mistaken, Joshua testified that he
14 was not. The whole time they rode down from Atlanta
15 there was no conversation about it. There was
16 supposed to be no conversation in the car that night.
17 So there is nothing in the record that I'm aware of
18 that ever suggested that Mr. Lackey knew about the
19 robbery before they got there.

20 Q Which is consistent with what he was saying all
21 along?

22 A No question about that. Yes, sir. You are
23 right, yes, sir.

24 Q Do you think two -- who was this fellow Torrie?
25 Were you able to determine his role?

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 A No, sir. Listen, let me say this, did I hear
2 Torrie's name bantered about, yeah. Did I make a fuss
3 during closing argument? Yeah. Was I going to find
4 Torrie and have him say my client did something? No,
5 I'm not doing that. I'm not buying a pig in a poke,
6 and I'm not going to go look for trouble. We had
7 enough trouble, and we had enough codefendants who
8 were already testifying against this defendant. The
9 last thing you want to do is find another one to help
10 out, and that is what would have happened, you know.

11 Did we hire an investigator to track this guy
12 down to testify? In fact, the State didn't even try
13 to get him, and I think, if I'm not mistaken, they at
14 least were talking about trying to charge him at one
15 point. They never did, as far as I know.

16 Q What did this case look like at the beginning?
17 Did it change shape in regards to what you thought the
18 State could prove and couldn't as it developed?

19 A No, not really. I don't think that it changed
20 that much, because I think the case was kind of
21 defined when the police stopped the vehicles and found
22 all five in the car, with the drugs and with the gun.

23 The gun was the center piece, because the gun had
24 Mr. Barrett's blood on it, which made a direct
25 connection to the house.

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 Q You all objected to that and tried to keep that
2 out?

3 A Sure. Yes. Yes.

4 Q Saying no probable cause for them to search the
5 car and, of course, it was ruled against?

6 A Yes. Yes.

7 Q Now, in evaluating the case, you felt like there
8 was -- if it went to trial, there was a substantial
9 risk of being convicted?

10 A There is always a substantial risk any time you
11 go to trial I tell my clients, two things can happen,
12 one is bad. Any time you go to trial there is a
13 substantial risk. If Mr. Lackey had simply talked
14 about what he did and stayed away from everything
15 else, we probably wouldn't have this conversation
16 today, I believe that.

17 Q You feel that strongly about it?

18 A I do. I just don't see where there was anything
19 -- I think what happened is -- this is my two cents
20 and a dollar-and-a-half will get you a cup of coffee,
21 but my position is that I think -- what I think is
22 that the jury -- when I -- when he tried to say that
23 Mr. Tine didn't go into the house, the jury didn't
24 believe that because then that would destroy everybody
25 else's story that there were four men in the house,

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 okay. Because we had the gun and the marijuana, which
2 came from the house. It's kind of crazy to say, oh,
3 well, none of us went into the house. You can't make
4 that argument and be serious and think that a jury is
5 going to buy it.

6 I honestly believe that based on everything that
7 I knew about it going into the trial, yeah, there was
8 a substantial risk, but I honestly thought that if he
9 had testified, look, the other four got out of the car
10 where they went and what they did, I don't know. I
11 stayed in the car, they came back and three minutes
12 later the police stopped us. Yeah, I think he would
13 have gotten off, I do.

14 Q Let me ask you about the plea offers. Do you
15 think because he -- I mean, even today he just says
16 that he didn't do this?

17 A Yes, sir.

18 Q Was that a hinderance regarding him accepting a,
19 quote on quote, guilty plea?

20 A Sorry?

21 Q Was the fact that he was unwilling to stand up
22 and say I did this --

23 A No, sir.

24 Q Was that a problem with accepting the plea?

25 A No, sir. No, sir. Look, if he would have -- if

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 he had told me, look, I want to take a plea, I want to
2 get this behind me, but I don't want to say I'm
3 guilty, then, yeah, I would have gone to the Solicitor
4 and asked will you let me do the Alford, agree or
5 consent. Now, when the charge is this serious, a lot
6 of times they say, no, we wouldn't agree. But I would
7 have gone to them and done my best to convince them to
8 do it. Honestly, I think they might have done it.

9 Q The other guy?

10 A Yeah. That is my point.

11 THE COURT: Somebody else entered an Alford plea?

12 THE WITNESS: Yes, sir. Reardon.

13 MR. T. THOMAS: Yes, the third codefendant went
14 to trial, stopped and he did an Alford plea.

15 THE COURT: Okay.

16 Q You remember if you ever discussed with Michael
17 an Alford plea? Do you know if he knew about it?

18 A I just answered that for the attorney general. I
19 can't honestly sit here and say I have a specific
20 recollection of having done that, I just do not have a
21 recollection of it. I wish I could say I did, but I
22 don't. I don't have a recollection of it. I would
23 tell you that knowing me, if we discussed pleas, I
24 probably did it. If you asked me do I have a specific
25 recollection of having done it, I would have to say I

RALPH WILSON, ESQ. - CROSS-EXAMINATION

1 do not have a specific recollection, no, I do not.

2 Q If that was the hang-up in regards to I don't
3 want to step up and say I didn't do something I didn't
4 do, could it have potentially solved it if he could
5 have entered the Alford?

6 A If he said to me, yes, look, I really want to
7 take this, but I don't want to say I'm guilty, you
8 know, yeah, I would have definitely told him, look,
9 let me do this, go to the Solicitor and see if I can
10 get you an Alford plea, and I clearly would have done
11 that without question, no doubt.

12 MR. T. THOMAS: I beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 (A brief pause in the proceedings.)

15 MR. T. THOMAS: Let me beg the Court's
16 indulgence. I want to look at my notes real fast.

17 THE COURT: Sure. Take your time.

18 (A brief pause in the proceedings while Mr. T.
19 Thomas and Mr. Lacey converse.)

20 Q Final question. You and I talked about it on the
21 phone a couple days ago, you just don't believe the
22 Court would have granted the sever?

23 A The sever?

24 Q Yes.

25 A No, sir. No, sir.

RALPH WILSON, ESQ. - REDIRECT EXAMINATION

1 Q You did not make a motion for severance?

2 A I did not, no, sir.

3 (A brief pause in the proceedings while Mr. T.
4 Thomas and Mr. Lackey converse.)

5 MR. T. THOMAS: No further questions.

6 MR. J. THOMAS: Briefly, Your Honor.

7 REDIRECT-EXAMINATION

8 BY MR. J. THOMAS:

9 Q During cross-examination you said that you
10 discussed with Mr. Lackey -- or you stated that there
11 was never any evidence on the part of pre-planning.
12 What discussion did you have with him about maybe the
13 hand of one, hand of all and the mere presence theory?

14 A Yes, sir. That was the problem. We did discuss
15 that. We discussed the hand of one is the hand of
16 all. Whenever two or more people engage in criminal
17 activity, one is equally guilty as the other if they
18 are there, and other than just being present, they are
19 just as guilty. If he was there and if he
20 participated in any way, picking up the wallets,
21 opening the door, standing guard, whatever, he would
22 be just as guilty as the people who actually had the
23 gun and took the drugs.

24 Q You also said you didn't go out looking for
25 Torrie because you thought that would be trouble. Is

RALPH WILSON, ESQ. - RECROSS EXAMINATION

1 it fair to say that you made that a strategic
2 decision?

3 A Yes. Yes. That was clearly not something I
4 wanted to do.

5 Q You'll ask you -- maybe -- do you recall the
6 judge giving a charge about joint defendants and how
7 they were to be convicted separately?

8 A Yes. Yes. I'm sorry, I was trying to remember.

9 Q And I can refresh your recollection.

10 A I'm good. It's been a while.

11 THE COURT: Anything else?

12 RECROSS-EXAMINATION

13 BY MR. T. THOMAS

14 Q I apologize. When you said that, I was just
15 looking in the charges. Do you know if "mere
16 presence" was charged?

