

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

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S.C. Supreme Court

DESHAUD SAMEL LUCK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001762

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2009-GS-10-03022, 03023

STATE OF SOUTH CAROLINA)
Plaintiff)
V.)
DASHAUD S. LUCK,)
Defendant.)

TRANSCRIPT OF RECORD
Trial

May 9 and 11-12, 2013,
Charleston, South Carolina

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

Mr. James Stack, Assistant Solicitor
Mr. Adam Young, Assistant Solicitor
Representing The State

Mr. Mark Archer, Esquire
Representing The Defendant

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Circuit Court Reporter

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1 THE COURT: This is indictment 2009-GS-10-2022
2 and 2023, for armed robbery, and possession of a
3 firearm during the commission of a violent crime.

4 State versus Dashaud Samuel Luck. Bench
5 warrants were issued for his arrest on March 3rd of
6 2011 for his failure to appear at a term of general
7 sessions court where his case was placed on the
8 roster.

9 He was notified of that roster by personal
10 mailings to his last known address on both
11 indictments.

12 I have before me a motion to suppressed which
13 would be taken up at the appropriate time, as well as
14 a motion to continue trial in absentia. And the
15 grounds for that motion are that -- did you actually
16 file your motion, Mr. Archer?

17 MR. ARCHER: No, ma'am, I didn't.

18 THE COURT: Yeah, you need to. Because these
19 copies that I have are part of my notes and I will
20 not -- and I couldn't file -- these are facsimile
21 copies so I wouldn't be able file these anyway.

22 So you need to make sure your originals get
23 filed.

24 MR. ARCHER: Yes, Your Honor.

25 THE COURT: The location of the defendant is

1 unknown, and he does not have actual notice of the
2 trial. The defendant is charged with armed robbery,
3 which is an extremely serious offense. A bench
4 warrant for his arrest has been outstanding for a
5 relatively short period of time, so the trial in
6 absentia is premature.

7 Is there anything further you want to place on
8 the record, Mr. Archer?

9 MR. ARCHER: No, Your Honor. And I think that
10 the solicitors are in line to proceed.

11 THE COURT: Well, this came up before. This
12 has been now, I think, the third or fourth roster
13 Mr. Luck has been on. And I had Mike go pull the
14 file because I looked it up the last time it was on
15 the roster, he did get actual notice.

16 The only thing case law requires and the
17 statute requires is that he be notified at the time
18 that his bond is set that if he fails to comply with
19 the conditions of his bond, or to appear for trial
20 that he will be tried in his absence. And he signed
21 that.

22 That is my recollection. But I had Mike go
23 get the file for me because I looked it up the last
24 time because I wanted to make sure that he had been
25 advised that he would be tried in absence if he did

1 not appear.

2 Do you have any idea where he is?

3 MR. ARCHER: No, ma'am, I do not.

4 THE COURT: Does his family have any idea
5 where he is?

6 MR. ARCHER: His mother is here. She says she
7 has no idea.

8 THE COURT: Who posted his bond? Who are the
9 bondsmen?

10 MR. STACK: The bondsman is Mr. Firetag, Your
11 Honor.

12 THE COURT: Has part of that bond been
13 estreated for them to go and pick him up.

14 MR. STACK: No. Because it's 90 days old yet,
15 the bench warrant isn't.

16 THE COURT: Okay.

17 MR. STACK: I spoke to Mr. Firetag last week.
18 I told him if he could find him, that would be very
19 helpful.

20 THE COURT: Have they made any efforts to find
21 him?

22 MR. STACK: Yes. He has been in contact with
23 the father, and I believe another cosigner. He has
24 not spoken with the mother yet. But he told me last
25 week he intended to.

1 THE COURT: I mean, was he supposed to have
2 this person check in with him every -- I mean what
3 was the process?

4 MR. STACK: It was a very low bond, which is
5 unusual. It's a \$5,000 bond.

6 THE COURT: Okay. Surety or PR?

7 MR. STACK: It was surety. Your Honor.

8 THE COURT: Okay.

9 MR. STACK: I'm not sure what conditions he
10 set. I didn't ask him that.

11 THE COURT: And do you have any idea why he
12 absconded, Mr. Archer?

13 MR. ARCHER: I think, to be honest with you,
14 Your Honor, there was a lot of discussion about a
15 plea bargain.

16 THE COURT: Okay.

17 MR. ARCHER: Where he would testify against a
18 brother, all right?

19 THE COURT: Okay. In an unrelated charge.

20 MR. ARCHER: Well, the brother is charged in
21 the same incident. It's in the same armed robbery,
22 Your Honor.

23 THE COURT: Okay.

24 MR. ARCHER: They were accused of being in it
25 together.

1 THE COURT: Okay. What happened to the
2 brother's case?

3 MR. ARCHER: The brother's case has not been
4 called.

5 THE COURT: Is it still pending?

6 MR. STACK: No, Your Honor. We looked at the
7 file, we don't have sufficient identification. They
8 could not identify the brother.

9 THE COURT: Okay. So what did you do with it?

10 MR. STACK: I dismissed it.

11 THE COURT: Okay.

12 MR. STACK: There was an issue of identifying
13 the getaway driver, which is suspected a cousin, but
14 we have not arrested him.

15 And there was the issue of firearms, the two
16 guns, which are not turned in and things like that.
17 We did not -- we discussed an offer, but again we did
18 not make one.

19 MR. ARCHER: Your Honor, this was to me a
20 particularly nice young man. And in the process of
21 talking to him about the possibility of him
22 testifying for the prosecution, in order to convince
23 him to do that myself and my wife, who's a former
24 office manager at the public defender's office, I
25 think we literally scared the fool out of him.

1 And we set up for him to come in and plea.

2 And like I say, I think we terrified him about --.

3 THE COURT: You set up a plea for him?

4 MR. ARCHER: Ma'am.

5 THE COURT: You set up a plea date for him?

6 MR. ARCHER: Yes, ma'am.

7 THE COURT: And when was that?

8 MR. ARCHER: Within March, right around the
9 time of the bench warrant.

10 MR. STACK: Yes. It would have been earlier
11 during the --

12 THE COURT: That's why it was issued, wasn't
13 it? He was on the plea docket.

14 MR. STACK: No, he was on the trial docket.

15 THE COURT: He was on the trial docket and
16 didn't appear.

17 MR. STACK: The week before we probably tried
18 to work a plea out and it did not work out. And he
19 was already scheduled for the week of the 28th of
20 February. And he was on the trial docket.

21 MR. ARCHER: He was going to plead straight up
22 to the offense at that time.

23 Your Honor, I think given the seriousness of
24 the offense, and it is a relatively short time this
25 bench warrant has been issued, that the bondsman

1 having just been notified to try to find him and
2 locate him, we really ought not try this case in
3 absentia.

4 You know, Judge, he is going to get caught.
5 They always get caught, so.

6 THE COURT: You have absolutely no idea where
7 -- is he your son?

8 MS. GREEN: Yes, ma'am.

9 THE COURT: He hasn't contacted you?

10 MS. GREEN: No, ma'am.

11 THE COURT: He has disappeared off the face of
12 the earth?

13 MS. GREEN: I have not heard from him since
14 February 28th.

15 THE COURT: He doesn't have a girlfriend?

16 MS. GREEN: No girlfriend. He has not
17 contacted me. He had a birthday in April. He has
18 not contacted me.

19 THE COURT: He has no children?

20 A voice: No children. He has been a working
21 young man from the time he was 15 years old.

22 THE COURT: I'm sorry, he's what?

23 MS. GREEN: He has been a working young man
24 from the time he was 15 years old. I have not --
25 this is the first time he has ever been away from

1 contact.

2 THE COURT: Well the case is 2 years old. It
3 was indicted in 2009. And I believe I continued it
4 -- well, in effect he had a continuance when the
5 bench warrant was issued.

6 And I believe it came up on several other
7 trial dockets, but I skipped over him deliberately to
8 give them time to try to find him. It has been on a
9 couple other rosters.

10 MR. ARCHER: It's been on a couple.

11 THE COURT: And I deliberately skipped over
12 him, I can tell you that. Because he was next in
13 line and I skipped over him and went to other cases.

14 MR. ARCHER: I think it's only been in front
15 of Your Honor once. It did come up once in front of
16 Judge Roger Young.

17 THE COURT: How many rosters has this case
18 been on?

19 MR. STACK: At the minimum this is the third,
20 Your Honor.

21 THE COURT: Counting when the bench warrant
22 was issued, or not counting when the bench warrant
23 was issued?

24 MR. STACK: Counting that first week when the
25 bench warrant was issued.

1 THE COURT: I know I deliberately skipped over
2 it on the roster.

3 MR. STACK: Well, then it would be before,
4 Your Honor.

5 THE COURT: Well, no, I mean, it must have
6 been that roster that came up after I issued the
7 bench warrant. Because I know I skipped over it and
8 went to another case to give them time to try to pick
9 him up on the bench warrant.

10 MR. ARCHER: I only remember it being up the
11 week that you were on the bench. He was going to
12 plead, and he didn't show up and then --

13 THE COURT: I think -- what weeks was it on
14 there? Because I will pull my rosters and I can tell
15 you exactly when it was.

16 MR. STACK: It's definitely on the week of
17 28th of February, and on the week of 25th of April,
18 and on this week, 9th of May.

19 THE COURT: What's the State's position on the
20 motion for continuance?

21 MR. STACK: We respectfully oppose and ask to
22 go to trial. As you already mentioned this case is
23 from October 2008.

24 And basically we have witnesses either moving
25 away or we are losing contact. There is a witness

1 from February who was the person that followed the
2 getaway car and called in partial tag. And there are
3 two witnesses that recognized him outside the store,
4 one of them has since become homeless, might be going
5 to rehab in Kentucky, we are unable to get in contact
6 with him.

7 We still have enough witnesses to presented
8 the case. It appears the defendant's absence is
9 willful because he was in contact with defense
10 counsel during the week of the first trial.

11 And we ask -- we think he should not benefit
12 from acting in bad faith, Your Honor.

13 THE COURT: Your client was in fact in contact
14 with you during the week -- he was in contact with
15 you, correct, and he was aware his case was up for
16 trial the week the bench warrant was issued?

17 MR. ARCHER: Judge, I'm trying to remember.

18 THE COURT: I remember you telling me you had
19 spoken with him and you were waiting for him to
20 appear. And then we waited most of the day and then
21 he didn't show up.

22 MR. ARCHER: Yes, ma'am.

23 THE COURT: My recollection was accurate. The
24 bond in this matter was originally set on October
25 17th, 2008. At that time there was no attorney of

1 record.

2 However, there was an acknowledgment by the
3 defendant: I understand that if I violate any
4 condition of this order, a warrant for my arrest will
5 be issued. I understand and have been informed that
6 I have a right and obligation to be present at trial.
7 And should I fail to attend the court, the trial will
8 proceed in my absence.

9 It has been explained to me that if I fail to
10 appear before the Court as required, a warrant for my
11 arrest will be issued. And he signed that on October
12 17, 2008.

13 And I will make that a copy of the record. I
14 will make his whole bond document part of the record,
15 a copy of that, because the original will remain in
16 his file.

17 Now, my other question becomes, at what
18 address was notice sent to the defendant of the
19 original trial?

20 MR. STACK: Notice was sent to 308 Royal Palm
21 Boulevard in Charleston, South Carolina. Which was
22 the address on the back of the arrest warrant. And
23 also Detective Nick Wagner used that, because that
24 was the address on his driver's license.

25 THE COURT: I assume that's his mother's

1 address?

2 MR. STACK: That is correct, Your Honor. That
3 was his mother's address. Now, she would indicate he
4 was not actually living at that address.

5 THE COURT: Well, why did he provide that
6 address then? It's incumbent on him to provide the
7 address. And it's incumbent on him to change the
8 address.

9 You're only required to send it to the last
10 known address. You're not required to hunt people
11 down.

12 MR. STACK: If I can just make one point.

13 THE COURT: What address did he provide to the
14 bondsman?

15 MR. STACK: I don't know that, Your Honor.
16 But there is another address in play here. When he
17 was interviewed by Detective Wagner, he listed 110
18 Royal Palm Boulevard, Apartment 202.

19 However, Detective Wagner -- and they
20 conducted a search warrant there -- Detective Wagner
21 went to the leasing agent and he is not on that
22 lease. Notice was sent to 308.

23 And he didn't respond to that notice in
24 December when it was first placed on a plea docket and
25 he had no attorney. Mr. Archer began to represent

1 him and we continued into the new year.

2 MR. STACK: What address did you have for him,
3 Mr. Archer?

4 MR. ARCHER: Well, I used to contact him by
5 telephone.

6 THE COURT: I would imagine that at intake you
7 took an address for your client, that's routine.

8 MR. ARCHER: Your Honor, this file has been
9 reconstituted.

10 THE COURT: Ma'am, does your son have a cell
11 phone?

12 MS. GREEN: Ma'am, he has not used that cell
13 phone since February of this year.

14 THE COURT: You said you've attempted to
15 contact to him?

16 MS. GREEN: I have attempted to contact him.
17 I have --

18 THE COURT: Do you keep getting the voicemail,
19 or does it show that it's been disconnected?

20 MS. GREEN: The cell phone is in my name, but
21 he is not using it at all. It shows inactive use on
22 February --

23 THE COURT: Oh, you had a phone on your
24 account for him?

25 MS. GREEN: I have a phone on my account for

1 him. He has not used it.

2 THE COURT: And it has not had any usage?

3 MS. GREEN: It has not had any usage. It's
4 the one phone that he did have in his own name has
5 not had any usage at all.

6 I have tried to contact the family members in
7 state and out of state to see where he could possibly
8 be. I posted it on Facebook if anybody had seen him,
9 his family members, to please contact me. No one has
10 seen him.

11 THE COURT: Do you have relatives out of
12 state?

13 MS. GREEN: Yes, ma'am.

14 THE COURT: What state do you have relatives?

15 MS. GREEN: North Carolina, Georgia, New York,
16 Virginia.

17 THE COURT: And none of them have seen him?

18 MS. GREEN: None of them have seen him.

19 THE COURT: Do you have a copy of the notice
20 that you sent to him, Mr. Stack, advising him of the
21 first trial date.

22 MR. STACK: Yes, Your Honor.

23 THE COURT: Is that your original? I mean, is
24 that your only copy?

25 MR. STACK: I can get a copy for you.

1 THE COURT: I can have my clerk make one. I
2 wanted to make sure that that wasn't your only copy.

3 MR. ARCHER: I believe they were returned.

4 MR. STACK: Yes, ma'am.

5 THE COURT: I'm sorry.

6 Ma'am, what is your address?

7 MS. GREEN: My address [REDACTED]

8 THE COURT: Okay.

9 MS. GREEN: If I may speak.

10 THE COURT: Sure.

11 MS. GREEN: When they picked Dashaud up, he
12 was living at the 110, that's where they arrested him
13 at when they arrested him on the date in October.
14 The officer, when he got to 308 was the -- 308 was
15 the location of the vehicle that they had intended
16 that they said it may have been used in the
17 commission of the crime.

18 The vehicle was listed in my name. That's why
19 the address was 308 Royal Palm Boulevard. We moved
20 out of that place in November of 2008. I then put in
21 a forwarding address to my post office box for
22 everybody that lived in the house with me.

23 Dashaud was not on my lease, but I had things
24 coming in my maiden name, which is Luck, that
25 everything went to my post office box, nothing has

1 come to my post office box for him.

2 THE COURT. I'm sorry, ma'am, repeat that. I
3 apologize, my clerk was telling me something.

4 MS. GREEN: That's okay. You want me to start
5 from the beginning or --.

6 THE COURT: No, ma'am, just the last two
7 sentences. I heard everything but that.

8 MS. GREEN: I left a forwarding address when
9 we moved from Royal Palm Boulevard in November of
10 2008 to go straight to my post office box.

11 THE COURT: Okay. You left that with the post
12 office?

13 MS. GREEN: Yes, ma'am. Dashaud was not
14 listed on my lease, but some of his mail came to me.
15 You know, he was a minor at the time so these things
16 still came to me. He just turned 18.

17 But nothing has come to me regarding any court
18 dates or anything like that, anything that I have
19 heard that someone has said because his attorney has
20 called me and said something has come up.

21 And since his driver's license has been kept
22 accurate, and every changed address he changed his
23 driver's license. So that address is on file with
24 DMV. So if they need to locate him, he has got his
25 address as [REDACTED] on his driver's license.

1 THE COURT: It looks like I had Mr. Luck on
2 the roster on March 3rd which was the week that I
3 issued the bench warrant. And that I had him again
4 on April 4th roster, trial roster.

5 And I've made a notation that the been warrant
6 was issued about a month ago, that the State was
7 requesting a trial in his absence. And that must
8 have been the roster that I skipped over.

9 The week of April 25th I was Moncks Corner, so
10 it would not have been on that roster for me. So
11 apparently he was on my April 4th roster.

12 MR. STACK: Yes, Your Honor, he was on 25th of
13 April in front of Judge Young. I was unclear on that
14 one.

15 THE COURT: So it's actually been -- this
16 would be the fifth roster that he has been on. And
17 actually that was incorrect, it wouldn't be the fifth.
18 It would be the fourth. Because he was before me --
19 I don't know, was he on the roster on the 28th? It
20 wouldn't have been before me.

21 MR. STACK: I'm --

22 THE COURT: The 28th runs into the week of
23 March 3rd.

24 MR. STACK: 28th of February was Monday, March
25 3rd was the Friday.

1 THE COURT: So then that is correct. It would
2 be the week of February 28h. I issued the bench
3 warrant on March 3rd. He was on the roster before me
4 on April 4th. And then with Judge Young on April
5 25th. And now May 9th. This will be the fourth
6 roster that he appears on.

7 I'm going to do some quick research. But it
8 is my understanding that notice is effective when
9 dispatched. It is not incumbent on the State to find
10 a defendant.

11 A defendant is required to update his address.
12 And to make the State aware of any address changes.
13 Absent that, they're only required to sent notice to
14 his last known address, which would have been the 308
15 Royal Palm Boulevard.

16 In addition to that, notice was sent to his
17 counsel of record. And I believe there is some case
18 law that says that that notice is effective when it
19 is given to his counsel.

20 If you all give me just a moment.

21 MR. ARCHER: Your Honor, if we are going to
22 call the case, I have hearing this afternoon in
23 family court. I ask if you can please --

24 THE COURT: What kind of hearing is it?

25 MR. ARCHER: It's an abuse and neglect, first

1 call on the merits.

2 THE COURT: What time is it set for?

3 MR. ARCHER: 3:30.

4 THE COURT: Are you first up on the roster, or
5 do you know where you fall?

6 MR. ARCHER: I have no idea.

7 THE COURT: We may work it in so that you are
8 able to do that.

9 MS. SHEALY: Judge, may I address that issue.

10 THE COURT: Yes, ma'am.

11 MS. SHEALY: Elizabeth and Cassie have a trial
12 that is also a 2009 case. And Ms. Winslow had
13 difficulty with her witnesses getting here late in
14 the week.

15 So what we were contemplating is putting
16 Elizabeth's trial first. And then --

17 THE COURT: Ahead of -- ahead of the TIA?

18 MS. SHEALY: Yes. And then do the TIA
19 immediately afterwards. And that would also address
20 Mr. Archer's problem this afternoon.

21 THE COURT: And, Mr. Archer, you can then put
22 on a full-court press and try to find your client.

23 MR. ARCHER: Yes, ma'am.

24 THE COURT: But let me look up something right
25 quick. Bear with me.

1 (Whereupon, a recess was taken.)

2 THE COURT: The motion for continuance is
3 denied. The Court finds for the record that Mr. Luck
4 received notice of the right to be present at trial;
5 he was warned that the trial would proceed in his
6 absence. And I have made a copy of that written
7 acknowledgment a part of the record as a Court's
8 exhibit.

9 What we will do, however, is consistent with
10 the State's request we will select the third case for
11 trial, which is State versus Clarence Washington
12 which is CSC with a minor. Is that correct, Ms.
13 Shealy?

14 MS. SHEALY: Yes, Your Honor.

15 THE COURT: And then after that we will
16 proceed with Mr. Luck's case. But I'm going to try
17 to pick both of those juries this morning if I have
18 sufficient time and number of jurors so that we don't
19 incur the expense of bringing them back twice.

20 We will see if we have enough. We will have
21 to reconstitute the jury and then re-pick them with
22 the new system that we are using.

23 So we are going to go ahead and pick State
24 versus Clarence Washington.

25 And then, did you all work something out, Mr.

1 Butler?

2 MR. BUTLER: We did not, but given the
3 schedule I think it's moot now.

4 THE COURT: Okay. You all need to work it out
5 because he is still sitting there and he's not
6 getting credit for his federal time.

7 MR. BUTLER: We are going to continue to work
8 on it. Thank you, Judge.

9 THE COURT: All right, guys.

10 (Whereupon, the matter of State versus Dashaud
11 Luck was adjourned while a jury panel was selected in
12 the case of State versus Clarence Washington.)

13 THE COURT: Mr. Stack and Mr. Archer, we are
14 going to probably -- tomorrow is a state holiday and
15 we decided instead of having the jurors come back
16 after lunch and then us being able to begin this
17 trial, that we will probably in all likelihood just
18 pick your jury on Wednesday morning.

19 And we will be in touch. We will let you know
20 what time you need to be here. Because I have a
21 reconsideration that morning and three -- two or
22 three guilty pleas, I can't remember.

23 MR. STACK: Yes, Your Honor.

24 THE COURT: So we would probably do it after
25 that and then delay when this case restarts. But we

1 will be in touch. We'll let you know.

2 MR. STACK: Thank you, Your Honor.

3 THE COURT: Thank you all so much for your
4 patience.

5 (Whereupon, the proceedings in the matter of
6 State versus Dashaud Luck were adjourned for the
7 evening.)

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1 (Whereupon, the jurors enter the courtroom.)

2 THE COURT: Good morning, ladies and
3 gentlemen. We are going to select a jury for the
4 State of South Carolina versus Dashaud Samuel Luck.
5 Indictment 2009-GS-10-3022, that's an indictment for
6 armed robbery.

7 We are going to go through a process that is
8 called voir dire, which again is just a fancy way of
9 saying that the Court is going to ask some questions
10 so that the attorneys can more effectively exercise
11 their preemptory challenges in jury selection.

12 If a question applies, please stand and in a
13 loud and clear voice give us your name and your juror
14 number, and remain standing until the Court has
15 completed questioning you.

16 Again we are going to try the cases of the
17 State versus Dashaud Samuel Luck. And those
18 indictments allege as follows: That being indictment
19 2009-GS-10-3022, an indictment for armed robbery.

20 And that indictment alleges that on or about
21 October 6th of 2008 in Charleston County, South
22 Carolina, the defendant, Dashaud Samuel Luck, at the
23 Pantry/Kangaroo gas station, located at 2572 Ashley
24 River Road, by use of force, threats or intimidation,
25 and while armed with a deadly weapon, or while

1 alleging either by action or words he was armed while
2 using a representation of a deadly weapon or other
3 object with which a person present during the
4 commission of the robbery reasonably believed to be a
5 deadly weapon, did take and carry away goods and/or
6 monies from the person or immediate presence of
7 employees, and/or patrons of the Pantry/Kangaroo gas
8 station with the intent to permanently deprive the
9 victim of possession thereof.

10 Alleging a violation of code section 16-11-330
11 of the code of laws as amended.

12 And indictment 2009-GS-10-3023, which is an
13 indictment for possession of a firearm during the
14 commission of a violent crime. And that indictment
15 alleges that in Charleston County, South Carolina on
16 or about October 6th, 2008, the defendant Dashaud
17 Samuel Luck did possess a handgun, or visibly display
18 what appeared to be a handgun during the commission
19 or attempted commission of armed robbery, a violent
20 crime. Alleging a violation of code section
21 16-23-490 of the code of laws as amended.

22 If counsel for the State would stand and
23 introduce himself, anyone who will be assisting him
24 in the trial of this case, as well publishing the
25 names of his office.

1 And, Mr. Archer, if you would provide us with
2 the same information.

3 You may proceed, Mr. Stack.

4 MR. STACK: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 MR. STACK: Ladies and gentlemen, my name
7 James Stack. And I'm an assistant solicitor here in
8 Charleston County. I will present the case of State
9 versus Dashaud Luck. And a man who is not here at
10 the moment, but will be here, is assistant solicitor,
11 Adam Young.

12 In addition to myself and Mr. Young the
13 attorneys assigned to the solicitor's office are
14 Scarlet Wilson, Bruce Durant, Mary Askins, Jessica
15 Baldwin, Spencer Compton, Julie Cardillo, Natasha
16 Chisolm, Rutledge Durant, Shannon Elliot, Timothy
17 Finch, Elizabeth Gordon, Meg Haley, Amy Harrell,
18 Debbie Herring-Lash, Culver Kidd, Jennifer Kinsler,
19 Stephanie Linder, Lindsay McKane, Michael Nelson,
20 Michael Sohn, Jennifer Shealy, Chad Simpson, Greg
21 Voigt, Burns Wetmore, Tyler Whitaker.

22 Those are the attorneys assigned to the
23 office. Thank you.

24 MR. ARCHER: Ladies and gentlemen, I am Mark
25 Archer. I'm the attorney for Dashaud Luck and it's

1 just me.

2 THE COURT: Is there any member of the panel
3 related by blood or marriage to Dashaud Samuel Luck
4 or anyone who is employed with, has any managerial
5 responsibility, or any ownership interest in the
6 Pantry/Kangaroo gas station located at 2572 Ashley
7 River Road, if so please stand at this time.

8 Does any member of the panel have a close
9 personal, social or business relationship with
10 Dashaud Samuel Luck, or anyone who's employed with,
11 is in any managerial position or has any ownership
12 interest in the Pantry/Kangaroo gas station located
13 at 2572 Ashley River Road, if so please stand at this
14 time.

15 Yes, sir.

16 PROSPECTIVE JUROR: I went to high school with
17 the gentleman that owns the one on Rivers Avenue.

18 Oh, I'm sorry. 264, Nick Palassis.

19 THE COURT: You know, Mr. Palassis, I have no
20 -- I would imagine they're all individually owned.

21 PROSPECTIVE JUROR: He owns a few. I'm not
22 sure if he owns that one.

23 THE COURT: Better to be on the safe side.

24 PROSPECTIVE JUROR: Right.

25 THE COURT: You are number 264?

1 PROSPECTIVE JUROR: Yes, ma'am.

2 THE COURT: As a result of this experience, do
3 you feel that you can remain fair and impartial, and
4 render a fair and impartial decision based solely on
5 the evidence as it will be presented, and on the law
6 as the Court will instruct?

7 PROSPECTIVE JUROR: Yes, ma'am.

8 THE COURT: Thank you, sir. You may take your
9 seat.

10 The following are a list of potential
11 witnesses in this case. I would ask that you listen
12 very carefully.

13 Deputy Richard B. Craver. Detective Nick
14 Wagner. Detective Kip Cooke. Patrolman Kathy
15 Kjellman. Patrolman Brent Roy. Patrolman James
16 Milz. Levina D. Williams. Weston D. Richardson.
17 Talon L. Willimason. John Andy Anderson. Larry
18 Reynolds. James W. Youker.

19 Is there any member of the panel related by
20 blood or marriage to any of the people that I have
21 just listed, or does anyone have a close personal,
22 social or business relationship with any of these
23 individuals, if so please stand at this time.

24 Has any member of the panel ever been
25 represented by any of the attorneys in this case, or

1 anyone with whom they practice law, if so please
2 stand at this time.

3 Is there any member of the panel related by
4 blood or marriage to, or have a close personal,
5 social or business relationship with any of the
6 attorneys involved or anyone with whom they practice
7 law, if so please stand at this time.

8 Yes, sir.

9 PROSPECTIVE JUROR: I'm 37, Steve Breland, I
10 grew up with Michael Nelson and went to school with
11 him.

12 THE COURT: If you would remain standing.

13 Yes, sir.

14 PROSPECTIVE JUROR: Number 20, Robert Basha.
15 Amy Harrell is a family friend.

16 THE COURT: As a result of these experiences,
17 do you both feel that you can be fair and impartial,
18 and render a fair and impartial decision in this case
19 based solely on the evidence as it will be presented,
20 and on the law as the Court will instruct?

21 If your answer is yes, please take your seats.

22 Let the record reflect that both answered yes.

23 Has any member of the panel formed or
24 expressed an opinion about any issue or matter
25 involved in this case, if so please stand.

1 Is there any member of the panel aware of any
2 bias or prejudice toward either the state or the
3 defense in this case, if so please stand at this
4 time.

5 Is there any member of the panel who's a
6 member grand jury which issued the indictments in
7 this case, if so please stand.

8 Is there any member of the panel who is a
9 member of, or contributor to any group which has as
10 its primary concern the promotion of law enforcement
11 or victim's rights. These groups would include, but
12 are not limited to, Mothers Against Drunk Driving,
13 Students Against Drunk Driving, Citizens Against
14 Violent Crime, People Against Rape, Citizens
15 Advocating a Return to Decency and Ethics, and
16 Parents Empowered to Save Teens, or any other type
17 community watch group, if so please stand at this
18 time.

19 Is there any member of the panel who has read,
20 watched or listened to any media accounts about this
21 case, that includes anything that could have been on
22 the radio, in the newspaper or television or
23 Internet, if so please stand at this time.

24 Is there any member of the panel who lives in
25 the vicinity of Ashley River Road or Parsonage Road,

1 if so please stand at this time.

2 Please tell me your name and your juror
3 number.

4 PROSPECTIVE JUROR: Antwon Nelson, 255.

5 THE COURT: Yes, sir.

6 PROSPECTIVE JUROR: Jeff Cohen, 66.

7 THE COURT: As a result of these experiences,
8 do you both feel that you can remain fair and
9 impartial, and render a fair and impartial decision
10 in this case based solely on the evidence as it will
11 be presented and on the law as the court will
12 instruct?

13 If your answer is yes, please take your seat.

14 Let the record reflect that both answered yes.

15 Is there any member of the panel who has any
16 family members who are employed in law enforcement,
17 if so please stand at this time.

18 If you will tell me your name, your juror
19 number and what family member it is and what agency.

20 PROSPECTIVE JUROR: William Tillman, 342. I
21 have an uncle that just retired from the City of
22 Charleston Police Department, and a cousin who is
23 also with the City of Charleston.

24 THE COURT: Yes, sir.

25 PROSPECTIVE JUROR: 264, Nick Palassis. My

1 stepfather is retired from SLED. And my first
2 cousin, and forgive me I don't know the name of the
3 town, is a sheriff in a small town in South Carolina.

4 THE COURT: As a result of these experiences
5 do you both feel that you can remain fair and
6 impartial, and render a fair and impartial decision
7 in this case based solely on the evidence as it will
8 be presented and on the law as the Court will
9 instruct?

10 If your answer is yes, please take your seat.

11 Let the record reflect that both answered yes.

12 Does any member of the panel know of any
13 reason whatsoever why he or she should not serve as a
14 juror in this case, with particular emphasis being
15 placed on your ability to be fair and impartial to
16 both the state and the defense, if so please stand at
17 this time?

18 Are there any additional questions from the
19 State?

20 MR. STACK: No, Your Honor.

21 THE COURT: Are there any additional questions
22 from the defense?

23 MR. ARCHER: No, Your Honor.

24 THE COURT: Could counsel approach for me,
25 please.

1 (Whereupon, the following discussion was held
2 at the bench.)

3 THE COURT: The first time your client was up
4 for trial was a term on February 28th. You advised
5 him that he was up for trial.

6 MR. ARCHER: Yes.

7 THE COURT: And he just didn't appear,
8 correct? And you had a conversation with him about
9 it.

10 MR. ARCHER: Wait a minute, Judge, I'm trying
11 to remember. Did he not show the first time? Did we
12 not get reached?

13 MR. STACK: He did not show the week of
14 February 28th.

15 THE COURT: I seem to recall you telling me
16 that you had notified him and you were waiting on him
17 and he didn't show up. I need to know if my
18 recollection is accurate. If not I can have the
19 court reporter look.

20 MR. ARCHER: You better pull the transcript.
21 To be honest, I don't remember. I thought we were
22 going to trial once and you told me it was off.

23 There was a question whether it would be back
24 on the very next week.

25 THE COURT: I wouldn't have issued a bench

1 warrant under those circumstances.

2 You don't have in your file whether you
3 notified your client of the trial date?

4 MR. ARCHER: No, I don't.

5 THE COURT: You are telling me you were
6 notified and you did not give him notice, or you did
7 give him notice?

8 MR. ARCHER: I seem to remember that we
9 continued it one time.

10 MR. STACK: In December he was on the plea
11 docket and did not have an attorney because he hired
12 you. We continued to the next year to this year.
13 During the week he was on the trial docket, you
14 called me up and told me he won't testify against
15 other codefendants.

16 He was on the week of the 28th. The week
17 prior we were talking about will he testify, can he
18 have an offer, something like that. The second,
19 again he won't testify against anybody.

20 During the week of the 28th, I think you told
21 me you were in cell phone contact with him, you had
22 spoken with him face to face during that week.

23 THE COURT: Isn't that the you had
24 conversation with him?

25 MR. ARCHER: I guess so, Your Honor. I'm not

1 trying to be --

2 THE COURT: I would just be hard-pressed to
3 have a lawyer that didn't tell his client he was up
4 for trial, show up waiting for him if you hadn't told
5 him to be here.

6 MR. ARCHER: Judge, I know we were talking
7 with him intensely before one of the appearances. We
8 were discussing possible plea deals.

9 MR. STACK: That's the week of the 28th.

10 MR. ARCHER: That's the week of the 28th.

11 THE COURT: Subsequently, I would imagine you
12 would not have been able to because he disappeared.

13 MR. ARCHER: Right. But I have been in
14 contact with his family trying to locate him.

15 THE COURT: Since then?

16 MR. ARCHER: Since then. Yes, ma'am.

17 THE COURT: You did notify him his case was up
18 for trial the week of the 28th when you appeared?

19 MR. ARCHER: A bench warrant --

20 THE COURT: March 3rd, the same week. We gave
21 you until the end of that week basically.

22 MR. ARCHER: Okay.

23 (In open court.)

24 THE COURT: Strikes are 10/5.

25 Who's going to demonstrate for me?

1 Ladies and gentlemen, if you would play close
2 attention to Mr. Brown. If your name is called,
3 please come forward, just as he is. And stand just
4 as he is standing facing back toward the panel until
5 we either seat you or excuse you as a juror.

6 We appreciate your patience.

7 Mr. Clerk, you may proceed when you're ready.

8 THE CLERK: Yes, Your Honor.

9 Juror number 157, Lisa Horner.

10 (Whereupon, a white female approaches.)

11 THE CLERK: What say you for the State?

12 MR. STACK: Please seat this juror.

13 THE CLERK: What say you for the defendant?

14 MR. ARCHER: Please seat this juror.

15 THE CLERK: Ms. Horner, please have a seat in
16 the jury box. You have been selected as a juror in
17 this case.

18 Juror number 364, Roger Weidman.

19 (Whereupon, a white male approaches.)

20 THE CLERK: What say you for the State?

21 MR. STACK: Please excuse the juror.

22 THE CLERK: Mr. Weidman, please have a seat
23 back in the audience. You have been excused from the
24 trial of this case.

25 Juror number 131, Corry Glaholt.

1 (Whereupon, a white male approaches.)

2 THE CLERK: What say you for the State?

3 MR. STACK: Please seat this juror.

4 THE CLERK: What say you for the defendant.

5 MR. ARCHER: Please seat this juror.

6 THE CLERK: Mr. Glaholt, please have a seat in
7 the jury box. You have been selected as a juror in
8 this case.

9 Juror number 354, Paula Walmet.

10 (Whereupon, a white female approaches.)

11 THE CLERK: What say you for the State?

12 MR. STACK: Please seat this juror.

13 THE CLERK: What say you for the defendant?

14 MR. ARCHER: Please excuse the juror.

15 THE CLERK: Ms. Walmet, please have a seat
16 back in the audience. You have been excused from the
17 trial of this case.

18 Juror number 200, Michael Litchfield.

19 (Whereupon, a white male approaches.)

20 THE CLERK: What say you for the State?

21 MR. STACK: Please seat this juror.

22 THE CLERK: What say you for the defendant.

23 MR. ARCHER: Please seat this juror.

24 THE CLERK: Mr. Litchfield, please have a seat
25 in the jury box. You have been selected as a juror

1 in this case.

2 Juror number 163, Catherine Hutson.

3 (Whereupon, a white female approaches.)

4 THE CLERK: What say you for the State?

5 MR. STACK: Please seat this juror.

6 THE CLERK: What say you for the defendant.

7 MR. ARCHER: Please excuse the juror.

8 THE CLERK: Ms. Hutson, please have a seat
9 back in the audience. You have been excused from the
10 trial of this case.

11 Juror number 133, Karen Grant.

12 (Whereupon, a black female approaches.)

13 THE CLERK: What say you for the State?

14 MR. STACK: Please seat this juror.

15 THE CLERK: What say you for the defendant?

16 MR. ARCHER: Please seat this juror.

17 THE CLERK: Ms. Grant, please have a seat in
18 the jury box. You have been selected as a juror in
19 this case.

20 Juror Number 12, Sarah Atkins.

21 (Whereupon, a white female approaches.)

22 THE CLERK: What say you for the State?

23 MR. STACK: Please seat this juror.

24 THE CLERK: What say you for the defendant?

25 MR. ARCHER: Please excuse the juror.

1 THE CLERK: Ms. Atkins, please have a seat
2 back in the audience. You have been excused from the
3 trial in this case.

4 Juror 164, Martin Hyatt.

5 (Whereupon, a white male approaches.)

6 THE CLERK: What say you for the State?

7 MR. STACK: Please excuse the juror.

8 THE CLERK: Mr. Hyatt, please have a seat back
9 in the audience, you have been excused from the trial
10 in this case.

11 Juror Number 97, Blake Durham.

12 (Whereupon, a white male approaches.)

13 THE CLERK: What say you for the State?

14 MR. STACK: Please seat this juror.

15 THE CLERK: What say you for the defendant.

16 MR. ARCHER: Please excuse the juror.

17 THE CLERK: Mr. Durham, please have a seat
18 back in the audience. You have been excused from the
19 trial of this case.

20 That's four strikes for the defendant.

21 Juror Number 70, Robert Condry.

22 (Whereupon, a white male approaches.)

23 THE CLERK: What say you for the State?

24 MR. STACK: Please seat this juror.

25 THE CLERK: What say you for the defendant?

1 MR. ARCHER: Please excuse the juror.

2 THE CLERK: Mr. Condy, please have a seat back
3 in the audience. You have been excused from the
4 trial of this case.

5 Jury Number 254 Ashley Neboschick.

6 (Whereupon, a white male approaches.)

7 THE CLERK: What say you for the State?

8 MR. STACK: Please seat this juror.

9 THE CLERK: What say you for the defendant?

10 MR. ARCHER: Please seat this juror.

11 THE CLERK: Please have a seat in the jury
12 box. You have been selected as a juror in this case.

13 Juror Number 299, Alexandria Roderick.

14 (Whereupon, a white female approaches.)

15 THE CLERK: What say you for the State?

16 MR. STACK: Please seat this juror.

17 THE CLERK: What say you for the defendant?

18 MR. ARCHER: Please seat this juror.

19 THE CLERK: Please have a seat in the jury
20 box. You have been selected as a juror in this case.

21 Juror number 177, Rebecca Johnston.

22 (Whereupon, a white female approaches.)

23 THE CLERK: What say you for the State?

24 MR. STACK: Please seat this juror.

25 THE CLERK: What say you for the defendant?

1 MR. ARCHER: Please seat this juror.

2 THE CLERK: Ms Johnston, please have a seat in
3 the jury box. You have been selected as a juror in
4 this case.

5 Juror number 188, Abigail Kobrovsky.

6 (Whereupon, a white female approaches.)

7 THE CLERK: What say you for the State?

8 MR. STACK: Please seat this juror.

9 THE CLERK: What say you for the defendant?

10 MR. ARCHER: Please seat this juror.

11 THE CLERK: Please have a seat in the jury
12 box. You have been selected as a juror in this case.

13 Juror Number 66, Jeffrey Cohen.

14 (Whereupon, a white male approaches.)

15 THE CLERK: What say you for the State?

16 MR. STACK: Please seat this juror.

17 THE CLERK: What say you for the defendant?

18 MR. ARCHER: Please excuse the juror.

19 THE CLERK: Mr. Cohen, have a seat back in the
20 audience. You have been excused from the trial of
21 this case.

22 Jury 138, Michael Hagerty.

23 (Whereupon, a white male approaches.)

24 THE CLERK: What say you for the State?

25 MR. STACK: Please seat this juror.

1 THE CLERK: What say you for the defendant?

2 MR. ARCHER: Please seat this juror.

3 THE CLERK: Mr. Hagerty, have a seat in the
4 jury box. You have been selected as a juror in this
5 case.

6 Juror Number 262, John Osborne.

7 (Whereupon, a white male approaches.)

8 THE CLERK: What say you for the State?

9 MR. STACK: Please seat this juror.

10 THE CLERK: What say you for the defendant?

11 MR. ARCHER: Please excuse the juror.

12 THE CLERK: Mr. Osborne, have a seat back in
13 the audience. You have been excused from the trial
14 of this case.

15 That's seven strikes for defendant.

16 Juror number 334, Tanya Stewart.

17 (Whereupon, a white female approaches.)

18 THE CLERK: What say you for the State?

19 MR. STACK: Please seat this juror.

20 THE CLERK: What say you for the defendant?

21 MR. ARCHER: Please excuse the juror.

22 THE CLERK: Ms. Stewart, please have a seat
23 back in the audience. You have been excused from the
24 trial of this case.

25 Juror number 37, Steven Breland.

1 (Whereupon, a white male approaches.)
2 THE CLERK: What say you for the State?
3 MR. STACK: Please seat this juror.
4 THE CLERK: What say you for the defendant?
5 MR. ARCHER: Please excuse the juror.
6 THE CLERK: Mr. Breland, please have a seat
7 back in the audience. You have been excused from the
8 trial of the case.
9 That's nine strikes for the defendant.
10 Juror number 210, William Mcavoy.
11 (Whereupon, a white male approaches.)
12 THE CLERK: What say you for the State?
13 MR. STACK: Please seat this juror.
14 THE CLERK: What say you for the defendant?
15 MR. ARCHER: Please seat this juror.
16 THE CLERK: Mr. Mcavoy, please have a seat in
17 the jury box, you have been selected as a juror in
18 this case.
19 Juror number 127, Michael Gazecki.
20 (Whereupon, a white male approaches.)
21 THE CLERK: What say you for the State?
22 MR. STACK: Please seat this juror.
23 THE CLERK: What say you for the defendant?
24 MR. ARCHER: Please excuse the juror.
25 THE CLERK: Please have a seat back in the

1 audience. You have been excused from the trial of
2 this case.

3 That's ten strikes for the defendant.

4 Juror number 366, Elizabeth Welch.

5 (Whereupon, a white female approaches.)

6 THE CLERK: What say you for the State?

7 MR. STACK: Please seat this juror.

8 THE CLERK: Any challenge from the defendant?

9 MR. ARCHER: No challenge.

10 THE CLERK: Ms. Welch, please have a seat in
11 the jury box. You have been selected as a juror in
12 this case.

13 Juror number 323, Amanda Shinn.

14 (Whereupon, a white female approaches.)

15 THE CLERK: What say you for the State?

16 MR. STACK: Please seat this juror.

17 THE CLERK: Any challenge from the defendant.

18 MR. ARCHER: No challenge.

19 THE CLERK: Ms. Shinn, please have a seat in
20 the jury box. You have been selected as a juror in
21 this case.

22 Now picking one alternate. The strikes are
23 one and two.

24 Juror Number 57, Nancy Cathcart.

25 (Whereupon, a white female approaches.).

1 THE CLERK: What say you for the State?

2 MR. STACK: Please seat this juror.

3 THE CLERK: What say you for the defendant?

4 MR. ARCHER: Please excuse the juror.

5 THE CLERK: Please have a seat back in the
6 audience. You have been excused from the trial of
7 this case.

8 Juror Number 333, Robert Stepp.

9 (Whereupon, a white male approaches.)

10 THE CLERK: What say you for the State?

11 MR. STACK: Please seat this juror.

12 THE CLERK: What say you for the defendant.

13 MR. ARCHER: Please seat this juror.

14 THE CLERK: Mr. Stepp, please have a seat in
15 the jury box. You have been selected as a juror in
16 this case.

17 Your Honor, the jury has been selected and are
18 seated.

19 THE COURT: Any motions regarding the
20 selection of the jury from the State.

21 MR. STACK: No, Your Honor.

22 THE COURT: From the defense?

23 MR. ARCHER: No, Your Honor.

24 THE COURT: Ladies and gentlemen, we
25 appreciate your time and your patience. I wish I

1 could let you go for the day, but we have some other
2 civil juries that are going to be selected. So I
3 need you to go with Mr. Brown and Mr. Robinson back
4 down to the assembly room. Have a great day.

5 (Whereupon, the prospective jury panel exits
6 the courtroom.)

7 MR. ARCHER: May we approach, Your Honor?

8 THE COURT: Yes.

9 (Whereupon, the following discussion was held
10 at the bench.)

11 MR. ARCHER: I have an appointment first up
12 this week.

13 THE COURT: What time your appointment?

14 MR. ARCHER: 12:30.

15 THE COURT: I am still trying another case.

16 MR. ARCHER: I just wanted to make sure I
17 understand.

18 THE COURT: We ain't going to finish this case
19 today. We won't start your case before tomorrow.
20 It's Wednesday already.

21 MR. ARCHER: Okay.

22 (In open court.)

23 THE COURT: Ladies and gentlemen, we
24 appreciate your patience. We are trying to do some
25 scheduling about some other cases that are completely

1 unrelated for this case.

2 For you all who don't know, State court is
3 very different than other types of courts. Because
4 of the limited sources we have, we try cases one
5 right after the other. So as soon as one finishes we
6 start another and then another.

7 And so to keep that momentum going, I have to
8 consistently keep other people getting ready. So if
9 you all will bear with us, that's what I'm doing.

10 We don't take your time for granted. And
11 while you all were with the bailiffs in your jury
12 room, I have to dispose of a couple motions and a
13 couple other things. I think I'm going to let you
14 all go before that, but I need to see exactly how the
15 rest of the docket is moving so that I can let you
16 all know when I am going to need you back.

17 So if you will go with the bailiffs for me.
18 Please do not discuss the case. Please don't
19 speculate about what you think it may or could be
20 about. We should be out very briefly. We appreciate
21 your patience.

22 (Whereupon, the jurors exit the courtroom.)

23 (Whereupon, the proceedings in this matter
24 were adjourned, and other unrelated matters were
25 heard by the court.)

1 THE COURT: Mr. Stack and Mr. Archer, approach
2 for me.

3 THE COURT: Apparently we had a juror that was
4 left in inadvertently. Number 14, which was number
5 177 Ms. Johnston. When I was getting ready to excuse
6 them for lunch, she advised us that she was protected
7 Thursday, she has dental surgery.

8 So what I propose we do is seat the alternate
9 and then you all pick another alternate from -- I
10 will give two and we'll start anew with an alternate,
11 two and one strikes, and then you pick a new
12 alternate from the next three people on the list.

13 Is that acceptable to the State?

14 MR. STACK: Yes, Judge.

15 THE COURT: To the defense?

16 MR. ARCHER: Sure.

17 THE COURT: Okay. You need reconstitution
18 that original panel. Actually, I need you to bring
19 up the last five people on this strike sheet.

20 Start with Albright, Ford, Hutchins, Simmons and
21 Basha.

22 Simmons I think would be five. No, I counted
23 wrong. Basha would be five.

24 THE CLERK: So bring up Albright through
25 Basha?

1 THE COURT: Yes. Unless you all want to do it
2 without then presenting themselves.

3 MR. ARCHER: That's fine.

4 MR. STACK: May I look at my notes?

5 THE COURT: Sure. Why don't get your notes
6 right quick and then you all can decide whether we
7 need to bring them upstairs or not.

8 Look at your notes, then we will just call
9 them.

10 We are starting with Allan Albright, number
11 27.

12 THE COURT: Mike, you can go ahead and get
13 started.

14 THE CLERK: Jury number 27, what say the
15 state?

16 MR. STACK: Beg the Court's indulgence.

17 MR. ARCHER: Is this Carol Bishop?

18 THE COURT: No. Allan S. Albright.

19 MR. ARCHER: What's the number

20 THE COURT: Number 3.

21 THE CLERK: 27.

22 THE COURT: We are using the strike sheet
23 numbers.

24 THE CLERK: Jury number three.

25 MR. ARCHER: Okay. No objection, seat the

1 juror.

