

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Anderson County
Alexander S. Macaulay, Circuit Court Judge

Opinion No. 2010-UP-464 (S.C. Ct. App. filed 10/25/2010)
07-GS-04-2532.

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JEFFREY S. EVANS,

APPELLANT

APPENDIX

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Jeffrey S. Evans,

Appellant.

Appeal From Anderson County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2010-UP-464
Submitted October 1, 2010 – Filed October 25, 2010

AFFIRMED

Appellate Defender LaNelle C. DuRant, of
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Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
and Assistant Attorney General Julie M. Thames, all

of Columbia; and Solicitor Christina T. Adams, of Anderson, for Respondent.

PER CURIAM: Jeffrey S. Evans appeals his convictions for armed robbery and possession of a knife during the commission of a violent offense. On appeal, Evans argues the trial court erred in denying his motions for a mistrial and directed verdict. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to whether the trial court erred in denying Evans's motion for a mistrial: State v. Culbreath, 377 S.C. 326, 331, 659 S.E.2d 268, 271 (Ct. App. 2008) ("Whether to grant or deny a mistrial motion is a matter within the trial court's sound discretion, and the court's decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law. . . . In order to receive a mistrial, a defendant must show error and resulting prejudice.").

2. As to whether the trial court erred in denying Evans's motion for a directed verdict: S.C. Code Ann. § 16-11-330(A) (2003) (stating armed robbery occurs when a person commits robbery while armed with a deadly weapon); State v. Moore, 374 S.C. 468, 476, 649 S.E.2d 84, 88 (Ct. App. 2007) ("Robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear."); Id. at 474, 649 S.E.2d at 86 ("The appellate court may reverse the trial [court]'s denial of a motion for a directed verdict only if there is no evidence to support the [trial court's] ruling."); Id. at 474, 649 S.E.2d at 87 ("A case should be submitted to the jury if there is any direct evidence or any substantial circumstantial evidence that reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced.").

AFFIRMED.

WILLIAMS, PIEPER, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JEFFREY S. EVANS,

APPELLANT

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

Opinion No. 2010-UP-464

PETITION FOR REHEARING

The Court of Appeals affirmed the above named respondent's conviction and sentence on October 25, 2010. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, respondent submits the following:

Jeffrey Evans argued two issues on appeal: (1) the trial court erred in denying Evans' motion for a mistrial after two prosecution witnesses referred to Evans as the robber which was outside the scope of evidence because no witness had identified Evans as the robber; (2) the trial court erred in denying Evans' motion for a directed verdict on the armed robbery charge when

the state did not prove the elements of armed robbery because no personal property was taken from Paula Ayers who was an employee of the goodwill Store.

The Court of Appeals held that whether to grant a mistrial was a matter within the trial court's discretion, would not be disturbed on appeal absent an abuse of discretion relying on State v. Culbreath, 377 S.C. 326, 331, 659 S.E.2d 268, 271 (Ct. App. 2008). The Court of Appeals relied on the case of State v. Moore, 374 S.C. 468, 476, 649 S.E.2d 84, 88 (Ct. App. 2007) which held that the appellate court may reverse the trial court's denial of a motion for a directed verdict only if there is no evidence to support the ruling, and the case should be submitted to the jury if there were any evidence that reasonably tended to prove the guilt of the accused or from which guilt could be fairly and logically deduced.

On May 24, 2007, Paula Ayers was working at the Goodwill Store on South Main Street in Anderson as the cashier. Several customers were still in the store as it was near closing time. As she was checking out a customer, a man who she could not identify put a knife to her side and demanded the money from the cash register. The man then ran from the store with the money. ROA. 14, ll. 7 – 23; ROA. 15, ll. 4 – 25; ROA. 16, ll. 1 – 25; ROA. 17, ll. 1 – 25; ROA. 22, ll. 16 – 25; ROA. 23, ll. 1 – 18.

Kevin Matheson, investigator for the Sheriff's Department, was assigned to this case. He obtained information through other investigators that the robber's name was "Scott" and that he was at the Sunrise Motel. He also had a partial tag number for the car the robber was driving from a witness. As result of the investigation and looking at the surveillance video from the store, he focused on Jeffrey Scott Evans. ROA. 33, ll. 4 – 18; ROA. 34, ll. 1 – 25; ROA. 35, ll. 1 – 25; ROA. 36, ll. 1 – 25; ROA. 37, ll. 1 – 25; ROA. 38, ll. 1 – 20.

Evans was arrested at the home where he was staying. ROA. 39, ll. 9 – 25; ROA. 40, ll. When he was questioned by Investigator Matheson, Evans gave a statement admitting the robbery. ROA. 41, ll. 14 – 25; ROA. 42, ll. 1 – 25; ROA. 43, ll. 1 – 25; ROA. 44, ll. 1 – 25. During the pretrial hearing, Evans testified that he only gave a statement because Investigator Matheson told him that the most time he would probably get would be ten years. Evans said he had been up six days smoking crack and ice at the time of the statement. ROA. 1, ll. 1 – 25; ROA. 2, ll. 1 – 25; ROA. 3, ll. 1 – 25.

ISSUE ONE: When Paula Ayers testified, she said in response to the state's questions:

Q. Okay. And so the register, in fact, came open?

A. Yes, it did.

Q. All right. So then what was the next thing you remember happening?

A. Okay. I was fixing to give the lady her change, and the defendant.

ROA. 18, ll. 2 – 7.

At that point, defense counsel immediately objected and asked to consider an issue outside the presence of the jury. ROA. 18, ll. 7 – 25. Counsel argued to the court that he had been informed by the state that none of the witnesses could identify Evans as the robber. Based on that, counsel did not request a hearing to determine if the identification was reliable. He argued that the witness had just identified Evans as the robber by stating that the “defendant” had robbed the cash register. ROA. 19, ll. 1 – 6.