17 A I don't know. I don't know. I honestly don't
18 know.

19 Q That would have been consistent that he was in
20 the car and would have been the opposite of hand of
21 one, hand of all. He was there literally for the
22 ride?

23 A Yeah. If he -- I would probably agree with that,
24 that if he was there in the car and he was not a part
25 of any planning or whatever, then that would come

THE COURT AND ATTORNEYS

1 under mere presence.

2 Q That would fit with your theory of defense that
3 he was not involved?

4 A Yeah.

5 Q I can't remember -- I don't remember seeing it.
6 I just don't know if you knew if you asked for it?

7 A I don't remember asking for it. I know generally
8 in most cases it is -- the judge includes it in the
9 charge. I would be shocked if it were not in there,
10 but I don't remember offhand.

11 MR. T. THOMAS: Thank you.

12 THE COURT: Anything else, Mr. Thomas?

13 MR. J. THOMAS: Not from Mr. Wilson, no, sir.

14 THE COURT: Thank you. You can step down. Next
15 witness.

16 MR. WILSON: May I be excused?

17 MR. J. THOMAS: That is all from the State.

18 THE COURT: Are you going to have any reply?

19 MR. T. THOMAS: No, Your Honor.

20 THE COURT: You are free to go.

21 MR. WILSON: Thank you.

22 THE COURT: Anybody need a break? Ready to go
23 forward?

24 MR. T. THOMAS: I'm ready.

25 THE COURT: Before I forget, what would have been

THE COURT AND ATTORNEYS

1 the basis for a severance? I guess I have not read
2 the transcript entirely, but the codefendants who
3 turned or decided to plead, if there had been a
4 separate trial, they would have testified at your
5 client's trial?

6 MR. T. THOMAS: Correct.

7 THE COURT: The other non-defendant witnesses
8 would have all testified?

9 MR. T. THOMAS: Yes, sir.

10 THE COURT: What would have been the legal basis
11 for severance?

12 MR. T. THOMAS: Your Honor, and those are
13 problems I think that would have been dealt with at
14 the time. I guess, you know, I don't --

15 THE COURT: There was no Bruton issues? Because
16 we have had the recent line of cases that talk about
17 severances aren't to be denied just for judicial
18 economy, that we need to look at Bruton issues more
19 closely. There was no redacted statements of
20 non-testifying codefendants?

21 MR. J. THOMAS: No, sir. No, sir.

22 MR. T. THOMAS: I think -- and my client felt
23 strongly, especially the family, they should be tried
24 separately. Our position is that he should have at
25 least asked the Court for them to be separated.

THE COURT AND ATTORNEYS

1 THE COURT: For purposes of proving prejudice,
2 you would have to show that the severance motion more
3 than likely would have been granted?

4 MR. T. THOMAS: That's correct. And I think that
5 could potentially have been difficult.

6 THE COURT: If you want to give me your closing
7 comments, that is fine, or we can take a recess if you
8 want to get your thoughts together, that is fine.

9 MR. T. THOMAS: Your Honor, I'll be glad to do it
10 now.

11 THE COURT: Okay.

12 MR. T. THOMAS: It is a really complicated case
13 in that you have multiple testimonies, multiple people
14 who have all various degrees of interest in this case
15 and self-serving interest in this case. Counsel
16 testified that he felt like the case didn't change,
17 you know. The evaluation of the State's case was that
18 it was strong from the beginning and that he felt like
19 if the codefendants were going to testify, it would be
20 extremely difficult for my client to prevail at trial.

21 I would suggest to the Court that I don't think
22 that they completely understood that, that he
23 completely understood that danger and the fact -- and
24 I've seen this in other cases where, you know, there
25 is a strong line running through in regards to --

THE COURT AND ATTORNEYS

1 well, you know, I have been raised this way, that if I
2 didn't do it, I shouldn't step up and say I did
3 something I haven't done. Mr. Wilson does say he
4 doesn't remember talking about the Alford plea, which,
5 to me, based upon the testimony presented today, and
6 especially from the step-father, that would have
7 solved the problem. If the hang-up was the fact that
8 he didn't want to stand before the Court and take a,
9 quote, end quote, guilty plea and admit he was guilty
10 of this charge, which appears to be the basis for
11 this, he would have accepted the 10 or the 12.

12 The step-father said he had an opportunity to
13 speak with him in the hotel that night. They
14 discussed it, and again the problem was I don't want
15 to admit to something I didn't do. We have an
16 indication of prejudice because the Court allowed the
17 third codefendant to take an Alford plea.

18 THE COURT: Was Mr. Lackey in the courtroom when
19 that happened?

20 MR. T. THOMAS: He was, but I think it's hard to
21 impose upon him the knowledge of what Alford involves
22 by just saying -- whether he was paying attention or
23 just mere presence and whether or not he understood
24 what was going on. I think it takes more than that.
25 I think it takes counsel sitting down and describing

THE COURT AND ATTORNEYS

~~00133~~

1 to him -- because we've all had problems with that in
2 the past as far as getting a client to understand what
3 you are saying, the basis of Alford. I'm saying I'm
4 not guilty, however, I'm afraid if I go to court there
5 is a likelihood I'll be convicted.

6 So I think it is hard. I heard that argument,
7 and I think it is hard to say that that solves the
8 problem just because of the fact he was in the
9 courtroom when the Alford plea was given. I think it
10 creates the opposite situation in that it potentially
11 shows the prejudice of the situation, because if we
12 didn't have that, we would be trying to figure out
13 whether or not the Court would have taken it.

14 THE COURT: Well, I know that there is -- first
15 of all, there has to be a bargain. From what I've
16 heard, the bargain was the dismissal of the other
17 charges?

18 MR. T. THOMAS: Yes, sir, which would be the most
19 serious, the burglary first.

20 THE COURT: It can't be just a good deal. The
21 bargain has to be, typically, more than something --
22 more than a recommendation for a lower time.

23 How about the fact that the prosecutor might say
24 I'll drop the other charges if he pleads, but it is
25 not an Alford, can a prosecutor do that?

THE COURT AND ATTORNEYS

1 MR. T. THOMAS: I think a prosecutor could do
2 that, and what I think is unique about this situation
3 is that we have something to look to. If you look to
4 Mr. Reardon's plea, he was going up to trial on the
5 same charges. He had the armed robbery, burglary
6 first and the other two charges. Obviously, the
7 Alford plea was allowed or consented to by the
8 Solicitor's Office and accepted by the Court.

9 THE COURT: Did any of the codefendants put Mr.
10 Lackey in the apartment, or was he outside?

11 MR. T. THOMAS: No, I think that -- I believe
12 Eric did, Your Honor.

13 THE COURT: Eric did what?

14 MR. T. THOMAS: I think Eric did put Mr. Lackey
15 in, because there was testimony in the record about
16 him being present and taking the cell phones and the
17 wallets.

18 THE COURT: Okay.

19 MR. T. THOMAS: So there was testimony to that
20 fact.

21 THE COURT: It sounds like one of your primary
22 points of emphasis is the failure to explain the
23 availability of an Alford?

24 MR. T. THOMAS: I think it is. Of all the issues
25 we have, a lot of them are standard post-relief

THE COURT AND ATTORNEYS

1 issues, but if one stands out, it is the plea.

2 THE COURT: There are cases about failure to
3 convey Alford, period.

4 MR. T. THOMAS: Yes.

5 THE COURT: Any cases where an appellate court
6 anywhere has addressed the failure to advise a client
7 of the availability of an Alford plea or nolo plea or
8 no contest plea?

9 MS. THOMAS: I don't know, but I would be more
10 than happy to look.

11 THE COURT: Do you know, Mr. Thomas?

12 MR. J. THOMAS: I'm not familiar, but I could do
13 a quick search.

14 MR. T. THOMAS: If you step back and look at it,
15 I think all the testimony is consistent with -- and
16 even Mr. Wilson said, for whatever it is worth, that
17 he believed Mr. Lackey in that he was literally taken
18 for the ride. He came down to see his friend, was in
19 car, he was in the front seat rather than the
20 backseat, the drugs and pistol were found in the
21 backseat. There was testimony that Eric was in the
22 car and they all get in, which is consistent with his
23 story. He is still sitting in the front seat, they
24 get in and he doesn't know what is in the backseat.