2 THE COURT: Well State goes first.

3 MR. STACK: I'm sorry. Your Honor, we would
4 ask that you please excuse that witness -- or that
5 juror.

6 THE CLERK: Okay. As to juror, 111 Delores
7 Ford, what say you for the State?

8 I mean any challenge from the State, I'm
9 sorry.

10 MR. STACK: No.

11 THE CLERK: What say you for the defendant?

12 MR. ARCHER: Please seat this juror.

13 THE CLERK: So the new alternate will be juror
14 number 111, Delores Ford.

15 Okay. Now, you need to go get Ms. Ford, 111.
16 Tell Don he can excuse the rest of them.

17 I still have two more guilty pleas to do. I
18 think 2:30 is a better time. I don't want them
19 sitting if it takes longer than I anticipate.

20 MR. ARCHER: I'd rather do 2:30.

21 THE COURT: Let's do 2:30.

22 (Whereupon, a recess was taken in this matter
23 and proceedings in unrelated matters were heard.)

24 (Whereupon, the jurors enter the courtroom.)

25 THE COURT: Ladies and gentlemen, we

1 appreciate your time and your patience. We had to --
2 we had a little administrative snafu on our part.
3 Ms. Johnston should never have been included in the
4 panel because she's protected for tomorrow.

5 And so we had to basically reconstitute a
6 portion of your jury that not selected and select
7 another juror from that pool and seat your alternate.
8 So that's what took so long.

9 So please know that we don't take your time
10 for granted. But procedurally we had to do it that
11 way. Otherwise, it just would have been a mess. I
12 don't know what really -- a fancy way to put that.

13 And we are excusing -- Ms. Johnston, you will
14 excused and protected for tomorrow for your dental
15 surgery. We will seat the alternate as part of the
16 panel, and that is Mr. Stepp. And then our new
17 alternate is Ms. Ford, okay?

18 We will resume at 2:30. During this break
19 please do not discuss the case. Please do not
20 speculate about what you think it may or could be
21 about. Please don't do any independent research of
22 any type on the Internet or otherwise.

23 Please don't have any contact with anyone in
24 or about the courthouse. Even an innocent
25 conversation could be very easily misinterpreted,

1 because people look very different outside the
2 courtroom than in the courtroom.

3 So I appreciate you all abiding by those
4 instructions. You will return directly to your jury
5 room, and the bailiffs will show you how to do that.
6 And we will see you at 2:30. I'll give you a little
7 longer lunch to make up for the fact -- I hope you
8 all were in a room with windows.

9 I apologize. You all have a good lunch. We
10 will see you at 2:30.

11 (Whereupon, the jurors exit the courtroom.)

12 (Whereupon, a recess was had in State versus
13 Dashaud Luck, and other unrelated matters were
14 heard.)

15 (Whereupon, State's Exhibit Nos. 1 through 31
16 were marked for identification.)

17 MR. ARCHER: Your Honor, this is not anything
18 critical, but I'm on my own here. I was wondering if
19 it would be permissible if I had the defendant's
20 mother come sit at the table with me.

21 THE COURT: I would imagine the State would
22 have no exception to that.

23 MR. ARCHER: I'm not going to call her as a
24 witness.

25 MR. STACK: Well, I have never had that

1 request before.

2 THE COURT: I can't see any prejudice. I
3 mean, if she wants to help him try the case. Because
4 I'm going to have to instruct the jury anyway that
5 him not being here cannot be construed as any
6 admission against him, or any inference of guilt.

7 MR. ARCHER: Well, you know, Judge, Fritz
8 Hollings used to tell a story on himself about trying
9 a case. It was just him and his client.

10 And the other lawyers were two or three
11 lawyers there. And he said he noticed during the
12 trial as he would come back to his table that his
13 client was looking more and more concerned.

14 And finally he asked him, what's wrong? And
15 he said, Mr. Hollings, when one of those lawyers is
16 up asking questions, one of them is back at the table
17 thinking. When you're up asking questions, there
18 ain't nobody thinking. So maybe I just -- sometimes
19 it's nice just to have somebody here to jot you a
20 note about something like this.

21 THE COURT: You know, I don't really have a
22 problem. Or she can sit right behind you in one of
23 those chairs. But I have no problems with her
24 assisting you.

25 State take any exception with her assisting

1 him?

2 MR. STACK: She is not going to be a witness
3 is my understanding.

4 MR. ARCHER: She is not going to be a witness.

5 MR. STACK: Then sitting behind him is fine,
6 Your Honor.

7 THE COURT: And so the record is clear, and I
8 believe I have already made these findings, that out
9 of an abundance of caution I'm going to -- better to
10 have done is twice than to have overlooked it.

11 So that the record is clear, the Court has
12 found that the defendant received notice of the right
13 to be present. We have marked his bond forms as
14 court's exhibit, which indicate that he signed and
15 acknowledged his right to be present at trial. And
16 that as a condition of his bond was to be present at
17 trial. And that if he failed to appear that he would
18 be tried in his absence.

19 And he acknowledged that and acknowledged that
20 he understood that right. And that he was warned
21 that the trial would proceed in his absences. And
22 again, that bonding form is marked as an exhibit for
23 that purpose.

24 The record reflects, and at least it's my
25 recollection that the case was originally called for

1 trial during the week of February 28th, at which time
2 Mr. Archer appeared and indicated that he had advised
3 his client of the trial and that he was not present
4 at that time.

5 The State requested a bench warrant, but out
6 of an abundance of caution -- and actually, I believe
7 Mr. Stack also asked for this or said he would give
8 this latitude. We waited until almost the end of the
9 week. We waited until Thursday before issuing the
10 bench warrant to give Mr. Archer additional time to
11 locate his client. And he was unable to.

12 So the Court issued a bench warrant.
13 Subsequently, the cases have placed on a docket for
14 April 25th as well as May 9th, which is this week.

15 Actually, let me make sure I'm accurate. It
16 was on a docket the week of February 28th, the week
17 of April 4th, which was before me. And I
18 deliberately, as I have indicated, skipped over it to
19 give Mr. Archer more time to find his client. Then
20 on the week of April 25th before Judge Young. And
21 now before the Court on this week.

22 The Court made inquiry of the defendant's
23 mother. And basically my words, not hers, she says
24 he has dropped off the grid, just disappeared. And
25 she made inquiry on Facebook to try to locate him.

1 I have inquired as to the use of the cell
2 phone. She indicated that he had a cell phone on her
3 plan. And that he apparently, after his last meeting
4 with Mr. Archer, stopped using that phone as well.
5 And he just cannot be found after both Mr. Archer,
6 the bondsman, as well his mother making extensive
7 efforts to locate him.

8 As I indicated, notice was sent to him at his
9 last known address. That is all the State is really
10 required to do; although, he is required to receive
11 notice, and notice to his lawyer does not suffice
12 without him having been personally notified, the
13 record would indicate that he was personally -- that
14 his lawyer was notified of the February 28th trial
15 term, and that his lawyer in turn notified him and
16 that he was in fact aware and he simply did not
17 appear.

18 I think we can all surmise that was out of
19 fear that he -- or for whatever purposes sufficient
20 to him, he did not appear and has not made himself
21 available to his mother.

22 In addition, I believe, if my memory is
23 accurate, his mother also indicated that his birthday
24 has past and he made no efforts to contact her, as
25 well as Mother's Day and he made no efforts to

1 contact her as well.

2 So I think it's safe to assume he does not
3 want to be found. In addition to that, he is
4 required to update the court of his address. And I
5 don't think there is any indication, the address
6 where the notices were sent were to the address that
7 is on his driver's license.

8 But I guess at some point that really becomes
9 a nullity because he was in fact personally notified
10 that his case was going to trial during the week of
11 February 28th. And he was notified by Mr. Archer of
12 that fact after having been notified by the
13 Solicitor's Office and Mr. Archer appeared and he did
14 not.

15 I'm really loathe to try someone in their
16 absence. I think it's always -- although the rules
17 allow it, it's probably a last alternative. If there
18 was some indication that he could be found, I think
19 it would be different. But I don't there is any
20 indication he is going to be found.

21 It's a fairly old case. These events are
22 alleged to have occurred in 2008. And I really can
23 discern no purposes for continuing to delay the
24 proceedings going forward.

25 And again, we allowed -- there was another

1 case we took ahead of this case to again given
2 Mr. Archer and the defendant's mother an opportunity
3 to make one last glaring call to try to locate him,
4 and he has not appeared.

5 okay. We ready to proceed and bring in the
6 jury from the state?

7 MR. STACK: Yes, Your Honor.

8 MR. ARCHER: One other thing I'd like to add
9 to that record.

10 THE COURT: Sure.

11 MR. ARCHER: Which everything you said appears
12 to be correct. But the notices that were sent out by
13 the solicitor were returned to the solicitor not
14 delivered.

15 THE COURT: They were. And we said that at
16 the last hearing, they were returned. But they sent
17 them to the last known address that he had which was
18 the address that was on the driver's license.

19 And he left no forwarding address when he left
20 the address where they sent it, which indicates to me
21 he didn't want to be found either.

22 But it is incumbent on him to keep everyone
23 abreast of his address. But, as I've indicated, it
24 really becomes a nullity because you notified him
25 personally of the trial date during the week of

1 February 28th and he chose not to appear, being fully
2 advised on the bond form that he would be tried in
3 his absence.

4 The State has marked Nos. 1 through 31. There
5 is no objection to 2, and 3 through 9, and 15 through
6 17, 20, and 22 through 29.

7 Is that correct from the State?

8 MR. STACK: I believe that's Mr. Archer's
9 position. Yes, Your Honor.

10 THE COURT: From the defense.

11 MR. ARCHER: I believe so, Your Honor.

12 THE COURT: So there would be an objection to
13 No. 1, 10 through 14, 18 and 19 and 21. Is that
14 correct.

15 MR. ARCHER: Yes, ma'am. And some of those if
16 properly authenticated at the time, I may not object
17 to.

18 THE COURT: So No. 2, 3 through 9, 15 through
19 17, 20, and 22 through 29 will be marked and admitted
20 without objection.

21 (Whereupon, Exhibit Nos. 2, 3, 4, 5, 6, 7, 8,
22 9, 15, 16, 17, 20, 22, 23, 24, 25, 26, 27, 28 and 29
23 were admitted into evidence.).

24 THE COURT: No. 1, 10 through 14, 18, 19 and
25 21 will be marked for ID only at this time.

1 Is the State ready to proceed?

2 MR. STACK: Yes, Your Honor.

3 THE COURT: Is the defense ready to proceed?

4 MR. ARCHER: Yes, Your Honor.

5 THE COURT: Thank you. Bring in Ms. Homer
6 last, she is the foreperson. H-O-M-E-R.

7 We are going forward on both indictments,
8 correct, armed robbery and possession of a firearm
9 during the commission of a violent crime?

10 MR. STACK: Yes, Your Honor.

11 THE COURT: What happened to his codefendants,
12 or were there any codefendants?

13 MR. STACK: There are two -- there is one
14 codefendant --

15 THE COURT: You non-prossed one of them, and
16 one you them you couldn't find.

17 MR. STACK: That's correct.

18 THE COURT: Okay. Did he ever give you any
19 information about where the person is they can't
20 find? Anything that would lead to anything further?

21 MR. ARCHER: Nothing in detail, Your Honor. I
22 just sensed there was a relative.

23 THE COURT: I was trying to explore whether he
24 had given you something that might have helped him
25 out, but apparently not. Okay.

1 I'm going to make a brief reference to tried
2 in absentia in opening instruction. It will be very
3 brief. It will be with in regards to the State
4 having the burden of proof. And it's not to be
5 construed against him in any manner.

6 And then at the end I will give another
7 instruction very similar from State verse Jackson,
8 which is simply says it cannot be construed as any
9 admission of guilt.

10 MR. STACK: Yes, ma'am.

11 THE COURT: Any exception from the State?

12 MR. STACK: No, Your Honor.

13 THE COURT: From the defense?

14 MR. ARCHER: No, Your Honor.

15 THE COURT: Please bring in the jury.

16 (Whereupon, the jurors enter the courtroom.)

17 THE COURT: Ladies and gentlemen, we
18 appreciate your patience. Please know that we do not
19 take your time for granted. I needed to take the
20 grand jury report.

21 And in addition to that I went ahead and to
22 the extent we could had a lot of the exhibits
23 premarked so that we could save time. So I
24 appreciate you all indulging us while we did that.

25 You all have just picked up notebooks. You

1 will be given the opportunity to take notes during
2 the course of this trial. There is a white sticker
3 on the front of each notebook. If you would write
4 your juror number on that sticker so that you will be
5 able to identify which notepad belongs to you.

6 I will give you some additional instructions
7 about note-taking near the conclusion of this
8 instruction.

9 If you would stand for me, please, and raise
10 your right hand so that the clerk can swear you.

11 (Whereupon, the jury panel was administered
12 the oath by the clerk.)

13 THE COURT: Thank you very much.

14 Ladies and gentlemen, we are going to try the
15 cases of the State of South Carolina versus Dashaud
16 Samuel Luck. And as I have explained, they're for
17 the offenses of armed robbery and possession of a
18 firearm during the commission of a violent crime.

19 what I will now say is intended to serve as
20 introduction to the trial of this case. These
21 remarks are not a charge on the law. You will hear
22 me use the term charge and instructions
23 simultaneously or interchangeably. That is because
24 charge is a legal term of art which simply means
25 instructions.

1 So when you hear me use the word charge, it
2 simply means instructions. So those terms mean the
3 same thing.

4 But as I have instructed, these remarks are
5 not a charge on the law. I will instruct on the law
6 at the end of the case before you retire to consider
7 your verdict. This is merely an explanation of the
8 procedures that we will follow in the trial so that
9 you may better understand what is happening.

10 The defendant, as I have indicated, is charged
11 by two separate indictments with the offenses of
12 armed robbery, and possession of a firearm during the
13 commission of a violent crime, the elements of which
14 I will explain to you at the conclusion of the trial.

15 The indictments, ladies and gentlemen, are
16 simply the charges by which the case is brought into
17 court, and they are not in any sense evidence of any
18 of the allegations they contain.

19 The defendant has pled not guilty to the
20 indictments. The State, therefore, has the burden of
21 proving each of the elements of the indictments
22 beyond a reasonable doubt. And it will be your duty,
23 ladies and gentlemen, to decide whether the State has
24 met that burden or not.

25 During the course of this trial, we will be

1 doing what is called trying a defendant in his
2 absence, which means the defendant is not present.

3 Please know that that should not be construed
4 in any manner against the defendant, nor does it
5 place any burden of proof on him. The State is still
6 required to prove each and every element of the
7 offenses that he has been charged with beyond a
8 reasonable doubt.

9 And as I have indicated, ladies and gentlemen,
10 it will be your duty to decide whether the State has
11 met that burden or not.

12 Your purpose as jurors is to find and
13 determine the facts. You are the sole judges of the
14 facts in this case. If at any time I make any
15 comment regarding the facts, you must disregard it.

16 You are to determine the facts from the
17 testimony you hear, and the other evidence introduced
18 in court. It is up to you to determine the
19 inferences which you feel may be properly drawn from
20 the evidence.

21 It is especially important that you perform
22 your duty of determining the facts diligently and
23 conscientiously because ordinarily there is no way to
24 correct an erroneous determination of facts made by a
25 trial jury.

1 On the other hand, and with equal emphasis,
2 the same law that makes you the judges of the facts,
3 makes me the judge of the law. The law as given by
4 the Court is the only law you may consider. You must
5 accept and follow it, even though you may disagree
6 with me about it.

7 I cannot tell you what the facts are, and you
8 cannot disagree with the Court about what the law is
9 or what the law should be.

10 Your responsibility, ladies and gentlemen, is
11 to take the law as I instruct it, and apply it to the
12 facts as you find them from the testimony of the
13 witnesses and the other evidence that will be
14 introduced during the course of this trial.

15 After doing that, you will render your
16 verdict, a true and just verdict under the solemn
17 oath that you have taken as jurors in this case.

18 Until I advise you to begin your
19 deliberations, you must not discuss this case with
20 anyone. That includes your fellow jurors, your
21 friends, your family members, or anyone involved in
22 the case.

23 After the case is submitted to you, you must
24 discuss it only in the jury room with your fellow
25 jurors.

1 The attorneys and the parties have been
2 advised that they're not to speak with you at all.
3 So if you should see them in the hallway, in the
4 elevator, even in the parking garage or maybe even at
5 lunchtime and they don't speak with you, please don't
6 think they're being unfriendly or untoward, they are
7 simply following the Court's instructions.

8 We would not want an innocent conversation to
9 be observed by someone and misinterpreted.

10 During the trial you are not to read, listen
11 to or watch any news reports about this case. That
12 includes anything that could be in the newspaper,
13 radio, television or Internet. And you are not to do
14 any independent research of any type on the Internet
15 regarding any fact or issue in this case.

16 You must not consider anything that you may
17 have read or heard about this case outside the
18 courtroom, whether before or during the trial.

19 It is essential that you maintain an open mind
20 and do not decide any issue in this case until all of
21 the evidence has been presented, the parties have
22 made their closing arguments, and I have instructed
23 you on the law.

24 It is your solemn responsibility to determine
25 the guilt or innocence of the defendant. And your

1 verdict must be based solely on the evidence as it is
2 presented to you in this trial, and on the law as I
3 will instruct you during and at the close of this
4 trial.

5 In just a moment the solicitor will make an
6 opening statement in which he will outline for you
7 what he believes the evidence will show in this case.
8 The attorney for the defendant may also make an
9 opening statement, although he is not required to do
10 so.

11 Keep in mind, ladies and gentlemen, that what
12 the attorney say is not evidence. It is only their
13 contention as to what they believe the evidence will
14 show in this case.

15 The evidence in this case will be presented to
16 you by the testimony of sworn witnesses from the
17 witness stand, and/or by exhibits that may be
18 introduced into evidence.

19 From time to time during the trial you may
20 hear one of the attorneys say something like, Your
21 Honor, I object. Just as in sports, business or any
22 other structured activity, there are certain rules
23 that we must obey in the presentation of evidence.

24 These rules ensure that you receive the most
25 trustworthy and reliable evidence available. An

1 objection is the procedure that an attorney uses to
2 call a possible violation of these rules to my
3 attention as the Judge of this court.

4 And for this reason, you should never hold an
5 attorney's objection against them. Nor should you
6 conclude from the Court overruling or sustaining an
7 objection that I favor one side or the other.

8 Also, from time to time one of the attorneys
9 may say, Your Honor, I have a matter of law. Or they
10 may ask to approach the bench, or I may ask them to
11 approach the bench, or it might be necessary for us
12 to exclude you from the courtroom for a short while
13 while we discuss matters of law.

14 The reason we do this, ladies and gentlemen,
15 is because you are the finders of the facts. And
16 sometimes when I'm discussing matters of law with the
17 attorneys, it might be necessary for me to make some
18 comment about the facts in ruling -- in connection
19 with ruling whether maybe a statute applies, or an
20 evidentiary rule or procedural rule.

21 And for this reason, we exclude you from the
22 courtroom so that in no way will you be influenced by
23 anything that I may say or do in connection with the
24 facts of this case.

25 Also during bench conferences you'll hear this

1 noise. And it is right over your head. It is
2 designed to interfere with your hearing so that you
3 cannot hear what we're saying. And we do that
4 sometimes as well because it minimizes us having to
5 send you in and out of the courtroom. And it allows
6 us to maximize time.

7 And I explain that because one time I had a
8 juror raise his hand while we were doing a bench
9 conference and I said, yes, sir? And he said, we
10 can't hear you. And I said, you're not supposed to
11 hear us.

12 So I tell you that so that you won't think
13 that we are being -- what's the word that I'm looking
14 for -- insensitive to your presence. But we do that
15 so that -- you know, that's a long walk.

16 Actually that hallway out there, believe it or
17 not, is the equivalent probably of two city blocks.
18 It runs the length of the street basically, two
19 street actually, two and a half streets.

20 So that's a long walk for you all to take back
21 and forth. It's great for me for exercise since I
22 sit all day, but it can get a little tiresome for you
23 all to go back and forth.

24 So in order for us to minimize time -- or
25 maximize time, we sometimes will do bench conferences

1 because it's easier than sending you all in and out
2 of the courtroom.

3 So know that we do that so that you will not
4 be influenced by what the Court may say or do in
5 connection with the facts.

6 In determining what the true facts are in this
7 case, you must decide whether or not the testimony of
8 a witness or witnesses is believable.

9 It is the Court's responsibility to rule as a
10 matter of law as to whether certain testimony is
11 admissible at all or not. But once it is admitted,
12 ladies and gentlemen, as the fact finders it is up to
13 you to determine whether you believe the testimony or
14 not.

15 In deciding whether to believe a witness you
16 have the right to consider the interest of any
17 witness; the bias of any witness; the prejudice of
18 any witness; the opportunity for the witness to have
19 seen the matters and thing about which the witness
20 may testify; and the way the witness acts on the
21 witness stand, something we commonly refer to as
22 demeanor.

23 You have a right to consider anything that is
24 in the record that will help you evaluate the
25 testimony witnesses. That means, ladies and

1 gentlemen, that it is your duty to pay close
2 attention to the witnesses, to observe them, to
3 listen to them, and to pay close attention to the
4 attorneys and the Court.

5 Although I know it is very difficult
6 sometimes, especially in a room without windows,
7 please do not allow your thoughts to wander. But
8 give strict attention to the testimony so that at the
9 end of the testimony, after the arguments of the
10 attorneys, and the after the instructions on the law
11 as given by the Court, you will then be in a position
12 to determine what the true facts are and apply the
13 law to those facts and thus render a true and just
14 verdict in this case.

15 As I have instructed, you will be given the
16 opportunity to take notes. Note-taking is a
17 privilege that you may choose to exercise or choose
18 not to exercise. Please don't feel that you have to
19 take notes. Not everyone finds note-taking helpful
20 to them.

21 If you should decide to take notes, you may
22 just want to keep an outline of the main points that
23 being made so that when you retire to deliberate, you
24 can allow those notes to refresh your memory.

25 As I have told you, you all are the finders of

1 the facts. So it is essential that you observe the
2 witnesses. So please do not allow note-taking to
3 become a distraction to you.

4 And by that I mean don't try to record
5 everything that is said. It's physically impossible.
6 Each of us probably speaks at a minimum of about 200
7 words a minute. And I would imagine that you know
8 that it would be almost impossible to take it down
9 verbatim.

10 And the only reason the court reporter can do
11 it is because she is trained in a very specialized
12 form of shorthand that allows her to take down a lot
13 of words phonetically. Sometimes one word is a key
14 stroke. And so she's allowed -- it allows her to
15 take down proceedings very quickly.

16 But even with that she goes back and listens
17 to the tape to make sure she got it right. Because
18 again, the brain hears things differently sometimes
19 than how it is recorded. So please do not allow
20 note-taking to become a distraction to you.

21 You may want to use your notes to refresh your
22 memory when you retire to deliberate. Your notes and
23 your -- will have to be left in your seats during
24 recesses and evening breaks so that you will not have
25 a temptation to talk about testimony you may have

1 just heard and prematurely deliberate regarding the
2 case.

3 I will remind you, ladies and gentlemen, that
4 your notes are for your specific and your individual
5 purposes. They are not to be shared with anyone
6 else. They are only to be used to refresh your
7 memory.

8 And you should be reminded that your notes
9 should not be considered any more reliable than
10 someone else's memory.

11 It is your added duty, Madam Forelady, to
12 write out the verdict form, and to write out any
13 questions that the jury may have during
14 deliberations. But I will give you further
15 instructions regarding that at the conclusion of the
16 case.

17 Ladies and gentlemen, your foreperson is an
18 administrative function. That person fills out the
19 verdict form, and they write out any questions that
20 you may have during deliberations.

21 The selection of the foreperson is completely
22 random. I wish there was a scientific process that I
23 could point to, but there is not one. We just try to
24 make sure that a cross-section of the community is
25 represented.

1 And so that you know, your foreperson does not
2 have any greater vote or voice than you do. It's
3 simply an administrative function. And again that
4 process is random.

5 In order to preserve everyone's rights I will
6 give the parties an opportunity to take exception to
7 anything that the court has said by way of opening
8 instruction.

9 Are there any exceptions from the state?

10 MR. STACK: No, Your Honor.

11 THE COURT: From the defense?

12 MR. ARCHER: None, Your Honor.

13 THE COURT: Okay. You may proceed.

14 MR. STACK: Thank you, Your Honor.

15 THE COURT: Ladies and gentlemen, I would ask
16 that you give the attorneys your undivided attention.

17 Mr. Stack, you may proceed when you are ready.

18 MR. STACK: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 MR. STACK: Good afternoon, ladies and
21 gentlemen. As I said earlier today, my name is Jim
22 Stack. I'm an assistant solicitor here in Charleston
23 County. That means I'm a prosecuting attorney.

24 Today and tomorrow I will present, with the
25 help of Adam Young, State versus Dashaud Luck.

1 Now, as you already know Mr. Luck is charged
2 with two crimes. He is charged with armed robbery,
3 and he is charged with possession of a firearm during
4 the commission of a violent crime; that is he had a
5 gun while he conducted an armed robbery.

6 He is charged with these two crimes because on
7 October 6, 2008 Mr. Luck and another young man
8 entered a convenience store located at the
9 intersection of Ashley River Road, Highway 61, and
10 Parsonage Road.

11 Two men were armed with pistols, they entered
12 the store and they drew those pistols. And from the
13 two ladies that worked there, one of which you will
14 meet, Ms. Williams, they robbed the cash register.

15 Ms. Williams was an employee. She was in
16 charge of the cash register. Two men came in, and
17 you'll see this on the security camera tape, drew
18 pistols, robbed the cash register and left.

19 Both men were armed with pistols. The third
20 man waited outside. The third man waited outside in
21 a getaway car, a white Crown Victoria. A white Crown
22 Vic is kind of unique in that it had like a
23 police-style search light on the left side, the
24 driver's side. You see cops have that a lot times
25 when they're looking for an address.

1 A search light on the driver's side, a white
2 Crown Vic, and a partial license tag was called in.

3 Now, during the course of this trial you are
4 going to hear testimony of many people beginning
5 today and into tomorrow. You're going to hear
6 testimony from witnesses at the convenience store.
7 And you'll see the security tape of the two men
8 entering.

9 You'll hear the testimony of Mr. Luck's
10 supervisors out at Denton's Shipyards up in North
11 Charleston, and how they heard that night of the
12 robbery a Crime Stopper tip on TV, and they actually
13 saw the camera footage on TV, the Crime Stopper tip.

14 They recognized the defendant, Mr. Luck. And
15 they also recognized the description of the getaway
16 vehicle, a white Crown Vic with a spotlight on the
17 left driver's side and a partial tag. They
18 recognized him, and they recognized the car that was
19 used as a getaway vehicle.

20 And you are going to hear the testimony of
21 several officers from the Charleston County Sheriff's
22 office who responded to the crime scene and conducted
23 an investigation.

24 And one of them is Detective Nick Wagner who
25 will be on the stand quite a bit. And you will hear

1 how he developed the defendant as a suspect, how he
2 made the arrest, and how he was brought here today.

3 Ladies and gentlemen, all three of those young
4 men committed that armed robbery because the hand of
5 one is the hand of all persons who were acting in
6 concert in order to commit a crime.

7 The two men, one of which was Mr. Luck, that
8 went into the store, each with a gun and took the
9 cash out of the cash register, and the man who waited
10 outside in the getaway car, all three of these young
11 men committed armed robbery. And this is Mr. Luck's
12 trial on that charge. Thank you.

13 THE COURT: Mr. Archer, you may proceed.

14 MR. ARCHER: Ladies and gentlemen, I'm Mark
15 Archer. With the exception of a period of time in
16 the 1980's when I was the chief public defender here,
17 I have been a private, sole practitioner for 39
18 years.

19 This is a little bit of novelty -- in 39
20 years, you think you've done everything, but you
21 haven't. And trying a case without a client is
22 something brand-new for me. Even after 39 years it's
23 brand-new.

24 That person sitting over there is not my
25 client in drag, that's his mom. Okay. She is here

1 but he is not. All right.

2 I will say one other thing. I usually like to
3 sit as close to the jury as possible, but today I'm
4 going to be sitting as far away from you as I can
5 get. And that is due to a defect in this courtroom,
6 I know before they built it, and that defect is this
7 thing right here.

8 And if you sit where Mr. Stack sits it's hard
9 to see the Judge because it blocks your view. And if
10 you sit where I like to sit, as close to you as
11 possible, you can't see the witness.

12 So I'm going to sit as far away from you as I
13 can so that I can see the witness. It's pretty
14 important to be able to see the judge, and it's
15 pretty important to be able to see the witness.

16 Now, what I believe -- because of in
17 particular it's -- in some ways it's harder for me to
18 give this opening statement as I might otherwise
19 because my client is not here.

20 So I can't say, well, he'll testify as to this
21 and this and so forth. All right. I need -- I have
22 to limit myself to what I think the evidence
23 reasonably might be.

24 And so I think what the State's going to be
25 able to prove beyond a reasonable doubt is that three

1 men went to that convenience, okay. And that two of
2 them went inside.

3 I think they will prove that one of the
4 individuals that went inside is William Luck, my
5 client's brother. All right. And I think they will
6 be able to prove that because one of the clerks at
7 the convenience store picked William out of a lineup.

8 But they're not going to be able to show that
9 anyone picked Dashaud out of a photo lineup. All
10 right.

11 And so -- and I think that they're going to be
12 able to show beyond a reasonable doubt that they went
13 to the counter with the pistol, pointed it at the
14 convenience store people and said, give me your money
15 was William not Dashaud. All right.

16 But beyond that, I think there are huge holes.
17 And I think -- because I have no client, I'm going to
18 make them -- I'm just going to take the position I'm
19 going to make them prove everything. Prove it beyond
20 a reasonable doubt.

21 I mean, that's y'all's duty is to make sure
22 it's proven beyond a reasonable doubt. I'm going to
23 make them prove my client went in the store. Okay.
24 He was there, that he went into the store, that he
25 actively participated in the armed robbery because

1 the prosecutor has mentioned something called the
2 hand of one is the hand of all which says if you are
3 in a joint enterprise with somebody else, you can be
4 responsible for whatever they do.

5 But the law also says, and I will be asking
6 the Judge to charge you this at the end of the case,
7 that merely being present at the scene of a crime is
8 not enough, unless it can shown that you actively
9 participated or encouraged in that crime.

10 So, I am going to ask y'all -- that's about
11 all I'm going to say at this point in time, all
12 right. But I'm going to ask y'all to very
13 particularly take seriously the duty of the State to
14 prove everything beyond a reasonable doubt.

15 And you do it even more so because Mr. Luck is
16 not here, the defendant. All right. And the next
17 time I get a chance to talk directly to you, the case
18 will be just about over. So thank you very much.

19 THE COURT: State may proceed.

20 MR. STACK: Your Honor, may we approach?

21 THE COURT: You may.

22 (Whereupon, the following discussion was held
23 at the bench.)

24 MR. STACK: There is a Jackson v. Denno issue.

25 THE COURT: Is there a statement? Is that

1 your first witness?

2 MR. STACK: Yes. It's my third witness.

3 THE COURT: Let's go ahead and push forward.

4 MR. STACK: Okay.

5 THE COURT: We will stop when you get to the
6 witness with the Denno issue. Ask all the questions,
7 save the Denno stuff and we'll do it out -- the
8 statement.

9 MR. STACK: I'm going to bring in the
10 statement through the third witness.

11 THE COURT: We will did that in-camera.

12 MR. STACK: Okay.

13 (In open court.)

14 THE COURT: You may proceed.

15 MR. STACK: State calls Levina Williams.

16 LEVINA DENISE WILLIAMS,
17 after having first been sworn to tell the truth, the
18 whole truth and nothing but the truth testified on
19 her oath as follows:

20 THE COURT: You may proceed.

21 MR. STACK: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 DIRECT EXAMINATION

24 BY MR. STACK:

25 Q Good afternoon, Ms. Williams.

1 Ma'am, do you live here in the Charleston
2 area?

3 A Yes.

4 Q How long have you lived here?

5 A About 6 years.

6 Q And where do you currently work?

7 A I work for UTI. Key Logistic warehouse.

8 Q And back on October 6, 2008, is that where you
9 worked or did you work at a different location?

10 A I worked in a difficult location.

11 Q okay. Where did you work back then?

12 A The Pantry.

13 Q Is that the Pantry at the intersection of
14 Ashley River Road and Parsonage Road?

15 A Yes.

16 Q Do you recall the events that occurred that
17 day, October 6th, 2008?

18 A Yes.

19 Q I know you might be a little bit nervous, but
20 from start to finish will you please tell the jury
21 everything that happened that day. Take your time.
22 Don't get in a rush.

23 A Okay. I was working from 2:00 to 10:00 that
24 day. Around nighttime, as soon as the night came,
25 two guys walked -- came in through the door as I was

1 working behind the register.

2 I was on the phone, and they came in with
3 stocking caps over their faces. One guy stand in
4 front of the register, the other guy came around the
5 register.

6 The guy that was in front of the register was
7 heavyset. He had a gun pointing at me. He told me
8 not to touch anything. So I backed away from the
9 register.

10 The other guy that came around the register.
11 He had a gun pointed into my head. And he was
12 telling me to go to the safe, which I couldn't -- I
13 told him that I couldn't get into the safe.

14 He asked me to open the register. So I opened
15 the register and he took the cash out of the
16 register.

17 The guy that was standing in front of the
18 register, he mentioned the other register. He was
19 like, open the other register. But that register we
20 didn't really much use so I couldn't open it because
21 it wasn't -- it wasn't on or anything.

22 So that's when the other guy that came behind
23 the register, he actually turned around and they ran
24 out the store. One ran left and the other guy ran
25 right of the store.

1 Shortly after they ran out the store, some
2 customers came in and they started explaining that
3 the guys actually ran from the parking lot. I told
4 them if they wanted to live they needed to get out of
5 the parking lot.

6 Then he told me that I guess someone went
7 behind the cars to get the tag number. And another
8 girl was working with me that day, but she was in the
9 back of the store.

10 She just was shocked of what was going on so
11 she just was standing in the corner and not saying
12 anything. And after that the cops -- the girl,
13 female that I was on the phone with, I didn't hang up
14 the phone, I put it in my back pocket so that she
15 could hear what was going on.

16 She hang up and she called the police to come
17 to the store. The customers that was in the parking
18 lot, they called the police also.

19 Shortly after the police and the managers and
20 everyone came to the store.

21 Q Okay, thank you. How many robbers entered the
22 store?

23 A Two.

24 Q Did they both have guns?

25 A Yes.

1 Q And they were wearing ski masks over their
2 face?

3 A Stocking caps.

4 Q I'm sorry, stocking caps.

5 A Yeah.

6 Q And did the man see the -- you made out like a
7 woman's black stocking?

8 A It looked like -- well, like the same material
9 as something that you can -- it looked like a
10 stocking cap that you just put on your head, but they
11 had it pulled over their faces.

12 Q Okay. And they were black in color, the caps?

13 A Yes.

14 Q How old did the two robbers appear?

15 A They looked pretty young. About 20 or
16 younger.

17 Q Were they both of African-American descent?

18 A Yes.

19 Q How were they build.

20 A The guy that came behind the register, he was
21 maybe my height, but he was skin -- like small,
22 skinnier than the other guy. The other guy was
23 heavyset.

24 With him standing in front of the register, he
25 had on black -- both of them had black on. The

1 heavier set guy that was standing in front of the
2 register, you could see like his chest print through
3 his black shirt.

4 He was maybe about 5'7", 6' or something
5 maybe.

6 Q And he was a heavyset young man?

7 A Yes.

8 Q Now, when you say his chest was pressed
9 against his T-shirt, what do you mean?

10 A Like he had man boobs or.

11 Q Okay. All right. Now, you mentioned the
12 robbers. Did they say anything to you?

13 A The guy that was -- the heavyset guy was in
14 front of the register, he just looked like don't
15 touch anything, don't press the button.

16 You know, he just was telling me, don't touch
17 anything. So I hold my hands up and I walk away from
18 my register.

19 As he said that, the other guy was coming
20 around the register. That's when he approached me
21 with the gun towards my head and he told me to open
22 the safe. I told him I couldn't open the safe.

23 Q And the heavyset young man had a gun?

24 A Yes.

25 Q You saw that clearly?

1 A Yes.

2 Q And the skinnier man also had a gun?

3 A Yes.

4 Q And you said they took money out of the cash
5 register?

6 A Yes.

7 Q And did you call 9-1-1, or did your friend on
8 the telephone call 9-1-1?

9 A My friend on the telephone called 9-1-1.
10 After they left, me and the other girl that was in
11 the store, we actually called too.

12 Q Okay. Were you frightened by all of this?

13 A Yes.

14 Q And the other lady was frightened too?

15 A Yes, she was.

16 Q And I think you said one of the two men
17 pointed the gun at you?

18 A Yeah, both of them did. The guy that was in
19 front of the register, he was pointing at me with a
20 gun. While the other guy came all the way around the
21 register, and he was pointing it at my head.

22 Q And because of this, did you ask for a
23 transfer to a different Pantry store?

24 A Well at that time I took -- they gave me about
25 a week off from work. And I did transfer to another

1 store because of that incident too.

2 I had to go back to work there though until
3 they got the transfer for me to go to another store.

4 Q Do you have any children, Ms. Williams?

5 A Yes.

6 Q What are their names and ages?

7 A I have an 11-year-old, Darius Williams. And I
8 have a 1-year-old, Clarence Jefferson.

9 Q Okay. Now, they had masks over their face; is
10 that correct?

11 A Yes.

12 Q So you could not identify them; is that
13 correct?

14 A No. I -- well, I could see their faces, but
15 it's like kind of blurred to me.

16 Q Okay. Thank you. If you would please answer
17 any questions defense counsel may have.

18 THE COURT: Mr. Archer, you may proceed.

19 CROSS-EXAMINATION

20 BY MR. ARCHER:

21 Q Were you ever shown a photo lineup?

22 A Yes.

23 Q Did you pick anybody out?

24 A Yes.

25 Q You did?

- 1 A Yes.
- 2 Q skinny guy, right?
- 3 A Yes.
- 4 Q Not the heavyset fellow?
- 5 A No. Well, with the heavyset guy I couldn't
- 6 really remember his face too well at the time.
- 7 Q But you did pick out the skinny fellow from a
- 8 photo lineup?
- 9 A Yes.
- 10 Q Do you remember who it was?
- 11 A No, I can't remember.
- 12 Q Okay. Do you -- now, the skinny fellow is the
- 13 fellow that came around the counter and he was right
- 14 over there by you, right?
- 15 A Yes.
- 16 Q And he pointed a gun, where did he point it at
- 17 you?
- 18 A Yeah, he pointed it -- he was holding it like
- 19 this to my head (witness indicating).
- 20 Q How about the heavyset fellow, did he ever
- 21 point a gun?
- 22 A Yes.
- 23 Q He did?
- 24 A (Affirmative head shake.)
- 25 Q Do you recall giving a statement to the police

1 officer on October 6, 2008?

2 A Yes.

3 Q All right. Now, let me ask you this. Do you
4 think it's important or unimportant fact whether
5 somebody points a gun at you during an armed robbery?

6 A I think it's important.

7 Q You think it's important?

8 A Yes.

9 Q Okay. Now, have you had a chance to look at
10 the statement that you made?

11 A Yes.

12 Q Before you came here to testify?

13 A Yes.

14 Q All right. Well in that statement I believe
15 you said, when the guy came around the register with
16 the gun he told me don't press the button, right?

17 A Yes.

18 Q And that's the skinny guy?

19 A Well, both of them say, don't press the
20 button. The first -- first the heavier set guy was
21 like, don't press the button. When the skinny guy
22 actually came all the way around the register he said
23 the same thing, don't press the button.

24 Q How far away -- you describe, I believe, as
25 one of them is 5'5" and about 130 pounds, right?

1 A Like the skinny guy probably.

2 Q That's the skinny guy?

3 A Yeah.

4 Q Fairly short, fairly thin, right?

5 A Yes.

6 Q And then you described the other fellow is
7 about 5'6" or 5'7" and 250 pounds, right?

8 A Well, yeah. Like a guess of how much he might
9 weigh. I'm not sure.

10 Q Right. But he was pretty heavysset?

11 A Yes.

12 Q And the one -- but the one that you were able
13 to pick out of the lineup is the skinny one that
14 actually came around the counter?

15 A Yes. He was much closer to me.

16 Q Now, I'd like for you to -- and in your
17 statement here you say, when the guy came around the
18 register with the gun, you are talking about the
19 skinny fellow there, right?

20 A Yes.

21 Q Can you show me anywhere in this statement
22 that you gave at the time of the robbery where you
23 told the police that the other fellow -- you saw the
24 other fellow with a gun?

25 A I guess I didn't mention it on here.

1 Q Excuse me? I can't hear you.

2 A I said, well, I guess I didn't mention it -- I
3 didn't mention that inside the statement.

4 Q In fact, in the statement you only mention the
5 skinny fellow having a gun, right?

6 A Yes.

7 Q Okay. Were you shown more than one lineup?

8 A Yes.

9 Q Okay. And were you shown a lineup with some
10 fat guys in it?

11 A Yes.

12 Q Did you pick anybody out of that one?

13 A I picked someone, but I wasn't sure if it was
14 exactly the same person.

15 Q Okay. But you did pick out the skinny fellow?

16 A Yes.

17 Q All right. But there is no mention in here of
18 the heavyset fellow having a gun, is there?

19 A No, sir.

20 Q No.

21 MR. ARCHER: I have no further questions.

22 THE COURT: Any redirect?

23 REDIRECT EXAMINATION

24 BY MR. STACK:

25 Q Ma'am, are you sure there were two guns there?

1 A Yes.

2 Q Okay. And your identification was of people
3 that had masks over their faces; is that correct?

4 A Yes.

5 MR. STACK: Beg the Court's indulgence.

6 THE COURT: Uh-hum.

7 MR. STACK: Nothing further, Your Honor.

8 THE COURT: Any objection to the witness being
9 excused from the State?

10 MR. STACK: No, Your Honor.

11 THE COURT: From the defense?

12 MR. ARCHER: No, Your Honor.

13 THE COURT: Ma'am, you are excused.

14 You may call your next witness.

15 MR. STACK: State call Deputy Richard Craber.

16 RICHARD CRABER,

17 after having first been sworn to tell the truth, the
18 whole truth and nothing but the truth testified on
19 her oath as follows:

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MR. STACK:

23 Q Good afternoon, Deputy Craber.

24 What do you do for a living, sir?

25 A I'm a deputy with the Charleston County

1 Sheriff's Office.

2 Q And how long have you worked for the sheriff?

3 A About 17-and-a-half years.

4 Q Would you please tell the jury the types of
5 duties, responsibilities you have with the Charleston
6 county Sheriff's Office?

7 A I am a patrol deputy. Basically answer calls
8 for service, accidents, shootings. Just basically if
9 you call the sheriff's office, we respond.

10 Q Back in October 6th, 2008, did you respond to
11 a call that day?

12 A Yes, sir.

13 Q Would you please tell the jury the nature and
14 the location of that call?

15 A It was for an armed robbery at 2572 Ashley
16 River Road.

17 Q Is that near the intersection of Ashley River
18 and Parsonage Road?

19 A Yes, sir.

20 Q And upon your arrival at that convenience
21 store, what did you see and what did you do?

22 A What we arrived on scene, I spoke with the two
23 clerks that were inside the store, Ms. Levina
24 Williams and Tiffany Brown. And they stated that
25 they had been --

1 MR. ARCHER: Objection, hearsay, Your Honor.

2 THE COURT: Please approach.

3 (Whereupon, the following discussion was held
4 at the bench.)

5 MR. ARCHER: He is saying the two victims
6 spoke to him.

7 MR. STACK: He interviewed the victims.

8 THE COURT: What exception are you saying this
9 comes under? You want to rephrase?

10 MR. STACK: Yes, I will rephrase.

11 (In open court.)

12 THE COURT: Question is withdrawn.

13 You may proceed.

14 A I arrived on scene and spoke to the two
15 clerks, Ms. Levina Williams and Tiffany Brown, who
16 were working inside the store. And they stated that
17 two males dressed in all black walked inside the
18 store.

19 And one of them pulled a gun out, pointed it
20 at the clerk that was working behind the register,
21 Ms. Levina Williams. And he stated to her to not
22 press the button, basically an alarm button, and he
23 asked her where the second clerk was.

24 After that, he walked behind the register,
25 stole the money from the register and the cash and

1 ran out of the store along with the second suspect.

2 After that, basically that's all I can say.

3 We were getting statements from them when a vehicle
4 pulled up that was occupied by Weston Richardson and
5 Talon Williams [sic]. And they stated that they had
6 pulled into the gas station, got out of their car,
7 and they were about to walk into the store --

8 MR. ARCHER: Objection.

9 THE COURT: Sustained, hearsay.

10 Q (By Mr. Stack) Let me rephrase my question.

11 Without going into the statements that were
12 made to you, do you interview Talon Williams [sic]
13 and Weston Richardson?

14 A Yes, sir.

15 Q Based on your investigation, what did you
16 learn?

17 A They -- we learned that they pulled into the
18 gas station and got out their car and were
19 approaching the store.

20 MR. ARCHER: Your Honor.

21 THE COURT: Is there an objection?

22 MR. ARCHER: Yes, but I still think --

23 THE COURT: No speaking objections. What's
24 the basis of the objection?

25 MR. ARCHER: Hearsay.

1 THE COURT: Sustained hearsay.

2 Move along, Mr. Stack.

3 MR. STACK: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 Q (By Mr. Stack) So you interviewed several
6 witnesses at the scene?

7 A Yes, sir.

8 Q And did you reduce Ms. William's statement
9 into a written statement?

10 A yes, sir.

11 MR. STACK: Beg the Court's indulgence.

12 THE COURT: Uh-hum.

13 MR. STACK: Nothing further for this witness.

14 THE COURT: Any questions for the witness?

15 MR. ARCHER: Yes.

16 CROSS-EXAMINATION

17 BY MR. ARCHER:

18 Q Did you take the statement of -- the written
19 statement of Teresa Williams -- not Teresa but Levina
20 Williams?

21 A I'm not sure exactly which one. If I can
22 see --

23 Q Let me let you look at it.

24 A No, sir.

25 Q Okay. But you recall her telling you that one

1 of the people that entered had a gun; is that
2 correct?

3 A Yes, sir.

4 Q You don't recall her saying both of them had a
5 gun?

6 A She stated the other suspect, she wasn't sure
7 if there was a gun or not?

8 Q Was not sure there was a gun or not?

9 A Yes, sir.

10 MR. ARCHER: I have no other questions.

11 THE COURT: Any further questions of the
12 witness?

13 MR. STACK: No, Your Honor.

14 THE COURT: Any objection to the witness being
15 excused.

16 MR. STACK: Nope.

17 MR. ARCHER: Oh, Your Honor, may I?

18 I'm sorry I sat down premature, and I have
19 maybe two more questions of the witness.

20 THE COURT: Absolutely, you may proceed.

21 CONTINUED CROSS-EXAMINATION

22 BY MR. ARCHER:

23 Q The one that had the gun she described as
24 being skinny?

25 A Yes, sir. About 6', 150. So, yes, sir,

1 roughly -- fairly skinny.

2 Q And that the one that came around the counter?

3 A Yes, sir.

4 MR. ARCHER: Okay. No other questions.

5 THE COURT: Any questions from the State in
6 redirect?

7 MR. STACK: No, Your Honor.

8 THE COURT: Any objection to the witness being
9 excused from the State?

10 MR. STACK: None, Your Honor.

11

12 MR. ARCHER: No, Your Honor.

13 THE COURT: Sir, you are excused.

14 You may proceed with your next witness.

15 MR. STACK: State calls Nick Wagner. The
16 state also respectfully asks to approach the bench.

17 THE COURT: Yes, sir, you may approach.

18 (Whereupon, the following discussion was held
19 at the bench.)

20 THE COURT: How many questions before?

21 MR. STACK: Right off the bat.

22 THE COURT: Okay. I will give them a bathroom
23 break.

24 (In open court.)

25 THE COURT: Madam Forelady, ladies and

1 gentlemen, we have a brief matter of law we need to
2 address. During the break, please do not discuss the
3 case and please leave your notepads in your seats.