The state responded that the witness, Ms. Ayers, had not been able to identify Evans as the robber and could not pick him out of a photo line-up. That was the reason there was no hearing. She could give a description. ROA. 19, ll. 7 – 15.

The judge instructed the state to rehabilitate the witness since the witness was not able to identify but would leave it the solicitor as to how to do it. The judge said he would give a curative

instruction if he felt it was necessary. ROA. 19, ll. 19 – 25; ROA. 20, ll. 1 – 14. The solicitor told the judge that none of the witnesses from the Goodwill Store could identify Evans as the robber. ROA. 20, ll. 10 – 23. The judge told the state to make it clear in the testimony that the witness could not identify the robber. He again said he might have to issue a curative instruction. ROA. 20, ll. 24– 25; ROA. 21, ll. 1 – 1 – 7.

Defense counsel then made a motion for a mistrial because he believed that the identification might have an effect on the jury. He explained that the state said in their opening statement that no witness could identify Evans as the robber and then the very first State's witness identified him. Counsel asked for a new trial. The judge denied his motion for the time because the judge said it would depend on if the state "put the testimony in the proper perspective." ROA. 21, ll. 9 – 25.

The state was able to get Paula Ayers to testify that she was not able to pick out from a photo line-up "or otherwise" the person who committed this crime. ROA. 22, ll. 8 – 14.

The second witness, Pat French, was working at the Goodwill Store at the time of the incident. When she testified, she said:

Q. So when you got to Register one, what happened if anything?

A. I was gonna talk to the cashier and help her, and I looked up and I seen the defendant running out.

Supp. ROA. 3, ll. 1 – 25; Supp. ROA. 4, ll. 1 – 17.

Defense counsel again objected and moved for a mistrial again. The court instructed the state to take a break and talk with future witnesses to say "they saw someone." He instructed her to tell them what they could testify to and what they could not testify to. The judge denied defense counsel's motion for a mistrial. However, the judge stated that he was taking it under advisement "because as each of the testimony begins, it becomes compounded" and "at some point the pounds

will have greater weight then deserving”. Supp. ROA. 4, ll. 18 – 25; Supp. ROA. 5, ll. 1 – 25; Supp. ROA. 6, ll. 1 – 24.

The judge warned the state that if the problem continued, he would have to consider whether the prejudice could be overcome by cross-examination. He said that court would proceed subject to defense counsel’s prior motions and his rulings. Supp. ROA. 7, ll. 3 – 18. The judge did not give a curative instruction to the jury either time the motion for a mistrial was made. ROA. 22, ll. 1 – 25; Supp. ROA. 7, ll. 1 – 25; ROA. 25, ll. 1 – 25.

The other two witnesses, Barbara Cooley and Suzanne Shirley, testified that a “gentleman” took money from the cash register and Ms. Shirley said “somebody” did it. Both stated they could not pick out the robber from a photo line-up. ROA. 26, ll. 1 – 25; ROA. 27, ll. 18 – 25; ROA. 28, ll. 1 – 25; ROA. 29, ll. 1 – 8; ROA. 30, ll. 4 – 25; ROA. 31, ll. 1 – 25; ROA. 32, ll. 15.

The decision to grant or deny a motion for a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Culbreath, 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008); State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct.App. 1999); State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999); State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455(Ct. App. 2005). The granting of the motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way. State v. Vazquez, 364 S.C. 293, 613 S.E.2d 359 (2005), State v. Patterson, 337 S.C. 251, 522 S.E.2d 845 (Ct. App.1999); State v. Edwards, 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007).

When an objection is timely made to improper remarks of counsel, the judge should rule on the objection, give a curative charge to the jury, and instruct offending counsel to desist from

improper remarks. State v. Primus, 341 S.C. 592, 535 S.E.2d 152 (Ct.App.2000) citing State v. Harry, 321 S.C. 273, 468 S.E.2d 76 (Ct.App.1996).

In order to receive a mistrial, a defendant must show error and resulting prejudice. State v. Culbreath, *supra*.

In State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996), the Supreme Court reversed the trial court and remanded the case because the trial court should have issued a curative instruction where the solicitor referred to the defendant's failure to call witnesses. The Supreme Court ruled this was necessary although the solicitor made only one reference to defendant's failure to call witnesses.

In Evans' case, the state allowed two witnesses to say the "defendant" committed the robbery which they did not know was so. The trial court certainly should have granted the mistrial after the second witness identified Evans as the robber by saying the "defendant". The judge did not give a curative instruction although he admitted the testimony was prejudicial. He used the term "compounded with each testimony" and was considering granting the mistrial motion as indicated by the fact he said he was taking it under advisement. Supp. ROA. 6, ll. 3 – 5.

The Court of Appeals misapprehended the issue as Evans was prejudiced because the testimony of two primary eyewitnesses stated "the defendant" was the robber, when they did not know whether this was so. The judge commented on that when he said he would have to consider if the prejudice could be overcome by cross-examination. Supp. ROA. 7, ll. 3 – 10.

The state should have instructed the future witnesses on what they could testify to or not immediately after the first witness made the error of referring to Evans as the robber. The judge made it clear to her at that point that it was not admissible testimony.

The prejudice was sufficient to require the court to grant a mistrial and select a new jury. There was a reasonable probability that the idea that Evans was the robber was in the minds of the jurors when the first two eyewitnesses identified him by saying the defendant did it. The judge believed the statements were prejudicial when he admitted they were. Supp. ROA. 6, ll. 3 – 5.