25 I think that all of that, even what the attorney

THE COURT AND ATTORNEYS

1 is saying, is consistent with him being mere presence.

2 THE COURT: I don't mind saying that I find
3 Mr. Lackey's testimony to be extremely credible, I do.
4 You know, you take into account his demeanor, his
5 demeanor is about as good as you can get for somebody.
6 He's polite, his story never wavered. He said, look,
7 I didn't do it, I didn't know what they were going up
8 there to do. The problem is that the PCR stage, law
9 says it doesn't matter what I think about whether or
10 not he's guilty or not. I can't revisit that. What
11 I'm looking for is, as you know, failure to perform in
12 accordance with professional norms; if so, was there
13 prejudice.

14 MR. T. THOMAS: Yes, sir.

15 THE COURT: I don't think the severance angle is
16 going to get you anywhere. Lawyers aren't supposed to
17 move for severance because the defendant's parents
18 want them to; that is not grounds for relief. There
19 is no Bruton issue available, so I think severance
20 would be a problem. The Alford, advising him of the
21 availability of such a plea, you know, there may or
22 may not be case law on that.

23 MR. T. THOMAS: I think that is the strongest
24 issue. The other thing that fits together, you know,
25 about whether or not there is an alternative --

THE COURT AND ATTORNEYS

1 THE COURT: Four people.

2 MR. T. THOMAS: Alternative events going on that
3 doesn't involve my client.

4 THE COURT: Was there DNA testimony at the trial
5 that the blood on the gun in this car matched that --
6 and I say "matched," but there is a difference in
7 science. "consistent with" and "matching" is two
8 different things to scientists. Blood is consistent
9 with my blood, because it is blood. Was there
10 testimony at the trial of one in four quadrillion that
11 it was somebody else other than Shawn Barrett?

12 MR. T. THOMAS: There was testimony, and what was
13 unusual about it was that the DNA evidence excluded
14 everyone. The problem -- except for Mario Tine. It
15 didn't excluded Mario, but what the testimony was --
16 and they objected to it and it came in any way -- was
17 the fact that they couldn't say that it matched, and
18 they couldn't say whether or not that it included him
19 or excluded him.

20 THE COURT: So it really was a non-event?

21 MR. T. THOMAS: In the middle. The difference
22 was that he was excluded, and Mario was not. But he
23 wasn't included.

24 THE COURT: Mr. Wilson testified that there was
25 testimony that the blood was consistent, and the word

THE COURT AND ATTORNEYS

1 "consistent" was --

2 MR. J. THOMAS: If I can clarify, I think we --
3 and I hate to interrupt, but the blood on the gun was
4 consistent with the victim.

5 THE COURT: "Consistent," what does that mean?
6 That is what I want to know. It may not make a
7 difference, but being consistent with is not the same
8 to a DNA analyst as a match?

9 MR. T. THOMAS: I don't know. I looked at it
10 from the other side, whether or not it was -- DNA
11 matched with the codefendant, Mr. Tine.

12 MR. J. THOMAS: Your Honor, I can direct you to
13 Page 778 of the transcript starting on Line 8, and it
14 probably goes before that, but that is just what I
15 pulled up now. There was a 1 in 17 quintillion chance
16 that the blood belonged to the victim, Shawn Barrett.

17 THE COURT: Then it wasn't his. It belonged to
18 somebody else?

19 MR. J. THOMAS: The blood belonged to the victim.

20 MR. T. THOMAS: I think it belonged to the
21 victim.

22 THE COURT: It says 1 in 17 quintillion that it
23 belonged to Shawn Barrett? If there is a 1 in 17
24 quintillion chance that it belongs to me, I dare to
25 say it doesn't belong to -- I have to look back at

THE COURT AND ATTORNEYS

1 that testimony. I was trying to pay attention to Mr.
2 Wilson when you were talking about it and find it at
3 the same time, and I made it to Page 774.

4 MR. T. THOMAS: The part I concentrated on is
5 further down on that page, Line 23, it says, Who are
6 the individuals who you are able to exclude, and it
7 was Ricky Johnson, Eric Brown and Michael Lackey. It
8 talks about they were not able to exclude Mario Tine,
9 but not able to include him either, over on 779.

10 THE COURT: Of course, I'll go with what is in
11 this record, I'll have to read it.

12 I guess, if you could, provide me with case law
13 on the issue of whether or not counsel is deficient in
14 failing to advise a client of the availability of an
15 Alford or no contest, nolo plea, that type of thing.
16 That might be helpful. Because it is apparent that
17 Mr. Wilson didn't tell him about it, but, in effect,
18 he said it didn't come up to him in his mind because
19 if he had told me, hey, I want to take this deal, I
20 just don't want to say I did it, then that is a
21 layman's way of saying I want to plead under Alford,
22 they just didn't know it.

23 So we look for commonsense in the law, and that
24 is based on a layman being able to understand it, and
25 we know how that works sometimes. Again, if you find

THE COURT AND ATTORNEYS

1 me cases, if there are any, I would appreciate that.

2 MR. T. THOMAS: I'll be glad to.

3 THE COURT: Anything else you have, Mr. Thomas?

4 MR. T. THOMAS: No, Your Honor.

5 THE COURT: Mr. Thomas for the State, anything in
6 closing?

7 MR. J. THOMAS: If I could briefly run down each
8 of the allegations. I believe we went over all -- the
9 motion to sever. Mr. Wilson testified there was no
10 grounds for it. I asked him if the judge gave an
11 instruction about a joint trial so there was no
12 prejudice.

13 THE COURT: Is that in there? I assume it is, it
14 is common -- or it is required.

15 MR. J. THOMAS: It is. It is on Page 1166, Line
16 18.

17 THE COURT: In other words, you can convict them
18 all, acquit them all or convict some and acquit the
19 rest and your verdict on one doesn't control your
20 verdict on the other.

21 MR. J. THOMAS: That is essentially what it says.

22 Failure to further establish an alternate theory,
23 I think he testified he presented his theory to the
24 jury. He testified he had strategic reason for not
25 investigating this Torrie gentleman.

THE COURT AND ATTORNEYS

1 Failure to advise regarding the plea offer, I
2 think we've been over that and, obviously, we're going
3 to present case law on that.

4 Failure to advise the risk of testifying, I think
5 testimony from Mr. Wilson was they went over
6 everything regarding that.

7 Failure to effectively cross-examine, he said
8 there was nothing else he could have done to bring out
9 more inconsistencies.

10 The indictment issue, I think there is no
11 evidence.

12 THE COURT: It came up earlier today, there is no
13 law that says the clerk of court has to time stamp an
14 original indictment. That is a certified copy for the
15 lawyers that typically has it, but it is not required.

16 MR. T. THOMAS: I know Mr. Lackey has been doing
17 research on his own, and that is why he wanted us to
18 present that. I don't know of anything that requires
19 that. It appears to be stamped that says "true
20 billed," and then there is a date stamp to the right
21 of that.

22 THE COURT: Yes, sir.

23 MR. T. THOMAS: If it pleases the Court, could
24 I -- and I apologize for not knowing the answer to
25 this -- look into whether or not mere presence was

THE COURT AND ATTORNEYS

1 charged?

2 THE COURT: You can, but you also need to look to
3 make sure even though it might not have been charged,
4 that it was like a segregated section of the charge.
5 In the hand-of-one charge there is typically the
6 equivalent of a mere presence charge, but I'll
7 certainly let you search through the transcript, and
8 let me know about that.

9 MS. THOMAS: Thank you.

10 THE COURT: As far as time frames, today is
11 March 20, so if you could get me your memoranda, if
12 you choose to do that, by next Friday; is that okay?