4 Please go with the bailiffs. We appreciate
5 your patience.

6 (Whereupon, the jurors exit the courtroom.)

7 MR. STACK: State calls Nick Wagner.

8 NICHOLAS R. WAGNER,

9 after having first been sworn to tell the truth, the
10 whole truth and nothing but the truth testified on
11 her oath as follows:

12 THE COURT: You may proceed.

13 IN-CAMERA DIRECT EXAMINATION

14 BY MR. STACK:

15 Q Good afternoon, Detective Wagner.

16 A Good afternoon.

17 Q Sir, what do you do for a living?

18 A I'm a detective with the Charleston County
19 Sheriff's Office.

20 Q And how long have you worked for the sheriff?

21 A I have been employed with the sheriff's office
22 since 1999, so approximately 12 years. And I have
23 been a detective for about five years now.

24 Q Will you please tell the judge the types of
25 duties and responsibilities you have with the

1 sheriff?

2 A As a detective, I'm assigned to our property
3 crimes investigation side. I primarily investigate
4 burglaries, robberies, business burglaries.

5 But part of my status is that I investigate
6 all crimes when I'm on-call, approximately about once
7 a month. So I investigate anything from murders all
8 the way down to thefts.

9 Q Okay. Back on October 6th, 2008, did you
10 respond to a call that day?

11 A Yes, sir. I was on the call team that week,
12 so I was working a 2:00 to 10:00 shift and responded
13 -- an armed robbery in progress came out as I was in
14 the West Ashley section of Charleston County. And I
15 responded to it.

16 Q Okay. During your investigation, did you
17 develop the defendant, Dashaud Luck, as a suspect in
18 that armed robbery?

19 A Yes, sir, I did.

20 Q And how did you develop him?

21 A Well, when we originally showed up at the call
22 at 2572 Ashley River at the Pantry, I interviewed
23 witnesses. Two of the witnesses said that they knew
24 Dashaud Luck from when they were in grade school.
25 They identified him that day by name.

1 They said that they knew -- they were
2 absolutely sure that he was one of the gentlemen that
3 was involved in the armed robbery. They knew his
4 voice and the way he walked and they knew his body.

5 They said, as soon as he talked to them that
6 day, they knew it was Dashaud Luck. And that was on
7 the day of the investigation. On the day after, on
8 the 7th, I was able to obtain a driver's license
9 picture of him from the South Carolina DMV photo.

10 I took it both of those witnesses
11 individually, and both of them positively identified
12 Dashaud Luck as being involved in the armed robbery,
13 as being armed with a gun.

14 On the day of the 6th, there was another
15 witness who identified the suspect vehicle that was
16 being driven, was able to give a license plate.

17 That vehicle was aired on the news. We were
18 able -- his employers were able to identify Dashaud
19 Luck as driving the vehicle. He was -- removed the
20 license plate the next day, was doing things that
21 were what we consider to be suspicious.

22 So they said that he was not only driving the
23 vehicle that was known to be involved in the armed
24 robbery during that day.

25 Q Did you arrest the defendant?

1 A Yes, sir, I did.

2 Q Did you Mirandize the defendant after you
3 arrested him?

4 A Yes, sir, I did. I arrested him on the 17th
5 of October. Brought him up to detective office where
6 he was Mirandized.

7 Q Did he acknowledge his rights?

8 A Yes, sir. We have a standard form that we do
9 advisement of rights at the Charleston County
10 Sheriff's Office. On that form it has the name, date
11 of birth. And then it has five different rights on
12 it.

13 And I provide him with a copy of the rights as
14 I read it to him. And we go one by one through the
15 five rights and I ask him to acknowledge it that he
16 understands those rights, and then he initials next
17 to them.

18 Q All right. And so he initialed and signed it?

19 A He verbally said he understood it. He
20 initialed next to each one of five rights. And he
21 signed underneath that waiving those rights, and
22 acknowledging that he understood them.

23 Q After he acknowledged his rights, did he make
24 a written statement in his own handwriting?

25 A Yes, sir, he did.

1 MR. STACK: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 Q (By Mr. Stack) I'm going to show you what has
5 been marked as State's Exhibit No. 1 for
6 identification purposes only. I'd like for you to
7 take a few moments and review the entire document,
8 please.

9 A Yes, sir, I recognize it.

10 Q Have you seen it before?

11 A Yes, sir.

12 Q Is your signature on it?

13 A Yes, sir, it is.

14 Q Is it in substantially the same condition as
15 when you last saw this document?

16 A Yes, it is.

17 MR. STACK: I'm not sure if I'm correct on
18 this, Your Honor, if I present this is a document for
19 the Court exhibit?

20 THE COURT: At this point, uh-hum.

21 Q (By Mr. Stack) What is this document,
22 Detective Wagner?

23 A It is a Charleston County Sheriff's rights
24 advisement, this is the first page. And then it is a
25 standard statement form with the other page that his

1 written statement is on.

2 So the first piece of paper is his advisement
3 of rights, his Miranda rights. And then the second
4 piece of paper is his written statement that he gave
5 in reference to the armed robbery.

6 Q When you Mirandized the defendant, did he
7 appear to understand his rights?

8 A Yes, he did.

9 Q Did he appear to be intoxicated or otherwise
10 impaired?

11 A No, he did not.

12 Q Did he appear to be frightened or intimidated
13 by his surroundings?

14 A No, he did not.

15 Q Was he coherent when he spoke to you?

16 A Yes, he was.

17 Q Did he ever ask to see an attorney?

18 A No, he did not.

19 Q Did he ask to see his parents?

20 A No, he did not.

21 Q Based on his date of birth, did you determine
22 that the defendant was 19 years old -- years of age
23 when you questioned him?

24 A Yes, he was.

25 Q Did you deny the defendant any food, water or

1 restroom breaks if he asked for one?

2 A No, I did not.

3 Q How long did you question the defendant?

4 A A little less than two hours.

5 Q Did you or anyone in your presence threaten or
6 intimidate the defendant in any manner?

7 A No, we did not.

8 Q Did he appear to make a statement of his own
9 free will?

10 A Yes, he did.

11 MR. STACK: Thank you, Detective Wagner. If
12 you would please answer any questions defense counsel
13 may have.

14 THE WITNESS: Yes, sir.

15 THE COURT: Any questions for the witness?

16 IN-CAMERA CROSS EXAMINATION

17 BY MR. ARCHER:

18 Q Now, you brought him in for questioning on
19 what date?

20 A On the 17th. October 17th, 2008.

21 Q Okay. October 17th, 2008. And where did you
22 pick him up from?

23 A From 110 Royal Palm Boulevard, Apartment 202.

24 Q And what time did you pick him up?

25 A About 11:00, 11:00 AM.

1 Q okay. And you took him from there to where?

2 A To the criminal investigation division over at
3 the Charleston County Sheriff's Office, 3505
4 Pinehaven Drive in North Charleston.

5 Q okay. Like back in the back, upstairs?

6 A Yes, sir, second floor, property side.

7 Q okay. And about what time had y'all gotten
8 there?

9 A I'm sorry?

10 Q What time had you gotten there?

11 A Probably about 11:30 I would say. Somewhere
12 between 11:00 and 11:30.

13 Q 11:30. Did you talk to him while he was in
14 the car?

15 A No, sir.

16 Q okay. Now, then you say you talked to him for
17 about two hours before he made the statement; is that
18 correct?

19 A That would include the statement.

20 Q That would what?

21 A That would be about the time that I had him
22 from we picked him up until the time I lodged him in
23 the Charleston County detention center. I had him
24 for about two hours.

25 Q From the time you picked him up to time you

1 brought him to the office?

2 A From the time that he was located at the
3 apartment to the time that he was inside the
4 detention, give or take right around two hours.

5 Q All right. So you had him for at least an
6 hour and a half there at the police --

7 A At the sheriff's office.

8 Q -- the sheriff's office there --

9 A Yes, sir.

10 Q -- questioning him, all right?

11 What responses does he give you initially?

12 What are the sort of questions you asked him and what
13 responses does he give you?

14 A Are you talking about in reference to the
15 Miranda or the investigation?

16 Q The investigation.

17 A First, I explained to him what he was there
18 for, what he was under arrest for because we had
19 already obtained an arrest warrant on the 16th.

20 Q Uh-hum.

21 A So I had the two warrants for his arrest as of
22 the 16th of October. So obviously notified him that
23 he was under arrest, and that he was charged with
24 armed robbery and possession of a firearm during the
25 commission of a violent crime.

1 And proceeded to talk with him about the
2 investigation, which he denied having any involvement
3 in whatsoever and said that everybody was lying about
4 it.

5 We questioned him about the vehicle, about
6 there was a North Charleston police officer that was
7 -- responded to Denton Shipyard after people had saw
8 him switching the license plates that morning after
9 the armed robbery. He said that that didn't happen.

10 He basically said that everyone was lying
11 against him. But as the interview went on, he
12 eventually said that he admitted to doing it, and he
13 gave me a written statement to that.

14 Q He gave you a written statement, or you did
15 the written statement?

16 A No, he wrote it.

17 Q He wrote it?

18 A Yes, sir.

19 Q Okay.

20 A It's his handwriting.

21 Q What about the part that says how much money
22 was taken from the cash register?

23 A That question part, that is my handwriting,
24 that's his answer.

25 Q Okay. But you are saying he wrote the rest of

1 it?

2 A Yes, sir. It's standard interviewing practice
3 that we do the verbal part first. And then
4 afterwards, go down and deduce what we got in the
5 verbal statement to a written statement. And give
6 him an opportunity to write it.

7 And then we clarify any questions for a
8 question and answer.

9 Q Okay. Wouldn't you want to know whether they
10 had planned this robbery?

11 A He didn't want to talk about any other stuff
12 because he did not want to, for lack of a better
13 word, snitch on who the other people were.

14 He didn't want to talk about the other people
15 that were with him, he only wanted to own up to his
16 own responsibility. He did not want to bring anyone
17 else who was involved in it.

18 Q Okay. He initially denied being part of this?

19 A Yes, sir.

20 Q Is there any time -- how long are you
21 questioning him before he admits to it?

22 A Probably took no more than maybe about 30
23 minutes of just talking about what was going on.
24 Less than 30 minutes.

25 Q What seemed to trip his switch and make him --

1 A I think once he saw the -- all the evidence we
2 had against him, that he was just lying through his
3 teeth over and over, and I kept calling him out on
4 it. And that I had witnesses and people talking
5 otherwise against him.

6 I think he realized that there was just too
7 much evidence. There was no denying that he was
8 involved in it, and that his only course was to
9 accept his responsibility.

10 Q okay. At no time did he refuse to answer your
11 questions?

12 A No. No, sir, he did not.

13 Q okay. At no time did he ask for a lawyer?

14 A No time did he ask for a lawyer.

15 MR. ARCHER: No other questions, Your Honor.

16 THE COURT: Any redirect?

17 MR. STACK: No, Your Honor.

18 THE COURT: Is there any exception to the
19 admission of the statement, Mr. Archer?

20 I assume this is your only Denno witness?

21 MR. STACK: Yes, Your Honor.

22 MR. ARCHER: Your Honor, I don't see that
23 there is grounds to --

24 THE COURT: There will be no exception to the
25 admission of the statement?

1 MR. ARCHER: No, Your Honor.

2 THE COURT: What number is that?

3 MR. STACK: It's States Exhibit 1 for
4 identification, Your Honor.

5 THE COURT: It will be State's 1 admitted
6 without objection.

7 (Whereupon, State's Exhibit No. 1 is admitted
8 into evidence.)

9 THE COURT: Do you all want to take a quick
10 restroom break while the jury is out?

11 MR. ARCHER: I sure do.

12 THE COURT: Sir, During the break please do
13 not discuss your testimony. You may take a restroom
14 break as well.

15 THE WITNESS: Thank you.

16 (Whereupon, a recess was taken.)

17 THE COURT: State ready to proceed?

18 MR. STACK: Yes, Your Honor.

19 THE COURT: Defense ready to proceed.

20 MR. ARCHER: I am ready, Your Honor.

21 THE COURT: Please bring in the jury.

22 (Whereupon, the jurors enter the courtroom.)

23 THE COURT: Ladies and gentlemen, we
24 appreciate your patience. We will now resume with
25 the testimony.

1 State may call its next witness.

2 MR. STACK: Thank you, Your Honor.

3 State calls Detective Nick Wagner from the
4 Charleston County Sheriff's Office.

5 NICHOLAS R. WAGNER,
6 after having first been sworn to tell the truth, the
7 whole truth and nothing but the truth testified on
8 her oath as follows:

9 THE COURT: You may proceed.

10 MR. STACK: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. STACK:

13 Q Good afternoon, Detective Wagner.

14 A Good afternoon.

15 Q Sir, what do you do for a living?

16 A I'm a detective with the Charleston County
17 Sheriff's Office.

18 Q And how long have you worked with the sheriff?

19 A I have been employed with the sheriff's office
20 for over 12 years. And I have been a detective for
21 almost five.

22 Q Almost five?

23 A Almost five.

24 Q And would you please tell the jury the types
25 of duties and responsibilities that you have with the

1 sheriff's office?

2 A Our detective office is divided up into two
3 sections. We have a person's crime, who typically
4 investigate all the violent crimes, the rapes, the
5 stabbings and murders, assaults. And then we also
6 have a property crime, which I am employed of.

7 As part of the property crime detectives, I
8 investigate mostly burglaries, thefts, things of that
9 nature.

10 I am also on a call team. And when I am
11 on-call then I am responsible for investigating
12 anything that comes out outside of the normal hours.

13 Q Okay. Back on October 6th, 2008, did you
14 respond to a call that day?

15 A Yes, sir, I was on-call. I was working a 2:00
16 to 10:00 shift at that time. I was in West Ashley.
17 An armed robbery call came out at the Pantry located
18 on Ashley River road and the Pantry -- or Parsonage
19 Road. And I responded to that as one of the initial
20 officers on scene.

21 After we secured the scene, I then
22 investigated that crime as part of the detective
23 office. And I was assigned that case afterwards.

24 Q So you were the investigating detective?

25 A I'm the lead detective of that armed robbery.

1 Q So it's your case?

2 A Yes, sir.

3 Q Okay. At the crime scene, would you please
4 tell the jury your actions?

5 A Once we arrived on scene and we make sure that
6 citizens are safe, i.e., that there is nobody inside
7 the building, that there is no threat going on to the
8 employees of the business or to the civilians that
9 are around, we help secure the scene for collection
10 of evidence.

11 Maintain any witnesses that are there. We
12 want to collect those statements from as many
13 witnesses, and identify them as much as possible.
14 Identify video surveillance cameras, see if there is
15 anything there. And just do an all-around
16 investigation into that crime.

17 Q Were the responding officers already there?

18 A Yes.

19 Q Was that Deputy Craber?

20 A Yes, sir. Deputy Craber was on scene.

21 Q Was he securing the crime scene?

22 A Yes, sir. We secured it with the evidence
23 tape. The yellow tape that normally says do not
24 cross.

25 Q Okay. And did the crime scene technician,

1 Kathy Kjellman, did she also arrive on the scene
2 while you were there?

3 A Yes. After everything was secured,
4 Investigator Kjellman, she came to the scene to take
5 photographs, fingerprints, collected any evidence
6 that we had there.

7 Q Did you interview anyone?

8 A I interviewed all of the witnesses that were
9 there. Detective Kip Cooke responded too. And he
10 helped do some of the interviewing. He took some of
11 the written statements.

12 So I made sure to touch base with all of the
13 witnesses that were there. I interviewed -- so I
14 spoke with both cashiers that were there that day. I
15 spoke with a gentleman who identified a suspect
16 vehicle that was driven away.

17 I spoke with two males that were there who
18 also called 9-1-1.

19 Q The two males, is that Weston Richardson?

20 A Yes.

21 Q And Talon Williams [sic]?

22 A Yes.

23 Q Now, you said one of the witnesses called --
24 or did you say one of the witnesses called in a
25 description of the getaway vehicle?

1 A Yes. I believe his name was Jeffrey Kennedy,
2 if I'm not mistaken, he called 9-1-1. He happened to
3 be across the street when he saw suspects leave the
4 Pantry.

5 And he thought it was awful suspicious having
6 two people in all black running outside of the
7 Pantry. So he watched the one get inside of white
8 Crown Victoria. Described it with a black police
9 spotlight on it and driving it away.

10 He gave a tag of 276 FDR as a partial tag.
11 And throughout the investigation, it turned out that
12 the vehicle that was actually used in the armed
13 robbery had a license plate number that had had --
14 instead of F it was a 7. So it was only off by one
15 digit.

16 Q And the description, do you receive a
17 description of the two men that entered the Pantry?

18 A Yes. One was -- they were both described as
19 being wearing all black with their faces concealed.
20 They were both described as carrying handguns. They
21 were both black--

22 MR. ARCHER: Objection.

23 THE COURT: Basis?

24 MR. ARCHER: I mean.

25 THE COURT: Basis of the objection?

1 MR. ARCHER: Hearsay.

2 THE COURT: Approach.

3 (Whereupon, the following discussion was held
4 at the bench.)

5 THE COURT: Who is he saying said what? Who
6 is he saying made the description.

7 MR. STACK: He was describing that.

8 THE COURT: I mean, for what purpose is it
9 being offered?

10 MR. STACK: Just reinforce earlier testimony.

11 THE COURT: Yeah. Does it come within an
12 exception?

13 MR. STACK: I will rephrase it.

14 THE COURT: Okay. Sustained, hearsay.

15 (In open court.)

16 THE COURT: You may proceed.

17 Q (By Mr. Stack) Did your investigation lead
18 you to interview anyone at the Denton Shipyard in
19 North Charleston?

20 A Yes, it did. On that Thursday I received
21 information that there were people who had
22 information to share about the armed robbery that
23 happened on the 6th. The employees at Denton
24 shipyard.

25 Q Do you remember who you interviewed?

1 A I interviewed a few people. If I can look at
2 my notes I can tell you their names exactly.

3 Q To refresh your recollection?

4 A Yes. I interviews James Warren Youker. And
5 Marvin Larry Reynolds. And a John Edward Anderson.

6 Q Okay. Thank you. And during your
7 investigation did you learn whether or not Dashaud
8 Luck worked at that shipyard?

9 A Yes. I was informed that he did.

10 Q And what kind of vehicle -- did you learn what
11 type of vehicle he normally drove at the shipyard?

12 A I learned that Dashaud Luck, as part of being
13 an employee at the shipyard, he was issued a permit
14 for a vehicle which he drove onto the -- to his work
15 site so that he could park. So they didn't have
16 obviously normal people in and out. Ship parking is
17 limited there.

18 And the vehicle in which he registered as his
19 vehicle that he wished to park there was a white Ford
20 Crown Victoria.

21 Q Okay. Were any search warrants executed in
22 support of your investigation in this armed robbery?

23 A We executed two search warrants.

24 Q And what was searched?

25 A On that Friday night -- the vehicle that was

1 originally described on the Monday on the 6th was
2 then verified on Thursday when I was at the Denton
3 shipyard as being involved in it.

4 Based on all the information I gathered at
5 that point, the partial plates, the VIN numbers, who
6 it was registered to and how it came back and it's
7 involvement there, and some of the activity that
8 happened at the shipyard.

9 And so we put that information out to our
10 patrol deputies what we were looking for. It was on
11 the news. Not only did the deputies know we were
12 looking for that suspect vehicle in connection to the
13 armed robbery, but also patrol deputies knew.

14 One of our deputies, Deputy Lawson, she
15 located it on Friday evening after 5:00, probably
16 5:30 in an apartment complex on Royal Palm Boulevard.

17 She verified that the VIN was the vehicle that
18 I was looking for. We spoke on the phone. I made
19 sure that she was able to look at the VIN, who it
20 came back to, the year of the vehicle, the
21 description of it, not just -- we weren't just towing
22 any white Ford Crown Victoria with a spotlight, but
23 we were able to make sure that that was the exact
24 vehicle that I was looking for.

25 She had it towed over to the evidence compound

1 on that Friday. And then when we came back to work
2 on Monday, I drew up a search warrant for that
3 vehicle and it was executed therein.

4 Q Okay. So you executed a search warrant at the
5 defendant's apartment and also on the vehicle?

6 A Yes. That was the vehicle one that we did on
7 the 13th. And then we did one -- we located the
8 defendant on the 17th. Friday the 17th. And we
9 executed a search warrant after locating him on the
10 residence in which we located him at.

11 Q Okay. During the course of your
12 investigation, did you learn who the owner of that
13 car was?

14 A The owner was a Ms. Crystal Green.

15 Q And who is Ms. Crystal Green in relation to
16 the defendant?

17 A It is the defendant's mother.

18 Q And on the day after the robbery, October 7th,
19 did Ms. Green report that the license plate was
20 missing from the Crown Vic?

21 A She called the duty officer, Deputy Joe Jones.
22 and she reported that the license plate had been
23 stolen off of that vehicle. And she listed Dashaud
24 Luck as being on that report.

25 Q Okay. So did you arrest the defendant?

1 A Yes. On the 17th when we located him at 110
2 Royal Palm Boulevard, Apartment 202, he was taken
3 into custody. I had two active warrants that I had
4 issued for him on the 16th of October.

5 Q After you arrested him, did you Mirandize him?

6 A Yes. He was located inside the apartment. He
7 was arrested. We transported him back to the
8 sheriff's office. And then he was Mirandized there.

9 Q After you Mirandized him, did you conduct an
10 interview of the defendant?

11 A Yes, I did. I did a verbal statement first.
12 Spoke with him about the investigation. And then we
13 deduced that to a -- reduced his statement to a
14 written statement.

15 Q Now, you said a Miranda warning. Is there --
16 is it in writing?

17 A Yes. We have a standard form at the
18 Charleston County Sheriff's Office, an advisement of
19 rights form, which I filled out the top portion of it
20 and then provided it to him for accuracy.

21 And then I read it as he was given a copy of
22 it to read himself.

23 Q Okay. Did he initial the form?

24 A Yes, sir. There are five different rights
25 that are identified on the advisement of rights form.

1 And after I read off each right, I asked him if he
2 understood the right that I just read to him and
3 waited for a verbal yes.

4 And then after he verbalized that he did
5 understand it, then I asked him to initial next to
6 it.

7 Q Okay. After you gave him his -- explained to
8 him his rights, did he make a written statement?

9 A Yes.

10 Q Did he sign that statement?

11 A Yes.

12 Q Did you also sign that as a witness?

13 A Yes, I did.

14 Q Okay. In front of you you have State's
15 Exhibit No. 1 marked for identification purposes.
16 Take a few moments to review that document.

17 A Yes, sir, I'm familiar with it.

18 Q Have you seen it before?

19 A Yes, sir.

20 Q Is your signature on that document?

21 A Yes, sir.

22 Q And is that document in substantially the same
23 condition as when you signed it?

24 A Yes, it is.

25 Q Is that in connection with this armed robbery?

1 A Yes, it is.

2 MR. STACK: Your Honor, at this time the State
3 moves State's Exhibit No. 1 into evidence.

4 THE COURT: It was already marked and admitted
5 without objection.

6 MR. STACK: Very well.

7 Q (By Mr. Stack) Detective Wagner, what is that
8 document?

9 A It's a two-page document. The first page is
10 the Charleston County Sheriff's Office advisement of
11 rights. And the second page is the Charleston County
12 Sheriff's Office statement, which is our written
13 statement form.

14 Q In that document, or in his statement -- now,
15 did you write it or did he write it?

16 A He wrote it.

17 Q Does he admit to committing the armed robbery
18 of the convenience store on October 6th, 2008?

19 A Yes, he does.

20 Q Does he admit to entering the store with a
21 gun?

22 A Yes, he does.

23 Q And does he admit to taking money from the
24 cash register?

25 A Yes.

1 Q All right. The State will now publish the
2 confession and ask the detective to please read the
3 defendant's statement to the jury. And please read
4 verbatim exactly as it's written.

5 A Page 1 of 1 for case number -- OCA number
6 2008021353B, as in boy. October 17th, 2008.
7 statement of Dashaud Samuel Luck.

8 Address of 110 Royal Palm Boulevard, Apartment
9 202. The phone number of 530-7445. Employed at the
10 Denton's Shipyard, Inc. Race is blank. Sex is male.
11 Date of birth 04/12/1989, 04/12/1989.

12 On Monday, October 6th, 2008, I, Dashaud Luck,
13 was an accomplice in an armed robbery. This robbery
14 took place on the corner of Ashley River Road and
15 Parsonage Road at a gas station better known as the
16 Pantry.

17 I proceeded in first and I watched the door.
18 Only watched the door. I am owning up to my
19 involvement with this robbery.

20 My car, the white Crown Victoria with the
21 black spotlight, was the getaway vehicle. My mother
22 wasn't aware that the car was used. I did tell her
23 that tags were stolen.

24 I did have a handgun going into the store, but
25 I never pointed it at anyone or attempted to even use

1 it. The guns were to tossed and I don't know their
2 whereabouts at this point in time.

3 After he got done with that I asked him,
4 question, how much money was taken from the cash
5 register?

6 His answer was \$78.

7 I had him initial afterwards. And then he
8 sign the bottom, Dashaud Luck.

9 Q Is that the end of the statement?

10 A That is the end of the statement.

11 Q When spoke with Mr. Luck, did he identify or
12 refuse to identify the other participants in the
13 armed robbery?

14 A Yeah, he refused to identify anybody else
15 involved, and would not talk about it.

16 MR. STACK: Beg the Court's indulgence.

17 THE COURT: Uh-hum.

18 MR. STACK: Thank you, Detective Wagner. If
19 you would, please answer any questions defense
20 counsel may have.

21 THE WITNESS: Yes, sir

22 THE COURT: You may proceed.

23 CROSS-EXAMINATION

24 BY MR. ARCHER:

25 Q Y'all in the process of your investigation

1 showed some photo lineups to the two cashiers at the
2 store, did you not?

3 A Yes, sir, I did.

4 Q And Ms --

5 A Levina Williams.

6 Q Ms. Levina Williams identified somebody, did
7 she not?

8 A Yes, sir. Yes, she did.

9 Q And that person was William Luck?

10 A Yes, the defendant's --

11 Q Brother.

12 A -- brother.

13 Q Right. Did you show her a lineup with
14 Dashaud's picture?

15 A Yes, I did.

16 Q Was she able to pick him out?

17 A No.

18 Q All right. How about -- now, there was
19 another clerk there, Tiffany Brown?

20 A Correct.

21 Q Did you show you are any photo lineups?

22 A Showed her both lineups, yes, sir.

23 Q Huh?

24 A Showed her both lineups.

25 Q Okay. Was she able to pick anybody out?

1 A No, sir, she was not.

2 Q All right. But Levina Williams picked out
3 Dashaud's brother, William Luck?

4 A Correct. Well --

5 Q All right. And you said that -- I believe,
6 I'm trying to remember, Dashaud took some money?

7 A During the robbery that the money was taken.

8 Q But he didn't admit in the statement that he
9 took the money, right?

10 A They took the money. During the armed robbery
11 that money was taken.

12 Q Well, could you -- yeah, could you show me
13 where that is in his statement?

14 A How much money was taken from the cash
15 register? \$78.

16 Q But he didn't say he took it, right?

17 A No. He never said that he -- he maintained
18 that he stayed by that door.

19 Q Did you ask him how he knew how much money was
20 taken?

21 A I don't recall if I asked him that
22 specifically.

23 Q Well, the description of the fellow who went
24 behind the counter and actually took the money fits
25 William, does it not?

1 A Correct.

2 Q All right. And Dashaud is heavyset, not
3 slender?

4 A Correct.

5 Q Okay. So according at least to the statements
6 you all had, there is no indication that Dashaud ever
7 went behind the counter to take money, right?

8 A Correct. That was the other person's. The
9 other person's role in the armed robbery.

10 Q Right, who was picked out of a lineup as being
11 his brother?

12 A Correct.

13 Q All right. Now, when were you aware that
14 William had been picked out of a lineup? Was it
15 before or after you took Mr. Dashaud Luck's
16 statement?

17 A He was -- William was identified before that.

18 Q Before that?

19 A Yes.

20 Q So at the time Dashaud gave a statement, you
21 already had somebody who picked William out; is that
22 correct?

23 A Correct, yes.

24 Q Now, you say he wrote this statement. But
25 there is a part, the question, question, how much

1 money with a taken from the cash register. He didn't
2 write that, did he?

3 A No. That's my handwriting.

4 Q That's your handwriting?

5 A Yes, sir.

6 Q Isn't it pretty standard practice to get a
7 general statement from a defendant, and then ask him
8 specific questions that might be important to the
9 case?

10 A Right. To clarify what is in the statement,
11 yes, sir.

12 Q All right. Now, did you ask him if he every
13 pulled out a gun?

14 A We talked about what happened in there during
15 the armed robbery. And he maintained that he never
16 pointed the gun at anybody.

17 Q And you never asked him specifically -- you
18 asked him one question, how much money was taken?

19 A Yes. During the interview he did not want to
20 go into any detail about who else was with him.

21 I talked to him about the fact that his
22 brother was identified, he did not want to talk about
23 that. He denied it. He was not very cooperative
24 with that portion of the investigation whatsoever.

25 Q He was concerned about protecting his brother,

1 was he not?

2 MR. STACK: Objection, calls for conclusion

3 THE COURT: I'm going to give him a little
4 latitude.

5 MR. STACK: Thank you, Your Honor.

6 THE COURT: Overruled. You may proceed.

7 A I can't tell you why he didn't want to tell
8 me. Maybe he didn't want to involve his brother.
9 Maybe his brother was --

10 Q But he just wouldn't talk about it?

11 A He did not want to talk about anything else.
12 He only wanted to own up to his own responsibility.
13 And he did not want to go into any detail of
14 everything there.

15 We would talk about it and that's what he
16 would write down right there.

17 Q All right. Now, did you ask him about his
18 mother? His mother was the registered owner of the
19 car, was she not?

20 A Correct.

21 Q Did you ask him about his mother?

22 A Of course.

23 Q Huh?

24 A Yes, sir.

25 Q What kind of questions were you asking him

1 about his mother?

2 A Well, I asked him about why the vehicle
3 license plate was reported stolen. And whether or
4 not she knew that he had committed an armed robbery
5 or not.

6 Q So you asked him if she knew he committed the
7 armed robbery?

8 A Of course. Yes, sir.

9 Q So he had reason to worry about maybe his
10 mother getting in trouble; is that right?

11 A He knew that a police report was filed that
12 was false.

13 Q What police report is that?

14 A The police report that was filed on October 7,
15 2008 saying that the license plate from that vehicle
16 was lost and stolen. It was reported as stolen over
17 the weekend prior to the armed robbery.

18 Q You talked with Ms. Green, did you not?

19 A Yes. On the 13th.

20 Q Didn't she tell you that her son had told her
21 that the plate had been stolen?

22 A Yes, sir.

23 Q All right. So somebody lied I guess maybe,
24 not necessarily Ms. Green?

25 A Ms. Green explained to me why it was that she

1 had that information, why she filed the police
2 reported. And she said she had no reason to believe
3 her son had lied to her when she filed that report.

4 And she knew that she needed a license plate
5 for the vehicle. She also said that Dashaud Luck was
6 the only one who drove that vehicle, that he's the
7 primary owner.

8 Q Were you also -- and part of your
9 investigation y'all determined basically that there
10 were three people involved in the robbery, correct?

11 A Yes, sir.

12 Q And you arrested, one which is Dashaud Luck,
13 right?

14 A We arrested both, his brother too.

15 Q And you arrested William?

16 A Yes.

17 Q And you've never been able to determine who
18 the third person was?

19 A Correct.

20 Q Or arrest that person?

21 A Correct.

22 Q Now, is there some reason you would not have
23 asked him if he ever pulled the gun out during the
24 robbery?

25 A Well we have statements -- during my

1 investigation we spoke to many people -- or I should
2 say several people, one which who showed up and said
3 that Dashaud pointed a gun at her when she walked up
4 to the door and that to leave.

5 Q Excuse me. Are you talking about the clerks?

6 A No, sir.

7 Q Okay.

8 MR. ARCHER: Move to strike that, Your Honor.

9 THE COURT: Any exception from the State?

10 MR. STACK: No, Your Honor.

11 THE COURT: Be stricken without objection.

12 Q (By Mr. Archer) Well, Ms. Williams gave a
13 statement. Did she give a statement to you?

14 A She gave it to Detective Cooke.

15 Q Detective Cooke?

16 A Yes. He interviewed the two cashiers inside.
17 And then I spoke with her.

18 Q And in that statement she indicated one of the
19 individuals, she saw one of the individuals with a
20 gun; is that correct?

21 A In her written statement, yes, sir.

22 Q Right. And the other cashier, who was Tiffany
23 Brown, said she didn't see either one of them with a
24 gun?

25 A I believe that Ms. Brown was in the back of

1 the store and she didn't see what was going on.

2 Q All right. But she was asked -- y'all -- you
3 took her statement, right?

4 A I believe that -- can I see the statement you
5 are referring to? Yes, absolutely.

6 Q And you asked her, did you see a gun in either
7 person's hands? And the answer was no, right?

8 A Correct.

9 Q Okay. Now, the statement says, that you took
10 from Dashaud says, on Monday, October the 6th, I,
11 Dashaud Luck was an accomplice. All right?

12 A Yes.

13 Q Did you ask him about anything specific that
14 he supposedly did during the robbery?

15 A Yes, he was the watch out man during the armed
16 robbery.

17 Q Watch out man?

18 A Yes.

19 Q And he says that in his statement?

20 A He watched the door.

21 Q Okay.

22 A So he owns up that he was inside during the
23 armed robbery and watched the door so that no one
24 would come in.

25 Q And he says that he watched the door so nobody

1 would come in?

2 A That's what the watch man did, yes, sir.

3 Q Does he say that in his statement?

4 A In his written statement or his verbal
5 statement?

6 Q In his written statement?

7 A He says that he only watched the door.

8 Q Uh-hum. That's all he says, right, I only
9 watched the door?

10 A That's what he wrote, yes, sir.

11 Q Okay. It doesn't say, I watched the door to
12 make sure nobody would come in. He doesn't say that
13 in his written statement, does he?

14 A He says he watched the door.

15 Q Yeah. But he doesn't say -- he does not say,
16 I watched the door to see if anybody was coming in.
17 He doesn't say that in his written statement, did he
18 not?

19 A He does not write that, correct.

20 Q And you didn't ask him questions to clarify
21 that, did you? Because that's not written down on
22 here either?

23 A When we did the written statement after I had
24 already had -- was talking with him and he owned up
25 to it, and he confessed to his involvement in the

1 armed robbery, he did not want to go into great
2 detail into the written statement.

3 Q Well, did you ask him any questions about his
4 written statement other than how much money was taken
5 from the cash register?

6 A He did not want to talk about anything else
7 that wasn't --

8 Q Did you ask him --

9 A No, I did not.

10 Q -- questions after he had done his statement?

11 A No.

12 Q No. You did not ask him other questions?

13 A No.

14 Q Now, so originally Dashaud was charged, right,
15 and William?

16 A Yes.

17 Q And the charges against William have
18 subsequently been dropped, have they not?

19 A Yes, sir.

20 MR. ARCHER: I have no other questions.

21 THE COURT: Any redirect?

22 MR. STACK: Yes, Your Honor.

23 THE COURT: You may proceed.

24 REDIRECT EXAMINATION

25 BY MR. STACK:

1 Q We have been talking a lot about William Luck.
2 How did you develop William Luck as a suspect?

3 A When I responded to the scene, we conducted a
4 through investigation. And during that -- even
5 during the initial investigation we identified those
6 two witnesses, Talon and Weston.

7 And before they left the scene, after the --
8 after they came back to talk to us -- because they
9 originally left. When they saw -- they pulled in and
10 they saw two guys walking up toward the -- my
11 investigation revealed the two guys walking up
12 towards the front of the Pantry dressed in all black
13 and they're both carrying handguns.

14 So that scared the two witnesses, and they
15 both said that --

16 MR. ARCHER: Your Honor.

17 THE COURT: Basis of the objection?

18 MR. ARCHER: Hearsay again, Your Honor.

19 THE COURT: Sustained, hearsay.

20 Q (By Mr. Stack) Did you develop William Luck
21 based on a Crime Stopper tip?

22 A We based William Luck from the Crime Stopper
23 tip. And Dashaud Luck was identified on the day of
24 the armed robbery from people who were on the scene
25 who told me that Dashaud Luck, that knew 100

1 percent --

2 Q Without going into what other people said. So
3 you developed William Luck based on a Crime Stopper
4 tip?

5 A Correct.

6 Q And did you show a six-pack that included
7 William Luck to Levina Williams, the store clerk?

8 A Yes.

9 Q And did she identify William Luck?

10 A Yes.

11 Q And did she qualify her identification?

12 A Yes.

13 Q How did she qualify her identification?

14 A She wrote, when she was shown the lineup on
15 October 13th, when she was shown on the 13th with
16 William Luck in it she says, his face was covered but
17 it looks like it could be number three. And William
18 Luck was in the number three position of that lineup.

19 Q Based on your experience in law enforcement,
20 is that --

21 MR. ARCHER: Objection.

22 THE COURT: Basis?

23 MR. ARCHER: Calls for speculation.

24 THE COURT: I'm haven't heard the whole
25 question. If it's within the ambit of his education,

1 training and experience it may not be.

2 Please complete the question.

3 Q (By Mr. Stack) would you consider Levina
4 Williams identification of William Luck a strong
5 identification or a weak identification?

6 A I would consider it to be a weak
7 identification.

8 Q Very well. Do you have other evidence, other
9 than the Crime Stopper -- well, is the Crime Stopper
10 tip someone you can call, or is that an anonymous
11 person?

12 A It is an anonymous person. That Crime Stopper
13 tip came -- I got that on October 9th, it was placed
14 on October 8th. It had named both Dashaud Luck and
15 William in it.

16 Q Now, can you call this person up who gave you
17 the Crime Stopper tip?

18 A No, sir, we cannot.

19 Q So it was an anonymous tip?

20 A We are not allowed to use it even as evidence
21 for an arrest warrant.

22 Q So the only evidence you had on William Luck
23 was a weak identification, and an anonymous Crime
24 Stopper tip?

25 A Correct.

1 Q And that case has been dropped?

2 A Yes, sir, it has.

3 Q What was the evidence that led you to arrest
4 Dashaud Luck?

5 A We had him being placed at the scene by people
6 who were there. We had his vehicle used during the
7 armed robbery. We had people after his actions, the
8 day after the armed robbery, from his employers that
9 seem to be suspicious.

10 We had him -- his mother filing a false police
11 report saying that his license plate was stolen the
12 day after. So we had lots of stuff that said that he
13 was involved in it.

14 Q In his confession did he say that both him and
15 the accomplice had guns?

16 A Yes.

17 Q Plural?

18 A Correct. He owned up in his written statement
19 and his verbal statement that he was in possession of
20 a handgun.

21 Q And did he indicate he acted in concert with
22 an accomplice?

23 A Yes.

24 Q And that they took money from the cash
25 register?

1 A Correct.

2 Q Thank you.

3 MR. STACK: Nothing further, Your Honor.

4 THE COURT: Any objection from the witness
5 being excused from the State?

6 MR. ARCHER: Your Honor, I have a brief.

7 RECROSS-EXAMINATION

8 BY MR. ARCHER:

9 Q He never indicates he took the money from the
10 cash register in his statement, does he?

11 A He says that there was \$78 that was taken from
12 the cash register and that he was acting as an
13 accomplice.

14 Which to me -- as we talked about it in our
15 interview that that is what they went in there was
16 for to rob the gas station.

17 Q I'm asking you about the statement. About the
18 statement you took. Does it say anywhere in the
19 written statement, and this is either yes or no, that
20 he took money out of the register?

21 A No.

22 Q All right.

23 MR. ARCHER: No other questions.

24 THE COURT: Any further questions from the
25 State.

1 MR. ARCHER: Oh, wait a minute. Let my old
2 brain think for a second if you would, Judge.

3 THE COURT: Not a problem.

4 MR. ARCHER: It seemed like there was
5 something else I wanted to ask this office, I got off
6 base here.

7 That's all.

8 THE COURT: Are there any further questions
9 from the State?

10 MR. STACK: No, Your Honor.

11 THE COURT: Any objection to the witness being
12 excused from the State.

13 MR. STACK: No, Your Honor.

14 THE COURT: From the defense?

15 MR. ARCHER: No, Your Honor.

16 THE COURT: Sir, you are excused.

17 Madam Forelady, ladies and gentlemen, we are
18 going to take advantage of this break in testimony to
19 take our evening recess. During the break please do
20 not discuss the case among yourselves.

21 Please do not do any independent research,
22 that includes anything that could be found on the
23 Internet. And please do not watch, read, or listen
24 to any media accounts about this case, that includes
25 anything that could be found on radio, television,

1 newspapers or the Internet.

2 Also, please refrain from discussing your jury
3 service on any social networking sites. That
4 includes Facebook, LinkedIn, My Space, YouTube or
5 otherwise. All of that would be inappropriate and a
6 violation of your oath as jurors.

7 I hope that you all have a great evening. We
8 will resume in the morning at -- I have another
9 unrelated matter at 9:30. We will resume at 10:00
10 with testimony.

11 You'll come directly to your jury room. And
12 again, please don't have any contact with anyone in
13 our about the courthouse.

14 Please leave your notepads in your seats. We
15 will secure them during the recess. Have a great
16 evening. We appreciate your patience today.

17 (Whereupon, the jurors exit the courtroom.)

18 THE COURT: Is there anything before we break
19 for evening from the state?

20 MR. STACK: No, Your Honor.

21 THE COURT: From the defense?

22 MR. ARCHER: No, Your Honor.

23 (Whereupon, the proceedings in this matter
24 before the Court were adjourned for the evening.)

25 * * * * *

1 THE COURT: Yes, sir.

2 MR. ARCHER: I believe this witness is going
3 to identify my client by voice.

4 THE COURT: Identify him from what?

5 MR. ARCHER: By his voice, not necessarily his
6 face.

7 THE COURT: As long as he can lay the
8 foundation, he knows him, is familiar with his voice.

9 MR. ARCHER: Well, I may want an out-of-court
10 hearing before we take it before the jury to suggest
11 identification. They showed him a photo lineup with
12 my client's picture in it.

13 MR. STACK: No, there is no six-pack with this
14 witness.

15 THE COURT: Does this person work with him?

16 MR. STACK: It's a person that grew up with
17 him, has known him from the fourth grade.

18 THE COURT: Does he identify him through the
19 voice?

20 MR. STACK: Yes. He identified him to the
21 police.

22 MR. ARCHER: He was --

23 THE COURT: Was he in the store or something?
24 Was he in the store at the time this happened.

25 MR. STACK: He was immediately outside the

1 store when the two brothers came out the store.

2 THE COURT: And he was an eyewitness and they
3 interviewed him and he says -- he identified the
4 defendant because he knew him from childhood and knew
5 his voice?

6 MR. STACK: Yes. His voice, his physique.

7 MR. ARCHER: They do show him the pictures.

8 THE COURT: It's not the source of the ID,
9 though.

10 MR. ARCHER: That's what I want to be sure
11 about, whether they showed him the picture first or
12 afterwards. Before the identification or after the
13 identification.

14 MR. STACK: They interviewed him at the scene
15 on the 6th. They interviewed him again on the 7th
16 for a second time.

17 The statement is he has known him since fourth
18 grade, they went to high school together.

19 THE COURT: Is the source of the ID on the
20 picture or him knowing since fourth grade.

21 MR. STACK: Him knowing him since fourth
22 grade.

23 THE COURT: So do you have plan to introduce
24 any photographs as a means of identifying him?

25 MR. STACK: No.

1 MR. ARCHER: My position is this. They showed
2 him a picture that conceivably suggests he knows my
3 client, he sees a picture in the showup line-up.

4 THE COURT: This is after.

5 MR. ARCHER: But does that lead him --.

6 THE COURT: They're not using that as the
7 basis of the ID. You can ask him all those questions
8 in cross-examination. If he has known him since
9 fourth grade.

10 And they can lay the appropriate foundation.
11 And then showing him a picture later, you might want
12 to question him regarding that on his credibility.
13 This is not a traditional --

14 MR. ARCHER: Showing him the picture first is
15 suggestive. If they showed it afterwards it's not
16 suggestive.

17 THE COURT: What is it?

18 MR. STACK: It was shown afterwards. The
19 driver's license photo, is this the guy we are
20 talking about? And he answers, yes, that's Dashaud
21 Luck.

22 THE COURT: Are you satisfied?

23 MR. ARCHER: Ma'am?

24 THE COURT: Are you satisfied?

25 MR. ARCHER: Well, I will cross-examine him on

1 that.

2 THE COURT: Okay. But you are not asking for
3 an in-camera hearing?

4 MR. ARCHER: Well, I'd like to have it, but if
5 you don't think it's necessary.

6 THE COURT: Well, I'm trying to figure out how
7 that fits within Biggers.

8 MR. ARCHER: Well, I mean I would just like
9 confirm in his words what order this took place in.

10 MR. STACK: It was the interview, and then at
11 the end of the interview they showed him the printout
12 of his driver's license.

13 THE COURT: Is that the first or the second?

14 MR. STACK: Second interview.

15 THE COURT: If it turns out differently, we
16 will go from there.

17 MR. ARCHER: Thank you.

18 THE COURT: You're welcome.

19 (Whereupon, the jurors enter the courtroom.)

20 THE COURT: Ladies and gentlemen, I hope that
21 you all had pleasant and restful evening. We will
22 now resume the trial of the State versus Luck.

23 We appreciate your patience. I had to select
24 another jury this morning, and deal with some other
25 unrelated matters. So please know we do not take

1 your time for granted.

2 We will now resume with the State's next
3 witness.

4 You may proceed.

5 MR. STACK: Thank you, Your Honor.

6 State calls Weston D. Richardson.

7 WESTON DAVID RICHARDSON,
8 after having first been sworn to tell the truth, the
9 whole truth and nothing but the truth testified on
10 her oath as follows:

11 THE COURT: You may proceed.

12 MR. STACK: Thank you

13 THE COURT: You're welcome.

14 DIRECT EXAMINATION

15 BY MR. STACK:

16 Q Good morning, Mr. Richardson.

17 A How are you doing?

18 Q Good. Sir, how old are you?

19 A 22.

20 Q And did you grow up here in Charleston?

21 A Yes, sir.

22 Q Where did you go to high school?

23 A West Ashley High School.

24 Q Back on October 6th, 2008, were you hanging
25 out with Talon Williamson at his house?

1 A Yes, sir.

2 Q And does he live near Parsonage Road and
3 Ashley River Road?

4 A Yes, sir.

5 Q Okay. And is there a convenience store at
6 that intersection?

7 A Yes, sir.

8 Q And back on October 6th, 2008, do you recall
9 the events that occurred on that day?

10 A Yes, sir.

11 Q Okay. Will you please tell the jury what you
12 saw and what you did that day, from the start to
13 finish. And please take your time. Don't rush.

14 Just tell the jury everything you saw that
15 happened.

16 A Me and my friend Talon was going to the gas
17 station. I'm not sure what time it was, probably
18 about 9:00 or so.

19 And we pulled up in front of the dumpster,
20 there was no one there, and two guys came out with
21 masks on. One of them lifted up his shirt and said,
22 if you want to go home I suggest you leave now. And
23 pulled up his shirt and showed me a gun, so I left.

24 And then we called cops after that and gave a
25 statement.

1 Q Okay, the two men, was one of them a thinner
2 man and one a heavier set person?

3 MR. ARCHER: Leading, Your Honor.

4 THE COURT: Sustained, leading.

5 Q (By Mr. Stack) What were the builds of the
6 two people you saw?

7 A One was a pretty husky guy, and the other an
8 average size person.

9 Q And the other was a heavyset?

10 A Yes, sir.

11 Q Now, which one of those two showed you the
12 gun?

13 A The bigger, bigger guy.

14 Q Would you call him chubby?

15 A Yeah, he's chubby.

16 Q I don't know mean to be rude, but he is a very
17 fat person?

18 MR. ARCHER: Leading, Your Honor.

19 THE COURT: I will give him a little latitude.
20 It's not offered for its truth.

21 Q (By Mr. Stack) All right. Did you grow up
22 with a person named Dashaud Luck?

23 A Yes, sir.

24 Q And how long have you known Mr. Luck?

25 A Since elementary school.

1 Q Since when?
2 A Elementary school.
3 Q Okay. And you've known him continuously since
4 then?
5 A Yes, sir.
6 Q Was he one of your friends?
7 A More of an acquaintance, I guess.
8 Q Okay. But you saw him a lot?
9 A Yes, sir.
10 Q Now, is Dashaud heavyset?
11 A He is a pretty big guy. Yes, sir.
12 Q Now, what kind of car were you driving that
13 day?
14 A A Chevy Cobalt.
15 Q And what color is that?
16 A Black.
17 Q So it's not a white Crown Vic?
18 A No, sir.
19 Q Okay. It's a black Chevy Cobalt?
20 A Yes, sir.
21 Q Okay. Did Talon Williamson go to the
22 convenience store?
23 A Yes, sir.
24 Q And again, how many people did you see behind
25 that store?