ISSUE TWO: After the state presented its case and rested and the judge talked to Evans about his right to testify or not, defense counsel made a motion for a directed verdict on the armed robbery charge. ROA. 45, ll.1; ROA. 45, ll. 22 – 25; ROA. 46, ll. 2 – 25. Counsel argued that the state had not met all of the elements of armed robbery but particularly the element regarding the taking of the personal property of another. ROA. 47, ll. 4 – 12.

Counsel said one of the elements was the taking and carrying away personal property of another with the intent to deprive with the use of force or a deadly weapon. He argued that there was no testimony that any personal property was taken from Paula Ayers. The property was money taken from a cash register owned by Goodwill. ROA. 46, ll. 25; ROA. 47, ll. 1 – 12.

The state argued in response that Ms. Ayers had custody and control of the cash register as an employee of Goodwill. She stated that someone stole the money from Ms. Ayers. ROA. 47, ll. 13 – 25; ROA. 48, ll. 1 – 2.

The court ruled that there was sufficient evidence for the armed robbery to go to the jury. He denied the motion for a directed verdict. ROA. 48, ll. 5 – 11.

In a pretrial motion, defense counsel made a motion to quash the indictment on armed robbery because the language in the indictment indicated that Evans did take away property from the person of Paula Ayers. Counsel argued then that the indictment was defective because the money was taken from the cash register owned by the Goodwill Store and not Paula Ayers. ROA. 10, ll. 6 – 20.

The judge ruled that it was clear that the owner was the Goodwill Store because the indictment said Paula Ayers was an employee of the Goodwill Store. The judge ruled that the indictment regarding the armed robbery was proper because Paula Ayers was in possession of the property. ROA. 11, l. 25; ROA. 12, ll. 1 – 5.

The Court of Appeals misapprehended the issue. A trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004). A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gentry, 363 S. C. 93, 610 S. E. 2d 494 (2005). In reviewing a motion for a directed verdict, a trial judge is concerned with the existence of the evidence, not with its weight. Id.

The offense of armed robbery occurs when a person commits a robbery while armed with a deadly weapon, and the display of the deadly weapon is not essential element of the crime. State v. Nix, 288 S.C. 492, 343 S.E.2d 627 (Ct. App. 1986); State v. Douglas, 359 S.C. 187, 597 S.E.2d 1 (Ct. App. 2004). “Robbery” is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting person in fear. State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003).

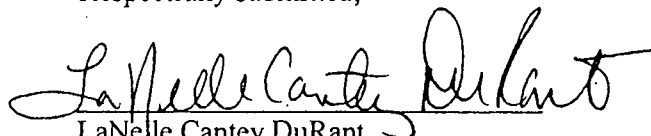
In State v. Philips, 73 S.C. 236, 53 S.E.370 (1906), the Supreme Court held that in an indictment for larceny the property may be laid in one who had merely the lawful possession. In that case, a cow was stolen from W. J. Bates who was the agent for the estate of Ms. Cornelia Bates. He was also her son. Evans’s case is distinguished because Paula Ayers was the cashier, and not the designated agent for Goodwill Stores as Mr. Bates was the designated agent for the estate of his mother.

The state should have put in the indictment that the money belonged to Goodwill Stores but the indictment was not clear. See Indictment ROA. 51. From a reading of the indictment, the money could have belonged to Paula Ayers who just happened to be an employee of Goodwill. In this case, the indictment was not clear to whom the money belonged.

The court should have granted a directed verdict on the armed robbery.

THEREFORE, we respectfully ask the Court of Appeals to reconsider its ruling.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

This 9th day of November, 2010.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

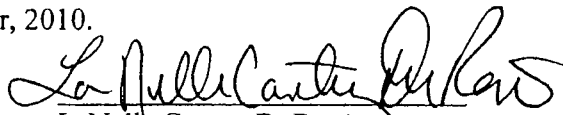
V.

JEFFREY S. EVANS,

APPELLANT

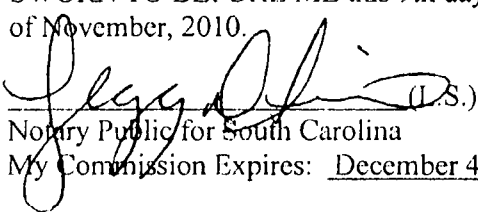
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rchearing in the above-entitled case has been served upon Julie M. Thames, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201; and upon Jeffery S. Evans, at Jeffrey S. Evans #220077, Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 9th day of November, 2010.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 9th day
of November, 2010.

 (I.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Anderson County
Alexander S. Macaulay, Circuit Court Judge

THE STATE,

Respondent,

vs.

JEFFREY S. EVANS,

Appellant.

RETURN TO PETITION FOR REHEARING

This Court should not grant Appellant Evans's petition for rehearing because this Court did not overlook any facts or law that warrant reversal of this Court's opinion. Op. No. 2010-UP-464 (S.C. Ct. App., filed October 25, 2010).

(1) Evans argues that the trial court erred in not granting a mistrial after the victim, Paula Ayers, testified that "the defendant" robbed her cash register at a Good Will store, and Pat French, who was working at Goodwill, testified she saw "the defendant" run out of the store. Neither witness called Appellant Evans a robber, contrary to the ambiguous language found in the petition for rehearing.

Evans complains that the trial court should have granted a mistrial. However, following Evans' objections, the State clarified through direct examination for both Ayers and French that they had been unable to identify the robber. R. p. 22, lines 11-14; p. 25. Since it was clear to the jury that neither of these two witnesses would be able to identify Evans as the perpetrator, no prejudice resulted and therefore, a mistrial was not warranted.