13 MR. T. THOMAS: That is fine.

14 THE COURT: That would be April, what, 3rd?

15 MR. J. THOMAS: That sounds right -- no, 28th.

16 THE COURT: March 28th, okay.

17 MR. T. THOMAS: Playing the Blue Grass
18 March 28th, Your Honor.

19 THE COURT: You need more time?

20 MR. T. THOMAS: No, I'm fine.

21 MR. J. THOMAS: You'll accept similar from the
22 State?

23 THE COURT: Certainly.. Thank you.

24 (Whereupon, the proceedings concluded.)
25

CERTIFICATE OF REPORTER

State of South Carolina)
County of Horry)

I, Natalie Dahl, Official Court Reporter for 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 matter of the captioned case,
relative to appeal, in the Court of General Sessions
for Horry County, South Carolina, on the 20th day of
March, 2014.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

August 28th, 2014



Natalie Dahl, RPR

Court Reporter

0011345

001430

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

MICHAEL J. LACKEY)

Full name and prison number (if any) of Applicant.)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legible, handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010
2. Name and location of Court which imposed sentence Horry County Court of General Sessions, 1301 Second Ave., Conway, SC 29526
3. Name(s) of co-defendant(s) (if any) Mario Tynes, Joshua Readon
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-26-00214 - Burglary First Degree
 - (b) 2008-GS-26-00215 - Armed Robbery
 - (c) 2008-GS-26-00216 - Unlawful carrying of pistol
 - (d) 2008-GS-26-00217 - Drugs/Manuf. possession 1st offense

FILED
HORRY COUNTY
2012 NOV 23 AM 9:26
MELANIE HOSKINS
CLERK OF COURT

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 21, 2010 - eighteen (18) years Concurrent
 - (b) May 21, 2010 - ten (10) years Concurrent
 - (c) May 21, 2010 - one (1) year Concurrent
 - (d) May 21, 2010 - five (5) years Concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty x
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. The South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. May 2, 2012
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. 2012-UP-257
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? X
- (c) your sentencing? X
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? X
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Ralph Wilson, Esq., P.O. Box 1827, Conway, SC 29526
 - ii. Wanda H. Carter, Esq., Appellate Defense, P.O. Box 11589, Columbia, SC 29211
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. trial, sentencing
 - ii. appeal
 - iii. _____

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

New trial

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

No

~~001350~~

001435

STATE OF SOUTH CAROLINA

County of Lee

VERIFICATION

I, Michael J. Lackey, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Michael Lackey

SWORN to and subscribed before me this 31
day of August, 2012.

Maverick Wilson (L.S.)
Notary Public

My Commission Expires: 3/8/2021

FILED
JURY COUNTY
2012 NOV 27 AM 8:26
MELANIE HUGGINS-WARD
CLERK OF COURT

~~0014351~~

001436

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

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

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

Michael Lackey
Applicant

SWORN or affirmed to and subscribed before me this

31 day of August, 2012

Mamie Wilson
Notary Public

My Commission Expires: 3/8/2021

FILED
CLERK OF COURT
MELANIE HUGGINS-WARD
2012 NOV 27 AM 8:26
CLERK OF COURT

~~001437~~

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

2012-CP-26-9094

Michael J. Lackey, 340933,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

Respondent, making its Return to the Application for post conviction relief (PCR) filed November 27, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the January 2008 term of the Horry County Grand Jury for burglary first degree (2008-GS-26-00214), armed robbery (2008-GS-26-00215), unlawful carrying of a pistol (2008-GS-26-00216), and possession of marijuana with intent to distribute (2008-GS-26-00217). Ralph Wilson, Esquire, represented Applicant. On May 21, 2010, Applicant was convicted as indicted at trial. The Honorable Larry B. Hyman, Jr. sentenced Applicant to an aggregate eighteen years imprisonment. Applicant filed an appeal to the SC Court of Appeals and was represented by Wanda H. Carter, Esquire. On May 20, 2012, Applicant's appeal was dismissed in unpublished opinion No. 2012-UP-257 and the matter was remitted to the lower court.

Attached herewith and incorporated herein are the records of the Clerk of Court regarding the subject conviction, Applicant's SCDC records, and if available, the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second,

counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

001440

~~001455~~

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

3-19, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

2012-CP-26-9094

MICHAEL J. LACKEY, #340933)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

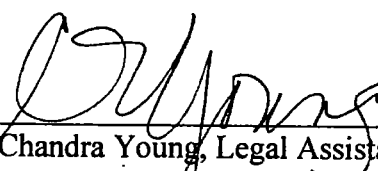
STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tommy A. Thomas, Esquire
Post Office Box 88
Irmo, SC 29063

DATED this 15th day of March, 2013.



Chandra Young, Legal Assistant
For Respondent

FILED
HORRY COUNTY

2014 APR -1 AM 8:12

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

MICHAEL J. LACKEY ~~340933~~,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS
CLERK OF COURT

DOCKET NO.: 2012-CP-26-9094

MEMORANDUM IN SUPPORT OF
POST-CONVICTION RELIEF

Throughout discussions with the State, the Applicant maintained his innocence. As he testified, the Applicant refused the notion of entering a guilty plea because he would be admitting guilt for a crime he did not commit – an act that would contradict the lifelong teachings of his mother who admonished him never to admit to something he did not do.

In United States v. Alford, 400 U.S. 25 (1970), the United States Supreme Court upheld a plea of guilty made by a defendant who contemporaneously asserted his innocence to the underlying offense. Since that time, the option to enter an Alford plea has been available for a defendant who believes that he would receive a greater sentence if he stood trial than he would receive through a plea agreement. In this case, the Applicant faced the possibility of extensive jail time had he gone to trial. The State made several plea offers, which by all accounts would have resulted in a lesser offense and in substantially less jail time than the

Applicant ultimately received. While he steadfastly refused the State's offers because they would require a false admission of guilt, the Applicant was never advised of the option of entering a plea under Alford.

At the PCR hearing, Applicant was questioned about entering a plea under Alford and was unaware of the existence of that possibly. Trial counsel admitted that he does not recall advising the Applicant of the option.

In Alford, the court held that an admission of guilt was not necessary, but "[t]he standard was and remains whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant."

During the sentencing phase of the Applicant's trial, counsel even addressed the Applicant's failure to accept a plea offer.

"He did make some horrible, horrible, decisions. One, when he went with these guys on that fateful day in October; and again when he decided not to take the plea offer that the State had offered him." (Tra. p. 1231, lines 24-25, p. 1232, lines 1-4)

In this case, the Applicant could not make a voluntary and intelligent choice because he was not advised of the courses of action open to him. The failure of trial counsel to advise the Applicant of the existence of a plea that would allow him to avoid admission of guilt and yet define the extent to which he was exposed to

sentencing, meets the two-pronged requirements of proving ineffective assistance of counsel both through deficient performance and prejudice.

The South Carolina Supreme Court has held that a defendant has the right to effective assistance of counsel during the plea bargaining process. Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996).

From Davie v. State, 675 S.E.2d 416 (S.C. 2009):

“In a PCR proceeding, the Applicant bears the burden of establishing that he or she is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). ‘In the context of a guilty plea, the court must determine whether 1) counsel’s advice was within the range of competence demanded of attorneys in criminal cases- i.e. was counsel’s performance deficient, and 2) if there is a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty.’ Smith v. State, 369 S.C. 135, 138, 631 S.E.2d 260, 261 (2006) (citing Hill v. Lockhart, 474 U.S. 52, 56-58 (1985)).

In Davie, counsel was found to be ineffective for failure to inform the defendant of a plea offer. The Court found that the difference in the sentence Petitioner received and the uncommunicated plea offer was proof of prejudice.