1 A Two.

2 Q And what were they wearing?

3 A Black T-shirts and black masks -- I really
4 couldn't tell what the masks were made of -- and some
5 jeans.

6 Q And one of them spoke to you?

7 A Yes, sir.

8 Q Which one?

9 A Dashaud. Or the one I assumed was Dashaud.

10 Q The heavyset one?

11 A Yes, sir.

12 Q And what did he say again?

13 A If you want to leave tonight -- or go home
14 tonight, I suggest you leave right now.

15 Q Okay. And were you able to recognize the
16 heavyset person, the one -- the heavyset person?

17 A Yes, sir.

18 Q And who was that person?

19 A Dashaud.

20 Q All right. If he had a mask over his face,
21 how did you recognize him?

22 A Just his voice and the way he moves. I've
23 known him forever.

24 Q His voice?

25 A Yes, sir. He lives right across the street

1 too. I figure it was him.

2 Q And his mannerism?

3 A Yes, sir.

4 Q His build?

5 A Yes, sir.

6 Q Okay. And you've known him since elementary
7 school?

8 A Yes, sir.

9 Q Now, he -- let me -- he pulled up his shirt,
10 or the other guy?

11 A He did.

12 Q And what did he show you when he pulled his
13 shirt up?

14 A A gun. I saw like the handle, not the rest of
15 the gun.

16 Q Okay. Did you also see a white car close by?

17 A Yes, sir.

18 Q What kind of -- do you know what kind of car
19 it was?

20 A A Crown Vic, white.

21 Q Did it have anything distinguishing on the
22 side?

23 A I think it still had a spotlight on it.

24 Q Like a police officer's spotlight?

25 A Yes, sir.

1 Q Is that on the driver's side?

2 A Yes, sir.

3 Q All right. After Dashaud Luck spoke with you,
4 what did you do?

5 A I left.

6 Q With Talon?

7 A Yes, sir.

8 Q All right. Did you see the two young men
9 enter the store?

10 A Yes, sir.

11 Q Did you see one of them point a gun at the
12 cashier?

13 A No, sir. By that point I was gone. I didn't
14 really see any of that.

15 Q Did you see the two persons exit the store?

16 A Yes, sir.

17 Q And what did they do when they exited the
18 store?

19 A Ran out and back to Parsonage Road, got behind
20 the Crown Vic.

21 Q Did they run in the same direction or in
22 separate directions?

23 A Same direction.

24 Q Did you or Talon or anyone call 9-1-1?

25 A Talon did.

1 Q And did you make a statement to Detective Nick
2 Wagner in this case?

3 A Yes, sir.

4 MR. STACK: Beg the Court's indulgence.

5 Q (By Mr. Stack) All right. Would you describe
6 again the mask that Dashaud was wearing?

7 A It was black, kind of like the same material
8 as a stocking cap almost, but a little thinner. And
9 it completely covered his face.

10 Q Is that material similar to material on a
11 woman's stocking?

12 A Yes, sir.

13 Q A black stocking?

14 A Yes, sir.

15 Q Thank you. Please answer any questions that
16 defense counsel may have.

17 THE COURT: You may proceed, Mr. Archer.

18 MR. ARCHER: One moment, Your Honor, please.

19 THE COURT: Take your time.

20 CROSS-EXAMINATION

21 BY MR. ARCHER:

22 Q Now, two of you came to the store together
23 that night, correct?

24 A Yes, sir.

25 Q You and Talon Williams [sic]?

1 A Yes, sir.

2 Q And you gave a statement to the police the
3 night it happened, did you not?

4 A Yes, sir.

5 Q All right. Now, let me ask you this. You
6 were shown a photograph by the police, I believe, of
7 Dashaud?

8 A Yes, sir.

9 Q At what point in time did they show you that
10 photograph?

11 A The next day.

12 Q The next day?

13 A Yes, sir.

14 Q Well, can you explain -- okay. Well, did you
15 give two statements to them?

16 A Yeah. I gave kind of the same one the next
17 day when the detective came to my house and asked me
18 about it.

19 Q Okay. Well, I'm curious here. Do you have a
20 copy of your statement?

21 A No, sir.

22 Q Have you looked at it?

23 A No. I don't have a copy of it.

24 Q Okay. Because I noticed that -- well, the
25 statement -- let me -- would you read the first

1 paragraph here.

2 And let me ask you, is that your statement?

3 A Yes, sir.

4 Q Okay. Would you read the paragraph
5 highlighted there?

6 A We pulled up, and a fat black kid came from
7 behind the dumpster with a black mask on his face.
8 He looked at us as we were getting out and said, if
9 you all want to go home tonight, I suggest you all
10 leave.

11 So we got on Pierpont and turned right at the
12 light. The skinny kid ran in as we were leaving. We
13 called the police immediately, and they showed up
14 about ten minutes later.

15 When DC Jackson got there, we told them that
16 they were in a white Crown Vic with a spotlight.

17 Q Okay. Now, when you were told to leave, y'all
18 got in the car and left, right?

19 A (Affirmative head shake.)

20 Q And you say here that the skinny kid ran in as
21 we were leaving?

22 A (Affirmative head shake.)

23 Q All right. You don't mention the heavyset?

24 A Well --

25 Q Huh?

1 A I guess I omitted that some before. They both
2 ran in.

3 Q Uh-hum. But you don't say that in your
4 statement?

5 A No, I do not.

6 Q Did you see them both run in or did you see
7 them both run out?

8 A I saw them both run in and run out.

9 Q All right. Now, you say you knew Dashaud
10 since y'all were kids. Were y'all in classes
11 together?

12 A Yes, sir.

13 Q During what periods of time?

14 A Elementary school and high school.

15 Q All right. But you never saw his face; is
16 that correct?

17 A No, sir.

18 Q And your identification is based solely upon a
19 voice?

20 A Yes, sir.

21 Q And are you saying you've never heard anybody
22 with a voice like Dashaud's?

23 A I'm sure I have, but I have known him a good
24 portion of my life, so I can distinguish it pretty
25 well.

1 Q okay. At what point in time -- are y'all
2 leave the parking lot when these fellows supposedly
3 go into the store?

4 A Yes, sir.

5 Q So where did you all go?

6 A To a parking lot next to it to call the
7 police.

8 Q Okay. So you all get back in your car and
9 immediately start backing out?

10 A Yeah.

11 Q Okay.

12 MR. ARCHER: I have no other questions

13 THE COURT: Any redirect of the witness?

14 MR. STACK: Thank you. Very briefly, Your
15 Honor.

16 REDIRECT EXAMINATION

17 BY MR. STACK:

18 Q Your identification of Dashaud Luck is based
19 on his voice; is that correct?

20 A Yes, sir.

21 Q And also his build?

22 A Yes, sir.

23 Q And also his mannerisms?

24 A Yes, sir.

25 Q And he did show you a gun?

1 A Yes, sir.

2 Q In the waistband of his pants?

3 A Yes, sir.

4 MR. STACK: Thank you.

5 RECROSS-EXAMINATION

6 BY MR. ARCHER:

7 Q You saw the gun outside the store, right?

8 A Yes, sir.

9 Q You weren't able to see what was going on
10 inside the store, were you?

11 A No, sir.

12 MR. ARCHER: Okay. Thank you.

13 THE COURT: Anything further from the State?

14 MR. STACK: No, Your Honor.

15 THE COURT: Any exception to the witness being
16 excused from the state?

17 MR. ARCHER: No, Your Honor.

18 THE COURT: From the defense?

19 MR. STACK: From the State, no, Your Honor.

20 THE COURT: Mr. Archer, you said no objection,
21 correct.

22 MR. ARCHER: No objection.

23 THE COURT: Sir, you're excused.

24 You may call your next witness.

25 MR. STACK: Thank you, Your Honor.

1 State calls Mr. John Andy Anderson.

2 JOHN EDWARD ANDERSON,

3 after having first been sworn to tell the truth, the
4 whole truth and nothing but the truth testified on
5 her oath as follows:

6 THE COURT: You may proceed.

7 MR. STACK: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 DIRECT EXAMINATION

10 BY MR. STACK:

11 Q Good morning, Mr. Anderson.

12 A Good morning.

13 Q Sir, what do you do for a living?

14 A I work at Denton Shipyard.

15 Q And how long have you worked for the shipyard?

16 A 14 years.

17 Q And are you responsible for security at the
18 shipyards?

19 A Part of it.

20 Q And does that security include the employee
21 parking lot?

22 A Yes, sir.

23 Q Okay. Back on the evening of October 6th,

24 2008, and the next morning, October 7th, do you

25 recall seeing on TV a Crime Stopper tip that showed

1 security camera footage of an armed robbery in West
2 Ashley?

3 A Yes, I do.

4 Q After you saw the footage, what did you do?

5 A I got in touch with Larry Reynolds because I
6 seen an individual that looked like, I thought,
7 someone that worked in the pipe shop. And I told him
8 about the video, him and Jim Youker.

9 Q Okay. And did you recognize a person on the
10 video?

11 A I did.

12 Q And can you describe that person physically?

13 A At the shipyard they call him Rerun. And he,
14 I guess, about 5'8", 5'6", and he was about this big
15 around (witness indicating).

16 And I remember his haircut. And I tried to
17 picture what he looked like, the way he moved. And I
18 watched him in the shipyard in the way he moved and
19 what I seen. That's one of the things that I
20 mentioned to Larry and Jim.

21 Q Okay. Did you also hear on the Crime Stopper
22 tip a description of the getaway vehicle?

23 A Yes, I did.

24 Q And what was that description, do you recall?

25 A It was a white vehicle. And the thing that

1 stood out to me, I think it was Crown Vic and it had
2 the spotlight like the cops have on most of their
3 cars. And I seen that in the parking lot.

4 Q You say his nickname is Rerun?

5 A Yes. That's what they call him.

6 Q Okay. And do you know, or later did you learn
7 the proper name of Rerun?

8 A Even at this time I don't know his proper
9 name.

10 Q Okay. That's fine. And you said you reported
11 this to Mr. Larry Reynolds?

12 A Yes.

13 Q And who was Mr. Reynolds?

14 A He is the vice president over production.

15 Q At the shipyard?

16 A Yes.

17 Q And did you and Mr. Reynolds go out to the
18 parking lot to look at the vehicle.

19 A Well, i didn't look at it with Larry. I'm
20 thinking him and Jim did. But I had another employee
21 that was on my golf cart with me, and we seen the
22 vehicle the first time, and it was just a vehicle
23 sitting out there.

24 And what made me notice the vehicle, it didn't
25 have a parking permit in it, okay. And then

1 eventually I had to go out in the parking lot and
2 someone told me that he was out there taking the
3 license plate off the car.

4 MR. ARCHER: Objection.

5 THE COURT: Sustained, hearsay.

6 Ladies and gentlemen, you are to disregard the
7 last comment. You are to give it absolutely no
8 consideration in your deliberations whatsoever.

9 You may proceed.

10 MR. STACK: I apologize for that, Your Honor.

11 THE COURT: That's okay. No need to
12 apologize.

13 Q (By Mr. Stack) Later in the day, do you see a
14 different license plate on that vehicle?

15 A Yes.

16 Q Different from the one you had saw earlier in
17 the day?

18 A Yes.

19 MR. STACK: Beg the Court's indulgence.

20 THE COURT: Uh-hum.

21 MR. STACK: Thank you, Mr. Anderson. If you
22 would, please answer any questions that defense
23 counsel may have.

24 THE COURT: Mr. Archer, you may proceed.

25 CROSS-EXAMINATION

1 BY MR. ARCHER:

2 Q This individual Rerun, do you know what type
3 of job he had out at Denton?

4 A Say that again.

5 Q Do you know what type of job he had at Denton?

6 a He was working in the pipe shop.

7 Q And Denton pays pretty good money, don't they?

8 A We don't discuss money at the shipyard, but I
9 think he may have been doing pretty good.

10 Q May have been what?

11 A He may have been doing pretty good. We don't
12 discuss what the employees get.

13 Q Right. But they pay better than the average
14 employer, don't they?

15 A Better than, yeah.

16 Q Yes? Was that yes?

17 A Yes.

18 MR. ARCHER: I have no other questions.

19 THE COURT: Any redirect?

20 MR. STACK: No, Your Honor.

21 THE COURT: Any objection to the witness being
22 excused from the State?

23 MR. STACK: No, Your Honor.

24 THE COURT: From the defense?

25 Any objection, Mr. Archer, to the witness

1 being excused?

2 MR. ARCHER: None.

3 THE COURT: Sir, you are excused.

4 You may call your next witness.

5 MR. STACK: Thank you, Your Honor.

6 State calls Mr. Larry Reynolds.

7 MARVIN LARRY REYNOLDS,

8 after having first been sworn to tell the truth, the

9 whole truth and nothing but the truth testified on

10 her oath as follows:

11 THE COURT: You may proceed.

12 MR. STACK: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 DIRECT EXAMINATION

15 BY MR. STACK:

16 Q Good morning, Mr. Reynolds.

17 Sir, what do you do for a living?

18 A Vice president of operations for Denton
19 Shipyards.

20 Q And how long have you worked for Denton
21 Shipyards?

22 A Approximately 13 years.

23 Q All right. Would you please tell the jury the
24 type of duties and responsibilities you have, the
25 type of things you do at the shipyard?

1 A I am in charge of the complete operations of
2 vessels coming and going, contract management, and
3 just the all-around work of the shipyard.

4 Q Okay. Back on October 7th, 2008, did you and
5 Mr. Anderson watch a Crime Stopper tip on TV?

6 A Yes, sir.

7 Q And after you saw that footage, what did you
8 do?

9 A I recognized one of the employees that worked
10 for Denton Shipyards.

11 Q How did you recognize the employee?

12 A Size, weight, just his body figure more or
13 less.

14 Q Would you describe his body figure, please?

15 A 5' -- probably 5'5", 5'6", 230 to 250 pounds.
16 Not a physically fit type guy.

17 Q A little bit chubby?

18 A Yes, sir, very.

19 Q I'm sorry for the use of that word.

20 Did you learn of him by his nickname or by his
21 proper name?

22 A Yes. I do know him, not personally, but I
23 know him as an employee. And his nickname is Rerun.
24 I would know him if he walked in the courtroom today,
25 yes, sir.

1 Q And do you know what his proper name is?

2 A Yes, sir.

3 Q What is that?

4 A Dashaud Luck.

5 Q okay. Was there also a description of a
6 vehicle in the Crime Stopper tip?

7 A Yes, sir.

8 Q And what kind of vehicle was described?

9 A It was similar to a police car. I believe it
10 was a Ford Crown Victoria, white. And it stated it
11 had the spotlight on the driver's side, similar to a
12 police car, four door.

13 And the license plate, they gave out the three
14 digits and I believe back then, 276. I'm not about
15 the number but there was three digit that did match
16 it and I was -- I did see that.

17 Q When you say you see that. Did you see that
18 in the parking lot on the Denton Shipyard?

19 A Yes, sir.

20 Q okay. Now, you say you saw a white -- you say
21 there was a partial license tag, is that correct, of
22 276?

23 A Yes, sir. And the tape that was shown by the
24 news, I don't know what channel it was on, but they
25 only gave three numbers to it. And that's were the

1 three numbers on that car matched the same color car
2 description they gave on the video, more or less.

3 Q Later in the day, did you observe that vehicle
4 again?

5 A Yes, sir.

6 Q And did it have the same plate on?

7 A At one time it did, yes, sir.

8 Q Okay. Did it have a different plate later in
9 the day?

10 A Yes, sir.

11 Q Now, who's Mr. James Youker?

12 A James is the HR, human resource director, for
13 the Denton Shipyard.

14 Q Did you discuss any of this with him?

15 A Yes, I did.

16 Q And did Mr. Anderson accompany you?

17 A Yes, sir.

18 MR. STACK: Thank you, Mr. Reynolds. If you
19 would, please answer any questions defense counsel
20 may have.

21 THE COURT: Mr. Archer, you may proceed.

22 CROSS-EXAMINATION

23 BY MR. ARCHER:

24 Q All those employees make pretty good money out
25 at the shipyard, don't they?

1 A Yes, sir.

2 MR. STACK: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. STACK: Relevance.

5 THE COURT: Overruled..

6 Q (By Mr. Archer) Do you know Dashaud Luck

7 personally?

8 A No, sir.

9 Q So you don't know what his position was there?

10 A Oh, I do know his position, yes, sir.

11 Q What was that?

12 A He was a pipefitter.

13 Q And what would the salaries of pipefitter

14 range from?

15 A \$10,000 to \$12,000 a year, up to \$60,000 or

16 \$70,000 a year depending on the classification as a

17 helper all the way to a supervisor.

18 Q Okay.

19 MR. ARCHER: No other questions.

20 THE COURT: Any redirect?

21 MR. STACK: No, Your Honor.

22 THE COURT: Any objection to the witness being

23 excused from the State?

24 MR. STACK: No, Your Honor.

25 THE COURT: From the defense?

1 MR. ARCHER: None.

2 THE COURT: Sir, you are excused.

3 You may call your next witness.

4 MR. STACK: The state calls James Youker.

5 JAMES W. YOUKER,

6 after having first been sworn to tell the truth, the
7 whole truth and nothing but the truth testified on
8 her oath as follows:

9 THE COURT: You may proceed.

10 MR. STACK: Thank you, Your Honor

11 THE COURT: You're welcome.

12 DIRECT EXAMINATION

13 BY MR. STACK:

14 Q Good morning, Mr. Youker.

15 A Good morning.

16 Q Sir, would you please tell the jury what you
17 do for a living?

18 A I'm the director of human resources for Denton
19 Shipyards.

20 Q And where is Denton Shipyards located?

21 A 1670 Dry Dock, North Charleston.

22 Q Is it up on the river?

23 A Yes, sir. Cooper River.

24 Q Would that be the old Navy base?

25 A Yes, sir.

1 Q Okay. And what kind of work is performed
2 there?

3 A General ship repairs.

4 Q And you, how long have you worked there?

5 A Six years. A little over six years.

6 Q Okay. And what is your involvement with them?
7 Are you a welder or a pipefitter?

8 A No, sir. Human resources, hiring,
9 terminations, benefits, policy.

10 Q Okay. So you are a human resource man.

11 A Yes, sir.

12 Q And does Mr. Dashaud Luck, did he work at the
13 shipyards?

14 A Yes, sir, he works -- he used to work at the
15 shipyard.

16 Q Okay. And do you know Mr. Luck by name and by
17 sight?

18 A Yes, sir.

19 Q And how did Mr. Luck come to work at the
20 Denton Shipyards?

21 A We have an apprenticeship program. And part
22 of what I do is I go around to different high schools
23 and speak with students with technical aptitude and
24 see if they are interesting in joining our
25 apprenticeship program.

1 I met Mr. Luck I believe 2007 at West Ashley
2 High School. And upon graduation he came to work for
3 us and joined our apprenticeship program.

4 Q Back on October 7th, 2008, did Mr. Andy
5 Anderson and Mr. Larry Reynolds meet with you?

6 A Yes, sir.

7 Q And what was the topic of that meeting?

8 A They came to me and wanted me to give them
9 information for who a vehicle -- who owned a certain
10 vehicle parked in the parking lot.

11 And human resources issues, when we hire
12 people, we issue parking permits and we put their
13 budge numbers on the parking permit which is
14 displayed in the window.

15 So when I came to work they called me up and
16 they said there was a vehicle in the parking lot that
17 was involved in an armed robbery last night, they had
18 seen it on Crime Stoppers, Live 5, and they wanted me
19 to go out and see who that car belonged to.

20 So I went out, saw the badge number, and it
21 belonged to Dashaud Luck.

22 Q All right. And what kind of vehicle was it?
23 Can you describe the vehicle?

24 A It was a white Crown Victoria, and it had the
25 black spotlight on it like an old police car.

1 Just as it did, because now I am looking up
2 Crime Stoppers on the Internet to see if I could see
3 the video. And sure enough, that was the car.

4 Q Okay. And were you given a partial tag
5 number, or do you recall any part of a partial tag
6 number?

7 A Yes, sir. It had three numbers, 276, with
8 first three. That was what Crime Stoppers had said
9 that's all they could read.

10 And sure enough, that was the first three
11 Alpha on the license plate.

12 Q Of the vehicle in the parking lot?

13 A Yes, sir, that belonged to Dashaud.

14 Q All right. Now, do you recall, did you look
15 -- so you looked at the vehicle. Was that the
16 morning or the afternoon?

17 A That was first thing in the morning.

18 Q Did you look at the vehicle later in the day?

19 A Yes, sir. The vehicle throughout the day had
20 started to get a lot of attention.

21 Q Okay. Did you notice, was there ever a
22 different license plate on the vehicle later in the
23 day?

24 A Yes, sir. It appeared to be switched out at
25 some point in time.

1 Q Okay. Now, Mr. Luck, do you recall did he
2 work the entire day or did he leave early?

3 A Mr. Luck worked through -- he worked, took a
4 lunch, returned to work, and he had left early soon
5 after returning from lunch.

6 He told his supervisor he was ill.

7 Q And when he left, did he take his car with
8 him?

9 A Yes, sir, the car was gone.

10 Q Okay.

11 MR. STACK: Beg the Court's indulgence.

12 THE COURT: Uh-hum.

13 Q (By Mr. Stack) Now, did you ever contact law
14 enforcement with regard to this?

15 A Yes, sir. We made several attempts. The
16 first attempt I called North Charleston police and I
17 informed them that we had a vehicle that was involved
18 in an armed robbery in our lot, it was on Crime
19 Stoppers, please come down here and let's resolve the
20 matter.

21 And they came down, they said, look, there is
22 nothing in North Charleston. We don't know anything
23 about this vehicle. So they left.

24 So we continued to try and find out -- we
25 didn't know where the robbery had taken place. We

1 continued to make phone calls to see who was
2 interested in this. Crime Stoppers, we were more or
3 less talking to a computer. We weren't -- there was
4 no real interaction.

5 Finally in the afternoon we contacted the --
6 or I contacted the sheriff's department and they sent
7 someone down, apparently they were on the case.

8 Q Okay. It was a sheriff's department case?

9 A Yes, sir.

10 Q Is that correct?

11 A Yes, sir.

12 Q Okay. Now, is Mr. Luck currently employed
13 there at Denton Shipyards?

14 A No, sir. We terminated him for abandoning his
15 job.

16 Q For abandoning his job?

17 A Yes, sir.

18 Q What does that mean?

19 A Probably last December sometime he stopped
20 coming to work.

21 Q Did you receive any explanation for that?

22 A No, sir.

23 MR. STACK: Thank you, Mr. Youker. If you
24 would, please answer any questions defense counsel
25 may have.

1 THE COURT: You may proceed Mr. Archer.

2 CROSS-EXAMINATION

3 BY MR. ARCHER:

4 Q Do you know in fact when he stopped coming to
5 work, or just generally?

6 A Generally.

7 Q Okay. In 2008 you're human resource, roughly
8 what would he have been making at Denton Shipyard?

9 A He was making 9-something an hour. Because he
10 came in as a person without any experience. As I
11 said, we recruited him.

12 So he came in starting at 9-something an hour.
13 Received an increase. And then we never gave him any
14 more increases for the last -- since 2008 I would
15 say.

16 Q He would have gotten an increase in 2008?

17 A Yes, sir. He was earning 10-something an hour
18 when he abandoned his job.

19 Q Do you overtime there? Do y'all do overtime?

20 A Yes, sir.

21 Q So he would have been make over 20,000 a year
22 there?

23 A Yes, sir.

24 MR. ARCHER: Okay. No other questions.

25 THE COURT: Any redirect?

1 MR. STACK: No, Your Honor.

2 THE COURT: Any objection to the witness being
3 excused from the State.

4 MR. STACK: No, Your Honor.

5 THE COURT: From the defense?

6 MR. ARCHER: No.

7 THE COURT: Sir, you are excused.

8 You may proceed.

9 MR. STACK: Thank you, Your Honor.

10 State calls crime scene specialist Kathy
11 Kjellman.

12 KATHY KJELLMAN,
13 after having first been sworn to tell the truth, the
14 whole truth and nothing but the truth testified on
15 her oath as follows:

16 THE COURT: You may proceed.

17 MR. STACK: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 DIRECT EXAMINATION

20 BY MR. STACK:

21 Q Good morning, Specialist?

22 A Good morning.

23 Q Ma'am, what do you do for a living?

24 A I work for the Charleston County Sheriff's
25 office as a crime scene investigator.

1 Q And how long have you worked for the sheriff?

2 A About 11 years.

3 Q Okay. Would you please describe to the jury
4 the types of duties and responsibility you have with
5 the sheriff's office.

6 A Currently, I'm a crime scene investigator,
7 respond to crime scenes, process the scene for any
8 evidence, latent prints and photograph it.

9 Q Back on October 6th, 2008, did you respond to
10 a call that day?

11 A Yes, I did.

12 Q And would you please tell the jury the nature
13 of that call?

14 A It was an armed robbery to a convenience
15 store, the Kangaroo, at the corner of Highway 61 and
16 Parsonage Road.

17 Q And once you arrived, what did you see and
18 what did you do? And take your time.

19 A When I was -- when I first arrived at the
20 crime scene the whole parking lot was cordoned off
21 with crime scene tape.

22 Detectives were already on scene. They were
23 interviewing some of the employees that were in the
24 store at the time of the incident.

25 Q Okay. During your investigation, did you

1 collect the footage from a security camera in the
2 store?

3 A Yes, I did.

4 Q And what did you do that with that footage?

5 A I viewed it while I was in the store. And I
6 also got a copy of it.

7 Q Okay.

8 MR. STACK: Your Honor, we are now going to
9 publish State's Exhibit No. 2 which has already
10 entered into evidence.

11 THE COURT: You may proceed.

12 Q (By Mr. Stack) Specialist, will you please
13 watched the video. We are going to show it twice
14 because it's kind of --

15 A It does run kind of fast.

16 Q Yes.

17 MR. STACK: Specifically, when you watch the
18 top right quadrant, observe the action of the
19 heavyset individual.

20 (Whereupon, State's Exhibit 2 is published to
21 the jury.)

22 MR. STACK: Okay. Go ahead and restart it.

23 Q (By Mr. Stack) Specialist Kjellman, in the
24 top right quadrant, observing the heavier set of the
25 two individuals, would you please state what, if

1 anything, you see in his hand?

2 MR. ARCHER: Objection. I think the film
3 speaks for itself, Your Honor.

4 THE COURT: Sustained.

5 (Whereupon, State's Exhibit 2 is published to
6 the jury.)

7 MR. STACK: Thank you.

8 Q (By Mr. Stack) All right. Did you take any
9 photos at the crime scene?

10 A Yes, I did.

11 MR. STACK: I'm now going to publish State's
12 Exhibits 3 through 9, which has already been entered
13 into evidence, Your Honor.

14 Q (By Mr. Stack) All right, Specialist, this is
15 State's Exhibit No. 3. What does this photograph
16 depict?

17 A It's the sign that was outside the store.

18 Q Okay. You say outside the store. And State's
19 Exhibit No. 4, what does this depict?

20 A That would just be the front of the store, the
21 front doors.

22 Q Is that at Ashley River and Parsonage Road?

23 A Yes, sir.

24 Q All right. This is State's Exhibit No. 5.
25 What is this?

1 A That is again the front doors of the store.

2 Q Okay. And 6?

3 A That would be inside the store, just as you
4 walk in the front doors.

5 Q And 7?

6 A That would be the same view, the same picture,
7 just from a different angle from --

8 Q There --

9 A Excuse me?

10 Q I'm sorry to interrupt you. Go ahead.

11 A It's from the inside of the store at a
12 different angle, looking at the front doors.

13 Q Okay. State's Exhibit No. 8. What does this
14 depict?

15 A That is a picture of the area behind the
16 counter.

17 Q And No. 9?

18 A That is the safe, and the register area.

19 Q Okay. Now, did you also test for
20 fingerprints?

21 A Yes, I did.

22 Q Were you able to obtain any results?

23 A I was able to lift two prints from the front
24 door.

25 Q And what were they -- were you able to get

1 identification from the two prints?

2 A There were no --

3 MR. ARCHER: Well, I think he has to qualify
4 her as a fingerprints expert before he asks her about
5 any --

6 THE COURT: No speaking objections. Is there
7 an objection?

8 MR. ARCHER: Yes, ma'am.

9 THE COURT: Basis of the objection?

10 MR. ARCHER: She hasn't been qualified as a
11 fingerprint expert yet.

12 THE COURT: Do you want to withdraw the
13 question.

14 MR. STACK: I will rephrase.

15 THE COURT: Question is withdrawn, rephrase.

16 Q (By Mr. Stack) Did you collect any
17 fingerprints?

18 A Yes, I did.

19 Q Did you send them off for analysis?

20 A Yes, I did.

21 Q Did you receive the results of that analysis?

22 A There were no confirmation hits on the prints.

23 Q Okay. Now, the front door, is that a public
24 door?

25 A Yes.

1 Q And would you conclude that all the people who
2 come in and out of that store go through that door?

3 A Yes.

4 Q So would there be a lot of fingerprints or a
5 few fingerprints on a public door like that?

6 A There would be a lot.

7 Q Okay. But you did test for fingerprints?

8 A Yes.

9 Q And you did test -- and you took photos?

10 A Yes, I did.

11 Q And you and collected the crime scene video?

12 A Yes, I did.

13 Q Now, that tape, was it running faster than
14 normal?

15 A It's does run faster than normal on the
16 original VHS tape that I was given.

17 Q Is that way everything is kind of herky-jerky
18 in a way like that?

19 A And it will be herky-jerky like you said
20 because of the age of the videotape. Because if you
21 reuse the tape over and over again, the quality gets
22 diminished.

23 Q Okay. Good enough.

24 MR. STACK: Nothing further. If you would
25 please answer any questions defense counsel may have.

1 THE COURT: You may proceed.
2 MR. ARCHER: No questions, Your Honor.
3 THE COURT: Any objection to the witness being
4 excused from the State?
5 MR. STACK: No, Your Honor.
6 THE COURT: From the defense?
7 MR. ARCHER: None, Your Honor.
8 THE COURT: Ma'am, you are excused.
9 You may call your next witness.
10 MR. STACK: Thank you, Your Honor.
11 State calls Crime Scene Specialist Brent Roy.
12 BRENT MICHAEL ROY,
13 after having first been sworn to tell the truth, the
14 whole truth and nothing but the truth testified on
15 her oath as follows:
16 THE COURT: You may proceed.
17 MR. STACK: Thank you, Your Honor.
18 THE COURT: You're welcome.
19 DIRECT EXAMINATION
20 BY MR. STACK:
21 Q Good morning, Specialist Roy.
22 A Good morning.
23 Q Sir, what do you do for a living?
24 A I'm a crime scene investigator for the
25 Charleston County Sheriff's Office.

1 Q And how long have you been working for the
2 sheriff?

3 A About ten years.

4 Q Okay. Back on October 17th, did you
5 participate in the execution of a search warrant at
6 110 Royal Palm Boulevard, Apartment 202?

7 A I did.

8 Q And was that the residence of Mr. Dashaud
9 Luck?

10 A I'm not sure whose residence it was. I was
11 there as the photographer and collecting the
12 evidence. I don't know whose residence it was.

13 Q Okay. But you said you were there as the
14 photograph and collector of evidence. What does that
15 mean?

16 A Basically in a search warrant situation the
17 detectives will get the search warrant in hand, and
18 we'll go to a location and we will photograph and
19 document as it was found.

20 And then once the search is concluded for
21 items of interest, we then collect those, photograph
22 them as well.

23 MR. ARCHER: Your Honor.

24 THE COURT: Yes, sir.

25 MR. ARCHER: If he doesn't know whose

1 residence he searched, I object to his testimony.

2 THE COURT: Please approach.

3 (Whereupon, the following discussion was held
4 at the bench.)

5 MR. STACK: The residence was established by
6 the testimony of Nick Wagner earlier when he said
7 that he conducted interviews, and two search warrants
8 were executed of the defendant's residence, the
9 defendant's car.

10 THE COURT: He still needs to establish -- you
11 need to lay the appropriate foundation where he
12 reported to vis-a-vis what he collected.

13 MR. STACK: Okay.

14 (In open court.)

15 THE COURT: You may proceed.

16 Q (By Mr. Stack) Specialist Roy, I'm going to
17 show you what has already been marked and entered
18 into evidence as State's Exhibit No. 1.

19 Would you please read that document,
20 especially the top part, the caption?

21 A Charleston County Sheriff's Office advisement
22 of rights?

23 Q Yes. Does it list the defendant's name on
24 there?

25 A It does.

1 Q what is that name?

2 A Dashaud Samuel Luck.

3 Q And is there an address listed there?

4 A 110 Royal Palm Boulevard.

5 Q Is there an apartment listed?

6 A Apartment 202. And then it actually has his
7 employment and other things on there.

8 Q Okay. And is that the residence that was
9 searched that you participated in the execution of
10 the search warrant on 17, October?

11 A It is.

12 Q Okay, thank you.

13 okay. When you say you were the collector,
14 does that mean you are the first -- what does that
15 mean?

16 A Normally in a search warrant situation, again
17 -- and was the case here -- another investigator
18 handled the initial case, therefore I was brought in
19 at a later time for an unknown reason. She wasn't
20 available or things like that. So I don't have full
21 familiarity with this case.

22 In a search warrant situation the detectives
23 would get there -- usually the lead agent, along with
24 another two or three detectives they know
25 specifically what items may be of evidentiary value

1 and they tell us, hey, we are looking for this, this
2 and this.

3 Q And do you collect that?

4 A I would photograph it and collect it.

5 Q So you're the first law enforcement person to
6 take control of that?

7 A I am.

8 Q So you are the first and the last in the chain
9 of custody?

10 A Correct.

11 Q Now, you say photographs. Did you take any
12 photographs while you were there?

13 A Yes, I did.

14 Q Okay. We are going to skip a little bit and
15 we are going to go to State's Exhibits 15 through 20
16 already entered into evidence.

17 I'm going to show you some photographs.

18 MR. ARCHER: Your Honor, I have.

19 THE COURT: No speaking objections. If there
20 is an objection --

21 MR. ARCHER: No. I was going to say I have no
22 objection to 15, 16 and 17.

23 THE COURT: Those have already been admitted.

24 MR. ARCHER: And none to 20.

25 THE COURT: That's also already been admitted.

1 MR. ARCHER: You know, I -- can we approach,
2 Your Honor?

3 THE COURT: You may.

4 (Whereupon, the following discussion was held
5 at the bench.)

6 THE COURT: We have two tags that have been
7 identified, which I assume are these two. I don't
8 think this is any relevant -- you got --

9 MR. STACK: Yes. One of those being the tags.
10 discussed.

11 THE COURT: Those are the tags collected at
12 the residence?

13 MR. STACK: That's correct.

14 THE COURT: Why are they relevant?

15 MR. STACK: The relevance is showing he has an
16 extra tag, switching out the tag.

17 THE COURT: There is no evidence any of these
18 were used to distinguish them out.

19 MR. STACK: They were not the specific ones.
20 We had the first tag, partial tag. We do not have
21 the subsequent tag.

22 THE COURT: The one related to what you have
23 there, correct?

24 MR. STACK: That's correct.

25 THE COURT: You have to connect the dots

1 somehow those are related to the ones that were
2 identified as one that were switched out in the
3 parking lot.

4 MR. STACK: I will withdraw it. No. 9 will be
5 ID only.

6 MR. ARCHER: This one I need tie it -- tie it
7 together. I'm not sure exactly what I'm looking at.

8 MR. STACK: Those are the gloves and hood,
9 something you put over your face. There has been
10 testimony they went through the store, faces covered.

11 MR. ARCHER: I have no objection to 18.

12 THE COURT: 18 will be marked and admitted
13 without objection. You may proceed.

14 MR. STACK: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 (Whereupon, Exhibit 18 is admitted into
17 evidence.)

18 (In open court.)

19 Q (By Mr. Stack) Okay. Specialist Roy, this is
20 State's Exhibit No. 15.

21 Did you take this photograph?

22 A I did.

23 Q What is this a photograph of?

24 A At the beginning of any portion of film, say
25 we're executing a search warrant at a scene, our

1 first photograph is usually our placard. And
2 basically the placard has the case number, the date
3 and our initials.

4 So you can barely see on this photograph, has
5 a lot to do with that projector, but they are there.

6 Q Now, why is it fuzzy or difficult to see? Can
7 you read that or is that our of focus?

8 A I can read it. But again, you can't hardly
9 see -- you can see a little bit of the case number
10 here, part of my initials and the date which is right
11 above it. I can see just a little bit of the date.

12 MR. ARCHER: I will stipulate this is a tag
13 identifying the case number and all that.

14 THE COURT: So stipulated.

15 MR. STACK: Thank you, Your Honor.

16 THE COURT: Proceed.

17 Q (By Mr. Stack) This is State's Exhibit No.
18 16. What does this photograph depict?

19 A It's basically showing the location of the
20 apartment. The apartment in question is upstairs on
21 the left.

22 That's just an overall of where the apartment
23 is located.

24 Q When you say upstairs on the left, is this
25 what you are talking about?

1 A Yes, sir.

2 Q This is State's Exhibit No. 18. What does
3 this photograph depict?

4 A This photograph was actually taken in the
5 master bedroom of the apartment. There's two black
6 gloves and a ski mask.

7 Q Okay. This is State's Exhibit No. 20. Can
8 you read that? Is that clear from where you are at?

9 A It isn't. I can tell it's a South Carolina
10 driver's license, social security card, and a -- I
11 believe that's a birth certificate at the top.

12 Q All right. Does that focus it or not?

13 A It does not.

14 Q Okay. What did you say was at the top?

15 A It looks like a birth certificate.

16 Q I'm going to present it to you.

17 Look at the photo, what is at the top?

18 A High school diploma.

19 Q And who is it for?

20 A Dashaud Samuel Luck.

21 Q And what is in the middle?

22 A Dashaud Samuel Luck's driver's license.

23 Q And the bottom piece?

24 A Dashaud Samuel Luck's social security card.

25 Q Thank you.

1 Now skipping back a little bit. Did you say
2 you took some photos, and did you collect evidence,
3 did you say?

4 A I did.

5 Q Okay. And do you recall what type of evidence
6 you collected?

7 A Those items that are in those two pictures
8 there I collected, along with a projectile -- or
9 actually a live round that was located in the same
10 room. And also three license plates.

11 Q Okay.

12 MR. ARCHER: May we approach, Your Honor?

13 THE COURT: You may.

14 (Whereupon, the following discussion was held
15 at the bench.)

16 MR. ARCHER: We --

17 MR. STACK: I'm not going to admit them. We
18 are not going to present it, not put the three
19 license plates into evidence.

20 MR. ARCHER: I ask you strike his reference to
21 the license plates.

22 MR. STACK: He made reference to the license
23 plates.

24 MR. ARCHER: I'm sorry?

25 MR. STACK: Just now, I asked him what

1 evidence he collected. He said three license plates.

2 THE COURT: I have to bring their attention to
3 what is to be stricken. I think it draws more
4 attention. I'm not going to strike the whole answer.
5 You might let that one slide.

6 MR. ARCHER: Okay.

7 (In open court.)

8 Q (By Mr. Stack) Now, I'm going to present to
9 you what has been marked for identification purposes
10 only as State's Exhibit No. 10.

11 I would like for you to review this object.
12 Take a few moments to review that object.

13 Have you reviewed that object?

14 A I have.

15 Q Have you seen it before?

16 A I have.

17 Q Is it in substantially the same condition as
18 when you last saw it?

19 A It is.

20 Q Was it collected in connection with the
21 execution of the search warrant?

22 A It was.

23 MR. STACK: Your Honor, State moves State
24 Exhibit No. 10 into evidence.

25 THE COURT: Any objection?

1 MR. ARCHER: No objection.

2 THE COURT: Marked and admitted without
3 objection.

4 (Whereupon, State's Exhibit No. 10 is admitted
5 into evidence.)

6 Q (By Mr. Stack) What is this object?

7 A It's a ski mask.

8 Q Will you please hold it up to the jury so that
9 they can see.

10 A (Witness complies.)

11 Q And would you describe it?

12 A Well, it's a black ski mask designed to keep
13 you warm on your face. And you see your eyes and
14 your nose. It covers your entire head all the way
15 down to your clothing.

16 Q Okay. I'm now going to present to you State's
17 Exhibit No. 11, 12 and 14 marked for identification
18 purposes only.

19 I'd like for you to take a few moments and
20 review each of these objects.

21 Have you reviewed each object?

22 A I have.

23 Q Have you seen them before?

24 A I have.

25 Q Are they in substantially the same condition

1 as when you last saw them?

2 A They are.

3 Q And did you collect them in connection with
4 the execution of the search warrant?

5 A I did.

6 Q All right.

7 MR. STACK: Your Honor, the State is moving
8 State's Exhibits 11 12 and 14 into evidence.

9 THE COURT: Any objection?

10 MR. ARCHER: I'm not --.

11 THE COURT: If there's an objection --

12 MR. ARCHER: Yes.

13 THE COURT: -- you need to tell me the basis
14 of the objection. No speaking objections.

15 MR. ARCHER: Yes, Your Honor.

16 State's 11 has never been made relevant.

17 THE COURT: No speaking objections. What is
18 the basis of the objection?

19 Would you like to approach?

20 MR. ARCHER: Yes.

21 (Whereupon, the following discussion was held
22 at the bench.)

23 MR. ARCHER: State's 11 is gloves that haven't
24 been --

25 THE COURT: How are they relevant.

1 MR. STACK: They're relevant because they're
2 consistent with the earlier description and talk
3 about mask.

4 THE COURT: I don't remember anybody
5 describing hands with gloves. There is a description
6 of one showed a gun, their faces being covered. I
7 don't recall any testimony about gloves.

8 MR. ARCHER: I don't either.

9 MR. STACK: I think the video indicates black
10 gloves.

11 THE COURT: Is it on video, clear.

12 MR. STACK: No. They're dressed all in black.

13 THE COURT: I will look at the video during
14 the break. If it is, I will admit those if it's in
15 the video.

16 They will be ID only at this time.

17 Do you object to the rest of it?

18 MR. ARCHER: No, Your Honor.

19 THE COURT: Then that is which one, 11?

20 MR. STACK: Black gloves are 11.

21 THE COURT: And 12 and 14 will be marked and
22 admitted without objection. 11 is for ID only.

23 (Whereupon, State's Exhibit Nos. 12 and 14
24 were admitted into evidence.)

25 (In open court.)

1 Q (By Mr. Stack) All right. What is State's
2 Exhibit No. 12?

3 A It's a -- it's like a mesh stocking.

4 Q Can that be worn over an individual's head?

5 A It can be.

6 Q Can you hold it up to the jury and stretch it
7 out to show the dimensions, if you would please.

8 A (Witness complies.)

9 Q All right. Is it a woman's stocking?

10 A Yes.

11 Q It can be worn over the head?

12 A It can.

13 Q And the face?

14 A Yes.

15 Q Okay. What is State's Exhibit No. 14?

16 A 14 is a .22-caliber bullet.

17 Q And where was that collected?

18 A It was collected at the apartment in the
19 master bedroom closet.

20 MR. STACK: Thank you. Court's indulgence.

21 MR. ARCHER: Your Honor.

22 THE COURT: Yes, sir.

23 MR. ARCHER: I mean, I have seen what was in
24 the -- I guess the inference, but I don't think there
25 is any testimony to tie that to this case.

1 THE COURT: Circumstantially and inferentially
2 there was testimony that there was a gun at the scene
3 of the robbery.

4 overruled.

5 MR. STACK: Thank you, Specialist Roy. If you
6 would, please answer any questions defense counsel
7 has.

8 THE COURT: You may proceed, Mr. Archer.

9 CROSS-EXAMINATION

10 BY MR. ARCHER:

11 Q Now, I'm showing you what has been marked as
12 State's Exhibit 20. And did you seize these
13 documents at the apartment, or you just photographed
14 them?

15 A They were just photographed.

16 Q You didn't seize them?

17 A No.

18 Q All right. The driver's license is the
19 driver's license for Dashaud Luck, correct?

20 A Yes.

21 Q And what's the address on that driver's
22 license?

23 A 1832 shell wood circle, Charleston, South
24 Carolina.

25 Q And you all were searching 110 Royal Palm

1 Boulevard, correct?

2 A Yes, sir.

3 Q So the driver's license does not match this
4 address of the residence you searched?

5 A Correct.

6 Q Okay. Now, before -- were you ever able to
7 determine how many people lived in that apartment?

8 A Not exactly. There was two bedrooms, there
9 was furniture in both. I can say two people.

10 Q So at least two people, maybe more?

11 A Correct.

12 Q Okay. And you really don't know who the two
13 people were that lived in there?

14 A I do not.

15 Q Okay. And you don't know whose name the lease
16 was in, do you?

17 A I do not.

18 Q Okay. You collected these items?

19 A I did.

20 Q And this. Did you ever send these off for DNA
21 analysis to see who might have had them over their
22 head?

23 A I did not, no.

24 Q Do you know if they ever were sent off?

25 A No, I do not.

1 Q But you are frequently able to get DNA off of
2 something like this, aren't you?

3 A Yes. It is possible, yes.

4 Q Particularly it is over your mouth and nose
5 when your moisture, mouth moisture would connect to?

6 A Uh-hum.

7 Q That's a yes?

8 A Yes, sir.

9 Q Okay.

10 MR. ARCHER: I have no other questions.

11 THE COURT: Any redirect?

12 MR. STACK: Yes, just very briefly.

13 REDIRECT EXAMINATION

14 BY MR. STACK:

15 Q Looking again at State's Exhibit No. 1. The
16 address that you indicated is what?

17 A On the advisement of rights is 110 Royal Palm
18 Boulevard, Apartment 202.

19 Q Is that the apartment you searched?

20 A It is.

21 Q And on that, is there Dashaud Luck's signature
22 on it?

23 A Yes, sir.

24 MR. STACK: Thank you. Nothing further.

25 THE COURT: Any objection to the witness being

1 excused from the State.

2 MR. STACK: No, Your Honor.

3 THE COURT: From the defense?

4 MR. ARCHER: None.

5 THE COURT: Sir, you are excused.

6 THE WITNESS: Thank you.

7 THE COURT: Madam Forelady, ladies and
8 gentlemen, you all have been sitting a little. I'm
9 going to give you a brief restroom break. During the
10 break, please do not discuss the case and please
11 leave your notepads in your seats.

12 We have ordered your lunch, and we anticipate
13 it will be arriving around 1:00.

14 If you would go with the bailiffs for me,
15 please.

16 (Whereupon, the jurors exit the courtroom.)

17 THE COURT: How many additional witnesses does
18 the State have?

19 MR. STACK: One, Your Honor.

20 THE COURT: That's Mr. Milz?

21 MR. STACK: Yes, Your Honor.

22 THE COURT: Okay. We will take a brief
23 restroom break. Do charge conference. And then we
24 will resume with the witness and do closing
25 arguments.

1 I'll give you a little break between to get
2 ready for closing arguments.

3 MR. ARCHER: Yes, Your Honor.

4 (Whereupon, a recess was taken.)

5 THE COURT: Is the State ready to proceed?

6 MR. STACK: Yes, Your Honor.

7 THE COURT: Defense ready to proceed?

8 MR. ARCHER: Yes, Your Honor.

9 THE COURT: Please get the jury.

10 (Whereupon, the jurors enter the courtroom.)