Further, on cross-examination, Ayers admitted she told the solicitor she could not pick anyone out of the lineup; and French admitted she did not get a good look at the robber

and that she was unable to pick anyone out in the courtroom as the perpetrator. Supp. R. pp. 1-2; R. pp. 24-25. Evans gave a confession to law enforcement, admitting he went to Good Will to snatch a purse, and then ended up robbing the woman at the cash register and that he had a knife. R. pp. 42-44.

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997). Our courts favor the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case. State v. Howard, 296 S.C. 481, 483, 374 S.E.2d 284, 285 (1988). "It is only in cases of abuse of discretion which result in prejudice that this court will intervene and grant a new trial." Id. A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons. State v. Patterson, 337 S.C. at 227, 522 S.E.2d at 851.

Appellate courts will not generally set aside convictions due to insubstantial errors which do not affect the result. State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006). In determining if an error is harmless, the appellate court will review the entire record to determine what effect the error had on the verdict. Id. "An insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. State v. White, 372 S.C. 364, 386, 642 S.E.2d 607, 618 (Ct. App. 2007).

In the instant case, there is no likelihood that the testimony which Evans complains about would have affected the verdict.

(2) The trial court did not err in denying the motion for directed verdict. This Court correctly determined that evidence supported the element of a taking of the personal property of another for the charge of armed robbery. This Court cited with approval the case of State

v. Moore, 374 S.C. 468, 476, 649 S.E.2d 84, 88 (Ct. App. 2007) which defined robbery as “the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.”

As Appellant conceded, the Supreme Court has held that property may be laid in one who had merely lawful possession. State v. Phillips, 73 S.C. 236, 53 S.E. 370 (1906). However, Appellant attempts to distinguish the instant case because the victim in Phillips was an agent for the estate from which the property (a cow) was stolen.

Appellant raises a distinction without a difference. Phillips cites with approval State v. Addington, 17 S.C.L. 310 (App. 1829), which notes: “it is a very clear general rule, that he, who has the lawful possession of a chattel, is to all intents the legal owner, except as to the rightful owner. If this be correct, the only inquiry is, whether [complainant] was in the lawful possession of the mare in question.”

“It is essential that the stolen goods be owned by someone other than the thief, but it is not ordinarily essential that the thief should know who the owner is.” State v. Sweat, 221 S.C. 270, 273, 70 S.E.2d 234, 235-36 (1952). In Sweat, an indictment naming five defendants alleged the warehouseman as owner of stolen tobacco, when the owner was actually C.W. Walters Tobacco Company, which bought the tobacco. Defendants moved to quash the indictment on grounds that the indictment failed to name the true owner and once the State rested, moved for directed verdict because of a variance of proof from the indictment and that the persons named in the indictment were not the true owners. The Court found no error, and cited 32 Am.Jur., § 22 as follows:

It is sufficient if he knows that the property is not his own and takes it to deprive the true owner of it. Nor is it necessary, in order to make the taking larceny, that the person from whom the property is stolen should have the general ownership. It is sufficient that he has possession as bailee.

Id., 221 S.C. at 273-74, 70 S.E.2d at 236 (internal quotations omitted).

Sweat is controlling. Evans makes the same arguments that failed Sweat and his co-defendants. However, the evidence indicates that Ayers, the victim, was an employee of Good Will. She was assigned to the cash register she was stationed at from which Evans took the money. She was in control and custody of the money which Evans took. R. pp. 15-16; p. 22; Supp. R. pp. 3-4. Evidence supports that Evans took the property of another and therefore, the trial court properly denied the direct verdict. This Court did not err and the petition should be denied.

CONCLUSION

For all of the foregoing reasons, this Court should deny the petition for rehearing.

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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November 16, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal From Anderson County
 Alexander S. Macaulay, Circuit Court Judge

THE STATE,

Respondent,

vs.

JEFFREY S. EVANS,

Appellant.

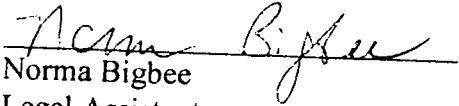
PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Return to Petition for Rehearing on Appellant by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

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

I further certify that all parties required by Rule to be served have been served.

This 16th day of November, 2010


 Norma Bigbee
 Legal Assistant

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The South Carolina Court of Appeals

The State,

Respondent,

v.

Jeffrey S. Evans,

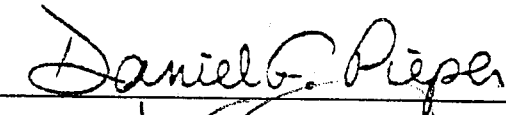
Appellant.

The Honorable Alexander S. Macaulay
Anderson County
Case No. 2007-GS-04-2532

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

 WILLIAMS, J.

 PIEPER, J.

 KONDUROS, J.

Columbia, South Carolina

cc: Appellate Defender LaNelle C. DuRant
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Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott

Assistant Attorney General Julie M. Thames
Christina Theos Adams, Esquire

FILED

Nov. 19, 2010

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY S. EVANS,

APPELLANT

RECORD ON APPEAL

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1 JEFFERY SCOTT EVANS,
2 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
3 FOLLOWS:

4 DIRECT EXAMINATION BY MR. POTTER:

5 Q. YOU ARE JEFFERY EVANS; IS THAT CORRECT?

6 A. YES.

7 Q. OKAY. AND YOU ARE THE DEFENDANT IN THIS CASE?

8 A. YES, SIR.

9 Q. YOU ARE LIVING ON 513 GEORGE ABBOTT LAKE ROAD; IS
10 THAT CORRECT?

11 A. YES, SIR.

12 Q. I DIRECT YOUR ATTENTION TO JUNE 1ST, 2007. YOU
13 WERE PICKED UP BY TWO SHERIFF'S DEPUTIES AND DETECTIVE
14 MATHESON THAT DAY; IS THAT CORRECT?