While plea offers were communicated to the Applicant in this case, his steadfast insistence that he would not admit guilt for a crime which he did not commit consistency kept him from accepting the offers. The State’s willingness to

participate in plea negotiations, (Tra. p. 1229, line 1-9) coupled with the State's request, following the Applicant's conviction, that the Court consider the Applicant's youth and not impose the maximum sentence (Tra. p. 1245, lines 7-10), indicates the likelihood that the State would have been willing to negotiate a plea agreement which would result in an Alford plea, had trial counsel ever informed the Applicant of that option. In fact, the Court accepted the Alford Plea of the Co-Defendant, Joshua Readon. (Tra. p. 78, lines 11-15 – p. 95, lines 14-23)

The Trial Judge emphasizes the Applicant's failure to accept the Plea offers at sentencing.

“You were given an opportunity not to plead to that very serious offense, as were your codefendants.

You made a terrible decision again by not accepting the opportunity to plea to a series of –uh– charges that would not include burglary in the first three.

I am aware of the efforts made by the State to protect – and this is so unusual – but in this case, the Solicitors in this case tried to protect all of you because of your youth, and the fact that this was an aberration. You did not have prior criminal records.

But you rejected that.

And let me tell you this: I would not penalize anyone for going to trial. I do not penalize you for going to trial. That is your constitutional right. It is one of the most precious rights that we have as citizens; and that is to go to trial.

However, it has been – and I'm sure your attorneys have told you – the custom of The Court – and it is statutorily the custom of the federal courts – to give credit for acceptance of responsibility.” (Tra. pp 1238-1139, lines 24-25, lines 1-23)

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

DOCKET NO.: 2012-CP-26-9094

MICHAEL J. LACKEY 3340933,)

Applicant,)

vs.)

CERTIFICATE OF SERVICE

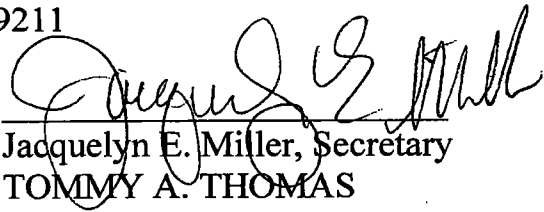
STATE OF SOUTH CAROLINA,)

Respondent.)

FILED
CLERK OF COURT
2014 APR -1 AM 8:12
JELANIE HUGGINS-WARD
HORRY COUNTY

I, Jacquelyn E. Miller, secretary to Tommy A. Thomas, Attorney for Appellant in the above action, hereby certify that I placed in the United States Mail, a copy of a Memorandum in Support of Post-Conviction Relief with postage prepaid, and the return address clearly shown on said envelope to Joshua Thomas, Esq. at:

Joshua Thomas, Esq.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211


Jacquelyn E. Miller, Secretary
TOMMY A. THOMAS
Attorney for Appellant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

Irmo, South Carolina
March 28, 2014

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Michael J. Lackey, #340933,

) Case No. 2012-CP-26-9094
)

Applicant,

)

v.

)

State of South Carolina,

)

Respondent.

)

)

**MEMORANDUM OF LAW
IN OPPOSITION TO
POST-CONVICTION RELIEF**

This matter comes before the Court pursuant to an Application for Post-Conviction Relief (PCR) filed November 27, 2012. The Court convened an evidentiary hearing into the application on March 20, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Tommy A. Thomas, Esquire. Applicant testified on his own behalf at the hearing. Also testifying on Applicant's behalf were Mr. and Mrs. Dozier, Applicant's parents. Respondent presented testimony from Applicant's trial counsel, Ralph J. Wilson, Sr., Esquire ("trial counsel"). At the conclusion of the hearing, the Court requested briefing on the question of whether trial counsel was ineffective in failing to discuss the possibility of an Alford¹ plea with Applicant. Respondent respectfully submits that, under the facts of this case, trial counsel was under no duty to inform Applicant of the existence of an Alford plea and Applicant has not met his burden of proving trial counsel ineffective in that regard.

I. Relevant Testimony at the Hearing

Applicant testified he always contended he was not guilty of robbing anyone, and that he told trial counsel he was not involved in the crime. Applicant admitted he was aware of the pleas

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

offered and that it was his decision to decline to plead guilty. Applicant further testified felt like he did not do anything wrong, so he did not want to plea. Applicant stated trial counsel never advised him of the availability of an Alford plea. He claimed he would have pled guilty if he would not have been required to admit he was involved in the crime. However, Applicant admitted he was present in the courtroom when a co-defendant entered an Alford plea immediately prior to trial. Mr. Dozier also testified trial counsel never advised of the availability of an Alford plea, but also admitted to being in the courtroom when the co-defendant pled.

Trial counsel testified Applicant took the position he was not guilty of the crimes because he never left the vehicle during the robbery. However, trial counsel admitted he thought there was a good likelihood of a conviction because the other co-defendants named Applicant as a participant in the robbery. He recalled receiving two offers from the State: an initial offer for ten (10) years and a subsequent offer for twelve (12) years. However, trial counsel testified Applicant never asked him to negotiate a plea. Instead, trial counsel recalled always planning on taking the case to trial. He further testified Applicant never asked for an option to enter a plea without admitting guilt. He reiterated this position on cross-examination, admitting the problem in convincing Applicant to plea did not involve his reluctance to admit his guilt in a plea. He further admitted he would have discussed an Alford plea with the State had Applicant ever indicated he was interested in entering a plea.

II. Law/Analysis

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Strickland v. Washington, 466 U.S. 668, 687; Turner v.

Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court must presume trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Here, Applicant has not shown trial counsel was under any duty to advise him of the existence of an Alford plea. The Constitution does not guarantee a criminal defendant the right to plead guilty under Alford. Rivers v. United States, No. 7:04-CR-85-2-F, 2010 WL 3063215, at *8 (E.D.N.C. Aug. 3, 2010) (citing Santobello v. New York, 404 U.S. 257 (1971); Alford, 400 U.S. at 38). However, when negotiating a plea on behalf of a defendant, counsel is under a duty to "fully communicate with the client so that the client can make an informed decision regarding any proposals by the State." Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009). Regarding counsel's performance during plea negotiations, the South Carolina Commission on Indigent defense recommends that:

"During the plea negotiation process, counsel should be fully aware, *and make sure the client is fully aware of*:

- (1) the maximum term of imprisonment and fine or restitution that may be ordered, and any mandatory punishment or sentencing guideline system;
- (2) the possibility of forfeiture of assets;

- (3) other consequences of conviction such as deportation, and civil disabilities;
- (4) any possible and likely sentence enhancements or parole consequences;
- (5) the possible and likely place and manner of confinement;
- (6) the effect of South Carolina Department of Corrections policies and procedures, relevant statutes governing sentencing calculation on the potential sentence of the client, and the general range of sentences for similar offenses committed by defendants with similar backgrounds.”

South Carolina Commission on Indigent Defense, Performance Standards for Public Defenders and Assigned Counsel (Non-Capitol), Guideline 6.2(a) (2013), available at [http://www.sccid.sc.gov/docs/SCCID%20%20Performance%20Standards%20\(Non-Capitol\)%20for%20Public%20Defenders%20and%20Assigned%20Counsel%20as%20adopted%20by%20SCCID%206-7-2013%20with%20revised%20Preamble%208-22-2013.pdf](http://www.sccid.sc.gov/docs/SCCID%20%20Performance%20Standards%20(Non-Capitol)%20for%20Public%20Defenders%20and%20Assigned%20Counsel%20as%20adopted%20by%20SCCID%206-7-2013%20with%20revised%20Preamble%208-22-2013.pdf) (emphasis added). Furthermore, the United States Court of Appeals for the Fourth Circuit has indicated

“counsel has the following duty surrounding plea negotiations: “1) notify the client of a plea offer; 2) advise the client of the option to proceed to trial; 3) present the client with the probable outcomes of both the guilty and sentencing phases of each alternative; and 4) permit the client to make the ultimate decision.”

Carr v. United States, No. 3:08CV123, 2009 WL 1867672, at *8 (N.D.W. Va. June 29, 2009) (citations omitted).