11 THE COURT: Ladies and gentlemen, I hope you
12 enjoyed your break. We will now resume testimony.

13 The State may proceed.

14 MR. STACK: Thank you, Your Honor.

15 State calls Crime Scene Specialist James Milz.

16 THE COURT: Sir, if you would come to the
17 witness stand to be sworn.

18 JAMES THOMAS MILZ,
19 after having first been sworn to tell the truth, the
20 whole truth and nothing but the truth testified on
21 her oath as follows:

22 THE COURT: You may proceed.

23 MR. STACK: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. STACK:

1 Q Good afternoon, Specialist Milz.

2 A Good afternoon, sir.

3 Q What do you do for a living?

4 A Sir, I'm a deputy sheriff. But also I'm a
5 crime scene investigator with Charleston County
6 sheriff's office.

7 Q And how long have you worked for the sheriff's
8 office?

9 A 12 years, sir.

10 Q Would you please tell the jury the types of
11 duties and responsibilities you have as a crime scene
12 officer?

13 A As an example, sir, if I was called out to a
14 scene I would preserve by photograph or videotape the
15 scene, gather evidence, and process the evidence, and
16 preserve the evidence in my warehouse if needed.

17 Q Okay. Back on October 13th, 2008, did you
18 participate in the execution of a search warrant of a
19 white Crown Victoria with a VIN number as follows:
20 2-F-L-A-P-7-1-W-8-Tango-X-ray-1-1-4-0-2-2?

21 A Yes, sir.

22 Q Okay. Did that vehicle -- do you know who
23 that vehicle belonged to?

24 A It was registered, sir, to a Crystal Green I
25 believe, sir.

1 Q Crystal Green. Are you aware of any
2 relationship between Ms. Green and Dashaud Luck?

3 A No, sir.

4 Q Now, did you collect anything from the white
5 Crown Victoria during that search?

6 A I did, sir.

7 Q And what did you do with those objects?

8 A They were photographed, sir, and entered into
9 our evidence compound, sir.

10 Q All right. Did you also take any photographs?

11 A I did, sir. Interior and exterior of the
12 vehicle.

13 Q All right. I'm now going to present some
14 photographs that have already been entered into
15 evidence. State's Exhibits 22 through 29.

16 MR. ARCHER: One second, Your Honor.

17 THE COURT: Uh-hum.

18 MR. ARCHER: Okay. No objections.

19 THE COURT: What are those numbers again.

20 MR. STACK: State's Exhibits 22 through 29.

21 THE COURT: Those are already marked and
22 admitted without objection.

23 You may proceed.

24 Q (By Mr. Stack) Specialist Milz, this is
25 State's Exhibit 22. What is this?

1 A Sir, that is placard card. The reason for a
2 placard card, sir, is at the beginning of every
3 traditional role of film, the placard tells me like
4 08, that is the year, the assigned number.

5 what I'm doing is a search warrant on a '96
6 crown victoria. And that is the VIN number that you
7 read off earlier, sir.

8 Q Okay. This is State's Exhibit No. 23.
9 what does this photograph depict?

10 A of the white Crown Victoria, sir.

11 Q Is there anything unusual on the driver's
12 side?

13 A It has a spotlight, sir.

14 Q When you say spotlight, using the laser, is
15 that what you are talking about right there?

16 A Yes, sir.

17 Q Is that common with police vehicles?

18 A Police and service vehicles, yes, sir.

19 Q Okay. This is State's Exhibit No. 24.
20 what does this photograph depict?

21 A Of also the white victoria, sir.

22 Q From a different angle?

23 A Yes, sir.

24 Q Okay. And 25?

25 A The same, sir, different angle.

1 Q And 26?

2 A Yes, sir. Same Victoria.

3 Q Okay. A little different here.

4 What does this photograph depict, State's
5 Exhibit No. 29?

6 A Sir, that is of the common VIN found on the
7 vehicle.

8 Q Is that the VIN number?

9 A Yes, sir.

10 Q Okay. And this is State's exhibit -- I'm
11 sorry, I need to correct myself. That is State's 27,
12 and this is State's 28.

13 Can you read that from there? I can't, but
14 can you?

15 A No, sir, I cannot.

16 Q Okay. Let me present it to you, then.

17 A Thank you. Yes, sir. It's a Geico insurance
18 card, sir, for a '96 Crown Victoria. It is for a
19 Crystal Green is the insured. '96 Crown Victoria,
20 and I can read the VIN if you so choose.

21 Q No, that's okay. Unless defense counsel wants
22 it.

23 And this is also State's Exhibit 29 behind
24 you. Can you read this document?

25 A No, sir, I'm sorry.

1 Q Okay. Then I will show it to you in the same
2 manner.

3 A Thank you.

4 Q I can't read it, but it doesn't mean it's not
5 in focus.

6 A Okay. Sir, it's a South Carolina registration
7 form.

8 Q Uh-hum.

9 A It is also for a '96 Ford Crown Victoria, same
10 matching VIN number for a Crystal Green of Royal Palm
11 Boulevard.

12 Q Okay. Now, did you collected any physical
13 evidence?

14 A I collected --

15 Q Just yes or no?

16 A Yes, sir.

17 Q Okay. I'm now going to show you what has been
18 marked as State's Exhibit 21.

19 MR. STACK: Marked for identification purposes
20 only, I believe, is that correct?

21 THE COURT: What is that number?

22 MR. STACK: 21, Your Honor.

23 Q (By Mr. Stack) Looking into this bag, do you
24 recognize this object?

25 A May I take it out?

1 Q Yeah.

2 A Yes, sir.

3 Q Okay. Have you seen it before?

4 A Yes, sir.

5 Q Is it in substantially the same condition as
6 when you last saw it?

7 A Yes, sir.

8 Q Was it collected during the execution of a
9 search warrant of that vehicle?

10 A It was, sir.

11 MR. STACK: Your Honor, the State moves
12 state's Exhibit No. 21 into evidence.

13 THE COURT: Any objection?

14 MR. ARCHER: No objection.

15 THE COURT: Marked and admitted without
16 objection.

17 (Whereupon, State's Exhibit No. 21 is admitted
18 into evidence.)

19 Q (By Mr. Stack) Specialist Milz, what is that
20 object?

21 A It's a -- commonly referred to as a do-rag.

22 Q Okay. Will you please hold it up to the jury.

23 A (Witness complies.)

24 Q And what is that material similar to?

25 A Like a nylon stocking.

1 Q Can you fit that over a person's head?

2 A Yes, sir.

3 Q And can you pull it down over your face?

4 A Yes, sir.

5 Q Would you be able to see through it if you
6 pulled it down over your face?

7 A Yes, sir.

8 MR. STACK: Thank you, Specialist Milz. If
9 you would please answer any questions defense counsel
10 may have.

11 THE WITNESS: Yes, sir.

12 THE COURT: You may proceed.

13 CROSS-EXAMINATION

14 BY MR. ARCHER:

15 Q Do-rags are pretty common, aren't they?

16 A Yes, sir.

17 Q And they are worn by a large number of young
18 black men, right?

19 A Yes, sir.

20 Q Now, was this particular one that you have,
21 was it ever submitted for DNA analysis?

22 A No, sir.

23 MR. ARCHER: No other questions.

24 Oh, yes, excuse me I do. I have some more,
25 I'm sorry.

1 Q (By Mr. Archer) Okay. I'm showing you
2 state's Exhibit 29. And that is what?

3 A The registration, sir.

4 Q And what is the -- it's registered to Ms.
5 Crystal Green, right?

6 A Yes, sir.

7 Q And what is the address on that?

8 A 308 Royal Palm Boulevard, Apartment 103,
9 Charleston, sir.

10 Q Okay. And No. 28 is the Geico card. And that
11 also shows the vehicle registered to Ms. Crystal
12 Green?

13 A Yes, sir.

14 Q But there is no address on that one, is there?

15 A No, sir.

16 MR. ARCHER: Okay. I have no other questions,
17 Your Honor.

18 THE COURT: Any further questions of the
19 witness?

20 MR. STACK: No, Your Honor.

21 THE COURT: Any objection to the witness being
22 excused from the State?

23 MR. STACK: No, Your Honor.

24 THE COURT: From the defense?

25 MR. ARCHER: None, Your Honor.

1 THE COURT: Sir, you are excused.

2 Anything further from the State?

3 MR. STACK: Court's indulgence for just a
4 moment.

5 Your Honor, the State rests.

6 THE COURT: Ladies and gentlemen, the State
7 has rested their case. There are some matters of law
8 I need to take up with the attorneys.

9 In the meantime, your lunch has arrived. And
10 so I'm going to allow you to go ahead and eat. While
11 you are doing that, we are going to work on some
12 matters of law so that we can move forward with
13 closing argument and instruction once you have eaten.

14 I anticipate that we will be out somewhere
15 between 45 minute to an hour. Once you have eaten,
16 just let the bailiffs know if you want to go
17 downstairs and get some air and walk around and they
18 will take you downstairs. So you all have my
19 permission for that in advance.

20 If you would go with the bailiffs. Leave your
21 notepads in your seats. And please do not discuss
22 the case in any manner whatsoever.

23 (Whereupon, the jurors exit the courtroom.).

24 THE COURT: Are there any motions? The State
25 has rested their case.

1 MR. STACK: Your Honor, we are withdrawing the
2 gloves and we don't need a ruling on that. We will
3 not enter them as evidence.

4 THE COURT: Okay. That's No. 19, correct.

5 MR. STACK: Let me double check. The gloves
6 are No. 11, Your Honor.

7 THE COURT: I'm sorry, I was thinking of
8 something else. 19 is the picture of the license
9 plate, you're correct.

10 No. 11 is withdrawn and marked for ID only.

11 Are there any motions, Mr. Archer?

12 MR. ARCHER: Yes. To simply preserve the
13 record I'd move to dismiss, or in the alternative for
14 a directed verdict. No argument is requested on
15 that.

16 THE COURT: I'm sorry.

17 MR. ARCHER: No argument is requested on that.

18 THE COURT: Okay. Would the State like to
19 respond?

20 MR. STACK: No, Your Honor.

21 THE COURT: The Court will deny the motion and
22 find that there is substantial circumstantial
23 evidence, as well as direct evidence reasonably
24 tending to prove the defendant's guilt, and therefore
25 the motion is denied.

1 We will do a quick charge conference. And
2 then I'm going to let you all go eat some lunch as
3 well so that you all can be refreshed when we resume
4 the proceedings.

5 I'm going to give the jury a general
6 instruction regarding my responsibility and their
7 responsibility. How they are to judge witness
8 credibility and believability.

9 I will give them a general instruction
10 regarding identification, as well as the statement
11 alleged to have been made by the defendant. And a
12 general instruction from State versus Grippon on
13 direct and circumstantial evidence.

14 A general instruction regarding the charge,
15 the arrest and the indictment not being evidence, as
16 well as on the presumption innocence. I will charge
17 Victor versus Nebraska on reasonable doubt.

18 I will then give a general instruction
19 regarding the fact that the defendant did not
20 testify, and that that is not to be construed against
21 him in any manner whatsoever. And that he does not
22 have any burden of proof in this case. That he does
23 not have to present any testimony.

24 I will also, in conjunction with that
25 instruction, give a general instruction regarding

1 trial in absence pursuant to State versus Jackson,
2 and that that is not to be construed as any inference
3 of guilt against the defendant in any manner
4 whatsoever.

5 I will then give a general instruction
6 regarding the element of armed robbery, which is
7 16-11-330. And I don't think there has been any
8 evidence regarding a representation of a deadly
9 weapon. I think the testimony is that there was a
10 gun. So I will only be instructing that and not the
11 representation language.

12 Then I well instruct code section 16-23-490
13 was just possession of a weapon during the commission
14 of a violent crime. And that 16-1-60 defines the
15 crime of armed robbery as a violent crime.

16 Then I will give the options on the verdict.

17 Are there any exception to the proposed charge
18 from the State?

19 MR. STACK: Yes, Your Honor. We would request
20 -- I don't know if you covered this, the hand of one
21 is the hand of all.

22 THE COURT: You know, I did not instruct
23 accomplice liability. And I intended -- is there any
24 exception to that, Mr. Archer?

25 MR. ARCHER: No, Your Honor.

1 THE COURT: I will also instruct hand of one.

2 MR. STACK: And, Your Honor, may I ask, I know
3 you covered this, in terms of representations, since
4 we don't have the gun to put into evidence to show
5 it's an actual gun, but merely the observation, and
6 also the observation on the tape, there could be an
7 argument it's not a real gun.

8 THE COURT: The statute says -- only if Mr.
9 Archer intends to argue that. But the only testimony
10 in the record, while you don't have a gun, the only
11 testimony you have is that the person saw a gun.

12 MR. STACK: Yes.

13 THE COURT: And then your eyewitness says a
14 gun was used. The terminology of the statute is when
15 somebody actually represents that they have a gun,
16 but they really don't have one.

17 In other words, later on you find out it was a
18 toy pistol, or some plastic gun, or where they turn
19 out to be mistaken and it was not in fact a gun. But
20 at the time of the robbery, it was in fact a gun.

21 I don't think it covers situations where you
22 don't actually recover the gun.

23 MR. STACK: My concern would be would a juror
24 be back there saying, well, maybe it's not a real
25 gun.

1 THE COURT: Well, I think that Mr. Archer
2 would have to argue that, wouldn't he? There would
3 have to be some testimony that it wasn't a real gun.

4 MR. STACK: Yes, Your Honor.

5 THE COURT: Because the way the statute is
6 worded is that robber alleged that he or she was
7 armed with a deadly weapon, either by action or
8 words, while using a representation of a deadly
9 weapon. Or any object which a person present during
10 the commission of the robbery reasonably believed to
11 be a deadly weapon.

12 I have usually instructed that when the facts
13 support that the person said, I got a gun and I'm
14 going to shoot you. But when they get him they find
15 out it was a BB gun, or it was a plastic gun like a
16 toy gun.

17 But I will think about it.

18 Is there any exception, Mr. Archer? Do you
19 plan to argue that he really didn't have a gun or
20 that there really wasn't a gun present.

21 MR. ARCHER: Well, I may argue about the gun.

22 THE COURT: Okay. Well, then I will instruct
23 the whole language of the statute.

24 MR. ARCHER: Yeah. You know, I would ask,
25 Your Honor, and this is based upon a couple of

1 things.

2 THE COURT: Wait, let me finish.

3 Mr. Stack, did you have any other exceptions
4 to the instructions?

5 MR. STACK: No, Your Honor.

6 THE COURT: Okay. Yes, sir, Mr. Archer.

7 MR. ARCHER: I would ask for a strong-arm
8 charge, Your Honor. And that's based upon a couple
9 of things. One is --

10 THE COURT: Well, let me ask. Does the state
11 have any exception?

12 MR. STACK: We are not requesting the
13 strong-armed, the lesser included.

14 THE COURT: Do you have any exception to his
15 request for the lesser included?

16 MR. STACK: There has been no evidence
17 presented that there is no gun there, Your Honor.

18 MR. ARCHER: Your Honor, I believe there has
19 been. There was testimony there were two clerks in
20 the store. One said she saw a gun, the other said
21 she saw no guns.

22 MR. STACK: Well, the other clerk says she
23 didn't see anything.

24 MR. ARCHER: Well, I think that raises an
25 issue.

1 THE COURT: What matters is what the clerk who
2 was stolen from saw.

3 MR. ARCHER: I think they are both witnesses
4 inside the store.

5 THE COURT: Yeah, but who was the money
6 actually taken from? I believe it was the first
7 witness who said it was held on her, she gave up the
8 money, correct?

9 MR. STACK: Yes, Your Honor.

10 MR. ARCHER: But we have two eyewitnesses to
11 the event. And I think --

12 THE COURT: It doesn't matter, that. It
13 matters when you talk about that who the money
14 actually was taken from.

15 If there is evidence that a gun was used when
16 the money was taken, then -- strong arm is
17 appropriate when there is force but no gun.

18 MR. ARCHER: Yes, ma'am. Well, I think --

19 THE COURT: It doesn't matter what the other
20 witness saw in terms of whether there was a gun or
21 not because she is not the one who it was taken from.

22 MR. ARCHER: She does --

23 THE COURT: She merely supports that the money
24 was taken and force was used.

25 MR. ARCHER: I think it does, Your Honor,

1 because, you know, there are two issues. One is what
2 in the mind of the girl behind the counter, and the
3 other is what actually happened. Okay.

4 And it's conceivable -- the girl behind the
5 counter said two things. One, on the night in
6 question she said she saw one guy. Then, she came in
7 here and said she saw two guns, okay.

8 THE COURT: She saw a gun. That's all deadly
9 force.

10 MR. STACK: Well, that's her perception. But
11 the question --

12 THE COURT: She is the one who the money was
13 actually taken from, correct?

14 MR. ARCHER: But there wasn't a gun pulled in
15 the store. No matter what she perceives, if there
16 wasn't a gun pulled in the store, then it's not an
17 armed robbery.

18 And when you have two witnesses inside the
19 store, and one says they saw a gun and the other said
20 they didn't, then that creates an issue as to whether
21 guns were pulled, no matter what the girl's
22 perception was who was behind the counter.

23 You have to have actual presentation or
24 representation of a gun. And I think that -- and we
25 have got the videos. And I think, you know, there is

1 an issue. If you look at the videos and there is a
2 question as to whether a gun was pulled.

3 MR. STACK: Your Honor, if I may interject.
4 Defense counsel is referencing testimony that has not
5 been given. The second clerk who was in there that
6 saw nothing did not testify because we didn't call
7 her. We have no contact with her.

8 In her written statement, she said she was in
9 the back --

10 THE COURT: Yeah, I don't recall there being
11 any test -- that testimony wasn't entered, correct?

12 MR. STACK: That's correct. In her written
13 statement --

14 THE COURT: So what are you referring to, Mr.
15 Archer?

16 MR. ARCHER: Well, it came into evidence
17 without objection.

18 THE COURT: When and through who?

19 MR. ARCHER: It came in through Officer
20 Wagner, I believe, Your Honor, that she had given a
21 statement indicating that she saw no gun.

22 MR. STACK: No, she said she didn't see
23 anything.

24 MR. ARCHER: And that --

25 THE COURT: I'd have to look back at the

1 record to see exactly what it says.

2 First of all, she was not here. She did not
3 testify. It was a passing reference from an
4 investigator referring to a statement that she saw
5 nothing. That's different than not seeing a gun.

6 MR. ARCHER: Well, it's in the record. Hold
7 on a second, Your Honor.

8 THE COURT: It would have to be as you
9 represented which is that she saw nothing -- that she
10 did not see a gun. That's different than, I saw
11 nothing.

12 That's different than saying I was there and I
13 didn't see anything. That's different than saying, I
14 didn't see a gun.

15 MR. ARCHER: One moment, Your Honor.

16 THE COURT: There has to be some factual
17 support for a lesser included offense. In other
18 words, there has to be some evidence that there's --
19 a weapon was not used at all.

20 MR. ARCHER: One second, Your Honor.

21 THE COURT: Her statement didn't come into
22 evidence.

23 MR. ARCHER: Well, this did, because I read it
24 to her. Did you see a gun in either person's hand --

25 THE COURT: You didn't read that.

1 MR. ARCHER: Huh?

2 THE COURT: You did not read that.

3 MR. ARCHER: I believe I did, Your Honor.

4 THE COURT: Our memory is one thing, but what
5 actually happened -- I'm going to look it up and see
6 that --

7 MR. ARCHER: Can we get the court reporter to?

8 THE COURT: Uh-hum. We are going to do it at
9 the break. I'm not going to do it right now.

10 MR. ARCHER: Right.

11 THE COURT: Right. But I don't recall you
12 reading from the statement. But then, my memory is
13 not infallible.

14 MR. ARCHER: That will be decided I guess
15 based on the --

16 THE COURT: Uh-hum. I'm going to go back and
17 read it.

18 MR. ARCHER: Yeah. The second thing is I
19 would ask or request a charge to failure to produce a
20 witness under one's control, you can draw an adverse
21 inference from.

22 And that would be the State's failure to call
23 the other clerk. And it's unexplained on the record.

24 And I do have a copy of a request to charge on
25 that, Your Honor. I believe the victim -- this

1 particular witness is under the control of the State.

2 MR. STACK: If I may address that.

3 THE COURT: Yes.

4 MR. ARCHER: That witness is not under our
5 control. We attempted to located her, were
6 unsuccessful.

7 THE COURT: How was she under their control,
8 Mr. Archer?

9 MR. ARCHER: Well, I mean as a victim of the
10 crime.

11 THE COURT: Well, she is not a victim, is she?

12 MR. STACK: No. She was at the back of the
13 store.

14 MR. ARCHER: I think everybody in the store is
15 a victim.

16 THE COURT: I don't think -- that's broad. If
17 I'm in a store that's being robbed I'm not a victim
18 if I wasn't a victim of the robbery.

19 MR. ARCHER: Well, she is an employee of the
20 store, and so --

21 THE COURT: But if she wasn't involved in the
22 robbery, she is not a victim.

23 And even if she was a victim, she is still not
24 within their control. They don't have any power to
25 make her be here, do they?

1 Is there any indication that she's within the
2 subpoena powers of the Court.

3 MR. ARCHER: I have no indication. I haven't
4 tried to subpoena her.

5 THE COURT: I doubt that I will instruct that.
6 it's generally an instruction that is given in a
7 civil context.

8 I have not been able to find any support for
9 it to be instructed in a criminal context. And there
10 are no criminal cases that support that instruction.
11 But I will have to think about it over lunch. And I
12 will have to see if it has been used or quoted in any
13 criminal cases.

14 I will think about, as well as whether the
15 lesser included is supported. I will have Anne look
16 that up for me and see exactly what was elicited from
17 the witness.

18 Is there anything further before we break for
19 lunch from the State?

20 MR. STACK: No, Your Honor.

21 THE COURT: From the defense?

22 MR. ARCHER: No, Your Honor.

23 THE COURT: And I will show you the verdict
24 forms after I make the decision.

25 We will break until 1:30 for lunch.

1 MR. STACK: Thank you, Your Honor.

2 THE COURT: You're welcome. See you all at
3 1:30.

4 And I assume you did not intend to call any
5 witnesses?

6 MR. ARCHER: No, Your Honor, I do not.

7 THE COURT: So you will reserve last argument.

8 MR. ARCHER: Yes, Your Honor.

9 (Whereupon, a recess was taken.)

10 THE COURT: Okay. I had the court reporter
11 look up the testimony, and Mr. Archer was correct.
12 On cross-examination of Detective Wagner, Mr. Archer
13 elicited that Ms. Brown was in the back of the store
14 and she didn't see anything.

15 However, he did question on the statement of
16 whether she saw a gun in either person's hand and he
17 said that she answered him no.

18 So I'm going to instruct the lesser included
19 of robbery based on that testimony that was elicited
20 without objection.

21 MR. ARCHER: You are going to instruct strong
22 arm, Your Honor? I just didn't hear you.

23 THE COURT: Yeah, robbery.

24 MR. ARCHER: Excuse me.

25 THE COURT: Robbery, which is common law.

1 MR. ARCHER: Common law robber.

2 THE COURT: Yeah, we call it strong armed
3 robbery, it's robbery.

4 MR. ARCHER: Thank you, Your Honor

5 THE COURT: Which the only element it lacks is
6 -- has all of the elements except the use of a deadly
7 weapon.

8 As regards to the request to instruct
9 regarding the failure to call the witness, we
10 shepardized the case law, and did some brief research
11 on the issue.

12 There is a citation regarding a criminal case.
13 However, there are some elements that must be met in
14 order to give that instruction. And I do not think
15 that they're present in this case based on the
16 testimony.

17 One of which is that the general rule is that
18 neither party is prejudiced if either fails to call a
19 witness who is equally available to the other party.

20 And generally, that instruction is appropriate
21 where under all of the circumstances of the case the
22 failure to produce such a witness creates a suspicion
23 of a willful attempt to withhold competent evidence.

24 And in addition to that, the case law has
25 articulated that an adverse inference from the

1 unexplained failure of a party to call an available
2 witness is generally held not warranted where the
3 material facts assumed to be within the knowledge of
4 the absent witness have been testified to by other
5 qualified witnesses.

6 So factually, it would not be applicable
7 because the Court has held that it is not warranted
8 where the material facts assume to be within
9 knowledge of the absent witness have been testified
10 to by other qualified witnesses. And that is what
11 has happened in this case.

12 The testimony was elicited through the
13 testimony of Detective Wagner and other witnesses.

14 In addition to that, there is no evidence in
15 the record that there has been a willful suspicion --
16 that there is a suspicion of a willful attempt to
17 withhold competent evidence from this witness.

18 And in addition to that, there has been no
19 articulation by the defense that the witness was
20 available, or that the State willfully did not
21 produce her.

22 What has been presented to the court is that
23 there have been several attempts to locate the
24 witness and she cannot be located. So there is not
25 even any indication that she is within the subpoena

1 powers of the Court.

2 In addition to that, there is no evidence in
3 the record that the witness is not equally available
4 to either party. So I am not going to instruct that.

5 If you all -- the verdict form will simply
6 guilty of armed robbery, or as to the lesser offense
7 guilty of strong armed robbery or not guilty. And
8 actually, it will just say robbery.

9 MR. ARCHER: Judge, I'd rather you use strong
10 armed.

11 THE COURT: Well, I will leave it at strong
12 arm, then. Because even though we call it that, in
13 the case law it simply refers to it as robbery.

14 MR. ARCHER: I understand, Judge. That's my
15 39 years of referring to it.

16 THE COURT: It's not a problem. We all do the
17 same thing.

18 Okay. And for possession of the firearm it
19 will simply be guilty or not guilty.

20 Is there any exception to the forms of the
21 verdicts from the State?

22 MR. STACK: No, Your Honor.

23 THE COURT: From the defense?

24 MR. ARCHER: No, Your Honor.

25 THE COURT: Okay.

1 Is the State ready to proceed with closing
2 argument?

3 MR. STACK: Yes, Your Honor.

4 THE COURT: Is defense ready to proceed with
5 closing argument?

6 MR. ARCHER: Yes, Your Honor.

7 THE COURT: Please bring in the jury.

8 MR. ARCHER: Am I being permitted to open and
9 close?

10 THE COURT: No. You only get to close. You
11 get last argument.

12 MR. ARCHER: Okay.

13 THE COURT: Since you did not present any
14 evidence.

15 (Whereupon, the jurors enter the courtroom.)

16 THE COURT: Ladies and gentlemen, I hope you
17 enjoyed your lunch. As I have indicated, we have now
18 reached the stage of the trial -- and actually I will
19 give Mr. Archer the opportunity to rest in the
20 presence of the jury.

21 Mr. Archer, you may proceed.

22 MR. ARCHER: Yes, ma'am. We rest our case.
23 We are actually not presenting any case.

24 THE COURT: Thank you.

25 Ladies and gentlemen, both the State and the

1 defense have rested their cases. The next stage of
2 the process is closing arguments and the Court's
3 instructions.

4 You will hear from the State and then the
5 defense and then the Court will give instructions. I
6 would ask that you give the attorneys your undivided
7 attention.

8 Mr. Stack, you may proceed.

9 MR. STACK: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 MR. STACK: Okay. Once again, good afternoon.
12 As you already know, my name is James Stack. I'm the
13 prosecutor here.

14 A legal concept that you are going to be
15 briefed on by the Judge when I'm done speaking, and
16 defense counsel is done speaking, is once again
17 you've heard it before it's called the hand of one is
18 the hand of all.

19 And what that means is that the hand of one
20 person is the hand of all persons who are acting in
21 concert in order to commit a crime. So if one person
22 had a gun, and another person took the money, and a
23 third person was out in the car as a getaway driver,
24 who committed armed robbery? The answer is all of
25 them did. Because the hand of one person is the hand

1 of all who are acting in concert.

2 Now, during the last two days you've heard a
3 lot of testimony. You've heard a lot of testimony,
4 you've seen a lot of evidence. It's been kind of
5 sprayed at you at a high rate of speed. Now it's
6 time to slow down and begin to organize that
7 information.

8 One way to organize your thoughts in this
9 matter, organize the information and then begin to
10 evaluate the information, is to use the elements of
11 the two crimes that Mr. Luck is charged with as a
12 framework or a structure within to organize the
13 information and to organize your thoughts in this
14 matter.

15 For a person to commit armed robbery, he must
16 do four things. He must take something of value from
17 the control of another person by force or by threat
18 of force, and he must do it while armed with a deadly
19 weapon.

20 Those are the four elements of armed robbery.
21 And I'm required to prove each of those four elements
22 to you.

23 First of all, was something of value taken?
24 And the answer appears to be yes. Cash was taken
25 from the cash register at that convenience store.

1 But that's my assertion.

2 What evidence do you have to that affect?
3 That something of value was taken, that cash was
4 taken? What testimony have you heard, what evidence
5 have you seen?

6 You heard the testimony of Ms. Williams,
7 Levina Williams, the first witness that testified
8 yesterday. She told you that cash was taken from the
9 cash register.

10 You saw it on the security tape. And you are
11 going to see it again in my close. And you'll also
12 have the security tape back in the room with you if
13 you want to see it again.

14 And who else told you that cash was taken?
15 Levina Williams, the security tape, and Dashaud Luck
16 told you that in his written, sworn statement with
17 his signature on it.

18 The cash was taken from the control of Levina
19 Williams, who was the clerk, the cashier behind the
20 counter with that cash register.

21 It cannot be excusable, I didn't take it, but
22 the other guy next to me took it. Because they're
23 both men that entered with pistols. Both men were
24 acting in concert. And the guy out in the car, who
25 was never arrested, committed the armed robbery.

1 It is not an acceptable excuse in the law to
2 say, I didn't do it, the other guy did it. The hand
3 of one is the hand of all.

4 All right. What else? Is there a threat of
5 force? What is indicated there? What evidence have
6 you seen? Two men entered, two men drew pistols.
7 She was told by both men, do not press the alarm.
8 That is a threat. When a person pulls out a gun and
9 tells you not to do something, that is a threat of
10 force.

11 And who told you that? Pretty much the same
12 evidence, Ms. Williams told you that, that one of
13 those guns were held to her head. That both men had
14 guns. Both men told her not to press the alarm. And
15 that the heavyset man told her to open up the other
16 cash register, the one that was not in use.

17 Who else told you that? Who else told you
18 there were guns there, two of them? Mr. Luck did.
19 Dashaud Luck in his confession.

20 Finally, while armed with a deadly weapon.
21 Again the same evidence. Both men had guns. Guns
22 are legally defined as a deadly weapon. Again you
23 have Ms. Williams, you have the tape, you have
24 Dashaud's statement to that affect.

25 Those are the four elements of armed robbery.

1 The second crime he is charged with is called
2 possession of a firearm during the commission of a
3 violent crime. To that we look to the legislature.
4 The South Carolina legislature has passed a law that
5 defines certain crimes as crimes of violence by
6 definition.

7 Now, fortunately, no one was injured that
8 night. The gun was not fired, and no one was hurt.
9 But nonetheless, the state legislature has legally
10 defined by statute a series of crimes considered
11 violent regardless of the facts. And armed robbery,
12 by that definition, is a crime of violence.

13 So the question becomes, did the defendant
14 have a gun while he was conducting an armed robbery?
15 Because he could have a knife, or a bat, or a
16 chainsaw.

17 But that's not the case. He had a gun. He
18 had a firearm while he was conducting a crime of
19 violence called armed robbery.

20 And again, who tells you that? Levina
21 Williams told you that both men had a gun, including
22 the heavyset man. Weston Richardson told you the
23 heavyset man had a gun in his waistband. Pulled up
24 his shirt and told him to go away.

25 You'll see it on the tape again in a few

1 moments. And who else told you he had a gun there?
2 Again, Mr. Luck. He told you he had that William --
3 his accomplice had a gun, and that he had a gun, and
4 that two guns were thrown away into a ditch, he
5 doesn't know where they're at now.

6 Now, when we talk about the hand of one is the
7 hand of, and all three men, the two men who entered
8 with the two pistols and the man who waited outside
9 in the Crown Vic, have committed armed robbery. And
10 it's true.

11 Two men were arrested. And Weston --
12 correction -- Williams Luck the case was dropped. I
13 dropped it. It wasn't found not guilty. It was not
14 presented to a jury. It was not tried. I dropped it
15 because it was insufficient evidence to prove armed
16 robbery with regard to his brother, William Luck, the
17 third man in there.

18 All we had was a weak identification. One of
19 the witnesses see I think it's number three, but I'm
20 not sure. And he had a mask over his face.

21 And the other one was an anonymous Crime
22 Stopper tip that was called in to Detective Wagner
23 who said the two brother, Williams and Dashaud,
24 committed it.

25 I can't put an anonymous tipster on the stand.

1 I would have insufficient evidence. We could not
2 ethically put William on trial. I don't have enough
3 evidence. I have to assume that he is not guilty.
4 That's not case with Dashaud --

5 MR. ARCHER: Your Honor.

6 THE COURT: Is there an objection?
7 Approach.

8 MR. ARCHER: His showing why he dropped the
9 charges against William are not part of the record.

10 THE COURT: You've gone a little further than
11 what you elicited through the witnesses. You said
12 you dropped it, you didn't go into all the stuff
13 about insufficient ID and all of that.

14 MR. STACK: The thing with William was brought
15 up by defense counsel. He brought it up, it was
16 dropped, through Nick Wagner's testimony. I talked
17 about it. He qualified it was a weak identification,
18 and talked about the anonymous tip, that he couldn't
19 testify. That was brought out.

20 THE COURT: You need to couch it in those
21 terms, Detective Wagner testified to it, not in the
22 terms of why I did it.

23 MR. STACK: Okay.

24 (In open court.)

25 THE COURT: Proceed.

1 MR. STACK: Thank you.

2 THE COURT: You're welcome.

3 MR. STACK: And that information came from
4 Detective Wagner. And you heard him on the stand
5 there.

6 All right. You've heard about the one gun
7 theory from defense counsel. That only the skinny
8 man had a gun. We have seen evidence that both men
9 had a gun, including Dashaud. You heard it from
10 Weston, he's known him since he was in elementary
11 school. You heard it from Levina Williams, who saw
12 it up close. You're going to see it again on the
13 tape. The heavyset man has a pistol in his hand.

14 But that's not sufficient. A one-gun theory
15 saying, let my guy go, is not sufficient because
16 again the hand of one is the hand of all. There is
17 three men there, they have six hands. Only one of
18 them has a gun, that's armed robbery.

19 If a different hand reaches into the cash
20 register and takes the money, that's armed robbery.

21 So to say, well, the skinny guy had the gun,
22 but not the heavyset gun [sic] is not sufficient.
23 Because the hand of one is the hand of all persons
24 acting in concert to commit a crime.

25 All right. At this time we are going to

1 publish State's Exhibit No. 2 again, which is the
2 crime security camera. And we are going to try to
3 slow it down, but we are not sure. And it's on
4 freeze frame now.

5 Now, I'd like to look at two things. One top
6 right, this is the heavyset man. You are going to
7 see the whole tape from start to finish in a minute.
8 And what is he holding? What is that object? The
9 heavyset man.

10 Again the heavyset man. And what is he
11 holding right there?

12 I want you to watch this. And I'm going to
13 show it to you again right now from start to finish.
14 This is the heavyset man, and that is the gun in his
15 hand.

16 (Whereupon, State's Exhibit No. 2 was
17 published to the jury.)

18 MR. STACK: All right. Now we're going to
19 back up and roll it again. Instead of concentrating
20 on the top right, I want you to concentrate on the
21 top left.

22 And again this is the heavyset man in profile
23 with the gun in his hand.

24 (Whereupon, State's Exhibit No. 2 was
25 published to the jury.)

1 MR. STACK: Right there. That's the heavyset
2 man. This is the thinner man, this is the heavyset
3 man. And what is holding in his hand? A firearm.

4 Okay. Who says Dashaud Luck is guilty? Who
5 says he had a gun? Ms. Williams did. Weston
6 Richardson did. You just saw it on the tape. But
7 also Mr. Luck says he is guilty. He had a gun and on
8 the day he took the cash.

9 I'm going to read you his statement. This is
10 verbatim. The Monday October 6th, 2008, I, Dashaud
11 Luck, was an accomplice in an armed robbery. This
12 robbery took place at the corner of Ashley River Road
13 and Parsonage Road at a gas station better known as
14 the Pantry.

15 I proceeded in first and watched the door.
16 Only watched the door. I am owning up to my
17 involvement with this robbery. My car, the white
18 Crown Victoria with the black spotlight, was the
19 getaway vehicle.

20 My mother wasn't aware that the car was used.
21 I did tell her that the tags were stolen. I did have
22 a handgun. I'm going to repeat that part. I did
23 have a handgun going into the store, but I never
24 pointed it at anyone -- I think you just saw
25 differently -- or attempted to even use it.

1 The guns, plural, were tossed and I don't know
2 where they're -- I do not know their whereabouts at
3 this point in time.

4 Then a question from Detective Wagner: How
5 much money was taken from the cash register?

6 Answer: 78 dollars.

7 That's the end of the statement.

8 That's his written statement written in his
9 own hand and signed by him and signed by Detective
10 wagner. And top of it is his Miranda warning, which
11 each line is initialed DSL, Dashaud S. Luck. Signed
12 here, and Detective Wagner signed there.

13 Those are the words of Dashaud Luck as he
14 speaks to you through his written statement. I had a
15 gun.

16 What does he not say? He does not say, I was
17 merely present. I was just a customer there and was
18 merely present. He said, I had a gun, and I acted
19 with an accomplice.

20 He doesn't say, I was not part of this. He
21 doesn't say, I was not involved. I acted with an
22 accomplice, I had a gun, the guns were tossed, we
23 took 78 dollars from the cash register.

24 Now, some points have been made by defense
25 about DNA testing, and that the masks that were

1 recovered from Dashaud's apartment were not sent off
2 for DNA testing.

3 It's not like a crime scene where they send it
4 off and 30 minutes later and two commercial breaks
5 they have a DNA profile, you know, competent to one
6 in four quadrillion.

7 It was not sent off. They were not sent off
8 for fingerprints either. Because fingerprints are
9 not -- fabric does not hold fingerprints very well.
10 And DNA was not tested because it was not an issue of
11 identification. We did not have an issue of who owns
12 this. It was in his apartment.

13 And also you heard a passing reference from
14 Detective Wagner about Tiffany Brown. Tiffany Brown
15 did not testify because we don't know where she is
16 and we have lost touch with her.

17 But she was the other clerk of court --

18 MR. ARCHER: Objection.

19 THE COURT: Basis of the objection?

20 MR. ARCHER: He is testifying to facts not in
21 the record.

22 THE COURT: Please approach.

23 (Whereupon, the following discussion was held
24 at the bench.)

25 THE COURT: What did you say?

1 MR. STACK: Tiffany Brown did not testify
2 during the course of this trial because we don't know
3 where she is. That's all I said.

4 MR. ARCHER: Because we don't know where she
5 is. That's not part of the record.

6 THE COURT: I don't know. Did you ask any
7 witnesses?

8 MR. STACK: I did not.

9 THE COURT: Don't go further into it if it's
10 not in the record.

11 MR. ARCHER: I move to strike that, Your
12 Honor.

13 THE COURT: Well --

14 MR. STACK: The issue has been brought up by
15 defense counsel about Tiffany Brown and her
16 statements through Nick Wagner. I think it's
17 appropriate to address that.

18 MR. ARCHER: It's different.

19 THE COURT: You should address it through
20 witnesses though.

21 MR. ARCHER: I will address it through
22 Wagner's testimony.

23 THE COURT: Yeah, through his testimony.

24 (In open court.)

25 THE COURT: Proceed.

1 MR. STACK: Thank you.

2 THE COURT: You're welcome.

3 MR. STACK: Tiffany Brown was the other clerk
4 in the back who didn't see anything. Levina Williams
5 was the clerk in the front that was at the cash
6 register. She was the victim, and she was the first
7 witness that testified.

8 Now, when Detective Williams [sic] was on the
9 stand, defense counsel asked him about Tiffany Brown,
10 about what she communicated to him.

11 And if you remember, Mr. Wagner said -- he
12 asked did Tiffany Brown see a gun. And the answer
13 was no. Tiffany Brown did not see a gun. Tiffany
14 Brown did not see anything.

15 Now, there's a big difference between I didn't
16 see anything -- there's a big difference that is not
17 equal to, does not equate to, I saw what happened and
18 I did not see a gun.

19 What Brown said -- what Detective Wagner said
20 that Brown related to him, Tiffany Brown was, I
21 didn't see anything. That's very different from, I
22 saw it and there was no gun. Her statement is -- or
23 Detective Wagner's statement is, I didn't see
24 anything.

25 And that's from the clerk who's at the back,

1 was cleaning up. The clerk at the front had had two
2 guns pointed at her. One gun pointed at her head,
3 the other gun held by Dashaud Brown [sic] said there
4 were two guns there. And you saw those guns, and the
5 heavyset guy.

6 Thank you.

7 MR. ARCHER: You know, ladies and gentlemen,
8 this may seem like a simple case at first glance, but
9 it really isn't. All right. You are going to be
10 asked to find beyond a reasonable doubt that Dashaud
11 Luck is guilty of armed robbery. That's what the
12 solicitor is asking you for.

13 Now, the Court is also going to instruct you
14 on what is called lesser included offense. And that
15 offense is variously called either just common law
16 robbery or strong armed robbery, all right?

17 Well, what is the difference? The difference
18 is armed robbery is you rob somebody under the threat
19 of a deadly weapon. And a gun would be a deadly
20 weapon. Strong armed robbery is taking money by
21 threat of force, but without a deadly weapon. All
22 right?

23 Now, you're finding is, and your decision as
24 to whether Dashaud is guilty beyond a reasonable
25 doubt is based upon the evidence you've heard, and

1 can also be based upon the evidence you didn't hear.

2 In other words, your decision can be based
3 upon the presence of evidence, or the absence of
4 evidence. All right?

5 And we would submit that there is considerable
6 absence of evidence here. All right? We have in
7 this case two clerks in the store, employees. We
8 heard from one of them.

9 We have outside -- and those two clerks are
10 Levina Williams and Tiffany Brown. Okay?

11 We have two witnesses outside the store who
12 are Weston Richardson and Talon Williams. We have
13 heard from one of them.

14 And, you know, I would submit to you, ladies
15 and gentlemen, that in a case of this seriousness and
16 this magnitude, both for Dashaud Luck's sake and for
17 y'all's sake, because you will be called upon to make
18 a really tremendous decision.

19 I mean armed robbery is what I call one of the
20 big three; murder, armed robbery and what we commonly
21 call rape these days is called criminal sexual
22 conduct. Those are the big three in criminal
23 offenses. And you are entitled to have more to make
24 your decision based upon than what you've got.

25 Let's look at what you've got. You've got --

1 and I'm going to say this. Every witness that got up
2 here, they raised their right hand and said, do you
3 swear to tell the truth, the whole truth and nothing
4 but the truth so help you God? And they said, yes, I
5 do.

6 well, I would submit to you that I don't care
7 who's testifying, it can be a preacher, the Pope, the
8 chief of police, that in a courtroom we never hear
9 the truth, the whole truth and nothing but the truth,
10 and that's even with people trying their best to tell
11 it. okay.

12 why? Because what we testify to is affected
13 by so many things. It's affected by our fears, our
14 perceptions, our memories, our prejudices, and many
15 other things.

16 I mean, here is a situation where an event
17 happens almost three years ago, October of 2008.
18 Time affects the truth and the completeness of our
19 testimony. There is a tendency of the human mind,
20 when something happens in a matter of a few seconds,
21 over a period of time, you go back and fill in the
22 blanks.

23 Things that are actually blank in our minds
24 get filled in. So, you know, I am not saying that
25 people lie to you when they get here. But we never

1 hear the truth, the whole truth and nothing but the
2 truth.

3 And in making your decision, that you need to
4 keep in mind that these factors affect the accuracy
5 of testimony.

6 All right. Now, what we know is that Mr.
7 Richardson says that he saw Dashaud Luck outside of
8 the Pantry that day. He doesn't identify him from
9 seeing his face. He says, I recognized the voice.
10 Maybe he did and maybe he didn't.

11 That's going to be one those things for you to
12 decide. But anything he says he may have seen inside
13 the store I think you can say -- you can take a look
14 at State's Exhibit No. 4 and No. 5. And you can't
15 see from outside what's going on in that store.

16 Why? Because it's all of these signs and
17 stuff pasted all over. It's just not possible to see
18 what went on in that store from outside.

19 Plus, as you remember, Mr. Richardson
20 testified that they were told to go away, and they
21 got in the car and they started to drive off.

22 So, I'm not -- I don't think you can be
23 certain of how much of Mr. Richardson's testimony is
24 accurate, and how much of it is his memory has been
25 filled in in that two and a half years. Okay?

1 what we do know -- but at best, at best
2 through independent witnesses they may have placed
3 Dashaud Luck outside of the store.

4 what else do we know? We know there were
5 three people involved. One supposedly Dashaud Luck,
6 one supposedly his brother, William Luck, and one
7 unidentified individual.

8 Do we know for certain which of those three
9 went into the store? Well, nobody in the store
10 identifies Dashaud. Okay. One clerk pick his
11 brother William out of the lineup. Nobody identifies
12 Dashaud.

13 The only thing that puts Dashaud in the store
14 is his statement. Okay. Well, unfortunately Dashaud
15 is not here to explain this statement.

16 But statements are like any other form of
17 evidence, with the possibly exception of things like
18 photographs and physical evidence. I would say
19 physical evidence is the evidence that cannot speak
20 and therefore cannot lie. It just is what it is.

21 You know, all right? But why -- if statements
22 -- people put a whole lot of credence in a statement,
23 and probably more than they should in some
24 circumstances.

25 why should a guy lie on himself? Well, I

1 think that the basis of the unreliability of this
2 statement, is it true or not? I cannot tell you.
3 But there is a very strong basis for it being
4 unreliable which is found in the statement itself.
5 All right?

6 Why would somebody make a statement to
7 incriminate themselves? To protect someone else.

8 All right? Who would Dashaud be protecting? Well --

9 MR. STACK: Objection, Your Honor.

10 THE COURT: Basis.

11 MR. STACK: Defense counsel is testifying to
12 facts not presented.

13 THE COURT: Please approach.

14 (Whereupon, the following discussion was held
15 at the bench.)

16 THE COURT: You talked about his statement.
17 You can talk about inference from his statement. You
18 cannot go beyond that. There is no evidence in the
19 record he had some motivation to lie to protect
20 someone.

21 The charges against his brother were dismissed
22 because of insufficient ID.

23 MR. ARCHER: Let me tell you, the officer used
24 -- the officer testified that he accused his mother
25 of lying, potential.

1 THE COURT: Accused who, his mother?

2 MR. ARCHER: Yes, his mother. And in here he
3 specifically says, my brother wasn't aware.

4 THE COURT: Are you saying he said that to
5 protect his mom?

6 MR. ARCHER: Yeah.

7 THE COURT: This is opinion evidence. I
8 thought he was going into saying he was protecting
9 his mother.

10 MR. STACK: That hasn't been brought out
11 either. Nick Wagner testified his mother filed a
12 false police report. She is told the tags were
13 stolen. There is no accusation that she was involved
14 in this armed robbery.

15 THE COURT: When he is saying is he lied
16 because he knew his mother had lied about the tags.

17 MR. STACK: There is nothing.

18 MR. ARCHER: To protect, yeah.

19 THE COURT: Where is that in the statement?

20 MR. ARCHER: My mother was unaware that the
21 car was used and the tags were stolen.

22 THE COURT: I'm going to give him some
23 latitude. It has been submitted in evidence.

24 (In open court.)

25 THE COURT: Color in the lines. You may

1 proceed.

2 MR. ARCHER: Ladies and gentlemen, you heard
3 Detective Wanger indicate to you, Ms. Green, he
4 thought she lied about the tags. He told her -- from
5 an outright lie.

6 Well, in this statement supposedly written by
7 Dashaud, what does he say? You can look at it. My
8 mother wasn't aware that the car was used. I didn't
9 tell her the tags were stolen -- did tell her the
10 tags were stolen.

11 You know, to lie in a criminal investigation
12 can be a serious matter. It's not just, oh, you did
13 a bad thing. You know, and you can see the results
14 of it from the news is Barry Bonds, a very famous
15 baseball player was just convicted by a federal court
16 of lying about his use of steroids in the process of
17 an investigation.

18 He wasn't convicted of using steroids, he was
19 convicted of lying. Obstruction of justice. Martha
20 Stewart, who some of you ladies may know. The ladies
21 does all the household decoration and fashion stuff
22 and had a TV program for a number years.

23 She went to jail for about nine months for not
24 -- not for -- there was a question of whether she had
25 advanced notice of what was going to happen to some

1 stock, and as a result sold her stock before it
2 happened. And that's called insider trading.

3 she went to jail for nine month not for
4 insider trading, but for lying about her knowledge.
5 All right.