15 A. YES.

16 Q. WHERE WERE YOU PICKED UP AT?

17 A. 513 GEORGE ALBERT LAKE ROAD.

18 Q. WHAT TIME OF DAY WERE YOU PICKED UP AT?

19 A. I GUESS SOMETIME LATE IN THE AFTERNOON.

20 Q. OKAY. DID YOU -- YOU WERE TAKEN TO THE SHERIFF'S
21 DEPARTMENT?

22 A. YES, SIR.

23 Q. WHO CARRIED YOU TO THE SHERIFF'S DEPARTMENT?

24 A. THERE WAS ANOTHER OFFICER.

25 Q. OKAY. WAS IT IN A MARKED CRUISER?

1 A. YES, IT WAS IN A MARKED CRUISER.

2 Q. WERE YOU TAKEN DIRECTLY TO THE SHERIFF'S
3 DEPARTMENT OR WERE YOU TAKEN TO THE DETENTION CENTER
4 FIRST?

5 A. THE SHERIFF'S OFFICE.

6 Q. DID THEY SERVE A WARRANT ON YOU AT ANY POINT IN
7 TIME?

8 A. NO, SIR. I DIDN'T GET A WARRANT SERVED ON ME
9 UNTIL I GOT TO THE COUNTY DETENTION CENTER.

10 Q. OKAY. WAS THAT BEFORE OR AFTER THE INTERVIEW?

11 A. AFTER THE INTERVIEW.

12 Q. AFTER THE INTERVIEW?

13 A. YES, SIR.

14 Q. APPARENTLY AT SOME POINT IN TIME YOU FOUND
15 YOURSELF IN AN OFFICE WITH DETECTIVE MCBRIDE AND
16 DETECTIVE MATHESON; IS THAT CORRECT?

17 A. YES.

18 Q. OKAY. WERE YOU IN HANDCUFFS WHILE YOU WERE IN
19 THAT OFFICE?

20 A. I WAS TO START WITH.

21 Q. OKAY. AND WHO TOOK THE HANDCUFFS OFF?

22 A. DETECTIVE MCBRIDE.

23 Q. OKAY. NOW, HOW WAS YOUR PHYSICAL CONDITION AT
24 THAT POINT IN TIME?

25 A. I HAD BEEN UP FOR SIX DAYS STRAIGHT WITHOUT ANY

1 SLEEP.

2 Q. OKAY. WHY WERE YOU UP FOR SIX DAYS STRAIGHT
3 WITHOUT ANY SLEEP?

4 A. BECAUSE I HAD BEEN SMOKING CRACK AND ICE.

5 Q. DID YOU TELL THAT TO DETECTIVE MATHESON AND
6 DETECTIVE MCBRIDE?

7 A. YES.

8 Q. DID YOU UNDERSTAND WHY YOU WERE THERE?

9 A. YES, SIR, I KNEW WHY I WAS THERE.

10 Q. OKAY. AND TELL THE COURT WHAT HAPPENED THEN.

11 A. AS I SAT DOWN, DETECTIVE MATHESON, WHEN I FIRST
12 SAT DOWN FOR THE INTERVIEW, HE TOLD ME I DIDN'T SEEM
13 LIKE THE REGULAR KIND OF ARMED ROBBERY GUY, I SEEMED
14 JUST LIKE A GOOD OLD COUNTRY BOY.

15 I HAD MY HEAD HANGING DOWN AND HE TOLD ME TO LIFT
16 MY HEAD UP, DON'T LOOK SO SAD, THINGS WON'T BE THAT BAD.

17 I SAID, YEAH, MAN. I SAID, WITH MY CHARGES
18 THEY'RE GONNA PUT ME AWAY FOR A LONG TIME.

19 HE SAID THEY WOULD NOT PUT ME AWAY FOR MORE THAN
20 TEN YEARS. HE SAID, JUST TALK TO ME.

21 I SAID, COULD I HAVE A CIGARETTE AND A MOUNTAIN
22 DEW?

23 AND HE SAID, WE'LL SEE WHAT WE CAN DO IF YOU TALK
24 TO ME.

25 AND I SAID OKAY.

1 AND HE SENT DETECTIVE MCBRIDE OUT, WHILE I WAS
2 GIVING THE INTERVIEW AND EVERYTHING STARTED, HE SENT
3 DETECTIVE MCBRIDE TO GET ME TWO NEWPORTS AND A MOUNTAIN
4 DEW IN A STYROFOAM CUP TO DUMP MY ASHES IN, AND BROUGHT
5 IT BACK.

6 Q. WHEN YOU WERE TALKING WITH DETECTIVE MATHESON,
7 WAS HE TYPING ON THE COMPUTER OR ANYTHING OF THAT
8 NATURE?

9 A. YES, SIR.

10 Q. DID HE EXPLAIN TO YOU YOUR WAIVER OF RIGHTS?

11 A. YES, SIR.

12 Q. DID YOU UNDERSTAND THEM?

13 A. YES, SIR.

14 Q. OKAY. DID YOU FEEL COMPELLED TO SIGN THAT FORM
15 THAT HE HAD GIVEN TO YOU?

16 A. I FELT, I FELT -- YEAH, I FELT COMPELLED.

17 Q. WHAT DID HE SAY?

18 A. I DID BECAUSE I WAS SCARED. I HAD BEEN UP. I
19 DIDN'T KNOW WHAT WAS GONNA HAPPEN TO ME. WHEN HE SAT
20 THERE TELLING ME ABOUT THE TEN YEARS, THAT SORT OF
21 SWAYED ME A LITTLE BIT TO TALK WITH HIM, AND I DIDN'T
22 WANT TO TALK.