Neither the Office of Indigent Defense nor the Fourth Circuit requires counsel to discuss the possibility of an Alford plea with a defendant. In fact, no precedent exists to establish trial counsel was under a duty to discuss an Alford plea with Applicant. See Rivers, 2010 WL 3063215, at *8 (“Furthermore, this court is unaware of any authority for the proposition that an attorney must inform or advise a client to consider entering an Alford plea.”); Matthews v. Koppel, No. CCB-08-1389, 2009 WL 3488349, at *9 (D. Md. Oct. 21, 2009) (“The court is

unaware, and petitioner's counsel does not provide, case precedent holding that counsel must pursue an Alford plea.”); Carr, 2009 WL 1867672, at *8 (“The Court has not found a case that holds that an attorney must inform or advise a client to consider entering an Alford plea.”). Thus, “[t]here is no constitutional requirement that the meaning of an Alford plea be explained to a criminal defendant.” Johnson v. Comm'r of Correction, 652 A.2d 1050, 1058 (Conn. 1995). Because trial counsel was under no constitutional duty to advise Applicant of the existence of Alford pleas, trial counsel was not deficient.

Trial counsel was also not deficient under the facts of this case because the evidence overwhelmingly indicates Applicant never indicated he was interested in any resolution to his charges other than a trial and acquittal. See Matthews, 2009 WL 3488349, at *9 (“Strickland discourages bright-line rules because the claimed ineffective assistance of counsel must be considered in context with all of the surrounding circumstances.”). Trial counsel’s testimony indicates he had no reason to believe Applicant would have been interested in an Alford plea. See id. (“[T]rial counsel testified [...] ‘but I don’t think Mr. Matthews, Jr. was going to take a plea no matter what.’”). The only evidence supporting Applicant’s allegation is his own testimony that he would have accepted the ten (10) or twelve (12) year offers if he could have maintained his innocence. See id. (“Although Matthews testified before the post-conviction court that he would have accepted a plea, his attorney gave contradictory testimony.”) However, both Applicant and trial counsel admitted they always planned on taking the case to trial. See id. (“Petitioner had already turned down an earlier Plea Offer[.]”).

Furthermore, both Applicant and his family were present in the courtroom when a co-defendant entered an Alford plea. (Trial Tr. 77:22-24)). The parameters of an Alford plea,

including the absence of an admission of guilt, were discussed at that time. (Trial Tr. 85:12-86:2). Thus, Applicant had an opportunity to raise this issue to trial counsel at that time and did not. Therefore, Respondent submits that, in light of the circumstances of this case, Applicant's allegation he would have pled guilty if he had known about the existence of an Alford plea is without merit.

III. Conclusion

For the foregoing reasons, Respondent respectfully asks this court to deny the application for post-conviction relief.

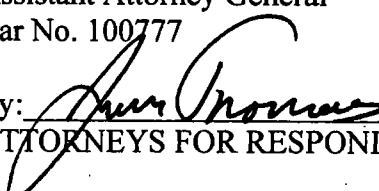
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

March 28, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Michael J. Lackey, #340933,)

Case No. 2012-CP-26-9094

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED
HORRY COUNTY
2014 MAY 28 PM 4:40
MELANIE HUSGINS-WARD
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed November 27, 2012. Respondent made a timely Return on or about March 15, 2013. The Court convened an evidentiary hearing into the matter on March 20, 2014, at the Horry County Courthouse. Applicant was present at the hearing and represented by Tommy A. Thomas, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing, as did his mother and father. Applicant's trial counsel, Ralph J. Wilson, Sr., Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the return, and the appellate records. Both parties also submitted memoranda in support of their respective positions. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In January 2008, the Horry

[Handwritten signature]

County Grand Jury indicted Applicant for first degree burglary (2008-GS-26-214), armed robbery (2008-GS-26-215), unlawful carrying of a pistol (2008-GS-26-216), and possession with intent to distribute marijuana (2008-GS-26-217). Ralph J. Wilson, Sr., Esquire ("trial counsel"), represented Applicant. On May 17, 2010, Applicant, along with his co-defendant, proceeded to trial before the Honorable Larry B. Hyman, Jr., and a jury. On May 20, 2010, the jury found Applicant guilty as indicted. On May 21, 2010, Judge Hyman sentenced Applicant to concurrent terms of eighteen (18) years for first degree burglary, ten (10) years for armed robbery, one (1) year for unlawful carrying of a pistol, and five (5) years for possession with intent to distribute marijuana.

Applicant filed a timely notice of appeal and Wanda H. Carter, Esquire, of the Office of Appellate Defense, perfected the appeal with the filing of an Anders¹ brief. The South Carolina Court of Appeals dismissed Applicant's appeal on May 2, 2012. State v. Lackey, Op. No. 2012-UP-257 (S.C. Ct. App. filed May 2, 2012). The remittitur was returned to the circuit court on May 22, 2012.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully because of ineffective assistance of counsel. At the hearing, Applicant alleged trial counsel was ineffective in the following regards:

1. Failure to file a motion to sever the trial from his co-defendant;
2. Failure to further establish an alternate theory of the crime;
3. Failure to advise of the possibility of entering an Alford² plea;
4. Failure to advise of the risks of testifying;

¹ Anders v. California, 386 U.S. 738 (1967).

² North Carolina v. Alford, 400 U.S. 25 (1970)

5. Failure to effectively cross-examine the co-defendants regarding their prior statements; and
6. Failure to challenge the sufficiency of the indictment and traffic stop.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified he was 18 years old at the time of the crime. He testified he lived in Georgia at the time, but was in Conway visiting his cousin, the co-defendant at trial, that attended Coastal Carolina University. He recalled retaining trial counsel and having a couple of meetings with him. Applicant also recalled going through the facts and his version of events with trial counsel "a good bit." Applicant testified he always contended he was not guilty of robbing anyone, and that he told trial counsel he was not involved in the crime. He testified he did not know the guns were in the car or that the co-defendants had robbed anyone. Applicant also recalled there were a lot of inconsistencies in statements provided by the co-defendants and witnesses. Applicant recalled the only evidence he was involved in the crime was the statements given by his co-defendants. Applicant also testified trial counsel never hired a private investigator and did not call certain witnesses to testify at trial.

Applicant recalled the State making an initial plea offer for ten (10) and a subsequent offer for twelve (12) years. He testified he did not understand the specifics of the pleas, but was

aware that some charges would be dismissed if he pled. He testified trial counsel attempted to convince him to take the offers, but he ultimately declined to plead guilty. Applicant further testified felt like he did not do anything wrong, so he did not want to plea. Applicant stated trial counsel never advised him of the availability of an Alford plea. He claimed he would have pled guilty if he would not have been required to admit he was involved in the crime. However, Applicant admitted he was present in the courtroom when a co-defendant entered an Alford plea immediately prior to trial.

Applicant recalled discussing a severance with trial counsel, but trial counsel did not move for a severance. He testified his cousin's attorney took the lead at trial. Applicant also recalled discussing his right to testify with trial counsel. He recalled trial counsel told him it was the only way to present his story to the jury. However, Applicant alleged trial counsel did not lay a foundation for him to tell his story. He also alleged trial counsel did not cross-examine the witnesses enough. Applicant testified trial counsel did not go into enough details with the witnesses about their conflicting stories. Applicant also testified trial counsel should have objected to the indictments because the descriptions of his crimes were vague and should have further challenged the traffic stop that led to his arrest.

Applicant's parents testified they spoke with trial counsel about the plea offers, but trial counsel never advised of the availability of an Alford plea. They testified Applicant was raised to be honest, and did not want to plead guilty and admit to a crime he did not commit. Applicant's father also recalled being in the courtroom when a co-defendant pled guilty.

Trial counsel testified he has been practicing criminal law since 1977. He recalled filing discovery motions and receiving responses from the State. Trial counsel testified he provided a

copy of the State's discovery response to Applicant and met with him four times prior to trial. Trial counsel recalled the State's version of events involved Applicant being present during the robbery and taking some phones and wallets from the victims. However, the phones and wallets were never recovered. Trial counsel recalled making a motion challenging the legality of the traffic stop, which Judge Hyman denied. He did not recall any problems with the sufficiency of the indictments.