6 So, I mean, I would submit that -- and I think
7 you can see it from the detective's point of view, he
8 very clearly made -- he made it very clear to Dashaud
9 that he thought his mother was lying and she was
10 going to be in trouble for it. That is why Dashaud
11 saw it as so important to put in here, my mama didn't
12 know anything. Okay?

13 THE COURT: Be careful, Mr. Archer. You're
14 going beyond the parameters of what was presented.

15 MR. ARCHER: Yes.

16 But that in itself is a reason to have some
17 question as to this statement.

18 Is he trying to protect his mama by accepting
19 responsibility? The statement itself is not real
20 complete. He doesn't say, I participated in an armed
21 robbery. He said, I was an accomplice in an armed
22 robbery.

23 He also -- you'll have the statement back
24 there -- says that he had a gun with him when he went
25 in, but that he did not -- I did have a handgun going

1 to the store, but I never pointed it at anyone or
2 attempted to even use it. Okay?

3 The -- so these are real issues here.

4 We heard from one person outside, we didn't
5 hear from the other person.

6 MR. STACK: Objection, Your Honor.

7 THE COURT: Basis?

8 MR. STACK: You are earlier ruling in camera.

9 THE COURT: Please approach.

10 (Whereupon, the following discussion was held
11 at the bench.)

12 THE COURT: You didn't hear what you said.

13 MR. ARCHER: You heard from one person
14 outside, you did not hear from the other person
15 outside. Then he said I object.

16 THE COURT: He can say that. I'm not going to
17 instruct on it. He can comment about the absence of
18 witnesses. I'm not going to instruct it. He can
19 make inferences on it.

20 You can always comment on who testified and
21 who didn't. That's always fair game as long as he
22 doesn't go to the extent of you failed to produce
23 them.

24 MR. STACK: The inference --

25 THE COURT: You can't say that. He can always

1 comment on the lack of testimony as long as he
2 doesn't say you didn't -- I'm not going to instruct
3 on it.

4 MR. STACK: Thank you.

5 (In open court.)

6 THE COURT: You may proceed.

7 MR. ARCHER: Well, the long and short of it is
8 there's two witnesses you haven't heard from. And
9 then that is one fellow who was outside of the store,
10 and the other one is the clerk inside.

11 And the clerk inside, all right, we didn't
12 hear her testimony. But we know from the testimony
13 of the detective that she had something real critical
14 to say. All right?

15 And what was that? I asked him, did you --
16 detective, didn't you ask this lady, did you see a
17 gun in either person's hand, and her response was no?
18 He said correct.

19 So we've got two people in the store. And we
20 can't really say -- who presumably have full ability
21 to see what is going on. We don't know anything
22 different.

23 MR. STACK: Objection, again, Your Honor.

24 THE COURT: Please approach.

25 (Whereupon, a discussion was held at the bench

1 off the record.)

2 THE COURT: What the basis of the objection?
3 I'm having a hard time hearing you. What was
4 the last sentence you said.

5 MR. ARCHER: We got two people in the store
6 who presumably had full ability to see what was going
7 on. We don't know anything different.

8 MR. STACK: That's directly contradicted by
9 the testimony of Nick Wagner that says Tiffany Brown
10 doesn't see anything.

11 You cannot presume they have an equal
12 opportunity to see when the testimony Wagner has --

13 THE COURT: You need to stay within the
14 evidence, Mr. Archer. The testimony and the evidence
15 was she was in the back of the store.

16 MR. ARCHER: Okay.

17 (In open court.)

18 THE COURT: Proceed.

19 MR. ARCHER: Anyway, ladies and gentlemen, if
20 one of them -- of the clerk's says she did not see a
21 weapon, that raises a substantial, serious question
22 as to what weapons were presented inside of the
23 store.

24 They may have been presented outside, but were
25 they presented inside as part of the armed robbery?

1 one witnesses says yes, they were. The other says,
2 no, they didn't see a weapon.

3 And the one witness who says they were, I'm
4 not sure how reliable her testimony is to begin with
5 because on the night in question she told -- well,
6 she told one of the first responding officers she saw
7 only one individual with a gun.

8 And she gave a statement in which she
9 indicated she only saw one individual with a gun.
10 She came in here, almost three years later, and said
11 she saw both individuals with a gun. Well, if you
12 are going to say who had a gun, you say it at the
13 time it happens.

14 Yeah, these guys came in and they both had
15 guns, officer. You don't wait two and a half years
16 and decide, one had a gun, both of them had guns.
17 All right?

18 So I don't know who is correct. You know,
19 maybe she thought somebody had a gun. The only one
20 she told them had a gun at the time was the skinny
21 fellow. We don't have any description or it, or any
22 sort of thing like that but she says he had a gun.

23 What made her think he had a gun, we don't
24 know. But the other person in the store, the other
25 clerk said they didn't see any guns. And I would

1 submit to you that that is a very, very important
2 fact.

3 Now, you can find Dashaud not guilty based
4 upon an absence of evidence, or absence of what you
5 consider credible or strong evidence that, one, he
6 was participating. Maybe he was in the store, you
7 can decide he was in the store but there is no
8 evidence he was actually participating in the
9 robbery. All right?

10 The one thing, though, that we know -- the
11 only thing I think we know beyond a reasonable doubt
12 is that a robbery occurred. We don't know beyond a
13 reasonable doubt whether it was an armed robbery or
14 strong armed robbery.

15 Was it due to the threat of a weapon, or was
16 it due to a -- just a threat? And, you know, I think
17 that under those circumstances if you are going to
18 find him guilty, your duty is to find him guilty of
19 strong armed robbery, not armed robbery.

20 Both of these are serious offenses. No
21 question about it. But when you've got two clerks
22 and one says they saw a gun, and the other says
23 didn't, and you know beyond a reasonable doubt that a
24 robbery occurred, that leaves you with one proper
25 verdict if you find him guilty, and that is not armed

1 robbery but strong armed robbery. Okay?

2 And I'm not splitting hairs. You know, I
3 remember years ago I was watching a TV program, one
4 of those detective shows, and one of the fellows
5 says, justice for many, just for the free, let each
6 man be paid in full, that's just enough for me.
7 Okay?

8 What all we know is that William is not going
9 to get paid. The charges against him have been
10 dismissed. Okay? And here this is a real issue as
11 to whether this is an armed robbery or a strong armed
12 robbery.

13 And if you decide he has paid in full, you
14 find him guilty of the strong armed, you find him not
15 guilty of the armed robbery.

16 Now, the Judge -- all this is painted by what
17 your duty is. And the Judge is going to tell you
18 it's your duty to make whatever findings you make
19 beyond a reasonable doubt. And she is going to
20 define that for you. And there are probably as many
21 definitions of reasonable doubt as there are leaves
22 on a tree. Okay?

23 But in both the English law and the American
24 law there is saying that is slightly different which
25 is, in American law -- in English law it's better for

1 ten guilty men to go free than for one innocent man
2 to be convicted.

3 In American law, it's better for a hundred
4 guilty men to go free than for one innocent man to be
5 convicted.

6 In the English law, that statement is
7 attributed to a fellow named Blackstone who was an
8 eminent jurist in England. And in American law it's
9 attributed to a guy who's a lawyer, as might be
10 expected. You say, well, that sounds like lawyer
11 talk to me. Okay. He was not only a lawyer, he was
12 a real liberal and radical guy, okay.

13 He was so liberal and he was so radical that
14 he advocated the overthrow of his duly appointed
15 government. And eventually, took up arms against his
16 duly appointed government.

17 He was a rat, a revolutionary, he was John
18 Adams, a signor of the Declaration of Independence,
19 the signor of the US Constitution. The first vice
20 president of the United States of America, and our
21 second president.

22 And he said it supposedly while defending the
23 captain of the British troops at what was called
24 Boston Massacre where British troops shot a bunch of
25 demonstrating Americans. Okay?

1 And he is not the only founding father who has
2 said that. About 15 years later, in 1785, which is
3 about when we were enacting the constitution,
4 Benjamin Franklin writes a letter to a fellow named
5 Randolph in Virginia and he says the same thing. It
6 is better for many guilty men to go free, than for
7 one innocent man to go to jail.

8 So, I tell this story quite frequently because
9 this is what the founding fathers thought a
10 reasonable doubt meant. And so it's not a
11 technicality. We have a president, a first -- you
12 know, signors of the Declaration of Independence,
13 signors of our constitution and major players. And
14 they thought that proof beyond a reasonable doubt was
15 just critical to our system. Okay?

16 Now, you -- the Judge is going to tell you
17 what the law is. And you better listen to her
18 because she is the judge of the law. Y'all are the
19 judges of the facts.

20 And whatever your decision is, you don't have
21 to answer to anybody. You don't have to answer to
22 me. You don't have answer to Mr. Stack. You don't
23 have to answer to the judge because you are the sole
24 judges of the facts. You don't even have to answer
25 to your husbands and wives about it.

1 But remember what John Adams said, and
2 remember what Ben Franklin said, and realize that
3 there is no shame in finding somebody not guilty.
4 And that is your sworn duty.

5 You now stand in the role of probably some of
6 the most powerful people in America. You know, the
7 president of the United States in theory can't order
8 somebody to be put in death, but a jury can.

9 That's how powerful a jury is. And that's the
10 power you have. All the jurors here can order
11 somebody to their death.

12 MR. STACK: Objection and ask to approach.

13 THE COURT: Approach.

14 (Whereupon, the following discussion was held
15 at the bench.)

16 MR. STACK: We aren't seeking the death
17 penalty. The argument in that form -- I want to make
18 it clear these members are in no way expected to
19 consider the death penalty.

20 MR. ARCHER: I will tell them that, Judge.

21 THE COURT: You went too far. You understand
22 the theory and how powerful they are. You went too
23 far.

24 Are you going to correct it?

25 MR. ARCHER: I'll correct it.

1 (In open court.)

2 THE COURT: Proceed.

3 MR. ARCHER: Ladies and gentlemen, in no way
4 do I mean to imply that this kind of case asks for
5 the death penalty. Certainly not. I'm simply
6 talking to you about the seriousness of your duties.

7 And, frankly, under the facts of this case,
8 your duty is to bring back a verdict of not guilty,
9 or bring back a verdict of strong armed robbery.
10 Because that's all, of anything, that's all you can
11 say happened beyond a reasonable doubt.

12 Thank you very much, folks.

13 THE COURT: Does anyone need to go to the
14 restroom?

15 Why don't you stand up and stretch, get your
16 blood circulating a little bit.

17 During this trial, ladies and gentlemen, you
18 and I have certain duties to perform. As the trial
19 judge, it is my responsibility to rule upon or pass
20 upon the admissibility of evidence which has been
21 offered during this trial.

22 You are to consider only the competent
23 evidence that is before you. And you are to
24 disregard and disabuse from your mind any testimony
25 that this Court has ordered stricken from the record

1 during the progress of this trial if there has been
2 any.

3 You are to consider only the testimony which
4 has been presented to you from the witness stand,
5 together with any exhibits which have been made a
6 part of the record in this case.

7 I have the additional duty to charge or
8 instruct on the law applicable to this case. As the
9 presiding judge, I'm the sole judge of the law. And
10 it is your duty, ladies and gentlemen, to accept the
11 law and apply the law as I now state it to you.

12 If you have a preconceived idea as to what the
13 law is or what the law ought to be in a case, or in
14 this case, and it should not agree with what I now
15 tell you the law is, you are obligated under the oath
16 which you have taken to abandon this preconception on
17 your part, because you are sworn to accept the law
18 and apply the law precisely as I now state it to you.

19 In every case tried in this Court before a
20 jury, the judge becomes -- the jury becomes the sole
21 and exclusive judges of the facts. You, the jury,
22 are the judges of the facts in this case. This Court
23 is the judge of the law.

24 The constitution of our state has declared
25 that a trial judge shall not intimate, state, comment

1 upon or make any statement to a trial jury about the
2 facts in a case.

3 Since you, the jury, are the sole judges of
4 the facts in this case, you are not to infer anything
5 from what I have said during the progress of this
6 trial in ruling upon the admissibility of evidence,
7 or otherwise, or anything that I say now to you
8 during the course of this instruction that I have any
9 opinion about the facts.

10 The law does not allow me to have an opinion
11 about the facts. This is a matter solely for you the
12 jury to determine.

13 As juror then it is your duty, as I have
14 instructed, for you to determine the affect, the
15 value, the weight and the truth of the evidence that
16 has been presented during this trial.

17 Necessarily, you must assess the credibility
18 of witnesses who have testified. Credibility is
19 simply a legalistic term meaning the believability of
20 each witness who has testified.

21 It becomes your duty as jurors to analyze and
22 to evaluate the evidence and determine that evidence
23 which convinces of you its truth.

24 I instruct you that in determining the
25 question of the credibility or believability of

1 witnesses who have testified, you may believe one
2 witness as against several witnesses, or several
3 witnesses as against one witness.

4 You may believe a part of the testimony of a
5 witness and reject the remaining part of the
6 testimony of that same witness.

7 If you have a good and sound witness, you may
8 believe the testimony of a witness in its entirety,
9 or reject the testimony of a witness in its entirety.

10 You may consider whether any witness has
11 exhibits to you any interest, any bias, any prejudice
12 or other motive in this case. You may consider the
13 demeanor of a witness. That is the appearance and
14 manner of a witness from the witness stand.

15 You can believe as much or as little of each
16 witness's testimony as you think is proper. Ladies
17 and gentlemen, you have but one objective, to seek
18 the truth regardless of its source.

19 An issue in this case is the identification of
20 the defendant as the person who committed the crime
21 charged. The State has the burden of proving
22 identity beyond a reasonable doubt. You must be
23 satisfied beyond a reasonable doubt of the accuracy
24 of the identification of the defendant before you may
25 convict the defendant.

1 Identification testimony is an expression of
2 belief or impression by a witness. You must
3 determine the accuracy of the identification of the
4 defendant. You must consider the believability of
5 each identification witness in the same way as any
6 other witness.

7 You may consider whether the witness had an
8 adequate opportunity to observe the offender at the
9 time of the offense. This will be affected by things
10 like how long or short a time was available; how far
11 or close the witness was; the lighting conditions;
12 and whether the witness had a chance to see or know
13 the person in the past.

14 Once again I instruct you, the burden of proof
15 is on the State. And that burden extends to every
16 element of the crime charged. And this specifically
17 includes the burden of proving beyond a reasonable
18 doubt the identity of the defendant as the person who
19 committed the crime.

20 If after examining the testimony you have a
21 reason doubt as to the accuracy of the
22 identification, you must find the defendant not
23 guilty.

24 I further instruct you a statement is alleged
25 to have been made by the defendant which has been

1 admitted into evidence in this case. While the Court
2 has determined that the statement is admissible, I
3 instruct you that you make the ultimate decision of
4 whether or not the defendant actually made the
5 statement.

6 If the defendant did make the statement, you
7 must determine whether the statement was made by the
8 defendant voluntarily, and of his own free will.
9 This means that the statement was not caused by
10 pressure, force, fear, threats, coercion, or
11 intimidation. Or by hope or promise of leniency. Or
12 a reward of any kind.

13 In determining whether the statement was
14 voluntary, you should consider both the
15 characteristics of the defendant, and the details of
16 the questioning. Some of the factors you
17 must consider are the age of the defendant, the
18 defendant's education or lack of education, the
19 defendant's mental ability or capacity, the
20 defendant's IQ or intelligence, the defendant's
21 background and environment, the length and place of
22 detention, the nature of the questioning, and the
23 advice or lack thereof to the defendant of his
24 constitutional rights.

25 Including but not limited to, the right to

1 remain silent; that any statement could be used
2 against him in a court of law; the right to have a
3 lawyer present; and that if he could not afford a
4 lawyer, a lawyer would be appointed to represent him
5 without any cost; and that he could stop making a
6 statement at any time.

7 You must carefully consider all of the
8 surrounding circumstances before you give any weight
9 to an alleged statement. The State has the burden of
10 proving beyond a reasonable doubt that the alleged
11 statement was voluntary.

12 If you determine it was, you may give the
13 statement any further consideration that you deem
14 proper. You must decide what weight, if any, should
15 be given to the alleged statement.

16 If you determine that the alleged statement
17 was not the free and voluntary statement of the
18 defendant, you should not consider the statement at
19 all.

20 Ladies and gentlemen, there are two types of
21 evidence which are generally presented during a
22 trial; direct evidence and circumstantial evidence.
23 Direct evidence is the testimony of a person who
24 asserts or claims to have actual knowledge of a fact,
25 such as an eyewitness.

1 Circumstantial evidence is proof of a chain of
2 facts and circumstances indicating the existence of a
3 fact. The law makes absolutely no distinction
4 between the weight or value to be given to either
5 direct or circumstantial evidence. Nor is a greater
6 degree of certainty required of circumstantial
7 evidence than of direct evidence.

8 Ladies and gentlemen, you should weigh all of
9 the evidence in the case. After weighing all of the
10 evidence, if you are not convinced of the guilt of
11 the defendant beyond a reasonable doubt, you must
12 find the defendant not guilty.

13 Conversely, if you are convinced of the guilt
14 of the defendant beyond a reasonable doubt, then you
15 must find him guilty.

16 I instruct you that the fact that the
17 defendant was arrested, charged, and indicted is not
18 evidence in this case, and cannot be considered by
19 you as evidence of guilt in this case. Nor does it
20 create any presumption or inference of guilt.

21 This documentation, ladies and gentlemen, are
22 simply the formal written instruments which contain
23 the charge or charges made against a defendant. They
24 serve as the formal documentation by which the case
25 is processed or brought into this court.

1 The defendant has pled not guilty to the
2 indictment. And that plea casts the burden on the
3 State to prove the defendant guilty. Because a
4 person charged with committing a criminal offense in
5 South Carolina is never required to prove himself
6 innocent.

7 I instruct you, ladies and gentlemen, that it
8 is a cardinal and important rule of the law of
9 evidence that a defendant in a criminal trial, no
10 matter what the seriousness of the charge made
11 against may be, will always be presumed to be
12 innocent of the crime for which he is indicted,
13 unless his guilt has been proven by evidence
14 satisfying you of that guilt beyond a reasonable
15 doubt.

16 This presumption of innocence does not cease
17 when you retire to deliberate, but it accompanies the
18 defendant throughout the trial until you reach a
19 verdict based upon evidence satisfying you beyond a
20 reasonable doubt.

21 Our Supreme Court has said that the
22 presumption of innocence is like a robe of
23 righteousness placed about the shoulders of the
24 defendant. And it remains with him and assigns him
25 to that class, the innocent, until that presumptive

1 robe of righteousness has been stripped from his
2 person by evidence satisfying you of that guilt
3 beyond a reasonable doubt.

4 The presumption of innocence is not mere legal
5 theory. It is not just a legal phrase. It is a
6 substantial right to which every defendant is
7 entitled unless you, the jury, are satisfied from the
8 evidence of his guilt beyond a reasonable doubt.

9 The State has the burden of proving the
10 defendant guilty beyond a reasonable doubt. Some of
11 you may have served as jurors in civil cases where
12 you were told that it is only necessary to prove that
13 a fact is more likely true than not true; such as by
14 the greater weight or the preponderance of the
15 evidence.

16 In criminal cases, the State's proof must be
17 more powerful than that. It must be beyond a
18 reasonable doubt.

19 Proof beyond a reasonable doubt is proof that
20 leaves you firmly convinced of the defendant's guilt.
21 There are very few things in this world that we know
22 with absolute certainty. And in criminal cases the
23 law does not require proof that overcomes every
24 possible doubt.

25 If based on your consideration of the evidence

1 you are firmly convinced that the defendant is guilty
2 of the crime charged, you must find the defendant
3 guilty.

4 If on the other hand you think there is a real
5 possibility that the defendant is not guilty, you must
6 give him the benefit of that doubt and find him not
7 guilty.

8 I instruct you and emphasize that the fact
9 that the defendant did not testify is not a factor to
10 be considered by you in any manner whatsoever in your
11 deliberations, and in your consideration on the
12 question of the guilt or innocence of the defendant.

13 It must not be considered by you in any manner
14 whatsoever. A defendant has the constitutional right
15 to remain silent. And the assertion of this right
16 must not be considered by you in your deliberations.

17 I repeat, under your oath, you are to draw no
18 conclusion whatsoever from the fact that the
19 defendant in this trial did not testify. The fact
20 that the defendant did not testify should not even be
21 discussed in the jury room in any manner whatsoever.

22 The burden of proof, as I have stated to you,
23 is on the State. The defendant is not required to
24 prove his innocence. The burden of proof remains on
25 the state to prove guilt beyond a reasonable doubt.

1 Ladies and gentlemen, we have conducted what
2 is called a trial in absentia, which simply in
3 layperson's English means a trial in the defendant's
4 absence, which means that defendant has not appeared.

5 When a defendant is tried in his absence, I
6 instruct you that the defendant's failure to appear
7 at trial must not be construed against him. Nor can
8 it be construed as an admission of guilt, or an
9 inference of guilt against him. It must not be
10 discussed in any manner whatsoever in your
11 deliberations.

12 The defendant is charged with armed robbery.
13 In order to prove this offense, the State must first
14 prove beyond a reasonable doubt that the defendant
15 took personal property from the person or presence of
16 another person.

17 Property is in the presence of a person if it
18 is within the person's reach, inspection,
19 observation, or control, so that the person could
20 not, if overcome with violence or prevented by fear,
21 keep possession of the property.

22 The State must also prove beyond a reasonable
23 doubt that the defendant carried the property away
24 intending to permanently deprive the owner of the
25 property, and to keep the property for the

1 defendant's own use.

2 The slightest removal of the property, or the
3 complete possession of the property, even for an
4 instant, by the defendant is sufficient to show a
5 taking and a carrying away of the property.

6 The taking and carrying away of the property
7 must have been done with violence, or by putting the
8 owner of the property in fear of violence.

9 Finally, the State must prove beyond a
10 reasonable doubt that the defendant was armed with a
11 deadly weapon during the robbery.

12 A deadly weapon is any article, instrument or
13 substance which is likely to cause death or great
14 bodily harm. Whether an instrument has been used as
15 a deadly weapon depends on the facts and
16 circumstances of each case.

17 The following are examples of instruments
18 which may be deadly weapons. A pistol, a shotgun, a
19 rifle, a dirk, a dagger, a knife, a slingshot, metal
20 knuckles, a razor, gasoline, a firebomb or Molotov
21 cocktail and lighter fluid.

22 A gun may be a deadly weapon even if it is not
23 operating. These are simply evidentiary facts to be
24 considered by you, along with the other evidence in
25 the case. And it is for you, the jury, to give it th

1 effect, value and weight you decide it should have.

2 Or the State may prove that the robber alleged
3 that he or she was armed with a deadly weapon, either
4 by action or words, while using a representation of a
5 deadly weapon, or any object which a person present
6 during the commission of the robbery reasonably
7 believed to be a deadly weapon.

8 So in summary, ladies and gentlemen, the State
9 may prove armed robbery by establishing the
10 commission of a robbery and either of the two
11 additional elements; that the robber was armed with a
12 deadly weapon; or that the robber alleged that he or
13 she was armed with a deadly weapon, either by action
14 or words, while using a representation of a deadly
15 weapon, or any object which a person present during
16 the commission of the robbery reasonably believed to
17 be a deadly weapon.

18 If you find that the State has failed to prove
19 that the defendant was armed with a deadly weapon,
20 you may then consider whether the State has proven
21 beyond a reasonable doubt that the defendant
22 committed robbery.

23 In order to prove robbery, the State must
24 prove beyond a reasonable doubt all of the elements
25 that I have just explained, except that the defendant

1 was armed with a deadly weapon.

2 In order to prove robbery, the State must
3 proved beyond a reasonable doubt that the defendant
4 took the personal property from the person or
5 presence of another, without that person's consent,
6 and carried it away.

7 As I have explained, property is in the
8 presence of a person if it is within the person's
9 reach, inspection, observation or control, so that
10 the person could, if not overcome with violence or
11 prevented by fear, retain possession of the property.

12 The State must show that the defendant carried
13 the property away with the intent to permanently
14 deprive the owner of the property, and to convert the
15 property to the defendant's own use.

16 The slightest removal of the property, or the
17 complete possession of the property, even for an
18 instant, by the defendant is sufficient to show a
19 taking and carrying away of the property.

20 The taking and carrying way of the property
21 must have been done with violence. Or putting the
22 owner of the property in fear of violence.

23 I instruct you, ladies and gentlemen, that if
24 a crime is committed by two or more people who are
25 acting together in committing the crime, the act of

1 one is the act of all.

2 A person who joins with another to commit an
3 unlawful act is criminally responsible for everything
4 done by the other person, which happens as a probable
5 or natural consequence of the acts done in carrying
6 out the common plan and purpose.

7 For example, two people can be guilty of
8 killing another person when only one of the two had a
9 gun, there was only one bullet, and only one of the
10 two fired the shot that caused the death.

11 If two or more people are together, acting
12 together, assisting each other in committing the
13 offense, the act of one is the act of all. Or as it
14 is sometimes said, the hand of one, is the hand of
15 all.

16 Prior knowledge that a crime is going to
17 committed without more is not sufficient to make a
18 person guilty of that crime. Mere knowledge that
19 another person is going to commit a crime, even if
20 the defendant is present when the crime is committed,
21 is not sufficient to convict the defendant as a
22 principal.

23 Guilt as a principal is shown by actual or
24 constructive presence at the scene as a result of
25 prior arrangement. Therefore, a finding of a prior

1 arranged plan or common scheme is necessary for a
2 finding of guilt as a principal.

3 The State must prove beyond a reasonable doubt
4 by competent evidence the theory of the hand of one
5 is the hand of all.

6 A principal in a crime is one who either
7 actually commits the crime, or who was present
8 aiding, abetting or assisting in committing the
9 crime.

10 When a person does an act in the presence of
11 and with the assistance of another, the act is done
12 by both.

13 Where two or more acting with a common plan or
14 intent are present at the commission of a crime, it
15 does not matter who actually commits the crime, all
16 are guilty. The hand of one is the hand of all.

17 Present at the commission of a crime means to
18 be sufficiently near to aid and abet and assist in
19 the commission of a crime. However, mere presence at
20 the scene of a crime is not sufficient to convict one
21 as a principal on the theory of aiding and abetting.

22 Intent is also a necessary element, for there
23 must have been a common design or intent to commit
24 the crime. And the crime must have been committed
25 pursuant thereto, with the person aiding and abetting

1 by some overt act.

2 Intent means intending the result which
3 actually occurs, not accidentally or involuntarily.
4 Intent may be shown by acts and conduct of the
5 defendant, and other circumstances from which you may
6 naturally and reasonably infer intent.

7 The State must prove these elements beyond a
8 reasonable doubt.

9 The defendant is also charged with possession
10 of a weapon during the commission of or attempt to
11 commit a violent crime. The State must prove beyond
12 a reasonable doubt that the defendant was in
13 possession of a firearm, or visibly displayed what
14 appeared to be a firearm during the commission of a
15 violent crime.

16 A firearm means any machine gun, automatic
17 rifle, revolver, pistol, or any weapon which will, is
18 designed to or may be readily converted to expel a
19 projectile.

20 In order to find the defendant guilty of
21 possession of a weapon during the commission of a
22 violent crime, you must first find the defendant
23 guilty of either committing a violent crime, or
24 attempting to commit a violent crime.

25 I instruct you that armed robbery is defined

1 as a violent crime pursuant to code section 16-1-60
2 of the South Carolina code of laws as amended.

3 Ladies and gentlemen, you have heard some
4 reference to punishment during the course of the
5 closing argument. I instruct you that in determining
6 the guilt or incidence of the defendant, you cannot
7 considered any potential for punishment for any
8 particular crime.

9 The punishment for a crime is a matter solely
10 for the Court to determine as a matter of law, and
11 should never be considered by you in any manner
12 whatsoever in arriving at a fair and impartial
13 verdict as to the guilt or innocence of the
14 defendant.

15 Bear with me just one moment. I apologize.
16 There are two indictments in this case and they
17 alleged two separate offenses. And this will go back
18 into the jury room with you, so you don't have to try
19 to write this down.

20 2009-GS-10-3023, and 3022, which are
21 possession of a firearm during the commission of a
22 violent crime, and armed robbery.

23 Each indictment, ladies and gentlemen, charges
24 a separate and distinct offense. You must decide
25 each indictment separately on the evidence and the

1 law applicable to it, uninfluenced by your decision
2 as to any other indictment.

3 The defendant may be convicted or acquitted on
4 any or all of the offenses charged. You will be
5 asked to write a separate verdict for each offense.

6 Ladies and gentlemen, there are -- on the
7 first indictment three possible verdicts, and on the
8 second two possible verdicts and I will go over those
9 with you.

10 Again you don't have to try to write this down
11 because it will go into the jury room with you.
12 There is no significance whatsoever to the order in
13 which these verdicts are stated, it is simply that
14 one must be stated first.

15 And as to the indictment for armed robbery,
16 the option are as follows: Guilty of armed robbery,
17 or as to the lesser included offense guilty of strong
18 armed robbery or not guilty.

19 As to possession of a firearm during the
20 commission of a violent crime, guilty of possession
21 of a firearm during the commission of a violent
22 crime, or not guilty.

23 Again, there is absolutely no significance to
24 the order in which I have stated these potential
25 verdicts. It is simply that one must be stated

1 first.

2 Ladies and gentlemen, your verdict must be a
3 unanimous one. Which means that all 12 of you must
4 agree in order to reach a verdict.

5 Madam forelady, it will be your reasonability
6 to fill out the verdict form, and to sign and date
7 those forms when the jury has reached a verdict. It
8 is also your responsibility to knock on the door and
9 advise the bailiffs that the jury has reached a
10 verdict.

11 If the jury has any questions during
12 deliberations, it is your responsibility to write
13 those out and to follow the same instructions by
14 knocking on the door and advising the bailiffs that
15 the jury has a question. And give that written
16 question to the bailiffs, and they will in turn give
17 it to the Court.

18 Ladies and gentlemen, if you have any
19 questions during deliberations please note that there
20 will be a delay in our response. Please don't think
21 we are ignoring you. It is simply that there is a
22 procedure that we must follow in answering any
23 questions.

24 So know that if you have a question there will
25 be a delay.

1 Again, ladies and gentlemen, your verdict must
2 be a unanimous one, which means that all 12 of you
3 must agree. I'm going to ask that you return to your
4 jury room. But please leave your notebooks in your
5 seats.

6 Do not yet begin your deliberations. I have
7 some matters of law that I need to take up with the
8 attorneys that may require further instruction, or
9 clarification of an instruction.

10 However, if there is no further instruction we
11 will bring in the evidence, the verdict forms and
12 your notebooks. And at that time we will release the
13 alternate. And then you will be allowed to begin
14 your deliberation.

15 If you would go with the bailiff for me,
16 please.

17 (Whereupon, the jurors exit the courtroom.)

18 THE COURT: Any exceptions from the State?

19 MR. STACK: No, Your Honor.

20 THE COURT: From the defense?

21 MR. ARCHER: Yes, Your Honor. I have one
22 based on some of the unique facts of this case.

23 THE COURT: Okay.

24 MR. ARCHER: And what I would ask is you give
25 an additional instruction on the armed robbery that

1 says --

2 THE COURT: It's a little late for that, but
3 I'm listening. You should have done that early.

4 MR. ARCHER: Well, here's where I see the
5 problem. There is some testimony that of the
6 witnesses outside that concluded that Dashaud had a
7 gun, all right?

8 THE COURT: Uh-hum.

9 MR. ARCHER: On the inside there is testimony
10 that one person had a gun, there is also some
11 testimony that indicates that there may have been no
12 gun, all right?

13 What I would ask is that in order to be armed
14 robbery it must be effectuated either by a visible
15 display of a deadly weapon, or by representation that
16 there was --

17 THE COURT: I have already instructed that.

18 MR. ARCHER: Well, you said if he is armed
19 with a deadly weapon. What I'm concerned of is that
20 they could find he was armed because he had a gun on
21 him, but he never displayed it.

22 THE COURT: That's not a rational conclusion
23 because you have to read the instruction in its
24 totality, and it has several elements. One that you
25 are armed and that you took something with force, and

1 with the use of that weapon.

2 So you can't be found guilty without having
3 the weapon and using it to commit the robbery, or
4 putting the person in fear of violence --

5 MR. ARCHER: That's where I have some concern.
6 It is not clear that includes using the weapon.

7 THE COURT: I have never had any problem with
8 that instruction before. It's the one approved by
9 the Supreme Court and it clearly says that.

10 It has several -- it's A, B, C. One, that you
11 have the weapon, or you visibly displayed what
12 appeared to be a weapon, or a person in that position
13 would have been believed a weapon. And that you used
14 that weapon to deprive the person of their property.

15 I don't think there is anything nebulous about
16 the instruction. I think it's clear on its face.
17 and I think to do anything more than that would be
18 confusing. And in addition to that, would be an
19 impermissible comment on the facts.

20 I think that they don't have -- the State does
21 not have to connect the dots, whole trail from when
22 he went into the store and did it. Circumstantially
23 you can infer that someone was outside, showed a gun
24 to somebody and said, if you want to leave here you
25 might want to go ahead and leave, which implies -- if

1 somebody did that to me I would think, they're going
2 inside and going to use this gun.

3 And they think something could happen to me
4 and I might want to leave the premises.

5 MR. ARCHER: Right.

6 THE COURT: I think that you can -- and then
7 of course a person testified that someone came in and
8 held a gun on me, that's within the ambit of
9 circumstantial evidence. That's the same analogy
10 that if somebody come inside with an umbrella, I
11 don't have to look outside to know it's raining.

12 If they come inside and the umbrellas wet, I
13 can imply that it is raining.

14 MR. ARCHER: Well, maybe I missed part of the
15 instruction. My main concern is that you walk into a
16 place armed, but you don't -- you don't display the
17 weapon, or somehow use it as part of the robbery it's
18 not necessarily armed robbery.

19 THE COURT: Yeah, I instructed 16-11-330 which
20 is that the person must have taken property from the
21 presence of another person, that they had to have the
22 intent to carry away or permanently deprive them of
23 it, and that the taking and carrying away had to have
24 been done with violence, or by putting the owner of
25 the property in fear of violence.

1 And that the State must prove he was armed
2 with a deadly weapon during the robbery.

3 MR. ARCHER: See that's where they prove he
4 was armed, under the circumstances of this case they
5 can decide he was armed from the fact they saw him
6 outside the store, but if he never displays the gun
7 inside the store.

8 THE COURT: When you read it in its totality.
9 It says, you have to have taken away by violence or
10 by putting the owner of the property in fear of
11 violence and that you used a weapon to do it. I
12 think it's clear on its face.

13 I will note your exception for the record. Is
14 there any further exception from the defense?

15 MR. ARCHER: No further exceptions, Your
16 Honor.

17 THE COURT: Can you all please go through the
18 evidence and make sure it's all there.

19 MR. STACK: I think we have.

20 THE COURT: Go ahead and collect the notebooks
21 for me and the verdict forms.

22 And bring me the alternate.

23 (Whereupon, the alternate juror enters the
24 courtroom.)

25 THE COURT: Madam Alternate, we want to thank

1 you for your time and your attention to this case. I
2 know it's being thankful to be an alternate, but it
3 is really very necessary. You have been punctual and
4 you have been attentive, and we really appreciate you
5 being so accommodating with the Court.

6 You are welcome to stay if you'd like, but you
7 are excused for the remainder of the week. You are
8 welcome to discuss the case if you would like, but I
9 would ask that you not do that until everything is
10 completed after Friday.

11 If someone should try to speak with you and it
12 makes you uncomfortable or it's beyond what you'd
13 like to discuss, please make the clerk's office aware
14 of it so we can protect your privacy.

15 If you need a work excuse you can get that on
16 the first floor on the civil side, and any of the
17 deputy clerks can give you that; otherwise, we will
18 make that to you along with your check.

19 THE JUROR: Okay.

20 THE COURT: And do you want us to destroy your
21 notes for you?

22 THE JUROR: Yes, you can.

23 THE COURT: We will. The bailiffs will do it.
24 Thank you so much. Have a wonderful day.

25 The record should reflect that the jury has

1 begun it's deliberations at 3:06. If you all will
2 stick close in case we have any questions.

3 (Whereupon, a recess was taken, and other
4 unrelated matters were heard by the Court.)

5 THE COURT: I need to interrupt you one second
6 because I got some notes from my other jury which I
7 knew was going to happen.

8 Are my lawyers here?

9 MR. STACK: I am, your Honor.

10 THE COURT: Mr. Archer is downstairs smoking a
11 cigarette.

12 Do you all have the software for us to let
13 them watch that video in the jury room?

14 MR. STACK: I don't know the answer to that.
15 He took the laptop back with him, that's all I've
16 got.

17 THE COURT: Yeah, it's got other stuff. Yeah,
18 we have wireless. I wouldn't want them pulling up
19 anything.

20 It's a small screen if you were to take it in
21 there just to play it. Who was playing in on the
22 laptop with you? Was it a paralegal.

23 MR. STACK: Yes.

24 THE COURT: I need to figure out how to deal
25 with this video situation.

1 (Whereupon, Mr. Archer enters the courtroom.)

2 THE COURT: We got questions from the jury.
3 Can we see the clerk's statement. We would like to
4 view the video again. Can we see all of the written
5 statements?

6 And in response to the written statement,
7 which is question one and three, I will respond,
8 Madam Forelady, ladies and gentlemen of the jury,
9 there are certain determinations that I make as the
10 Judge of the law that are certain admissions of
11 documents based on the rules of evidence and the
12 rules of procedure.

13 All of the documents that you are entitled to
14 review are with you in the jury room. And you not to
15 speculate or draw any inferences or conclusions as to
16 why the document has not been sent in with you for
17 purpose of your deliberations.

18 If you desire to have any testimony replayed,
19 please advise the bailiff and we will accommodate
20 your request.

21 Is there any exception to the Court's response
22 to question number one and number three in that way,
23 from the State?

24 MR. STACK: No, ma'am.

25 MR. ARCHER: What is number one?

1 THE COURT: Can we see the clerk's statement.
2 It wasn't entered.

3 MR. ARCHER: Oh, the clerk in the store.

4 THE COURT: In the store. And can we see all
5 written statements.

6 MR. ARCHER: Right.

7 THE COURT: None of those were admitted.

8 MR. ARCHER: That's fine.

9 THE COURT: Now, what I would propose, and you
10 all can tell me if you object to this. This is
11 purely selfish on my part to conserve time so that I
12 can go forward with my other jury is to allow someone
13 to replay the video on the computer in the jury room
14 and make sure there's a bailiff in there, and that no
15 discussion take place and that the video simply be
16 replayed as many times as the jury wants to see it.

17 And that no deliberation take place and no
18 discussion take place while that is being done.

19 Is there any exception?

20 MR. STACK: No, Your Honor.

21 MR. ARCHER: Who's going to play it for them?

22 THE COURT: It would have to be the paralegal.

23 MR. STACK: She is reliable.

24 THE COURT: Well, I have two bailiffs here. I
25 trust my bailiffs with my life.

1 MR. STACK: Otherwise, they're going to flop
2 around trying to bring it up.

3 THE COURT: They are not going to be able to
4 without the media player. I can send my clerk in as
5 well.

6 MR. ARCHER: I would feel better with somebody
7 in there, Your Honor.

8 THE COURT: I'm going to have my bailiffs in
9 there. My bailiffs are better than my clerk will
10 ever be. No offense. They don't play.

11 MR. STACK: Will you instruct them in that
12 regard?

13 THE COURT: Absolutely.

14 Where is your paralegal?

15 Ma'am, we are going to allow you to play the
16 video for the jury. You will be in there solely as a
17 technical person. I'm going to have you take your
18 badge off as well. They're not going to know who you
19 are or what your position is.

20 As far as they're concerned you are just like
21 any clerk or deputy clerk in the clerk's office. You
22 are not to have any contact, no discussion. You are
23 not to answer any questions.

24 The only thing you are to do is set the video
25 up and hit play as many times as they need to see it.

1 And I need -- who all can go in the jury room?
2 which of my bailiffs -- who is down there with them.

3 THE BAILIFF: I can go.

4 THE COURT: Mr. Brown, the man. Mr. Brown and
5 Hope are going to go in there with them as well and
6 make sure that there is no deliberation to take
7 place, no discussion among themselves or with anyone
8 else.

9 And I'm going to instruct the foreperson of
10 that as well.

11 Is that acceptable to the State?

12 MR. STACK: Yes, Your Honor.

13 THE COURT: To the defense.

14 MR. ARCHER: Yes, Your Honor.

15 THE COURT: Could you go get the Foreperson
16 for me, and also take this note? And then I'm going
17 to do that as well, and that should take care of it.

18 Do you all have the computer?

19 MR. STACK: Yes. It's right here.

20 THE COURT: And You are going to go with Mr.
21 Brown and he is going to take you down there right
22 after I get through instructing the foreperson.

23 (Whereupon, the juror enters the courtroom.)

24 THE COURT: Madam Forelady, we received your
25 note. I responded to two of your notes in written

1 form. You are to share that with the jury. You are
2 to keep that note and make sure it's not destroyed in
3 any way.

4 Can you give that to Mr. Major for me for one
5 second so the court reporter can put a sticker on
6 there for me. Thank you.

7 Also, we received your request to rewatch the
8 video. We need a special program to play that video.
9 So instead of bringing you all back into the
10 courtroom, someone is going to bring a laptop into
11 the jury room with you to watch it, because you all
12 are not going to be able to find, or to be able to
13 play it.

14 So that person is going to play it as many
15 times as you all request. I'm going to -- if the
16 jury wants to see it another time, you are the only
17 person that is to communicate that.

18 In other words, I'm trying to think of the
19 best -- actually, what I'm going to do is have it
20 replayed -- is three times sufficient?

21 THE JUROR: I would say four.

22 THE COURT: I'm going to have it replayed four
23 times from start to finish. A bailiff is going to be
24 in there with you all, Mr. Brown. My clerk is going
25 to be in there.

1 And I need for you all to understand -- and
2 the young who is going to be operating the computer.
3 I need for you all to understand that you cannot talk
4 while the video is being played. You cannot
5 deliberate. And you cannot ask any questions of any
6 of them because they're not going to be able to
7 respond to you, okay?

8 And the bailiff is going to have to certify
9 for me that none of that happened once you all are
10 done. Okay.

11 No, if after we play it the four times you
12 want it played it again, write us a note, and we'll
13 accommodate you.

14 THE JUROR: Thank you.

15 THE COURT: Thank you so much. Give her that
16 note.

17 (Whereupon, the juror exits the courtroom.)

18 THE COURT: All right. Are there any
19 exception from the State?

20 MR. STACK: No, Your Honor.

21 THE COURT: From the defense?

22 MR. ARCHER: No, Your Honor.

23 THE COURT: Okay. If you will all sit tight
24 in case they want to see it again.

25 (Whereupon, a recess was taken, and other

1 unrelated matters were heard by the Court.)

2 THE COURT: Mr. Stack and Mr. Archer, I got a
3 note from the jury that said, we would like to see
4 the testimony of Weston Richardson and Levina
5 Williams. And then five minutes after they sent me
6 that note they said they had a verdict.

7 And I was prepared to send them a note that
8 says, our technology doesn't allow us to immediately
9 produce transcripts, but we will replay it if you
10 need it.

11 But before I could stop to give them that --
12 and it was actually less than five minutes. It was
13 almost immediate. As soon as I got this and had my
14 clerk make a copy of response I was going to send, I
15 was going to take a break and send the response back.

16 But before I could even do that, they sent a
17 message that they reached a verdict.

18 Is the State ready to proceed?

19 MR. STACK: Yes, Your Honor.

20 THE COURT: I'm going to have that note marked
21 and with that explanation on the record as a Court
22 Exhibit.

23 Is the defense ready to proceed?

24 MR. ARCHER: Yes, Your Honor.

25 THE COURT: Please bring in the jury,

1 Mr. Brown.

2 (Whereupon, the jurors enter the courtroom.)

3 THE COURT: Madam Forelady, ladies and
4 gentlemen, we appreciate your patience. I apologize
5 for the delay. I got your message that you had
6 reached a verdict, but we were in the middle of a
7 witness's testimony so I had to wait until we
8 finished that testimony to take a break to take your
9 verdict.

10 Madam Forelady, has the jury reached a
11 verdict?

12 THE JUROR: Yes, ma'am.

13 THE COURT: If you would give the verdict form
14 to the bailiff for me, please.

15 Mr. Clerk, if you would publish the verdict.

16 THE CLERK: Yes, Your Honor. The verdict
17 forms in the matter of State of South Carolina versus
18 Dashaud Samuel Luck, Defendant.

19 As to indictment number 2009-GS-10-3023, we
20 the jury by unanimous consent find the defendant
21 guilty of possession of a firearm during the
22 commission of a violent crime.

23 Signed by the foreperson of the jury on May
24 12, 2011.

25 Ladies and gentlemen of the jury, if this was

1 your verdict, please raise your right hand.

2 (Jurors comply.)

3 THE CLERK: Thank you. Please let the record
4 reflect that all 12 jurors raised their right hand.

5 THE COURT: Any request to the poll the jury
6 from the State.

7 MR. STACK: No, Your Honor.

8 THE COURT: From the defense.

9 MR. ARCHER: No, Your Honor. Just one
10 verdict.

11 THE CLERK: As to indictment 2009-GS-10-3022.
12 We the jury by unanimous consent find the defendant
13 guilty of armed robbery. Signed by the foreperson of
14 the jury on May 12th, 2011.

15 Ladies and gentlemen of the jury, if this was
16 your verdict, please raise your right hand.

17 (Jurors comply.)

18 THE CLERK: Thank you. Please let the record
19 reflect that all 12 jurors raised their right hand.

20 THE COURT: Any request to poll the jury from
21 the State?

22 MR. STACK: No, Your Honor.

23 THE COURT: From the defense.

24 MR. ARCHER: No, Your Honor.

25 THE COURT: Madam Forelady, ladies and

1 gentlemen, you all have been incredibly patient with
2 us this week, and I want to tell you thank you on
3 behalf of the State as well as the defense.

4 I always feel that when you have a holiday in
5 the middle of the week or at the beginning of the
6 week, you have a double day after that holiday. You
7 always have to pay for it. And that is exactly -- I
8 usually call it a double Monday, because usually have
9 a holiday with Monday and then the Tuesday follows
10 it. And that is exactly what happened this week.

11 We try and still do every that we would
12 normally do in five days. And you all have been
13 incredibly patient with us.

14 And I don't know -- I wish I could do
15 something more than say thank you, but that's all
16 they equip me with.

17 But I hope that you have learned how very
18 important you are to us. Really you are
19 indispensable to us. We could not do what we do
20 every day without you all being willing to sacrifice
21 your schedule and your time to act as fact finders in
22 -- during this process with us.

23 Our system is the only one of its kind in the
24 world where 12 ordinary citizens sit as the fact
25 finders and then apply the law to the facts to render

1 verdicts.

2 So we thank you for being here with us.
3 Hopefully you have learned that real court is nothing
4 like Judge Judy, Judge Joe Brown, the People's court,
5 Judge Mathis. There is now Judge Winn. I didn't
6 even know that one existed. And we even have got
7 local attorneys that have judge shows on local access
8 TV, which is like amazing to me.

9 But I hope that you learned that it's really
10 nothing like that, and how very important you are to
11 us. You are welcome to discuss this verdict if you
12 would like. By the same token, if someone should
13 persist in speaking with you and it makes you
14 uncomfortable, let the clerk's office know so that we
15 can take the appropriate action to protect your
16 privacy.

17 Your checks and your work excuses will be
18 mailed out to you probably on tomorrow. If you need
19 one in advance of that, please let us know and I will
20 get Mike to accommodate you.

21 Madam Forelady, if you could just wait outside
22 the door as we leave so I can have you sign the
23 indictments. You all are excused with the court's
24 profound thanks.

25 I will hear post-trial motions in just one

1 moment.

2 (Whereupon, a recess was taken.)

3 THE COURT: Are there any post-trial notions
4 from the State?

5 MR. STACK: No, Your Honor.

6 THE COURT: From the defense?

7 MR. ARCHER: For the record I would move for a
8 directed verdict of not guilty, or in the alternative
9 for judgment notwithstanding the verdict.

10 No argument is requested, Your Honor.

11 THE COURT: Any response from the State?

12 MR. STACK: No, Your Honor.

13 THE COURT: The Court would deny those
14 motions. There is substantial evidence in the record
15 to support the defendant's convictions on the
16 charges.

17 There is direct and substantial circumstantial
18 evidence reasonably tending to prove his guilt, and
19 therefore your motions are denied.