23 **MR. POTTER:** NOTHING FURTHER, YOUR HONOR.

24 **THE COURT:** CROSS-EXAM.

25 CROSS-EXAMINATION BY MS. HUEY:

1 Q. MR. EVANS, LET ME SHOW YOU STATE'S 1 AND 2.

2 MS. HUEY: JUDGE, MAY I APPROACH?

3 THE COURT: CERTAINLY.

4 MS. HUEY: I BELIEVE THEY'RE UP HERE.

5 BY MS. HUEY:

6 Q. ALL RIGHT. I'LL START OUT WITH STATE'S 1,

7 MR. EVANS. TAKE A LOOK AT THAT EXHIBIT FOR ME.

8 A. YES, MA'AM.

9 Q. OKAY. AND DO YOU RECOGNIZE THAT?

10 A. YES, MA'AM.

11 Q. ALL RIGHT. IS THAT YOUR SIGNATURE ON THE FORM?

12 A. YES, MA'AM, IT IS.

13 Q. AND HOW MANY PLACES?

14 A. ONE, TWO, THREE, FOUR.

15 Q. AND SO WHAT DID THOSE SIGNATURES INDICATE?

16 A. THAT I HAD THE RIGHT TO REMAIN SILENT IF I DIDN'T
17 WANT TO SPEAK.

18 Q. SO YOU UNDERSTOOD WHAT WAS GOING ON?

19 A. YES, AT THE TIME I DID UNDERSTAND.

20 Q. YOU DID UNDERSTAND THAT?

21 A. YES, MA'AM, I SURE DID.

22 Q. ALL RIGHT. AND YOU ALSO DECIDED TO GIVE A
23 STATEMENT, ISN'T THAT TRUE?

24 A. YES, MA'AM, I DID.

25 Q. SO I'M GONNA SHOW YOU WHAT'S BEEN MARK AS STATE'S

1 2. IF YOU WOULD TAKE A LOOK AT THAT FOR ME.

2 A. (READS DOCUMENT.) YES, MA'AM.

3 Q. DO YOU RECOGNIZE THAT?

4 A. YES, MA'AM.

5 Q. OKAY. AND HOW ARE YOU ABLE TO RECOGNIZE IT?

6 A. IT'S SOME THINGS I TOLD WITH SOME HOLES IN IT.

7 Q. OKAY. BUT IS YOUR SIGNATURE ON THAT?

8 A. YES, MA'AM.

9 Q. YOU SIGNED IT?

10 A. YES, MA'AM.

11 Q. AND YOU COULD HAVE MADE CHANGES IF YOU HAD WANTED
12 TO, COULDN'T YOU?

13 A. I DON'T RECALL BEING TOLD THAT.

14 Q. OKAY. YOU COULDN'T HAVE SCRATCHED THROUGH
15 SOMETHING?

16 A. I WAS NOT TOLD THAT.

17 Q. YOU COULDN'T HAVE INITIALED IT?

18 A. THERE WAS NOTHING FOR ME TO SCRATCH THROUGH. HE
19 WAS TYPING IT UP. HE SAID I WAS THERE.

20 Q. NONETHELESS, THOUGH, YOU SIGNED THIS STATEMENT?

21 A. YES, MA'AM, I SURE DID.

22 Q. INDICATING THAT IT WAS YOURS?

23 A. YES, MA'AM.

24 Q. ALL RIGHT. NOW, MR. EVANS, YOU'VE GOT A PRETTY
25 BAD PRIOR RECORD, RIGHT?

1 A. I'VE BEEN CONVICTED ONE TIME ON EVERYTHING THAT I
2 HAD WAS THE WARRANT CHARGED AT ONE TIME, IT WAS A SPREE.
3 IT AIN'T LIKE I BEEN A CAREER CRIMINAL ALL MY LIFE, NO,
4 MA'AM.

5 Q. BUT WHEN YOU CAME IN TO MR. MATHESON'S OFFICE,
6 YOU KNEW YOU WERE LOOKING AT BIG TROUBLE, BIG TIME,
7 RIGHT?

8 A. YES, MA'AM.

9 Q. YOU ALREADY KNEW THAT?

10 A. YES, MA'AM.

11 Q. AND ISN'T IT TRUE THAT YOU COULD HAVE, IN FACT,
12 PLED TO SOMETHING ELSE, GOTTEN ---

13 **MR. POTTER:** JUDGE, OBJECTION; THAT'S
14 OUTSIDE THE SCOPE OF WHAT WE'RE DOING TODAY.

15 **THE COURT:** THERE WAS A REFERENCE MADE TO A
16 TEN-YEAR SENTENCE. I'M GOING TO OVERRULE YOUR
17 OBJECTION.

18 BY MS. HUEY:

19 Q. ISN'T IT TRUE THAT I OFFERED TO REDUCE THESE
20 CHARGES SO THAT YOU COULD PLEAD AND NOT BE FACING LIFE
21 WITHOUT PAROLE?

22 A. YES, MA'AM.

23 Q. AND ISN'T IT TRUE THAT YOU TURNED DOWN THAT
24 OFFER?

25 A. BECAUSE I WAS MISLED BY MY OTHER ATTORNEY.

1 THAT'S WHY I GOT THIS ONE RIGHT HERE, I FIRED MY LAST
2 ONE.

3 Q. REGARDLESS, YOU WERE LOOKING AT A BETTER DEAL
4 THAN YOU ARE TODAY?

5 A. YES, MA'AM, I WAS.

6 Q. AND WEREN'T YOU ADVISED BY ME IN THE PRESENCE OF
7 THE OTHER ATTORNEY THAT I WOULD BE SEEKING LIFE WITHOUT
8 PAROLE AS A RESULT OF YOU NOT TAKING ---

9 A. I CAN'T RECALL. I NEVER TALKED TO YOU THAT DAY,
10 MA'AM. I TALKED TO MY LAWYER THAT DAY OVER THERE.

11 Q. THAT IS THE RESULT. BUT YOU KNEW YOU WERE
12 LOOKING AT LIFE WITHOUT PAROLE BECAUSE OF THE CHARGES
13 THAT YOU WERE FACED WITH?