Trial counsel testified Applicant took the position he was not guilty of the crimes because he never left the vehicle during the robbery. However, trial counsel admitted he thought there was a good likelihood of a conviction because the other co-defendants named Applicant as a participant in the robbery. He recalled receiving two offers from the State: an initial offer for ten (10) years and a subsequent offer for twelve (12) years, both of which he encouraged applicant to accept. However, trial counsel testified Applicant never asked him to negotiate a plea. Instead, trial counsel recalled always planning on taking the case to trial. He further testified Applicant never asked for an option to enter a plea without admitting guilt. He reiterated this position on cross-examination, admitting the problem in convincing Applicant to plea did not involve his reluctance to admit his guilt in a plea. He further admitted he would have discussed an Alford plea with the State had Applicant ever indicated he was interested in entering a plea but not admitting guilt.

Trial counsel testified the co-defendant's ^(S) stories were highly inconsistent and that he cross-examined them on these inconsistencies. Trial counsel recalled explaining to Applicant the risks of testifying. He testified he generally advises clients not to take the stand, but ultimately decided that was the best way to present Applicant's version of events to the jury. He further

testified he discussed Applicant's story about remaining in the car and not participating in the robbery. Trial counsel discussed how the story was believable except for one element. Trial counsel explained he did not believe Applicant's story about his cousin staying in the car was consistent with the other evidence at trial, and the jury would have found Applicant more believable had he not attempted to help his cousin by placing him in the car during the robbery.

Trial counsel testified he saw no grounds for severing Applicant's trial from his cousin's. He could not recall anything he could have claimed created a conflict to justify a severance. He recalled cross-examining the co-defendants on their prior inconsistent statements. Trial counsel testified he does not believe he could have further impeached the witnesses. He also testified he made a strategic decision to not call the witness Applicant mentioned because the witness would have done more harm than good.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir.

3/6

1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

1. Failure to file a motion to sever the trial from his co-defendant.

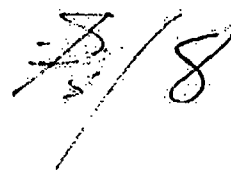
The Court finds Applicant failed to meet his burden of proving trial counsel was ineffective in failing to sever his trial from his cousin's. Applicant argues trial counsel's failure to sever his trial resulted in the jury being prejudiced against Applicant because his testimony was so different from that of the other witnesses. However, the Court finds trial counsel's testimony credible and agrees with his analysis that there was no reason to move for severance. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). "Criminal defendants who are jointly tried [...] are not entitled to separate trials as a matter of right." State v. Dennis 337 S.C. 275, 281, 523 SE2d 173, 176 (1999) (citing State v.

Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); State v. Holland, 261 S.C. 488, 201 S.E.2d 118 (1973); State v. Crowe, 258 S.C. 258, 188 S.E.2d 379 (1972)). Instead, a court should only grant a severance "when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent a jury from making a reliable judgment about a co-defendant's guilt." Id. at 282, 523 S.E.2d at 176. There was no indication at trial that Lackey might offer any defenses inconsistent with those of his co-defendants. Instead, Applicant's defense involved his lack of participation in the crime. While this may be inconsistent with the other evidence adduced at trial, it does not give rise to cause for a severance. Therefore, trial counsel was not deficient in determining there was no basis for a severance.

Regardless, Applicant was not prejudiced by the joint trial with his cousin. A cautionary instruction as to multiple defendants is sufficient to protect each co-defendant from prejudice that might result from a joint trial. See State v. Holland, 261 S.C. 488, 494, 201 S.E.2d 118, 121 (1973). Here, Judge Hyman gave a thorough instruction on the jury's duties regarding multiple defendants. (Trial Tr. 1166:18-1167:16). This instruction negated any prejudice that may have resulted from the joint trial. Accordingly, Applicant has failed to prove either prong of the Strickland test.

2. Failure to further establish an alternate theory of the crime.

The Court finds Applicant failed to meet his burden of proof to establish trial counsel was ineffective in failing to establish an alternate theory of the crime. As to this allegation, the Court finds trial counsel's testimony to be credible. An alternate sequence of events the night of the crime is irrelevant. Applicant never disputed being with the co-defendants on the night of the crime, he just disputed participating in the act itself. Trial counsel decided the only way to prove



Applicant did not participate was to have Applicant testify. Trial counsel also decided not to pursue Applicant's other witness because it could have done more harm than good. The Court finds trial counsel articulated a valid strategy for all of the steps he took through trial. Stokes, 308 S.C. at 548, 419 S.E.2d at 779. The Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. Also, Applicant has not shown what further evidence any other witnesses could have provided. See Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) ("A PCR applicant cannot show that he was prejudiced by counsel's failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence." (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995))). Accordingly, Applicant has failed to show how trial counsel was ineffective in implementing his trial strategy regarding the theory of the crime.

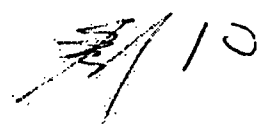
3. Failure to advise of the possibility of entering an Alford plea.

Applicant also has not proven trial counsel was ineffective for failing to advise him of the existence of an Alford plea option. Trial counsel had no duty to advise Applicant of the existence of an Alford plea. The Constitution does not guarantee a criminal defendant the right to plead guilty under Alford. Rivers v. United States, No. 7:04-CR-85-2-F, 2010 WL 3063215, at *8 (E.D.N.C. Aug. 3, 2010) (citing Santobello v. New York, 404 U.S. 257 (1971); Alford, 400 U.S. at 38). When negotiating a plea on behalf of a defendant, counsel is merely required to "fully communicate with the client so that the client can make an informed decision regarding any proposals by the State." Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 420 (2009). In advising a client about a plea offer, trial counsel must:

"1) notify the client of a plea offer; 2) advise the client of the option to proceed to trial; 3) present the client with the probable outcomes of both the guilty and sentencing phases of each alternative; and 4) permit the client to make the ultimate decision."

Carr v. United States, No. 3:08CV123, 2009 WL 1867672, at *8 (N.D.W. Va. June 29, 2009) (citations omitted). However, trial counsel is not required to discuss an Alford plea with Applicant. See Rivers, 2010 WL 3063215, at *8 ("Furthermore, this court is unaware of any authority for the proposition that an attorney must inform or advise a client to consider entering an Alford plea."); Matthews v. Koppel, No. CCB-08-1389, 2009 WL 3488349, at *9 (D. Md. Oct. 21, 2009) ("The court is unaware, and petitioner's counsel does not provide, case precedent holding that counsel must pursue an Alford plea."); Carr, 2009 WL 1867672, at *8 ("The Court has not found a case that holds that an attorney must inform or advise a client to consider entering an Alford plea."). Thus, "[t]here is no constitutional requirement that the meaning of an Alford plea be explained to a criminal defendant." Johnson v. Comm'r of Correction, 652 A.2d 1050, 1058 (Conn. 1995). Because trial counsel was under no constitutional duty to advise Applicant of the existence of Alford pleas, trial counsel was not deficient.

Trial counsel was also not deficient under the facts of this case because the evidence overwhelmingly indicates Applicant never indicated he was interested in any resolution to his charges other than a trial and acquittal. See Matthews, 2009 WL 3488349, at *9 ("Strickland discourages bright-line rules because the claimed ineffective assistance of counsel must be considered in context with all of the surrounding circumstances."). Trial counsel's testimony indicates he had no reason to believe Applicant would have been interested in an Alford plea. The only evidence supporting Applicant's allegation is his own testimony that he would have accepted the ten (10) or twelve (12) year offers if he could have maintained his innocence.



However, both Applicant and trial counsel admitted they always planned on taking the case to trial. Applicant was fully aware of the benefits of accepting one of the State's offers, i.e. a sentence of ten (10) or twelve (12) years, and he would have received the same sentence pleading guilty or pleading under Alford. However, Applicant chose to proceed to trial. In light of these facts, the Court cannot find trial counsel was ineffective for failing to explore an Alford plea with Applicant. See id. (counsel not deficient for not exploring Alford plea where client declined an earlier offer and counsel testified he never had reason to believe client wanted to enter a plea).