20 Consistent with the case law, he will be
21 sentenced but will be sealed -- those sentences will
22 be sealed and will be placed in his file. And a
23 bench warrant is already outstanding for his arrest
24 and will remain until such time as he is picked up.
25 And at that time he will be sentenced.

1 MR. ARCHER: You're not going to proceed with
2 sentence then?

3 THE COURT: Yes, that's how it's done. He is
4 sentenced, and then those sentences are sealed, and
5 he is placed --

6 MR. ARCHER: Can I make --.

7 THE COURT: I don't think you can do any
8 better than what I am going to give him.

9 MR. ARCHER: Okay.

10 MR. STACK: I assume the State -- was the
11 State planning on make some argument on the
12 sentencing?

13 MR. STACK: No, Your Honor.

14 THE COURT: Okay. You all are going to leave
15 it to my discretion?

16 MR. STACK: Yes, Your Honor.

17 MR. ARCHER: I would do the same.

18 THE COURT: But you know the sentences are not
19 published until such time as he is picked up.

20 MR. ARCHER: I know. In 39 years this is the
21 most depressing young man.

22 THE COURT: It's troubling. I wish he had --
23 of course a trial in absence is the Court's last
24 alternative. But with the age of the case he really
25 left the Court with very little alternative except to

1 go forward in his absence.

2 And he appears that he -- this is just my own
3 observation regarding it. I think he got terrified
4 based on now what I know to be some very -- what's
5 the word I'm looking for -- convincing evidence that
6 he in fact committed this offense and fled. Or
7 either just fear overwhelmed him. That happens to
8 people all the time.

9 I think he probably could have given you
10 greater assistance by being present and put you at a
11 great deficit as well in terms of defending him.

12 MR. ARCHER: We were trying to work a deal
13 with the prosecutor. I terrified the young man as to
14 what the consequences for an armed robbery were, and
15 it fell through. His not being here is how badly I
16 frightened him.

17 THE COURT: Or, you never know. You're not
18 clairvoyant, you don't know what was in his mind.
19 People abscond all the time based on reasons that are
20 sufficient to them. So --

21 MR. ARCHER: I would say.

22 THE COURT: -- You never know what he was
23 thinking.

24 MR. ARCHER: Your Honor, I have been doing
25 this 39 years, and this young had more insight into

1 what he had done and why he done than just about
2 anybody I have dealt with. Recognized,
3 unfortunately, he is -- for rehabilitation purposes,
4 he doesn't need -- there's a minimum sentence for
5 armed robbery that's required by law.

6 THE COURT: It is. And they had a chance to
7 change it and they chose not to.

8 MR. ARCHER: Yes.

9 THE COURT: Thank you all very much.

10 MR. STACK: Thank you, Your Honor.

11 MR. ARCHER: Thank you.

12 (Whereupon, the proceedings in this matter
13 before the court were adjourned.)

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
PARTIAL transcript of record, and of all the
proceedings had and evidence introduced in the
above captioned case, relative to appeal, in the
Circuit Court for South Carolina, on the indicated
date.

I do further certify that I am neither
of kin, counsel, nor interest to any party hereto.

Anne Bouley Meyer

Anne Bouley Meyer, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) CASE NO.: 2009-GS-10-03022

STATE OF SOUTH CAROLINA)
)
VS.)
)
DASHAUD LUCK,)
)
DEFENDANT.)

PLEA

held before the Honorable Deadra L. Jefferson
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Monday, July 9, 2012, Commencing at 12:02 p.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
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EXHIBITS

[None]

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PROCEEDINGS

THE COURT: Okay. This is the State of South Carolina --

And how is your client's first name pronounced, Mr. Archer? Is it Dashaud?

MR. ARCHER: Dashaud.

THE COURT: I just wanted to make sure I didn't mispronounce it.

This is the State of South Carolina versus Mr. Dashaud Samel, S-A-M-E-L, Luck, L-U-C-K, case number 2009-GS-10-3022 and 2009-GS-10-3023. This came before the Court originally --

Bear with me one moment.

[Whereupon, the Court reviews documents]

THE COURT: -- originally on May 9th of 2011. At that time Mr. Luck was tried in his absence. It is clear from the file, and it was documented for the record at that time, that he had been notified, that should he fail to appear that he would be tried in his absence. And that is borne out by his signature on the bonding forms, which were acknowledged on February 12th --

Actually, this is something different. I apologize.

[Whereupon, the Court reviews documents]

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1 THE COURT: -- by his original bond documents
2 from the original arrest, which were executed on
3 October 17th of 2008.

4 Prior, however, to Mr. Luck being tried in his
5 absence, it is my recollection, and please correct me
6 if I am inaccurate --

7 [Whereupon, the Court and the law clerk confer]

8 THE COURT: Just for the record -- I apologize,
9 I should have said this originally. Mr. Jim Stack
10 represents the State. At the time of the trial,
11 Jim Stack and Adam Young represented the State and
12 Mr. Archer represented the defendant, as he does on
13 today.

14 It is my recollection that Mr. Luck was on
15 several dockets, that he did not appear, and I gave,
16 at the request -- actually, it's my general policy. I
17 generally don't try someone in their absence
18 immediately upon them not appearing. And I believe he
19 was on one trial docket -- I was chief judge at the
20 time. He appeared on one trial docket and I continued
21 it to give Mr. Archer an opportunity to locate his
22 client. And I believe he appeared on another docket.
23 That's what I thought.

24 [Whereupon, the Court and the law clerk confer]

25 THE COURT: A bench warrant was originally

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1 issued for him on March 11th -- March 3rd of 2011. He
2 was placed on the April 4th docket, where it was
3 continued from the April 25th docket where it was
4 continued from. And then I heard it on the May 9th
5 docket. So I wanted to, just out of an abundance of
6 caution, to give him --

7 [Whereupon, the Court and the law clerk confer]

8 THE COURT: -- that out of an abundance of
9 caution, that I gave Mr. Archer an opportunity to
10 locate his client, as well as allowing the system to
11 work, to see if he could be located on the bench
12 warrant, prior to trying him in his absence, to give
13 him the benefit of the doubt, so to speak, to see if
14 he would appear. And by that April 9th docket, he had
15 failed to appear. The Court made the appropriate
16 findings of fact for the record regarding his notice
17 regarding being tried in his absence and the case went
18 forward on May 9th. The jury returned a verdict.
19 They deliberated from 3:06 to 5:40 after the trial of
20 the case and found him guilty on both indictments,
21 that being the armed robbery and possession of a
22 firearm during the commission of a violent crime. And
23 the only thing left to do -- of course, at that time,
24 as provided by statute, Mr. Luck was sentenced and
25 that sentence was sealed, so the only thing left for

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1 the Court to do this morning is to impose that
2 sentence.

3 Has the history, the procedural history, been
4 accurate? From the State?

5 MR. STACK: Yes, Your Honor.

6 THE COURT: From the defense?

7 MR. ARCHER: It has, Your Honor.

8 THE COURT: And it's my understanding -- and we
9 have those original verdict forms attached to each
10 indictment.

11 It is my understanding that Mr. Luck was picked
12 up on some federal warrant; is that correct?

13 MR. STACK: No, Your Honor. He was picked up --

14 THE COURT: What happened?

15 MR. STACK: -- on this bench warrant. He was
16 picked up by the U.S. Marshals.

17 THE COURT: That's what I couldn't -- and why
18 was he picked up by the marshals?

19 MR. STACK: We asked them to look for him. They
20 often do that for us.

21 THE COURT: Now, I have some other documents in
22 here that looks like he has some additional charges
23 from 2012.

24 MR. STACK: Yes, Your Honor.

25 Sometimes the bench warrant didn't catch -- and

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1 he was arrested on a drug charge and I think a failure
2 to stop charge.

3 THE COURT: And they bonded him out --

4 MR. STACK: Yes, Your Honor.

5 THE COURT: -- and the bench warrant didn't show
6 up?

7 MR. STACK: Somehow it did, and that's how we
8 got -- called the marshals and asked them to find him.

9 THE COURT: And what date was he picked up?

10 MR. STACK: I'm not exactly sure. I think it
11 was like two or three weeks ago, Your Honor.

12 THE COURT: Mr. Archer, do you know what date
13 your client was picked up by the marshal service?

14 MR. ARCHER: No, I don't, Your Honor.

15 Do you know what date it was?

16 MR. LUCK: No, sir.

17 THE COURT: Has it been two weeks? Do you have
18 any idea?

19 MR. LUCK: It's been at least two weeks.

20 THE COURT: Now, he has some other pending
21 charges, Mr. Archer. Are you aware of those? Are you
22 representing --

23 MR. ARCHER: I'm not aware of those, Your Honor.

24 THE COURT: -- him on those?

25 He has -- it looks like he was arrested for

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1 failure to stop for a blue light and possession with
2 the intent to distribute marijuana. It looks like
3 this bond form was done on February 12th of 2012 and
4 at that time he had a P.R. -- let's see -- an
5 appearance or cognizance with surety of \$8,000, and he
6 was supposed to have his first appearance on April
7 20th of 2012. And those were, again, done on February
8 12th of 2012.

9 [Whereupon, the Court and the law clerk confer]

10 THE COURT: We have in here also a failure to
11 stop for a blue light, it looks like, Mr. Stack. Was
12 that charge nol-prossed?

13 MR. STACK: I'm not sure, Your Honor. Attorney
14 Stephanie Linder is handling that. I've spoken with
15 her and she's likely going to either dismiss these or
16 include it in the burg time.

17 THE COURT: Don, do you have the actual bench
18 warrants so that those can be rescinded?

19 THE CLERK OF COURT: They should be attached to
20 the --

21 [Whereupon, the Court and the clerk of court
22 confer]

23 THE COURT: Mr. Archer, is that an accurate
24 summary of the procedural history in this case?

25 MR. ARCHER: Yes, Your Honor.

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1 THE COURT: Mr. Luck, if you would stand for
2 imposition of sentence.

3 On 2009-GS-10-3022, which is the armed robbery,
4 sir, having been found guilty by a jury of your peers,
5 you are sentenced to ten years in the State Department
6 of Corrections. On 2009-GS-10-3023, you are sentenced
7 to three years in the State Department of Corrections.
8 These sentences are to run concurrent with one another
9 and you'll get credit for any time that you've served,
10 pursuant to 24-13-40, to be calculated and applied by
11 the Department of Corrections.

12 Does your client need any drug treatment or
13 otherwise?

14 MR. ARCHER: I don't believe so, Your Honor.

15 THE COURT: Does he want to dispose of these
16 other charges instead of them lingering and being out
17 here when he gets out of jail?

18 And I made a mistake in the sentencing on the
19 possession of a firearm during the commission of a
20 violent crime. The statute requires that I impose
21 five years. It gives me the option of whether I run
22 it concurrent or consecutive, but the five years is
23 mandatory. So I'm going to have to amend it to that
24 extent, because that was my mistake. But they run
25 concurrent, so it really doesn't -- I don't know that

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1 it really makes a difference. And, again, he'll get
2 credit for any time that he's served.

3 You're not representing him on these new
4 charges; is that correct?

5 MR. ARCHER: That's correct, Your Honor.

6 THE COURT: And does he want to dispose of
7 the -- I don't know if you've gotten discovery or
8 anything. It's a possession with the intent to
9 distribute marijuana.

10 Do you know who is handling that, Mr. Stack?

11 MR. STACK: Yes. Stephanie Linder is handling
12 it. She was going to be here but she's in trial right
13 now, I believe.

14 THE COURT: Is she in trial with Ms. Gordon?

15 MR. STACK: I believe so. I'm not sure.

16 THE COURT: Do you want to maybe talk to her?
17 And it's failure to stop for a blue light, which is
18 ninety days to three years, I believe.

19 Possession with the intent to distribute
20 marijuana, is that zero to ten? I can't remember.
21 What is possession with the intent to distribute
22 marijuana?

23 MR. ARCHER: Marijuana?

24 THE COURT: Yes, marijuana.

25 MR. ARCHER: It's zero to something.

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1 THE COURT: I think it's zero to ten but it's
2 suspendable. I just can't remember.

3 [Whereupon, the Court and the law clerk confer]

4 THE COURT: It's a first? Do you know?

5 MR. STACK: Yes. Yes, Your Honor.

6 THE COURT: It's zero to five. I knew something
7 had changed. Zero to five and/or 5,000.

8 Do you want to maybe talk with Mr. Luck and see
9 if he wants to dispose of those charges instead of
10 them -- because, basically, what they'll do is they'll
11 hold on to these indictments and then they'll be
12 waiting on him when he maxes out.

13 MR. ARCHER: Yeah.

14 THE COURT: And that wouldn't make a whole lot
15 of sense. I mean, I'm not --

16 I don't take a position one way or the other,
17 sir. I don't know what your position is regarding
18 those charges. But it would make sense to me, it
19 seems, that if you want to dispose of them, you could
20 do it today instead of waiting to do it. But, again,
21 it's up to you. If you want a trial on them, that's
22 fine. The Court doesn't take a position one way or
23 the other.

24 [Whereupon, Mr. Archer and Mr. Luck confer]

25 MR. ARCHER: He says he would like to dispose of

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1 the charges.

2 THE COURT: Do you want -- do you want to maybe
3 see if you can talk to Ms. Linder? Which courtroom
4 are they picking a jury in? Because I saw them
5 standing outside. I don't think they've started.

6 [Off the record momentarily]

7 MR. STACK: She was on the docket. I don't know
8 if she's in or not. But I can chase her down right
9 now, if you would like, Your Honor.

10 THE COURT: Yes. We're going to check right now
11 and see if they've started picking the jury yet and
12 see if we can get one of the bailiffs to have her step
13 out right quick so you can talk to her. And then
14 maybe we can get -- it just seems to me to make more
15 sense if we can dispose of them, or how --

16 MR. STACK: I'll do that.

17 THE COURT: -- whatever she might want to offer
18 him.

19 Is there any discovery that needs to be turned
20 over? Do you know, Mr. Archer?

21 MR. ARCHER: Your Honor, I mean, I'm at a loss
22 because I don't know anything about the charge. He's
23 indicated he wants to dispose of it. And I think he's
24 aware of his right to a trial by jury and --

25 THE COURT: Why don't you discuss with him what

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1 evidence they may have against him and the facts and
2 circumstances of the case while we figure out what's
3 going on with Ms. Linder.

4 And I'm also going to rescind the bench warrants
5 so that they will not show as a hold in the system
6 anymore.

7 [Whereupon, Mr. Archer and Mr. Luck confer]

8 [Off the record momentarily]

9 THE COURT: Ms. Linder went to get her file, and
10 to look and see if there's any discovery she needs for
11 you to go over with Mr. Luck, and to get the
12 sentencing sheet, and she'll be right over. They're
13 not picking their jury yet --

14 MR. ARCHER: -- my client has indicated to me
15 that it was twenty-seven grams of marijuana, which, if
16 that's the case, it would be less than --

17 THE COURT: Well, you might want to talk to her.
18 I'm not saying he needs to plea as charged.

19 MR. ARCHER: Right.

20 THE COURT: But I think it's worth you talking
21 about.

22 MR. ARCHER: I do, too.

23 THE COURT: And if he doesn't want to, like I
24 said, I don't take any position one way or the other.
25 But I wouldn't want him to go sit at the department of

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1 corrections --

2 MR. ARCHER: No.

3 THE COURT: -- on a charge where he has to max
4 out at least seven years before he's considered for
5 parole, and have these charges pending. That just
6 doesn't make any sense when, if he wants to dispose of
7 them, he can just do it all at one time and be done
8 with it.

9 MR. ARCHER: Right.

10 THE COURT: But she's on her way down so give
11 her about maybe five or ten minutes and then I'll give
12 you time to go over everything with him. And I would
13 imagine from -- the 2012 the SLED report should be
14 back with the exact weight of whatever it was and then
15 you can go over all that with him.

16 But she went to get the file, Mr. Stack, and
17 everything, so she'll be down here in just a minute.
18 And then we'll just -- I'll give y'all some time to
19 talk with him and then we'll resume. Y'all can let me
20 know when you're ready, and we'll resume.

21 MR. STACK: Yes, Your Honor. Thank you.

22 THE COURT: Okay.

23 [Whereupon, a recess is taken from 12:14 p.m. to
24 12:46 p.m.]

25 THE COURT: Have we got Mr. Luck signed up?

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1 MS. LINDER: Yes, Judge.

2 THE COURT: This is 2012-GS-10-5063, which is an
3 indictment for failure to stop for a blue light,
4 pleading to failure to stop for a blue light, and
5 2012-GS-10-5064, which is possession with the intent
6 to distribute marijuana. Pleading under Alford as
7 indicted.

8 Mr. Archer, were you provided with discovery by
9 Ms. Linder?

10 MR. ARCHER: No, I was not.

11 But I discussed the matter with my client and I
12 believe he understands the nature of the pleas.

13 THE COURT: When I say discovery, were there any
14 SLED reports or anything that needed to be provided?
15 Any incident reports from the police or anything?

16 MR. ARCHER: I have not been provided with
17 those. We're here. Go ahead and --

18 THE COURT: That's okay. Do you want some time
19 to go over that with him?

20 MR. ARCHER: I don't think he needs it.

21 [Whereupon, Mr. Archer and the defendant confer]

22 MR. ARCHER: He says he does not.

23 THE COURT: Is there a SLED report or anything
24 with the weights?

25 MS. LINDER: No, Judge.

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1 THE COURT: Has that been done yet?

2 MS. LINDER: Not that I'm aware of, Judge. This
3 was a --

4 THE COURT: Or did they -- is it a city case
5 where they do their weighing and that sort of --

6 MS. LINDER: No. It's North Charleston.

7 However, I indicated to Mr. Archer that since
8 the exposure is less than I believe -- my
9 understanding is the minimum of his previous charge, I
10 was fine proceeding under Alford. I'm recommending
11 concurrent. And then, also, due to the reports that I
12 had, that I furnished to Mr. Archer, there are other
13 indicators of the with intent to, distribute, so I
14 believe there's enough to support that.

15 THE COURT: And you've gone over that with your
16 client, Mr. Archer?

17 MR. ARCHER: I've gone into that with him.

18 THE COURT: You've gone over -- is there
19 anything else that you need the State to provide that
20 you feel you need to go over with him to give you any
21 comfort level regarding the plea?

22 MR. ARCHER: No, ma'am. I believe my client is
23 comfortable with the plea. And --

24 THE COURT: And what is that that the State just
25 provided to you? I saw a CD and some other documents.

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1 What is that?

2 MR. ARCHER: Yes, ma'am. An incident report.

3 THE COURT: And then what's on the DVD or CD?

4 MS. LINDER: The CD are photos, just the items
5 that were taken in the PWID marijuana case -- there's
6 a copy for him with the photos -- and it's the report
7 from the marijuana case and also the report from the
8 failure to stop for a blue light case.

9 THE COURT: But there was no audio or video or
10 anything like that that you needed to go over with
11 him?

12 MS. LINDER: Correct.

13 THE COURT: Mr. Archer, have you explained to
14 your client the charges contained in the indictments,
15 the possible punishment, and his constitutional
16 rights?

17 MR. ARCHER: I have, Your Honor.

18 THE COURT: Do you believe he understands the
19 charge, the punishment, and his rights?

20 MR. ARCHER: Yes, Your Honor.

21 THE COURT: Does he wish to plead guilty or not
22 guilty?

23 MR. ARCHER: He wishes to enter a plea of
24 guilty.

25 THE COURT: Do you agree with that decision?

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1 MR. ARCHER: I do, Your Honor.

2 THE COURT: To your knowledge, has he ever had
3 to be evaluated to determine his competency?

4 MR. ARCHER: No, Your Honor, he has not.

5 THE COURT: Are there any recommendations or
6 negotiations, Ms. Linder?

7 MS. LINDER: Your Honor, the State is
8 recommending that this sentence run concurrent to the
9 sentence that will be unsealed.

10 THE COURT: Is that accurate, Mr. Archer?

11 MR. ARCHER: Yes, Your Honor.

12 THE COURT: Sir, if you would stand up for me,
13 please, and raise your right hand to be sworn.

14 [Whereupon, Mr. Luck complies]

15 [Whereupon, Mr. Luck is duly sworn by the Court
16 as follows: do you swear or affirm the testimony you
17 give will be the truth]

18 THE WITNESS: Yes, ma'am.

19 THE COURT: You can put your right hand down.
20 Mr. Luck, state your full name for the record.

21 MR. LUCK: Dashaud Samel Luck.

22 THE COURT: Mr. Luck, how old are you?

23 MR. LUCK: Twenty-three.

24 THE COURT: How far have you gone in school?

25 MR. LUCK: Two years at college.

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1 THE COURT: Okay. What did you take in college?

2 MR. LUCK: It was --

3 THE COURT: Was it at tech? Or where was it at?

4 MR. LUCK: It was at tech --

5 THE COURT: Okay. And what did you study?

6 MR. LUCK: I studied management.

7 THE COURT: Okay. Are you married?

8 MR. LUCK: No, ma'am.

9 THE COURT: Do you have any children?

10 MR. LUCK: No, ma'am.

11 THE COURT: What type of work did you do before
12 you were incarcerated?

13 MR. LUCK: I did -- I've been in plumbing and
14 also cooking.

15 THE COURT: Are you currently on probation or
16 parole?

17 MR. LUCK: No, ma'am.

18 THE COURT: Have you ever been treated for the
19 abuse of alcohol, drugs, or mental illness?

20 MR. LUCK: No, ma'am.

21 THE COURT: Have you had any drugs or alcohol or
22 medication in the last seventy-two hours?

23 MR. LUCK: No, ma'am.

24 THE COURT: Are you aware of any physical,
25 emotional, or nervous problem that might keep you from

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1 understanding where you are right now or what you're
2 doing?

3 MR. LUCK: No, ma'am.

4 THE COURT: Mr. Archer, have you explained to
5 your client his right to have both of these
6 indictments presented to the grand jury?

7 MR. ARCHER: I have, Your Honor.

8 THE COURT: And does he wish to give up that
9 right?

10 MR. ARCHER: He wishes to waive presentment.

11 THE COURT: Have you likewise explained to him
12 that while he's entering a plea on 2012-5064 under the
13 Alford doctrine, that it will still be treated as a
14 guilty plea and will be reflected as a guilty plea on
15 his record?

16 MR. ARCHER: Yes, Your Honor.

17 THE COURT: From your investigation of the facts
18 and circumstances of this case, do you believe the
19 State can produce sufficient evidence to prove your
20 client's guilt beyond a reasonable doubt?

21 MR. ARCHER: Yes, Your Honor.

22 THE COURT: Do you believe that if he were to go
23 to trial, a jury would most probably find him guilty?

24 MR. ARCHER: Yes, Your Honor.

25 THE COURT: Sir, on the indictment 2012-5063,

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1 which is failure to stop for a blue light, how do you
2 plead?

3 MR. LUCK: Guilty.

4 THE COURT: I can't hear you.

5 MR. LUCK: Guilty.

6 THE COURT: Do you understand that that carries
7 a minimum of ninety days, a maximum of three years, or
8 a minimum fine of \$500?

9 MR. LUCK: Yes, ma'am.

10 THE COURT: Do you understand that your license
11 will be suspended for at least thirty days by the
12 department of motor vehicles?

13 MR. LUCK: Yes, ma'am.

14 THE COURT: And on offense PWID marijuana, 2012-
15 5064, how do you plead?

16 MR. LUCK: Guilty.

17 THE COURT: Do you understand that that carries
18 a maximum of five years and/or a maximum fine of
19 \$5,000?

20 MR. LUCK: Yes, ma'am.

21 THE COURT: And from your investigation of the
22 facts and circumstances of this case, do you believe
23 the State can produce sufficient evidence to prove
24 your guilt beyond a reasonable doubt?

25 MR. LUCK: [No response]

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1 THE COURT: Do you believe the evidence the
2 State would produce against you at trial would be
3 enough to rise above the standard of beyond a
4 reasonable doubt?

5 MR. LUCK: Yes, ma'am.

6 THE COURT: Do you believe that if you were to
7 go to trial, a jury would most probably find you
8 guilty?

9 MR. LUCK: What happens if I say no to that
10 question?

11 THE COURT: Then we would set it for trial.

12 MR. LUCK: Oh. Well, yes.

13 THE COURT: Now, I don't want you to say it
14 because you feel coerced or anything, I want you to
15 say it because --

16 MR. LUCK: I do. I do, but it's yes. It's yes.

17 THE COURT: Okay. Now --

18 MR. LUCK: I do feel coerced, for the record,
19 but it's just --

20 THE COURT: I'm sorry?

21 MR. LUCK: I feel coerced, for the record, but,
22 yes.

23 THE COURT: Well, if you feel --

24 MR. LUCK: Yes.

25 THE COURT: -- but if you feel coerced, then I

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1 can't take your plea and I need to set it for a trial.
2 I don't want you doing anything you don't want to do.
3 If you feel you're being pressured to do something --

4 MR. LUCK: I want --

5 THE COURT: -- then you --

6 MR. LUCK: I want to do it.

7 THE COURT: Okay. You understand what coerced
8 means?

9 MR. LUCK: Yes, ma'am.

10 THE COURT: Okay. Tell me what coerced means.

11 MR. LUCK: Like I being pushed into it.

12 THE COURT: Okay. Now, I need to know that
13 whatever you're doing, you're doing it of your own
14 will, you're doing it freely and voluntarily. And if
15 you feel coerced or under duress, I can't take the
16 plea and it's because I don't want you to come back
17 later and say that I forced you, or Mr. Archer forced
18 you, or the State forced you. You have to do it
19 because you want to do it and because you believe it's
20 in your best interest. The Alford plea means that:
21 there may be some doubt in my mind about my guilt but
22 when looking at the evidence the State has and what
23 they would present against me, it's most likely a jury
24 would find me guilty so it's in my best interest to
25 plead guilty even though I think there is some

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1 possibility that I'm not guilty, I'm not willing to
2 roll the dice because if it turns out worse case
3 scenario, that wouldn't be in my benefit.

4 Do you understand what I'm saying? Has Mr.
5 Archer explained that to you?

6 MR. LUCK: He has.

7 But I don't understand the law. I just want to
8 say it's yes. That's my answer, yes.

9 THE COURT: Okay. You want to plead guilty?

10 MR. LUCK: Yes, ma'am.

11 THE COURT: Okay. Sir, you may have discussed
12 parole or parole eligibility with your lawyer or with
13 others but until you're sentenced, no one can tell you
14 when, if ever, you will be eligible for parole or
15 under what conditions. You should assume that you
16 will serve the entire time in jail that you're
17 sentenced to day-to-day. Do you understand?

18 MR. LUCK: Yes, ma'am.

19 THE COURT: And has your lawyer explained to you
20 your right to have your indictments presented to the
21 grand jury?

22 MR. LUCK: Yes, ma'am.

23 THE COURT: And do you wish to give up that
24 right?

25 MR. LUCK: Yes, ma'am.

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1 THE COURT: I want you to listen carefully to
2 the facts.

3 Ms. Linder?

4 MS. LINDER: Thank you, Your Honor. May it
5 please the Court.

6 On August the 29th of 2011, officers were
7 patrolling on Ashley Phosphate in North Charleston
8 here in Charleston County. Officers initiated a
9 lawful traffic stop. At that point the defendant put
10 the vehicle in reverse and jumped a sidewalk and then
11 went on to 526. A car chase ensued at speeds up to
12 eighty-five miles an hour. That is the failure to
13 stop for a blue light. Those are the facts that I
14 would be presenting if this were to go to trial.

15 As far as the marijuana charge, February 11th of
16 2012, a lawful traffic stop was initiated on Otranto
17 here in North Charleston here in Charleston County.
18 Officer approached and smelled marijuana on the
19 defendant and his passenger. They were near a
20 shopping cart. Ultimately, the defendant had twenty-
21 eight grams in his left-front pant's pocket and there
22 was a shopping cart in the proximity of the
23 codefendant and the defendant that had about 374 grams
24 of marijuana and a scale. Again, those are the facts
25 that I would be presenting at trial. And I believe

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1 that is the charge that perhaps caused Mr. Luck a
2 moment of hesitation with the Alford.

3 THE COURT: How much was in the shopping cart
4 again, tell me?

5 MS. LINDER: 374 grams.

6 THE COURT: Sir, do you agree or disagree that
7 on -- well, let me do them one at a time.

8 On failure to stop for a blue light, do you
9 agree or disagree with the facts?

10 MR. LUCK: I disagree with one fact. They said
11 that I jumped a sidewalk.

12 THE COURT: Okay. Do you agree that once the
13 police put their sirens on and their blue lights and
14 approached you, that you did not stop the vehicle?

15 MR. LUCK: Their blue lights were already on and
16 I was stopped. I left while the blue lights were on.

17 THE COURT: Okay. And you kept traveling down
18 the highway, correct, some time period before you
19 stopped for the police?

20 MR. LUCK: No. Before I stopped for the police
21 and he got my ID, then he tried to pull me out of the
22 car, I put the car in reverse and left.

23 THE COURT: Okay. You understand that's failure
24 to stop for a blue light?

25 MR. LUCK: I guess I do.

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1 THE COURT: Okay. The elements of failure to
2 stop for a blue light is once signaled or indicated by
3 someone you recognize to be a law enforcement officer,
4 that you fail in any manner to comply with their
5 directions. So that means whether the car is moving,
6 whether it's stopped, whether you pull over and take
7 off again, you know, whether --

8 MR. LUCK: I also disagree that it was a lawful
9 traffic stop. I had no reason to be stopped. I was
10 already stopped when the police came and put his blue
11 lights on me, so -- but --

12 THE COURT: Why did they stop him? Do you know?

13 MS. LINDER: Can I have the Court's indulgence?
14 [Whereupon, Ms. Linder reviews documents]

15 MS. LINDER: It appears as though it was -- it
16 had to do with turning violations.

17 THE COURT: Where were you stopped at, sir? You
18 said you were stopped before they approached you?

19 MR. LUCK: I was already pulled into a Waffle
20 House, getting out of the car, when the police blue-
21 lighted me. He -- this is Ashley Phosphate where the
22 Motel 6 is. He pulls into the parking lot at the
23 Motel 6 that's behind the Waffle House. And he pulls
24 behind the Motel 6 and I drove to the Waffle House.
25 He didn't see me to say that I made a traffic

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1 violation. He just came and put the blue lights on me
2 after I pulled into the Waffle House and was about to
3 walk in there and go get something to eat. He was
4 behind the Motel 6 at the time he's saying he saw me
5 do a traffic violation.

6 THE COURT: Uh-huh. There's more than one --
7 one officer involved in the stop, Ms. Linder?

8 MS. LINDER: Your Honor, there appears to be --
9 the short answer is yes. There appears to be two
10 police officers.

11 THE COURT: Okay. So one saw it and called it
12 to another one?

13 MS. LINDER: One moment, Judge. Normally --
14 [Whereupon, Ms. Linder reviews documents]

15 MS. LINDER: Two officers were in the same
16 vehicle.

17 MR. LUCK: No, they weren't. They were in two
18 separate cars, Your Honor.

19 MS. LINDER: And then it looks as though one
20 officer approached the driver's side of the
21 defendant's vehicle, another officer approached the
22 passenger's side. The one at the driver's side asked
23 for him to exit the vehicle and then at that point,
24 that's when --

25 THE COURT: Put it in reverse?

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1 MS. LINDER: Yes, Judge.

2 THE COURT: And why did they say they stopped
3 him, again?

4 MS. LINDER: It says that they're a bunch of --
5 it was -- how they -- it sound like they give a lot of
6 different reasons of how he's turning into Magnum from
7 the Motel 6 around to the Waffle House and it has to
8 do with how he was driving.

9 THE COURT: Are they saying he was driving in
10 some erratic manner?

11 MS. LINDER: Yes. Said he was driving
12 erratically, and then it also says --

13 [Whereupon, Ms. Linder reviews documents]

14 MS. LINDER: -- and it also says his license was
15 suspended. So that's why they said --

16 THE COURT: Sir, part of taking a plea to any
17 kind of charge, one, you have to -- there are several
18 stages. There is no -- we don't randomly ask
19 questions. We ask questions for legal reasons and
20 there are certain benchmarks that we have to meet in
21 order to qualify a plea.

22 It doesn't matter to me whether you plead guilty
23 or not. Okay? I'm a great believer in the trial
24 system. If you want a trial, you should have one. If
25 you have any doubt about whether you did this or not,

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1 then you should have a trial. But don't do this just
2 because you think you're pleasing me, because I'm
3 going to be here whether you're here or not. I come
4 to court every day, so whether it's you or somebody
5 else, I'm going to be trying this or a civil case or
6 doing something non jury. It doesn't matter whether
7 you do it today or don't do it today. So I need you
8 to understand that.

9 I don't have a stake in this one way or the
10 other. But I need you to -- and neither does the
11 State, because they're going to be here trying it.
12 And Mr. Archer will be here. Maybe he'll be in family
13 court, maybe he'll be in this court, maybe another
14 court. But the point is, I don't want you doing this
15 because you think you're pleasing us, because we don't
16 have a stake in it one way or the other.

17 Either you believe you did it or you don't
18 believe you did it. If you don't believe you did it,
19 then you shouldn't plead guilty to it. If you believe
20 you did it and you want to get the benefit of serving
21 your time at the same time -- because on the armed
22 robbery -- and, of course, you were tried in your
23 absence, so you wouldn't know this and I neglected to
24 tell you this when I was sentencing you. You have to
25 serve seven years day for day on that charge before

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1 you're eligible for parole. So --

2 MR. LUCK: You told me that.

3 THE COURT: -- and I apologize. I --

4 MR. LUCK: No. You already told me that.

5 THE COURT: -- and so before you can even begin
6 to max out. And so I did not --

7 If you wanted to get the benefit of your time
8 running together, only you can make that decision.
9 None of us can make that for you. Okay?

10 MR. LUCK: I know that.

11 THE COURT: But in order for me to qualify your
12 plea, you're going to have to be able, one, to tell me
13 either you did it and you're guilty of it or that the
14 State is going to be able to produce the evidence to
15 prove your guilt beyond a reasonable doubt and that
16 you don't have any doubt about that and that if you go
17 to trial, you believe that they would prevail. In
18 other words, that a jury would find you guilty on it.

19 So if you equivocate about the facts, if you
20 have any doubt about the facts, if you think the stop
21 wasn't good, then you need to have a lawyer challenge
22 the stop. But those are calculated risks only you can
23 take, because, see, I don't have to live with any of
24 those consequences. So I can't make that decision for
25 you. Only you can think through it, think through

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1 what happened that day on both of these occasions, and
2 decide whether that's something you want to do. But,
3 you know, you can talk to anybody in this courtroom
4 but, ultimately, you're the only one that has to live
5 with the consequences. None of us do. So only you
6 can make that decision.

7 So I need you to think through it, I need you to
8 be clear, because I don't want to see this on post-
9 conviction relief where you say we all forced you to
10 do it. Because, see, once people get to the
11 department of corrections, after they get through R&E
12 and they've got a lot of time to think, then we get a
13 PCR application. And as far as I'm concerned, then
14 that's a waste of court time because then now we've
15 got to do it twice.

16 So you need to be certain about what you want to
17 do. If you really want a trial, you need to have one.
18 If you don't want a trial and you want to plead
19 guilty, then you need to do that. But you're the only
20 person that can make that decision. I have to make
21 sure -- if I don't believe you're doing it freely and
22 voluntarily and of your own will, and I don't believe
23 you're convinced of what you're saying to me, I'm not
24 going to qualify the plea. Okay? So I just needed
25 you to know that that's why we ask all these

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1 questions. We don't just randomly --

2 MR. LUCK: Yes, ma'am.

3 THE COURT: -- ask these questions.

4 So when you start telling me that you don't
5 believe the facts happened a certain way, that starts
6 making me -- in my mind, I'm already at post-
7 conviction relief. I'm already seeing the application
8 and I'm already thinking we're wasting court time
9 because you need a trial. Okay?

10 So I need you -- do you need more time to talk
11 with Mr. Archer about the facts --

12 MR. LUCK: No, ma'am.

13 THE COURT: -- and to go through all of this?

14 Do you need to go over with him whether you
15 think you want to file any motions on the stop or to
16 suppress or anything like that?

17 MR. LUCK: No, ma'am.

18 THE COURT: You're certain?

19 MR. LUCK: I don't understand what's going on,
20 so --

21 THE COURT: Tell me what you don't understand.
22 Well, you shaking your head is not telling me. You've
23 got to articulate it -- I just -- for me. You've got
24 to tell me what you're thinking.

25 MR. LUCK: I want to -- I want to plead guilty

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1 because I heard you say that I would go serve my time.
2 and after I serve my time I would have this charge --

3 THE COURT: It's possible.

4 MR. LUCK: -- and that charge --

5 THE COURT: Uh-huh.

6 MR. LUCK: -- pending over my head and --

7 THE COURT: It's up to the State how long it
8 takes them to bring it to trial.

9 MR. LUCK: Right. Right.

10 And I don't want that pending over my head when
11 I get out. When I get out, I want everything to be a
12 fresh start. And so --

13 THE COURT: Okay.

14 MR. LUCK: -- I plead guilty to it all.

15 THE COURT: Well, do you believe you can tell
16 me, though, that you agree or disagree with the facts
17 as Ms. Linder has shared them with the Court?

18 MR. LUCK: Can you give me a court date before I
19 get out of jail?

20 THE COURT: I can't give -- I have no control
21 over the docket. Only the State controls the docket.
22 I have no idea when they'll call the case and there's
23 nothing that -- I have absolutely no control over the
24 docket. The solicitor is a constitutional officer,
25 just like me. They call the docket whenever they

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1 please to and I have absolutely no control over it.
2 And with you being in jail, it complicates it because
3 then a lawyer has to come visit you. It just depends
4 on a lot of variables and factors. It depends on when
5 you can be transported back to court. I just --

6 It's my job to tell you the worst-case scenario
7 because I don't want you to come back later and say,
8 well, the judge told me my case was going to be
9 disposed of in two or three months, because I'm not
10 going to put my foot in my mouth like that and tell
11 you that, because I know it's not true. They control
12 the docket. They could wait until two months before
13 you get out and call this case.

14 MR. LUCK: Right. That's why I wanted to plead
15 guilty.

16 THE COURT: But you have to be able to elocute
17 to the facts, which means either you have to admit to
18 me you did it or you have to admit that that's the
19 evidence they would produce at trial and that you
20 actually believe that. I don't want you just saying
21 it to say it. Because, see, then you'll go to the
22 department of corrections and meet some of the lawyers
23 up there and then you're going to write me a PCR
24 application and say we forced you to do it.

25 MR. LUCK: I don't know -- I don't know what a

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1 PCR is.

2 THE COURT: It's post-conviction relief. That's
3 where you --

4 MR. LUCK: I don't --

5 THE COURT: That's where you say your lawyer was
6 ineffective and he really did tell you what to do and
7 we all forced you to do this and you really didn't
8 want to do it. That's it in a nutshell. And then we
9 basically have to deal with this all over again, and
10 all over again.

11 So if you -- in my estimation, if you really
12 don't want to do it, you should just ask for a trial
13 and be done with it, if you really don't want to plead
14 guilty.

15 MR. ARCHER: May I have one moment?

16 THE COURT: Sure. Absolutely.

17 [Whereupon, Mr. Archer and Mr. Luck confer]

18 THE COURT: How much detention time did he have
19 before he bonded out originally? Do you know?

20 MR. ARCHER: How long were you in jail?

21 MR. LUCK: Three days.

22 MR. ARCHER: Three days.

23 THE COURT: Okay. So he really doesn't have a
24 whole lot of credit.

25 MR. ARCHER: Didn't put a lot of time in there,

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1 Your Honor.

2 THE COURT: Okay. Well, he'll get his three
3 weeks [sic].

4 MR. ARCHER: Judge, I mean, I --

5 THE COURT: I don't want him to feel pressured.
6 I'll tell you the truth, I --

7 MR. ARCHER: Well, I think part of the --

8 THE COURT: Because I don't -- because I don't
9 want him to think I have a stake in it one way or the
10 other, because I don't.

11 MR. ARCHER: Yes, Your Honor. I understand.

12 And I think that part of the problem is I didn't
13 know about these charges until we got here so I
14 haven't have a long time to discuss it with him.
15 Discussing it with him, I think that he definitely
16 wishes to enter a plea of guilty and that if --

17 THE COURT: Do you need time to go over it with
18 him?

19 MR. ARCHER: -- and that he is convinced that if
20 it went to trial -- I'm certain on the Alford
21 situation, going to trial that a jury would come back
22 with a guilty verdict on the blue lights. You know, I
23 think it's --

24 THE COURT: But I don't want him to feel
25 pressured. I don't want him to feel like he has to do

MIA PERRON, CVR-CM-M

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1 this. Because he doesn't.

2 MR. ARCHER: Well, that's one thing I don't
3 think he feels. I don't think he's being -- feels
4 like he's being pressured. He just has some -- he
5 wants to do it --

6 THE COURT: Uh-huh.

7 MR. ARCHER: -- but this has some factual
8 differences with the prosecutor.

9 THE COURT: Well, the factual differences he
10 has, however, would rise to the level of a motion to
11 suppress. If he says the stop wasn't good -- of
12 course, you know, I don't know. I haven't heard it,
13 so I wouldn't know. But I can tell you that -- well,
14 the State really hasn't made any recommendation other
15 than it running concurrent.

16 MR. ARCHER: Yes.

17 THE COURT: Which they could change that posture
18 and ask for it to be consecutive, since he had an
19 outstanding sealed sentence --

20 MR. ARCHER: Right.

21 THE COURT: -- at the time this happened.

22 And, you know, again, it's my job to give worse-
23 case scenario. So I don't know.

24 [Whereupon, Mr. Archer and Mr. Luck confer]

25 MR. LUCK: They're just telling me I'm guilty,

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1 man. There's nothing I can do but. I can't do
2 anything. I got stopped illegally. I can't fight it.
3 There's nothing I can do.

4 THE COURT: You can fight it. You can file a
5 motion to suppress.

6 MR. LUCK: I can't. I can't. It's nothing I
7 can do about it. I'm trying to just go --

8 MR. ARCHER: Well, I mean --

9 THE COURT: Well, there's always something you
10 can do.

11 [Whereupon, Mr. Archer and Mr. Luck confer]

12 MR. ARCHER: He basically admits that he had an
13 officer followed him down I-26 with a blue light
14 going. And I think for him the issue was the initial
15 stop. He stopped, then he takes off again, and then
16 the officer turns on the blue light and takes off
17 after him. And I don't think there's any question
18 that -- you know, it's sort of like two situations:
19 the initial stop and then a second stop.

20 THE COURT: Yeah. Once he failed to render --
21 uh-huh.

22 MR. ARCHER: Yeah.

23 And on the second stop I don't see any question
24 he didn't -- he failed to stop for the blue light.

25 And his only issue was with the first stop, not with

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1 the second stop.

2 MR. LUCK: There wasn't a second stop. There
3 was no turn off the blue lights and turn back on blue
4 lights.

5 Your Honor, I would like to plead guilty.

6 THE COURT: Well, you're going to have to be
7 able to tell me either that you admit this is what
8 happened or that the State would produce this evidence
9 and that you believe it would convict you.

10 MR. LUCK: I believe the State will produce
11 evidence to convict me.

12 THE COURT: Okay. And you're doing -- okay.

13 I want you to listen very carefully. When you
14 enter pleas of guilt, you give up certain important
15 constitutional rights. Those rights include your
16 right to a jury trial. At a jury trial you have the
17 right -- the State has the burden of proving your
18 guilt beyond a reasonable doubt. You would have the
19 right to confront and cross-examine the State's
20 witnesses and call witnesses in your own defense. You
21 would have the right to present any defenses that you
22 may have. If you've made any confessions or other
23 incriminating statements, you would have the right to
24 challenge those statements. You would also have the
25 right to remain silent and if you were to remain

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1 silent, your silence could never be used against you.

2 Do you understand your rights as I've just
3 explained them to you?

4 MR. LUCK: Yes, ma'am.

5 THE COURT: Do you understand that you're giving
6 up each and every one of those rights?

7 MR. LUCK: Yes, ma'am.

8 THE COURT: Other than what the State has
9 stated, which is a recommendation of concurrent
10 sentences, have there been any other deals worked out
11 on your behalf?

12 MR. LUCK: No, ma'am.

13 THE COURT: Have you been satisfied with your
14 lawyer's services?

15 MR. LUCK: If I said no, does it change
16 anything?

17 THE COURT: Uh-huh.

18 MR. LUCK: Yes, ma'am.

19 THE COURT: Has he answered all of your
20 questions?

21 MR. LUCK: Yes, ma'am.

22 THE COURT: Done everything you've asked or
23 expected in representing you?

24 MR. LUCK: Yes, ma'am.

25 THE COURT: Anything more you would have him do

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1 that he's not already done on your behalf?

2 MR. LUCK: No, ma'am.

3 THE COURT: Have you had enough time to talk
4 with him about the elements of these charges and the
5 range of penalty?

6 MR. LUCK: Yes, ma'am.

7 THE COURT: And has he fully explained to you
8 your right for presentment to the grand jury?

9 MR. LUCK: Yes, ma'am.

10 THE COURT: And has he fully explained the
11 Alford doctrine to you?

12 MR. LUCK: Yes, ma'am.

13 THE COURT: Do you have any complaints about his
14 services?

15 MR. LUCK: No, ma'am.

16 THE COURT: Has anyone promised you anything or
17 held out any hope of a reward to cause you to plead
18 guilty?

19 MR. LUCK: No, ma'am.

20 THE COURT: Has anyone used threats, coercion,
21 force, pressure, intimidation or duress to cause you
22 to plead guilty?

23 MR. LUCK: No, ma'am.

24 THE COURT: Are you pleading guilty freely and
25 voluntarily and of your own will?

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1 MR. LUCK: Yes, ma'am.

2 THE COURT: Do you believe you've had enough
3 time to make up your mind about pleading guilty?

4 MR. LUCK: Yes, ma'am.

5 THE COURT: Okay. Do you want to go over
6 anymore of the documents that the State has provided
7 to Mr. Archer in anymore detail, or talk with Mr.
8 Archer in anymore detail, before entering this plea?

9 MR. LUCK: No, ma'am.

10 THE COURT: Have you understood my questions?

11 MR. LUCK: Yes, ma'am.

12 THE COURT: Do you need to ask me about anything
13 that we've been over?

14 MR. LUCK: No, ma'am.

15 THE COURT: Have you been absolutely truthful in
16 your answers?

17 MR. LUCK: Yes, ma'am.

18 THE COURT: Do you understand that you have the
19 right to appeal this guilty plea and sentence of the
20 Court but that you must do so in writing within ten
21 days of today?

22 MR. LUCK: Yes, ma'am.

23 THE COURT: Do you understand that if you cannot
24 afford an attorney for this process, that one will be
25 appointed to you at no cost?

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July 9, 2012

1 MR. LUCK: Yes, ma'am.

2 THE COURT: I find there's a substantial factual
3 basis for the plea, that the defendant has entered the
4 pleas freely, voluntarily, knowingly and
5 intelligently, that he has had the advice and
6 assistance of counsel with whom he's indicated to the
7 Court he's satisfied, and I will accept each plea.

8 Anything further from the State?

9 MS. LINDER: Nothing further with regard to
10 these two.

11 THE COURT: Anything further from the defense?

12 MR. ARCHER: No, ma'am.

13 THE COURT: Okay. Sir, anything you want to
14 state for the record on your own behalf?

15 MR. LUCK: That I'm not a corporation. Dashaud
16 Luck is not a corporation --

17 THE COURT: Did we --

18 MR. LUCK: -- for the record.

19 THE COURT: Did we put that on here somewhere?

20 MR. LUCK: Yes, when you tried to state versus
21 Dashaud Luck, because the State of South Carolina is a
22 corporation.

23 THE COURT: The State is not a corporation.
24 It's a sovereign entity.

25 MR. LUCK: Oh. Okay. Well, just for the

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1 record.

2 THE COURT: Yeah. We have -- we don't have you
3 listed as a corporation.

4 MR. LUCK: Okay.

5 THE COURT: Okay. Anything further, Mr. Archer?
6 You've already told me nothing further.

7 And he has not had any substantial amount of
8 time that he served; correct?

9 MR. ARCHER: That's correct, Your Honor.

10 [Whereupon, the Court and the law clerk confer]

11 THE COURT: Sir, on the failure to stop for a
12 blue light, you're sentenced to one year. On the
13 possession with intent to distribute marijuana, you're
14 sentenced to two years. These sentences will run
15 concurrent to one another, as well as to 2009-GS-10-
16 3022 and 3023. You will get credit for any time that
17 you've served pursuant to 24-13-40, be calculated and
18 applied by the department of corrections.