14 A. I KNEW WHEN I GOT SERVED THE PAPERS WITH --
15 WHAT'S HIS NAME -- THE INVESTIGATOR FROM THE SOLICITOR'S
16 OFFICE, JIMMY PENN, SERVED PAPERS ON ME. I KNEW WHAT
17 YOUR INTENTIONS WAS THEN.

18 Q. SO MR. EVANS, ISN'T IT TRUE THAT YOU WEREN'T
19 THREATENED INTO MAKING THIS STATEMENT?

20 A. NO, MA'AM, I WAS NOT THREATENED.

21 Q. YOU WEREN'T COERCED INTO MAKING THIS STATEMENT?

22 A. I FELT LIKE I WAS LED, I WAS LED ALONG WHILE I
23 WAS MAKING THE STATEMENT.

24 Q. BUT REGARDLESS, YOU WEREN'T THREATENED OR
25 INTIMIDATED TO MAKE THE STATEMENT?

1 A. NO, MA'AM, I WAS NEVER INTIMIDATED, I SURE WAS
2 NOT.

3 **MS. HUEY:** THAT'S ALL I HAVE, JUDGE.

4 **THE COURT:** RE-EXAM?

5 **MR. POTTER:** NONE, YOUR HONOR.

6 **THE COURT:** YOU MAY STEP DOWN. THANK YOU.

7 (WITNESS LEAVES STAND.)

8 **THE COURT:** CALL YOUR NEXT WITNESS.

9 **MR. POTTER:** NONE, YOUR HONOR.

10 **THE COURT:** ANY REPLY?

11 **MS. HUEY:** YOUR HONOR, I THINK I WILL
12 RE-CALL KEVIN MATHESON TO THE STAND, PLEASE.

13 **THE COURT:** DO YOU UNDERSTAND YOU'RE STILL
14 UNDER OATH?

15 **THE WITNESS:** YES, SIR.

16 **THE COURT:** ALL RIGHT. VERY GOOD.

17 WHEREUPON,

18 KEVIN MATHESON,

19 AFTER FIRST HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED
20 AS FOLLOWS:

21 DIRECT EXAMINATION BY MS. HUEY:

22 Q. MR. MATHESON, DURING THE COURSE OF THE INTERVIEW
23 WITH MR. EVANS, AT ANY TIME DID YOU SAY HE WAS ONLY
24 GONNA GET TEN YEARS?

25 A. NO, MA'AM.

1 PROVIDED.

2 SO OUR POSITION IS THAT STATUTE DOES NOT SET
3 FORTH THE CORRECT SECTION OF WHAT HE HAS ALLEGEDLY BEEN
4 CHARGED WITH; THEREFORE, IT'S DEFECTIVE AND WE MOVE TO
5 QUASH THAT PARTICULAR COUNT OF THE INDICTMENT.

6 IN REGARDS TO COUNT 1, THE LANGUAGE IN THE
7 INDICTMENT INDICATES THAT HE DID TAKE AWAY, TAKE AND
8 CARRY AWAY FROM THE PERSON OF PAULA AYERS PROPERTY AND
9 AN UNKNOWN AMOUNT OF CASH.

10 JUDGE, MY UNDERSTANDING OF THE REQUISITE
11 ELEMENTS OF A ARMED ROBBERY INDICATES PERSONAL PROPERTY
12 OF ANOTHER. HE DIDN'T TAKE PROPERTY FROM PAULA, HE TOOK
13 ITEMS. IT'S OUR POSITION THAT THAT PORTION OF THE
14 INDICTMENT IS ALSO DEFECTIVE AND WE MOVE TO QUASH. THE
15 ALLEGED FACTS, AS FAR AS I KNOW, HE TOOK MONEY FROM THE
16 CASH REGISTER OWNED BY THE STORE, NOT PAULA AYERS.

17 AND IT'S OUR POSITION THAT IN ORDER FOR IT
18 TO BE PROPER THEY NEED TO ALLEGE THAT PERSONAL PROPERTY
19 FROM THIS PARTICULAR WITNESS HAD BEEN TAKEN AND THAT WAS
20 NOT THE FACTS.

21 MS. HUEY: YOUR HONOR, MAY IT PLEASE THE
22 COURT?

23 THE COURT: MADAM SOLICITOR?

24 MS. HUEY: YOUR HONOR, AS YOU WELL KNOW, THE
25 PURPOSE OF THE INDICTMENT IS SIMPLY TO PUT THE DEFENDANT

1 ON NOTICE OF THE CRIMES HE'S BEEN CHARGED WITH. IN
2 FACT, THIS IS NOT A PIECE OF EVIDENCE, IT WILL NOT GO
3 BACK TO THE JURY UNLESS YOU THINK IT SHOULD, YOUR HONOR.
4 I BELIEVE THAT WE HAVE COMPLIED WITH THAT IN PUTTING THE
5 DEFENDANT ON NOTICE.