4. Failure to advise of the risks of testifying.

The Court further finds Applicant has not shown trial counsel was ineffective in not making him aware of the risk of testifying. Here, the Court finds trial counsel's testimony credible, and Applicant's not credible. Trial counsel testified at the hearing that he always advises clients not to testify because of the risk. It appears Applicant's strategy was initially to not testify, but the strategy changed when it became clear it was the only way to present his version of the night's events. The Court agrees this is sound strategy in light of the other evidence presented at trial. Stokes, 308 S.C. at 548, 419 S.E.2d at 779.

The record also indicates Applicant made the decision to testify with a full understanding of his rights. Trial counsel explained to him the benefits and risks of taking the stand. They even discussed how certain aspects of his testimony would ultimately hurt his case. Furthermore, Judge Hyman thoroughly explained Applicant's right to testify and his right to remain silent. (Trial Tr. 1043:19-1050:18). Therefore, the record supports a finding that

Applicant knowingly and voluntarily exercised his right to testify in his own defense and waived his right to remain silent.

Regardless, Applicant was not prejudiced by his ultimate decision to testify. Applicant contends testifying hurt him because his story differed so much from that of the other witnesses. Applicant's story was starkly different from the other co-defendants' stories, which all involved him participating in the robbery. However, Applicant's was the only testimony that did not have him directly involved in the execution of the crime. Brown v. State, 340 S.C. 590, 596, 533 S.E.2d 308, 311 (2000) ("[T]here is no reasonable probability the result of the trial would have been different had he chosen not to testify, because without his testimony, the jury would only have heard uncontroverted evidence of respondent's guilt."). Therefore, Applicant has not satisfied either prong of the Strickland test with regard to his decision to testify.

5. Failure to effectively cross-examine the co-defendants regarding their prior statements.

Applicant has also not shown trial counsel was ineffective in his cross-examination of the other witnesses. Applicant's primary complaint appears to be that trial counsel was not effective in showing discrepancies between co-defendants' and witnesses' statements and was ineffective in impeaching witnesses. The Court does not agree. Trial counsel testified he cross-examined the co-defendants about their inconsistent prior statements to the extent he felt was reasonable under the circumstances. The Court agrees there was little trial counsel could have done to further impeach the witnesses. Stokes, 308 S.C. at 548, 419 S.E.2d at 779. He impeached the co-defendants and witnesses with inconsistencies at different points in the trial; however, there was little he could do when most witnesses admitted to their prior inconsistencies.

Furthermore, the trial transcript reveals trial counsel subjected the State's case to a "meaningful adversarial testing[.]" United States v. Cronin, 466 U.S. 648, 659 (1984). Trial counsel made timely and articulate objections, thoroughly cross-examined the State's witnesses, and made well-reasoned arguments to the jury.³ In light of this thorough representation, Applicant has not shown he was prejudiced by the lack of further cross-examination regarding the witnesses' conflicting stories. See Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) ("[W]here evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel's failure to bring it forward." (citations omitted)).

6. Failing to challenge the sufficiency of the indictment and traffic stop.

Finally, the Court finds Applicant's allegations regarding the indictment and traffic stop to be wholly without merit. A presumption of regularity attaches to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986) (citing State v. Britt, 235 S.C. 395, 111 S.E.2d 669 (1959); State v. Jones, 211 S.C. 319, 45 S.E.2d 29 (1947); State v. Waring, 109 S.C. 52, 95 S.E. 143 (1918)). Absent evidence to the contrary, the Court must presume that a properly returned indictment is valid. State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citing Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991)). Here, there is no evidence the indictments were irregular in any manner whatsoever. The indictments are valid on their face because they state all the necessary elements of the charges, the dates of the offenses, and the name of the accused. Id. at 75, 472 S.E.2d at 40. Likewise, the indictments are stamped "True

³ Applicant's cousin's counsel also cross-examined many witnesses and challenged the State's evidence.

#113

Billed" and signed by the foreman. Pringle, 287 S.C. at 410, 339 S.E.2d at 128. Therefore, the Court agrees with trial counsel's assessment that the indictments were not defective.

Regarding Applicant's challenge to the traffic stop, such an allegation is not an issue that may be addressed by this Court. Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). Trial counsel challenged the stop at trial, and thus any review of that challenge would have been properly brought on direct appeal.

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

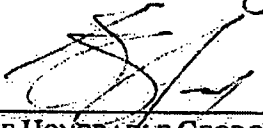
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 16 day of May, 2014.


 THE HONORABLE GEORGE C. JAMES, JR.
 Presiding Judge

5/16, South Carolina

3/15

001468

~~001484~~**Tommy A. Thomas****ATTORNEY AND COUNSELOR AT LAW**

TELEPHONE:
(803) 732-8507
(803) 732-8508

FACSIMILE:
(803) 781-4226

HARRINGTON BUILDING
7588 WOODROW STREET
IRMO, SOUTH CAROLINA 29063

PLEASE REPLY TO:
PO Box 88
IRMO, SC 29063

INMATE LINE
(803) 732-6542

MELANIE HUGGINS-WARD
CLERK OF COURT

2014 JUN 20 PM 2:19

FILED
Horry County

June 19, 2014

The Honorable George C. James, Jr.
 Judge of the Third Judicial Circuit
 P.O. Box 1716
 Sumter, SC 29151

RE: Michael Lackey v. State of South Carolina
 Docket No.: 2012-CP-26-9094

Dear Judge James:

I received a signed, clocked copy of the Order in the above referenced case on June 9, 2014. I forwarded a copy of this Order to my client. I have reviewed this Order and believe that it is extremely thorough and well written. My client, Mr. Lackey, is concerned with one issue in paragraph 6 regarding failing to challenge the sufficiency of the Indictment. He brought to my attention that he testified concerning the fact that the Indictments and more specifically, the Indictment for Armed Robbery, there is no indication that the Indictment was filed and clocked in with the Clerk of Court. Further, Mr. Lackey is concerned that there is no time stamp on any of the Indictments. He has directed my attention to Rule 3 of the Rules of Criminal Procedure, more specifically Rule 3 (c), which requires that the Indictment be filed with the Clerk of Court, as well as Rule 3 (e), which requires any action taken pursuant to paragraphs (a, b and c) be entered into the record at the Clerk of Court.

I have explained to him that pursuant to your ruling, the Court has found that there was no evidence to indicate that the Indictments were irregular in any manner and that the Indictments are valid on their face. I also explained that the Court found that the indictments are not defective.

The purpose of this letter is to bring this matter to the Court's attention, pursuant to the request of my client. He wants to make sure this issue is preserved for appeal.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
2012-CP-26-9094

Michael J. Lackey, #340933,)

Applicant,)

vs)

State of South Carolina,)

Respondent,)

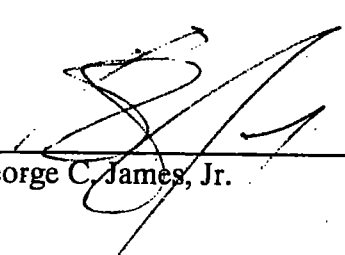
ORDER

FILED
HORRY COUNTY
2014 JUL -8 PM 3:23
MELANIE HUGGINS-WARD
CLERK OF COURT

The applicant, by way of letter dated June 19, 2014, requests the court to rule upon the issue of whether the grand jury's indictment was defective for not having been filed with the Horry County Clerk of Court.

In this court's order denying the application for post-conviction relief, the court ruled that the indictment was not defective. To ensure that the subject issue has been fully ruled upon, the court now specifically finds the indictment was not defective in any way, and the indictment was in full force and effect, even if it had not been filed with the Clerk of Court.

AND IT IS SO ORDERED.


George C. James, Jr.

Sumter, South Carolina

June 30, 2014