19 MR. ARCHER: Thank you, Your Honor.

20 THE COURT: Thank you very much. Y'all have a
21 good day.

22 [PLEA CONCLUDES AT 1:16 P.M.]

23

24

25

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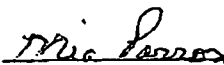
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the plea held fore the Honorable Deadra L. Jefferson, on Monday, July 9, 2012.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 12th day of August, 2013.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

FORM 5

STATE OF SOUTH CAROLINA

County of Charleston2013-CP-10-3400
IN THE COURT OF COMMON PLEASDashaund Sameal Luck #3514725
Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEFFILED
2013 JUN 11 PM 12:04
JULIE J. ARMSTRONG
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention MacDougall Correctional Institution
1516 Old Gilliard Rd. Ridgeville S.C. 29972 M1A3B
2. Name and location of Court which imposed sentence Charleston County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) William Daren Glover Luck
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2009GS1003022, 2009GS1003023

- (b) Armed Robbery, Possession of a firearm During
 (c) Commission of a violent crime
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) July 9, 2002 Concurrent Sentence of ten years,
 (b) and five years
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty yes
 (c) after a plea of nolo contendere _____
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. South Carolina Court of appeals
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. Conviction and Sentence was not Affirmed
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. n/a
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) n/a

- (b) N/a
- (c) N/a
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) Violation of Due Process
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failing to render adequate representation during
- (b) my absence at trial
- (c) Unknowingly and Unwillingly tried in absence
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/a
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/a
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. N/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/a

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/a

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. N/a

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/a

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) IAOC - First time Challenged
 (b) Violation of Due Process - First time challenged
 (c) _____

17. Were you represented by an attorney at any time during the course of:

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

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. Mark L Archer 736 Lavalier Sq
Mt. Pleasant S.C. 29464-7796

ii. _____

iii. _____

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

- i. Trial and Sentencing

ii. _____

iii. _____

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

Reconsideration of Sentence or Reversed for new trial

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

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Dashaud S. Luck, 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.

Dashaud Luck #357475

SWORN to and subscribed before me this 5th day of June, 2013.

Tammy C Way (L.S.)
Notary Public

My Commission Expires: March 9, 2014

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

I, Dashaund S. Luck, 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.

Dashaund S. Luck
Applicant

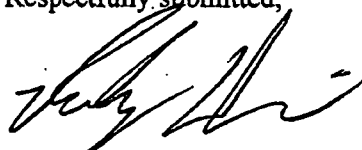
SWORN or affirmed to and subscribed before me this
5th day of February, 2013.

[Signature]
Notary Public
My Commission Expires March 9, 2014

9. The same day, Mr. Luck waived presentment to a Grand Jury and entered guilty pleas, under Alford, to Failure to Stop for a Bluelight and Possession with Intent to Distribute Marijuana under Indictment Numbers: 2012-GS-10-5063 & 5064.
10. He was represented by Mark Archer (trial attorney).
11. No appeal was made from the guilty plea.
12. The Applicant filed an *in forma pauperis* application for post conviction relief on June 11, 2013.
13. The undersigned counsel, Rodney D. Davis, was appointed to represent the Applicant on August 21, 2013.
14. The State filed a Reply on December 9, 2013.
15. Applicant's counsel received the transcript of the guilty plea and sentencing on March 13, 2014.
16. On reviewing the transcript it became apparent that Mr. Luck's trial attorney was ineffective when assisting on the guilty plea to additional charges (Indictment Numbers: 2012-GS-10-5063 & 5064).
17. Applicant's trial attorney provided ineffective assistance of counsel in failing to fully investigate, analyze and advise his client prior to entering the guilty pleas.
18. The Applicant felt undue pressure to make a decision on a plea offer to avoid future consequences, including but not limited to, an undue delay in resolving his cases, excessive incarceration and/ or consecutive sentences.
19. The Applicant believed his trial attorney was insufficiently prepared to advise him to plead guilty under Alford for a variety of reasons, including:
 - A. Failing to fully investigate the evidence and witnesses in the case;
 - B. Failing to obtain any discovery;
 - C. Failing to provide full discovery to the Applicant; and
 - D. Failing to have the green plant-like material evidence analyzed.
20. Since the trial attorney failed to complete the previous tasks, the Applicant was denied effective assistance of counsel and entered a guilty plea under Alford.

Wherefore, the Applicant requests that these additional charges and grounds for relief be made a part of his application by amendment and considered during his hearing on the merits.

Respectfully submitted,



Rodney D. Davis
Attorney for Applicant
Bar #: 12396
4000 Faber Place Drive, Suite 300
Charleston, SC 29405
Davis@LowcountryLawOffice.com
(843) 323-4353

March 27, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Dashaud Samuel Luck, #351475,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-10-3400

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed June 11, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April 2009 term of the Charleston County Grand Jury for armed robbery (2009-GS-10-3022) and possession of a weapon during the commission of a violent crime (2009-GS-10-3023). The Applicant was represented by Mark Archer, Esquire.

On May 12, 2011, the Applicant was tried in his absence and found guilty as indicted. On July 9, 2012, the Applicant was apprehended and sentenced by the Honorable Deadra L. Jefferson to confinement for a period of ten (10) years of armed robbery and five (5) years for possession of a weapon.¹ The Applicant did not appeal his convictions or sentences.

¹ It also appears the Applicant pled guilty to two separate charges on July 9, 2012. (2012-GS-10-5063, 2012-GS-10-5004).

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to render adequate representation during my absence at trial.
2. Violation of due process.
 - a. Unknowingly and unwillingly tried in his absence.

III.

In this application, the Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

The Applicant also alleges a due process violation based on the fact that he was tried in his absence. It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence. State v. Fairey, 374 S.C. 92, 99, 646 S.E.2d 445, 448 (Ct.App.2007); State v. Goode, 299 S.C. 479, 481, 385 S.E.2d 844, 845 (1989). A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the defendant in his absence. State v. Patterson, 367 S.C. 219, 229,

625 S.E.2d 239, 244 (Ct.App.2006) (citing State v. Jackson, 288 S.C. 94, 95, 341 S.E.2d 375, 375 (1986)). The judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend. Id. The Respondent submits and the record reflects the trial court made the required findings of fact and conclusions of law prior to trying the Applicant in his absence. However, this allegation may raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

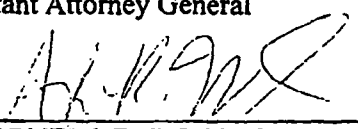
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Dec. 4, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2013-CP-10-3400

DASHAUD SAMUEL LUCK, #351475)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

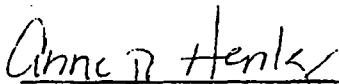
STATE OF SOUTH CAROLINA,)

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:

Rodney D. Davis
4000 Faber Place Drive
Suite 300
Charleston, SC 29405

DATED this 5th day of December, 2013



Anne R. Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF CHARLESTON)

Dashaud S. Luck,)
)
 Applicant,)
 v.) Case No. 13-CP-10-3400
)
 State of South Carolina,)
)
 Defendant)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 16, 2014, before The Honorable R. Markley Dennis in Courtroom 4D of the Charleston County, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Rodney Davis, Esq.
 4000 Faber Place, Suite 300
 Charleston, South Carolina 29401
 Appearing for Applicant

Ashleigh Wilson, Esq.
 U.S. ATTORNEYS OFFICE
 P O Box 11549
 Columbia, South Carolina 29211
 Appearing for State of South Carolina

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
 P O Box 901
 Johns Island, South Carolina 29457
dgarrison@sccourts.org

Dashaud S. Luck v. State of South Carolina

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Case No. 13-CP-10-3400

PCR Hearing of April 16, 2014

Before The Honorable R. Markley Dennis

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Before The Honorable R. Markley Dennis

1 THE COURT: Was this sentence by
2 Hughston? The transcript says Judge
3 Jefferson.

4 MS. WILSON: Yes, Your Honor.

5 THE COURT: The transcript that I
6 have says Deadra Jefferson. I know she
7 sentenced him on -- did Judge Hughston
8 sentence him or did Judge Jefferson sentence
9 him?

10 MR. ARCHER: Judge Jefferson, Your
11 Honor.

12 THE COURT: Okay. Maybe I read it
13 wrong. I have a failure to stop for a blue
14 light by Judge Jefferson, but that ---

15 MS. WILSON: Your Honor, Your
16 Honor, I think those are Green's records.

17 THE COURT: Okay. You are Dashaud
18 Luck?

19 APPLICANT: Yes, sir.

20 THE COURT: I just wanted to be
21 sure because -- what I have before me, Mr.
22 Luck, is that you went to trial on the charge
23 or armed robbery and the possession of a
24 firearm. Basically what you're saying in
25 your application is that 'I want another shot

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1 at going to trial.' But your sentence was
2 the minimum sentence that you could possibly
3 get for those charges. Do you understand
4 that?

5 APPLICANT: Yes, sir.

6 THE COURT: You are facing the
7 potential of thirty-five years if you're
8 convicted.

9 APPLICANT: Right.

10 THE COURT: A judge could sentence
11 you to five years and then to a consecutive
12 sentence on the armed robbery; do you under-
13 stand that?

14 APPLICANT: Yes, sir.

15 THE COURT: It is your desire to
16 have a chance to do it again?

17 APPLICANT: Yes, sir.

18 THE COURT: Okay, that's fine.
19 Call your first witness.

20 MR. DAVIS: Your Honor, we'd like
21 to put a couple of things on the record, if
22 we could.

23 First of all, in my initial letter
24 to all PCR clients, I indicate where I worked
25 previously. It turns out that in this case,

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1 last week when I was meeting with Mr. Luck
2 about this, I actually represented his
3 brother in the armed robbery and that case
4 was dismissed. Until he mentioned the name
5 "Luck", I told him and I'll tell the court
6 that I did not ---

7 THE COURT: This armed robbery?

8 MR. DAVIS: Yes, sir. Yes, sir.
9 I did not recall the specifics of the case,
10 the armed robbery. I confirmed with the
11 Clerk of Court's records that I did represent
12 him, and those charges were dismissed.

13 I was talking to Dashaud and he's
14 aware of that. He does not want to raise any
15 conflict issues. He's prepared to go
16 forward, but I just wanted to make sure
17 that's on the record.

18 THE COURT: Is that correct, Mr.
19 Luck?

20 APPLICANT: Yes, sir.

21 THE COURT: Okay. You may
22 proceed.

23 MR. DAVIS: I'd filed an amended
24 application that dealt with allegations
25 during the guilty plea on the possession with
26

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1 intent to distribute. On the failure to
2 stop for a blue light, it's my understanding
3 in consultation with my client, that he
4 wishes to not move forward with those
5 complaints but to only focus on the trial of
6 the case.

7 THE COURT: Okay. So that's why
8 the failure to stop for blue light is in
9 here?

10 MR. DAVIS: Yes, Your Honor, and
11 the possession ---

12 THE COURT: Okay. I have both of
13 those, -- so we're not concerning ourselves
14 with that. Is that correct, Mr. Luck?

15 APPLICANT: Yes, sir.

16 THE COURT: Okay.

17 MR. DAVIS: Thank you, Your Honor.
18 I'd call Dashaud Luck to the stand.

19 (WITNESS TAKES STAND)

20 DASHAUD SAMEL LUCK, having been
21 sworn to tell the truth, and nothing but the
22 truth, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. DAVIS:

25 Q. Mr. Luck, you're here on a PCR

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1 application and you're focusing simply on the
2 armed robbery?

3 A. Yes, sir.

4 Q. And who were you represented by on
5 that charge?

6 A. I was represented by Attorney Mark
7 Archer.

8 Q. When -- you hired/retained Mr.
9 Archer to represent you?

10 A. Yes, sir.

11 Q. Do you recall in hiring him whether
12 -- what the agreement was about fees for his
13 representation and fees for his
14 representation if you went to trial?

15 A. Well, when I first spoke to Mr. Mark
16 Archer, when I hired him, he informed me that
17 if I wished for him to represent me in front
18 of a plea that I would have to pay him a
19 certain amount of money, and that if I wished
20 him to represent me ---

21 MS. WILSON: Objection, Your Honor,
22 to the relevance of this testimony.

23 THE COURT: I'll allow it.

24 APPLICANT: Can I go on ---

25 THE COURT: Yes, sir, you can

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1 complete you ---

2 APPLICANT: --- with what I was
3 saying?

4 THE COURT: Yes, sir.

5 APPLICANT: Well, I just said that
6 when he first talked to me that he told me
7 that it was a separate fee for him represent-
8 ing me for a plea versus him representing me
9 for a trial.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. DAVIS:

12 Q. Have you paid the first part of that
13 contractual agreement?

14 A. Yes, sir, I paid him to represent me
15 at the plea.

16 Q. Okay. Turning specifically to your
17 trial -- your trial commenced on May 9th,
18 2013. Did you receive notice to be present
19 for that trial?

20 A. No, sir, I did not.

21 Q. Did you any documentation in the
22 mail from the solicitor's office?

23 A. No, sir, I did not.

24 Q. Any documentation from your
25 attorney's office, Mr. Archer?

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1 A. No, sir. I received no notice
2 whatsoever.

3 Q. Any phone calls from Mr. Archer?

4 A. No, sir. I didn't have a phone
5 working at that time.

6 Q. Had there been discussion between
7 you and Mr. Archer about this case as a
8 trial?

9 A. No, sir, we never discussed this
10 case going to trial.

11 Q. Had he represented an additional fee
12 to be paid, the trial fee?

13 A. No, sir, he didn't request that
14 additional fee to be paid.

15 Q. You've had a chance to review the
16 transcript of the trial?

17 A. Yes, sir.

18 Q. Are you aware of testimony about
19 identification in this trial, identification
20 of you as the suspect, as the accused?

21 A. Yes, sir, I am fully aware of that.

22 Q. I want to talk then about -- is it
23 -- was it alleged that you also gave a
24 statement?

25 A. Yes, sir, it was.

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1 Q. And who was that statement given to?

2 A. It was given to a Detective Wagner.

3 Q. If you had been present at your
4 trial and been given the opportunity to
5 testify about the taking of that statement, I
6 would like for you to tell Judge Dennis what
7 was the officer -- the discussion between you
8 and the officer in taking that statement.

9 A. Well, Judge Dennis, not only if I
10 were present at trial but if I had been
11 informed that there would be a trial, I would
12 have had my attorney, Mark Archer, put in a
13 Motion to suppress the statement given by me,
14 being that it was given under duress by way
15 of threats and coercion.

16 Q. Can you tell the judge what you mean
17 by threats? What did the detective threaten?

18 A. Well, the detective threatened that
19 if I didn't a statement that made me seem
20 guilty, that he would -- number one, he would
21 have my mother arrested because he believed
22 that she lied in her statement. Number two,
23 he would go talk to the bond judge and ask
24 that I receive a high bond.

25 Q. There is no dispute that you gave a

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1 statement.

2 A. No, sir.

3 Q. Did you give that statement freely
4 and voluntarily or for some other reason?

5 A. I gave that statement involuntarily
6 for the reasons that I just told you.

7 Q. Mr. Luck, thank you. That's all the
8 questions that I have.

9 THE COURT: You may cross-examine.

10 CROSS EXAMINATION

11 BY MS. WILSON:

12 Q. Good morning, Mr. Luck.

13 A. Good morning.

14 Q. Do you recall how many times you met
15 with Mr. Archer?

16 A. Maybe three times.

17 Q. Were you arrested on these charges?

18 A. Yes, ma'am.

19 Q. And how long were you in jail after
20 you were arrested?

21 A. Maybe twelve hours.

22 Q. Twelve hours?

23 A. (Affirmative nod).

24 Q. So you were out on bond all the time
25 during the time leading up to your trial; is

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1 that correct?

2 A. Yes, ma'am.

3 Q. While you were out on bond, did you
4 ever stop by Mr. Archer's office to discuss
5 the case or to get the status on the case?

6 A. When I was initially out on bond, I
7 did not have the money to pay an attorney.
8 I was appointed a public defender, who never
9 got in contact with me; I don't even know who
10 it was.

11 Q. So then later on your family
12 retained Mr. Archer; is that correct?

13 A. I retained Mr. Archer two years
14 later.

15 Q. But after you retained Mr. Archer,
16 did you ever go to his office to speak to him
17 about your case?

18 A. Mr. Archer practiced from his home
19 and me and him met at a mutual location.

20 Q. So when you called Mr. Archer, you
21 could get in touch with him immediately; is
22 that correct?

23 A. If he had time, I could get him and
24 meet up with him, (affirmative nod).

25 Q. Did you try to do that at any time

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1 before your trial?

2 A. Before my trial?

3 Q. Did you try to meet up with Mr.
4 Archer around the time your case was tried?

5 A. We spoke before my case went to
6 trial but I was never informed that my case
7 would go to trial.

8 Q. Do you know if Mr. Archer ever tried
9 to track you down or contact you before
10 trial?

11 A. Well, Mr. Archer had a phone number
12 for me. I don't remember when we initially
13 met whether I gave him the address. I don't
14 know if attorneys are supposed to get your
15 address or any emergency contact information.
16 But I don't see why he shouldn't have had a
17 reason (sic) to get in touch with me if he
18 couldn't have gotten in touch with me by way
19 of telephone, which is how we communicated.

20 Q. Did he go over any evidence that the
21 State had against you? Did you and Mr.
22 Archer review that?

23 A. No, ma'am. We didn't review any
24 evidence.

25 Q. Did he talk to you about any

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1 possible defense that he could present, your
2 side of the story?

3 A. No, ma'am. We never discussed
4 trial.

5 Q. Okay. Mr. Luck, your mother was
6 present at your trial, isn't that correct?

7 A. Yes, ma'am.

8 Q. Did you review the trial
9 transcripts, since you weren't present?

10 A. Yes, ma'am.

11 Q. And you were out on bond during this
12 time, is that true?

13 A. Yes, ma'am.

14 Q. So you don't know what happened at
15 trial, because you weren't present; is that
16 right?

17 A. Yes, ma'am. I know what happened at
18 the trial because I read the transcript.

19 Q. But you weren't there to witness it?

20 A. I wasn't there to see it; no, ma'am.

21 Q. Would you believe me if I told you
22 that Mr. Archer argued to the jury that the
23 statement was coerced because the police had
24 threatened your mother?

25 A. (No verbal response).

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1 Q. Do you recall that in your review of
2 the transcript?

3 A. I would believe you if you told me
4 that. But I would have had him put it in a
5 Motion to suppress the statement, so it would
6 never have made it into a trial.

7 Q. But do you recall reading that in
8 the transcript?

9 A. No.

10 MS. WILSON: Thank you.

11 THE COURT: Redirect?

12 MR. DAVIS: No, Your Honor.

13 THE COURT: Come down, sir.

14 (WITNESS STEPS DOWN)

15 THE COURT: Call your next
16 witness.

17 MR. DAVIS: We would call Mark
18 Archer.

19 (WITNESS TAKES STAND)

20 MARK ARCHER, having been sworn to
21 tell the truth, and nothing but the truth,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. DAVIS:

25 Q. Good morning, Mr. Archer.

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1 A. Hey.

2 Q. As far as the contract to represent
3 Mr. Luck, this was a bifurcated contract; is
4 that accurate?

5 A. It was. He's accurate. I haven't
6 reviewed the contract but I do remember that
7 it was two parts: a fee if he entered a
8 plea, an additional fee if it was to go to
9 trial. He agreed to pay the first part of
10 it.

11 Q. But had not paid the trial fee part
12 of it?

13 A. Never paid the trial fee part of it.

14 Q. Now, you -- do you recall discus-
15 sions with Judge Jefferson in the calling of
16 this case, and you requested a continuance of
17 the case; is that accurate?

18 A. Yes, I did.

19 Q. Also in the discussions of the
20 calling of this case, you indicated then and
21 it is your testimony today that you did not
22 give actual notice to Mr. Luck about the May
23 9th, 2013 trial date.

24 A. I never gave it directly to him. I
25 was trying to get in touch with him but never

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1 was able to.

2 Q. Now, other than explaining that to
3 Judge Jefferson, you respectfully asked her
4 for a continuance; is that accurate?

5 A. I asked her for a continuance, yes.

6 Q. And that was denied?

7 A. It was denied.

8 Q. Do you recall if the State provided
9 any -- let me rephrase that. The State never
10 provided any documentation of proof of notice
11 to Mr. Luck, did they?

12 A. I do not recall them doing that.

13 Q. You did not require any documenta-
14 tion showing that Mr. Luck was aware of this
15 trial proceeding in his absence? D

16 A. Whatever the transcript reflects.
17 I remember that there was a long discussion
18 of the history of the matter, that it had
19 been previously called and once continued.

20 Q. You did not require any testimony
21 from the Clerk of Court providing proof of
22 the ---

23 A. No. No testimony from the Clerk of
24 Court, no.

25 Q. And at the directed verdict stage,

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1 did you rely on lack of notice for that
2 Motion?

3 A. The directed verdict stage?

4 Q. (Affirmative nod).

5 A. I doubt that I did.

6 Q. What about at the end of the trial,
7 did you rely on the failure to notice as
8 grounds for a directed verdict, as well?

9 A. No.

10 MR. DAVIS: Your Honor, if I could
11 have a moment?

12 THE COURT: Certainly.

13 MR. DAVIS: (Sidebar with
14 Applicant), -- thank you, Mr. Archer, no
15 further questions. Thank you, Your Honor.

16 THE COURT: You may cross-examine.

17 CROSS EXAMINATION

18 BY MS. WILSON:

19 Q. Mr. Archer, how long have you been
20 practicing law?

21 A. Forty-one years.

22 Q. How much of that time has been spent
23 practicing criminal law?

24 A. I would say about thirty-nine to
25 forty of them.

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1 Q. Do you recall the timeframe when you
2 were retained to represent Mr. Luck?

3 A. Not specifically. I was contacted
4 by the family early after his arrest, and I
5 think that I spoke with Dashaud but he didn't
6 come back to hire me for another year or two
7 afterwards. I believe that he was taking all
8 his money and giving it to his mom.

9 Q. Do you recall how many times that
10 you met with Mr. Luck before his trial
11 proceeding?

12 A. Not specifically. I would say
13 probably four or five times, total. I
14 remember meeting with him -- I believe me and
15 my wife met with him before the first court
16 hearing that he had.

17 And I talked -- and I felt somewhat
18 responsible for the fact that he, uh, didn't
19 show up for trial. We were doing some
20 negotiations with the prosecutor about him
21 testifying against -- his brother was also
22 charged -- about him testifying and receiving
23 consideration for that.

24 I remember my wife and I going to meet
25 with him and having a long conversation,

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1 scaring the fool out of him about the
2 consequences of going to prison. Then I lost
3 contact with him and I always felt like maybe
4 I scared him too much, that that's why he
5 took off and disappeared.

6 But the negotiations did not come to
7 anything.

8 Q. So after these talks that you
9 referenced with Mr. Luck, you were unable to
10 contact him?

11 A. No. And I tried to contact him.
12 I believe that I had some phone numbers for
13 him. I tried those. I was in contact with
14 his family, with his mother. I believe that
15 I contacted his former stepfather, a fellow
16 by the name of Snuckie Wills, Snuckie Green.
17 I was looking for him but I couldn't find
18 him. The mother claimed that she did not
19 have any idea where he was.

20 Q. Did you file *Brady* or Rule 5 Motions
21 on Mr. Luck's behalf?

22 A. Did I file what?

23 Q. *Brady* or Rule 5 Motions on Mr.
24 Luck's behalf?

25 A. I filed *Brady* motions, yes.

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1 Q. And did you have a chance to review
2 the discovery material with him before ---

3 A. I think basically we went over it.
4 I don't believe that we went over every stick
5 of it in detail.

6 Q. Did you talk with him about the
7 elements of the charges that the State had to
8 prove?

9 A. I would have at some point in time,
10 yeah. Yes, I did.

11 Q. And did you talk to him about his
12 version of the facts?

13 A. Yes, I did.

14 Q. Did you talk to him about possible
15 defenses to present at trial?

16 A. I am not sure we would have gone
17 into detail on that. He basically did not
18 contest the statement that he gave when he
19 had the conversations with me. But he ---

20 Q. Did he -- go ahead. Sorry.

21 A. That's it.

22 Q. Did you talk to him about filing any
23 motions to suppress if you proceeded to
24 trial?

25 A. I can't recall whether we specifi-

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1 cally discussed that or not. I did make a
2 Motion for a *Jackson v. Denno* hearing. But
3 without a client present, there wasn't much
4 point to it.

5 Q. Could you briefly characterize the
6 State's evidence against Mr. Luck?

7 A. Excuse me?

8 Q. Could you characterize the State's
9 evidence against Mr. Luck?

10 A. Well, the State's evidence against
11 Mr. Luck was, uh, -- they had a confession,
12 and he wasn't there.

13 They had a lady who came in and testified
14 about two fellows coming into the Minute
15 Saver -- Pantry, I think it was -- to rob
16 her. She had been able to identify his
17 brother in some photo lineup but never
18 identified Dashaud.

19 There were some people outside who were
20 there when they came up to go in were
21 basically told, 'y'all need to get out of
22 here.' One of them had known Dashaud and
23 recognized his voice, that he had an unusual
24 voice and he said that he recognized his
25 voice. That's where I think that they got

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1 Dashaud's name from, was from him.

2 That basically was it.

3 One of the ladies who was in The Pantry
4 did not come to testify. So there was one
5 lady who testified about two fellows coming
6 in. She was never able to pick him out of a
7 lineup.

8 There was also some video from inside the
9 store that was played at trial.

10 Q. Did you feel like you had enough
11 time to prepare for trial even though you
12 didn't have the assistance of Mr. Luck?

13 A. Yeah. I'll be honest with you, I
14 thought that under the circumstances that I
15 didn't do a good job, I did a great job. I
16 got his allegation that his mother had been
17 threatened. I was sitting there with an
18 empty seat beside me, a written confession by
19 his hand, but I was able to get out the fact
20 that they had threatened his mother. That
21 was basically what I was able to get before
22 the jury, 'Why would this fellow lie about
23 himself? Because they were threatening his
24 mother.' It was enough to -- the jury stayed
25 out deliberating for right at three hours,

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1 and I thought that was quite an accomplish-
2 ment with a written confession and no client
3 to dispute it.

4 Q. Do you recall what type of notice
5 that the State presented to the Court at the
6 time of, or prior to trial, about trying to
7 give Mr. Luck notice about the trial?

8 A. They said that they had sent him
9 letters to an address -- I am trying to
10 remember the name of where it was -- his
11 mama's address. But they'd moved a couple
12 times, I believe. And, yeah, they also had,
13 I think, his driver's license to show that
14 that was his address on his license.

15 Q. Are you also -- do you also recall
16 the court reviewing this form for Mr. Luck's
17 fine. Do you recall seeing that?

18 A. Do I recall seeing

19 Q. Do you recall the State presenting
20 to the court Mr. Luck's acknowledging form?

21 A. I can't remember whether they
22 presented it or not. I know they made
23 reference to it in their argument. Whether
24 it was made a part of the record or not, I
25 don't recall.

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1 Q. Did you think that you had any bias
2 to challenge their notice to Mr. Luck?

3 A. (No verbal response).

4 Q. Did you have any bias to challenge
5 the State's notice to Mr. Luck?

6 A. Well, I think -- I think that I've
7 indicated that he denied notice of that
8 particular day's trial.

9 Q. Thank you.

10 THE COURT: Redirect?

11 MR. DAVIS: Just briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q. There was a prior trial date in
15 February that you did notify him about,
16 correct?

17 A. I am not sure that he had -- he
18 didn't show up for that. But I got it put
19 over.

20 Q. The trial was continued, correct?

21 A. It was continued.

22 Q. So there was a prior date when they
23 did notify him, in February of the same year,
24 and the case was not called but continued?

25 A. Right.

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1 Q. Do you have any documentation of
2 returned letters as far as the May 9th, 2013
3 trial date that you would have sent showing
4 that there was a change of address or
5 anything, on your attempt(s) to contact him?

6 A. No. I just -- I generally contacted
7 him by telephone. That was my way of
8 communicating with him rather than by writing
9 to him. When I couldn't get him to answer --
10 couldn't get an answer from him, that's when
11 I started trying to contact him through his
12 mama and through his former stepfather,
13 hoping that they would know where he was and
14 could get word to him.

15 Q. Did you contact the bonding company?

16 A. The what company?

17 Q. The bonding company?

18 A. No, I didn't. I figured if his mama
19 didn't know where he was, they wouldn't know.

20 Q. Thank you, Mr. Archer, that's all
21 the questions that I have.

22 A. Okay.

23 THE COURT: Recross?

24 MS. WILSON: Briefly.

25 RECROSS EXAMINATION

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1 BY MS. WILSON:

2 Q. Ultimately, do you recall where Mr.
3 Luck was found?

4 A. Where he -- when and where he was
5 found?

6 Q. Where and when?

7 A. I think that he was in Myrtle Beach
8 or something. The U.S. Marshals caught up
9 with him and brought him back.

10 MS. WILSON: Thank you.

11 THE COURT: You may step down.

12 (WITNESS STEPS DOWN)

13 THE COURT: Yes, sir.

14 MR. DAVIS: Thank you, Your Honor.
15 There is in the transcript a reference to the
16 bond sheet. It's unclear as to how the Court
17 obtained that. On page thirteen, Judge
18 Jefferson does reference that.

19 THE COURT: She also references a
20 bench warrant being issued for him in 2011.

21 MR. DAVIS: That's accurate, Your
22 Honor. I didn't want to misargue to the
23 Court, so I wanted to clarify that.

24 THE COURT: Yes, sir.

25 MR. DAVIS: We make no complaints

Dashaud S. Luck v. State of South Carolina
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Closing Arguments of Counsel
Before The Honorable R. Markley Dennis

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1 about Mr. Archer for his services during
2 the course of the trial. He did make a Denno
3 hearing, did his best without Mr. Luck being
4 present.

5 Our specific allegation, though, is
6 that -- first of all, he didn't notify him.

7 THE COURT: How was he supposed to
8 notify him.

9 MR. DAVIS: Well, Your Honor, we
10 -- his testimony is that he did try calling
11 him. We ---

12 THE COURT: I understand that, but
13 how is he supposed to notify him outside of
14 trying to call him and in fact talking to his
15 mother?

16 MR. DAVIS: There is no proof of
17 mailing to the address that he last had, that
18 it was returned.

19 THE COURT: But he wasn't there.
20 For the purpose of -- being straightforward,
21 he wasn't at that address.

22 MR. DAVIS: I understand, Your
23 Honor.

24 THE COURT: I'm saying as a
25 practical matter -- I understand your point.

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1 It would have been an exercise for nothing,
2 because he wasn't there. Correct?

3 MR. DAVIS: Judge, I personally
4 don't know.

5 THE COURT: Well, there was no
6 testimony that he was.

7 MR. DAVIS: Correct, there is no
8 testimony where he was at the time of trial.

9 THE COURT: There is no testimony
10 that he didn't voluntarily appear -- turn
11 himself in. Anything like that. Correct?

12 MR. DAVIS: Correct, Your Honor,
13 and our argument is that he had no ---

14 THE COURT: No duty to do that?

15 MR. DAVIS: --- knowledge of the
16 May trial.

17 THE COURT: That's ---

18 MR. DAVIS: Then, secondly, Judge,
19 we would argue ---

20 THE COURT: He didn't have any-
21 thing to do with that?

22 MR. DAVIS: That he had no notice
23 of the May ---

24 THE COURT: He didn't have anything to
25 do with having no notice?

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1 MR. DAVIS: (No verbal response).

2 THE COURT: I am just asking you.

3 MR. DAVIS: Well, I'm bound by the

4 ---

5 THE COURT: I understand.

6 MR. DAVIS: And then, Judge, --
7 then, Judge, at the trial the only complaint
8 that we have is dealing with that very issue,
9 that the State would be required to prove
10 notice, and that he voluntarily did not show.
11 Mr. Archer did not formally request a
12 continuance, he did not object or require the
13 proper foundation for the court to move
14 forward. So that's the basis of our
15 complaint, Judge.

16 Just briefly, Judge, as I am sure
17 you know, it is required that the defendant
18 receives notice, that he be warned that the
19 trial would proceed in his absence. We would
20 argue here that the record is absent of the
21 actual proof required of the foundation of
22 that and that Mr. Archer was ineffective in
23 failing to request that.

24 Had Mr. Luck been present -- and we
25 had testimony about this briefly. First of

Dashaud S. Luck v. State of South Carolina
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1 all, we argued that it was ineffective in
2 that he should have been given notice, or
3 warned that the trial could proceed without
4 him. Secondly, he would argue that he was
5 ineffective at the beginning of the trial for
6 not objecting. And had Mr. Luck been there,
7 we would argue that the result would have
8 been different. He's testifying that he
9 would have been willing to have been called
10 at the Denno hearing, and more fully in front
11 of the jury, to testify, as Mr. Archer
12 attempted to do, and we believe that could
13 have caused the statement to be suppressed,
14 which was the primary evidence against him.

15 THE COURT: Okay.

16 MS. WILSON: May it please the
17 Court, Your Honor, the State just asks that
18 you dismiss his application for post-
19 conviction relief with prejudice.

20 It's the State's position that Mr.
21 Archer gave credible testimony that he tried
22 to give notice to Mr. Luck but was unable to
23 find him.

24 Mr. Luck has shown no basis to
25 challenge the State's notice and, uh, -- Mr.

Dashaud S. Luck v. State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Closing Arguments of Counsel
Before The Honorable R. Markley Dennis

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1 Luck was made aware of the pending charges,
2 since he was out on bond and he contacted Mr.
3 Archer to find out the status of his case.

4 With regard to ---

5 THE COURT: Let me ask you a
6 question, though.

7 MS. WILSON: Yes, Your Honor?

8 THE COURT: And I haven't had many
9 -- maybe two in my twenty years -- but I
10 can't think of one time when I didn't hear
11 testimony about the notice issue and the fact
12 that if he didn't appear that it would go
13 forward in his absence. Every single one.
14 Was that just something where they were being
15 nice, or is that not something that is
16 required to be done?

17 MS. WILSON: Well, Your Honor, it
18 is the State's position that the Court had
19 that evidence, it's in the trial transcript
20 at the start of trial. I don't think that it
21 specifically references that it be made a
22 part of the record but ---

23 THE COURT: I don't see any
24 testimony -- I'm talking about a clerk being
25 called to testify.

Dashaud S. Luck v. State of South Carolina
Case No. 13-CP-10-3400 - Hearing of April 16, 2014
Closing Arguments of Counsel
Before The Honorable R. Markley Dennis

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1 MS. WILSON: Right, Your Honor.

2 Your Honor, ---

3 THE COURT: I didn't see that in
4 the transcript. Did I miss it?

5 MS. WILSON: No, Your Honor, I
6 don't think that it is present in the
7 transcript.

8 THE COURT: All right.

9 MS. WILSON: But it is clear from
10 the Court's statements on the record that
11 information was presented. I think starting
12 on page twelve and thirteen that the Court
13 references that the defendant acknowledges.

14 We just ask that you deny his
15 application on that the notice was proper by
16 the State. Thank you.

17 THE COURT: Anything else?

18 MR. DAVIS: No, Your Honor.

19 THE COURT: All right. I am going
20 to take this under advisement and do some
21 research. Thank you.

22 (HEARING CONCLUDED)

23

24

25

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on April 16, 2014, before The Honorable R. Markley Dennis, Jr.;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Deborah Garrison

Deborah Garrison

Charleston, South Carolina
September 6, 2014

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Dashaud S. Luck, #351475,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-10-3400

ORDER OF DISMISSAL

FILED
2014 JUL 16 PM 3:32
JULIE L. DUNSTON
CLERK OF COURT

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

The Honorable R. Markley Dennis
Rodney D. Davis, Esquire
Ashleigh R. Wilson, Esquire
Mark Archer, Esquire
April 16, 2014
Deborah Garrison

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 11, 2013 and amended on March 27, 2014. The Respondent made its Return on December 4, 2013. An evidentiary hearing into the matter was convened on April 16, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Rodney Davis, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's defense counsel, Mark Archer, Esquire, also testified at the hearing. This Court had before it the guilty plea and trial transcripts, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR applications, and Respondent's Return thereto.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the April 2009 term of the Charleston County Grand Jury for armed robbery (2009-GS-10-3022) and possession of a weapon during the commission of a violent crime (2009-GS10-3023). Mark Archer, Esquire, represented the Applicant. The Applicant was tried in his absence on May 12, 2011. The Applicant was sentenced on July 9, 2012 by the Honorable Deadra L. Jefferson to confinement for five (5) years for possession of a weapon and ten (10) years for armed robbery. The sentences are to run concurrent. On July 9, 2012, the Applicant also pled guilty to two other charges- possession of marijuana with intent to distribute (2012-GS-10-5064) and failure to stop for a blue light (2012-GS-10-5063). The Applicant was sentenced to two (2) years for PWID marijuana and one (1) year for failure to stop. The sentences are to be served concurrently. The Applicant did not appeal his convictions or sentences.

ALLEGATIONS

The Applicant alleges in his original application he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to render adequate representation during my absence at trial.
2. Violation of due process.
 - a. Unknowingly and unwillingly tried in his absence.

The Applicant alleges in his amended application he is being held in custody unlawfully for the following reasons:

1. The Applicant's trial attorney provided ineffective assistance of counsel in failing to fully investigate, analyze and advise his client prior to entering the guilty pleas.
2. The Applicant felt undue pressure to make a decision on a plea offer to avoid future consequences, including but not limited to, an undue delay in resolving his cases,

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excessive incarceration and/or consecutive sentences.

3. The Applicant believed his trial attorney was insufficiently prepared to advise him to plead guilty under Alford for a variety of reason including:
 - a. Failing to fully investigate the evidence and witnesses in the case.
 - b. Failure to obtain any discovery.
 - c. Failing to provide full discovery to the Applicant.
 - d. Failure to have the green plant-like material evidence analyzed.

At the hearing, the Applicant withdrew all allegations raised in his amended application with regard to his guilty plea. The Applicant proceeded solely on the claim that counsel was ineffective for failing to notify him about trial and for failing to require the State prove notice was given to the Applicant prior to proceeding in his absence. This Court finds the Applicant presented no testimony or evidence with regard to any other claims raised in his application. This Court deems any remaining allegations not addressed in this order abandoned by the Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This 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).

Summary of Testimony

The Applicant was present and testified he was represented by Mark Archer. He testified he paid counsel to represent him at a guilty plea and met with him three times. The Applicant testified he did not discuss the case going to trial with counsel and counsel did not request a fee to represent the Applicant at trial. The Applicant testified if counsel called him they would meet

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up and talk. He testified he did not receive notice of his trial and counsel never informed him about trial. The Applicant testified he was out on bond at the time and did not have a working phone. The Applicant testified he reviewed the trial transcript and is alleged to have given a statement to police. He testified if he had been present at trial he would have told counsel to move to suppress his statement because the detective threatened to arrest his mother if he did not give a statement. The Applicant testified his mother was present at trial.

Mark Archer, Esquire, testified he has been practicing criminal law for forty years. He testified he was contacted by the Applicant shortly after arrest and retained a year after arrest. Counsel testified he met with the Applicant four or five times. He testified he filed Brady and Rule 5 motions on the Applicant's behalf. He testified he discussed with the Applicant the elements of the charges he was facing and what the State was required to prove. Counsel testified he also discussed with the Applicant his version of the facts.

Counsel testified he met with the Applicant before his first scheduled court appearance. He testified he lost contact and the Applicant disappeared after that meeting. Counsel testified he felt responsible for the Applicant not showing up and he may have scared the Applicant about the consequences of going to prison. He testified he was looking for the Applicant, but was unable to find him. Counsel testified he was unable to give notice to the Applicant about trial because he was unable to get in touch with him. He testified he figured the Applicant did not want to be found. Counsel testified he was doubtful that the Applicant did not have notice of his trial.

Counsel testified the Applicant confessed to the armed robbery and a witness recognized his voice from the store video. Counsel testified he had ample time to prepare for trial and felt he did a great job under the circumstances at trial. He testified the theory he presented at trial was

that the Applicant lied in his confession because police threatened to arrest his mother.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the

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Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel conferred with the Applicant as best he could, conducted a proper investigation, and provided thorough representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

The Applicant alleges counsel was ineffective for failing to notify him about trial. The Applicant also alleges trial counsel was ineffective for failing to require the State prove notice was given prior to proceeding in his absence. This Court finds these allegations are without merit. It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence. State v. Fairey, 374 S.C. 92, 99, 646 S.E.2d 445, 448 (Ct. App. 2007). A trial judge must determine a criminal defendant voluntarily waived his right to be present at trial in order to try the defendant in his absence. State v. Patterson, 367 S.C. 219, 229, 625 S.E.2d 239, 244 (Ct. App. 2006). A judge must make findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned he would be tried in his absence should he fail to attend. Id. A notice of the term of court in which a defendant will be tried is sufficient notice to enable the defendant to make an effective waiver of his right to be present at trial. Ellis v. State, 367 S.C. 257, 261, 227 S.E.2d 307, 306 (1976). A bond form that provides notice that a defendant can be tried in absentia may serve as the requisite warning that he may be tried in absence should he fail to appear. Fairey, 374 S.C. at 101, 646 S.E.2d at 449.

This Court finds counsel provided credible testimony that he attempted to contact the Applicant to notify him of the trial date, but was unable to locate the Applicant. Counsel testified he tried reaching the Applicant by phone which was his normal method of communicating with the Applicant. Counsel testified he was in contact with the Applicant's mother and stepfather who claimed they also had been unable to contact the Applicant. The record reflects counsel also requested a continuance prior to trial to gain more time for the Applicant to appear. This Court finds counsel's attempts to contact the Applicant prior to trial were adequate and did not result in deficient performance.

This Court finds counsel was not ineffective for failing to require the State to prove notice was given to the Applicant prior to proceeding to trial in his absence. This Court finds the State presented adequate proof of notice of trial to the Applicant prior to proceeding in the Applicant's absence. During the pre-trial hearing, the State presented to the Court copies of roster notices sent to the Applicant's last known address. (T. 13:2-15:1, 16:19-25). This Court finds the State's presentation of evidence was not objectionable and was sufficient to establish proof of notice to the Applicant.

This Court also finds the trial court made the requisite findings on the record before proceeding to trial in the Applicant's absence. Before proceeding in the Applicant's absence, the trial court found the Applicant was given notice by personal mail to his last known address. (T. 3:9-11). The Court also found the Applicant's bond acknowledgement form warned the Applicant that if he failed to appear the trial would proceed in his absence. (T. 12:23-13:16). This Court finds the trial judge properly evaluated the waiver of the Applicant's right to be present at trial prior to proceeding in the Applicant's absence.

This Court also finds the Applicant has failed to carry his burden of proving prejudice resulted from his absence. This Court finds counsel provided excellent representation of the Applicant at trial despite the Applicant's absence. This Court finds the Applicant has failed to carry his burden of proving counsel performance was deficient and that it affected the outcome of his proceeding.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions while representing the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence or testimony regarding such allegations. Accordingly, this Court finds the Applicant abandoned such allegations. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

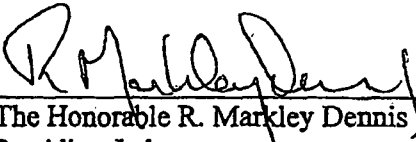
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This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 10th day of July, 2014


The Honorable R. Markley Dennis, Jr.
Presiding Judge
9th Judicial Circuit

Moncks Corner, South Carolina.

STK20081006291

WITNESSES

NICHOLAS WAGNER

Charleston County Sheriff

AGENCY CASE NUMBER

2008021353B

ARREST WARRANT NUMBER

K341784

DATE OF ARREST

October 17, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 06 2009

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GSI003023

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

APRIL TERM 2009

THE STATE

VS.

DASHAUD SAMEL LUCK

DOB:

B/M

Indictment for

POSSESSION OF A FIREARM DURING
THE COMMISSION OF A VIOLENT
CRIME**FILED**

2009 APR -8 AM 9:55

JULIE J. ARMSTRONG
CLERK OF COURT

BY

OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on April 6, 2009 the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about October 6, 2008, the Defendant, DASHAUD SAMEL LUCK, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of armed robbery, a violent crime. This is in violation of 16-23-490 of the South Carolina 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.


JAMES P. STACK
ASSISTANT SOLICITOR

STK20081006291

WITNESSES

NICHOLAS WAGNER
Charleston County Sheriff

AGENCY CASE NUMBER

2008021353B

ARREST WARRANT NUMBER

K341783

DATE OF ARREST

October 17, 2008

ACTION OF GRAND JURY

FILED

Foreperson of Grand Jury

APR 06 2009

VERDICT

Guilty
5/12/11

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GSI003022

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

APRIL TERM 2009

02-45016011

THE STATE

VS.

DASHAUD SAMEL LUCK

DOB: [REDACTED]

B/M

Indictment for

ARMED ROBBERY

FILED

2009 APR -8 AM 9:55

JULIE J. ARMS TRONG
CLERK OF COURT

BY

OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

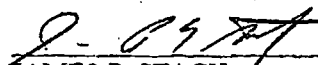
INDICTMENT

At a Court of General Sessions, convened on April 6, 2009 the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about October 6, 2008, in Charleston County, South Carolina, the Defendant, DASHAUD SAMEL LUCK, at The Pantry/Kangaroo Gas Station located at 2572 Ashley River Road, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of employees and/or patrons of The Pantry/Kangaroo Gas Station with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina 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.


 JAMES P. STACK
 ASSISTANT SOLICITOR

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SLB20120201185**WITNESSES**North Charleston Police DepartmentAGENCY CASE NUMBER2011032075ARREST WARRANT NUMBERM726787DATE OF ARRESTFebruary 11, 2012ACTION OF GRAND JURYForeperson of Grand JuryDate:VERDICTForeperson of Petit JuryDate:INDICTDOCKET NO. 2012GSI005063 WThe State of South CarolinaCounty of CharlestonCOURT OF GENERAL SESSIONSJuly Term 2012THE STATEvs.DASHAUD SAMEL LUCKDOB:B/MIndictment forFailure to Stop For Blue Light

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

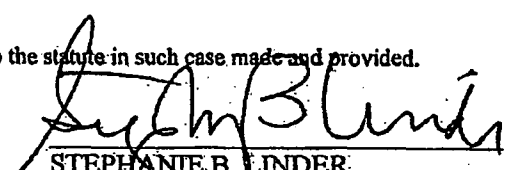
INDICTMENT

At a Court of General Sessions, convened on July 9, 2012 the Grand Jurors of Charleston County present upon their oath:

Failure to Stop For Blue Light

That in Charleston County, South Carolina, on or about August 29, 2011, the Defendant, DASHAUD SAMEL LUCK, while driving a motor vehicle on a road, street, or highway of the State, did knowingly, willfully, intentionally, and in the absence of mitigating circumstances, fail to stop for a law enforcement vehicle after being signaled by a flashing light and/or a siren to do so; all in violation of Section 56-5-750 of the South Carolina 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.


STEPHANIE B. LINDER
ASSISTANT SOLICITOR

SLB20120201193WITNESSESNorth Charleston Police DepartmentAGENCY CASE NUMBER2012005217ARREST WARRANT NUMBERM996375DATE OF ARRESTFebruary 12, 2012ACTION OF GRAND JURYForeperson of Grand JuryDate:VERDICTForeperson of Petit JuryDate:INDICTDOCKET NO. 2012GS1005064 WThe State of South CarolinaCounty of CharlestonCOURT OF GENERAL SESSIONSJuly Term 2012THE STATEvs.DASHAUD SAMEL LUCKDOB: [REDACTED]B/MIndictment forPossession With Intent to Distribute
Marijuana

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

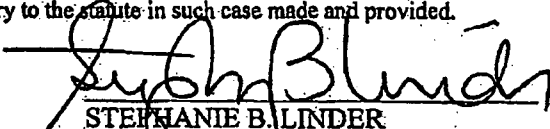
INDICTMENT

At a Court of General Sessions, convened on July 9, 2012 the Grand Jurors of Charleston County present upon their oath:

Possession With Intent to Distribute Marijuana

That in Charleston County, South Carolina, on or about February 11, 2012, the Defendant, DASHAUD SAMEL LUCK, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: Marijuana; in violation of 44-53-370 of the South Carolina 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.


 STEPHANIE B. LINDER
 ASSISTANT SOLICITOR