6 SPECIFICALLY AS TO THE VICTIM IN THIS CASE,
7 PAULA AYERS, SHE WAS AN EMPLOYEE OF GOODWILL. THE
8 PROPERTY BEING THE CASH IN THE CASH REGISTER WAS IN HER
9 CONTROL AT THE TIME IT WAS TAKEN FROM HER. SHE WAS
10 LITERALLY STANDING IN FRONT OF THE CASH REGISTER WHEN HE
11 BASICALLY PUSHED HER OUT OF THE WAY AND GRABBED THE
12 MONEY FROM THE REGISTER, SO IT WAS IN HER CONTROL, YOUR
13 HONOR. AGAIN, AS AN EMPLOYEE OF THE GOODWILL STORE AND
14 AGAIN, THE INDICTMENT SEEKS TO PUT THE DEFENDANT ON
15 NOTICE FOR THAT.

16 IN ADDITION, THE POSSESSION OF KNIFE DURING
17 THE COMMISSION OF VIOLENT CRIME, AGAIN HE HAS BEEN PUT
18 ON NOTICE THAT HE DID POSSESS A KNIFE DURING THE
19 COMMISSION OF THE ARMED ROBBERY, WHICH IS MENTIONED, TO
20 WIT, ARMED ROBBERY, WHICH AGAIN WAS CITED IN COUNT 1.

21 AND, YOUR HONOR, I DO NOT HAVE MY CODE BOOK
22 IN FRONT OF ME, BUT THAT MAY VERY WELL BE A
23 TYPOGRAPHICAL ERROR. BUT NONETHELESS, HE'S BEEN PUT ON
24 NOTICE FOR THESE CRIMES.

25 **THE COURT:** WELL, AS FAR AS THE ARMED

1 ROBBERY, IT'S CLEAR THAT THE OWNER WAS THE GOODWILL
2 STORE BECAUSE EVEN IN THE INDICTMENT IT SAYS AN EMPLOYEE
3 OF THE GOODWILL STORE; HOWEVER, PAULA AYERS WAS IN
4 POSSESSION OR OWNER OF THE PROPERTY, REPRESENTATIVE, AND
5 I FIND THAT COUNT 2 IS PROPER, PROPERLY ALLEGED.

6 COUNT 2, THE ONLY THING THAT CONCERNS ME
7 ABOUT IT IS, IS IT A TYPOGRAPHICAL ERROR OR NOT?
8 READING IT, IN PART, THAT JEFFERY S. EVANS DID IN
9 ANDERSON COUNTY, ON OR ABOUT MAY THE 24TH, 2007, POSSESS
10 A KNIFE DURING THE COMMISSION OF A VIOLENT CRIME; TO
11 WIT, ARMED ROBBERY, IN VIOLATION OF SECTION
12 16-3-10/16-3-20 IS THE MURDER SECTION.

13 I MIGHT FURTHER NOTE THAT, AS POINTED OUT BY
14 MR. POTTER, THAT HAS THE CUSTOMARY LANGUAGE, WHICH IS
15 AGAINST THE PEACE AND DIGNITY OF THE STATE CONTRARY TO
16 THE STATUTE IN SUCH CASE MAY BE PROVIDED, THAT
17 ALLEGATION IS VIOLENT CRIME IS; TO WIT, ARMED ROBBERY.
18 AND THE LANGUAGE AGAINST THE PEACE AND DIGNITY OF THE
19 STATE AND CONTRARY, QUOTE, IN THE STATUTE IN SUCH CASE
20 MAY BE PROVIDED IS HARD LANGUAGE, MEANING IT'S NOT CASE
21 LAW, IT WAS STATUTORY LAW. AND AGAIN, THE STATUTE IN
22 THIS CASE WOULD BE THE ARMED ROBBERY. AND INASMUCH AS
23 YOU ALLEGE SOME OTHER CODE SECTION WHICH APPARENTLY IS
24 NOT AT ISSUE HERE, IT'S NOT PUT AT ISSUE, IT'S
25 SUPERFLUOUS AND WITHOUT ANY EFFECT AS FAR AS THE NOTICE

1 REQUIREMENT.

2 I DO WANT TO FIND OUT WHAT STATUTE IN SUCH
3 CASE MAY PROVIDE FOR ARMED ROBBERY, YOU FIND THAT
4 SECTION -- THE INDICTMENT ALLEGES THAT THE VIOLENT CRIME
5 IS, TO WIT, ARMED ROBBERY. ANYTHING ELSE IS SUPERFLUOUS
6 OR NULLIFIED.

7 MOTIONS TO QUASH THE INDICTMENTS AS TO COUNT
8 1, DENIED; AS TO COUNT 2, DENIED. ALL RIGHT. YOU MAY
9 PROCEED.

10 I WILL NOTE THAT THE REFERENCE TO COAT
11 SECTION 16-3-10/16-3-20 IS IRRELEVANT AND BE STRICKEN.

12 MS. HUEY: THANK YOU, JUDGE.

13 MR. POTTER: THANK YOU, YOUR HONOR.

14 THE COURT: YES, SIR. ALL RIGHT. THIS ONE
15 IS GOING FORWARD AT 3:00?

16 MS. HUEY: YES, SIR, YOUR HONOR.

17 THE COURT: VERY GOOD. HAVE YOUR WITNESSES
18 READY.

19 MR. POTTER: DOWNSTAIRS, YOUR HONOR?

20 THE COURT: DOWNSTAIRS IN THE COURTROOM ON
21 THE THIRD FLOOR. VERY GOOD.

22 (A LUNCHEON RECESS OCCURRED FROM 1:32 P.M.
23 UNTIL 2:00 P.M.)

24

25

1 YOU TO LISTEN CAREFULLY, AND I'M SURE THAT YOU WILL DO
2 THAT.

3 WE WILL NOW BEGIN THE TRIAL WITH THE OPENING
4 STATEMENT BY THE STATE, AND I RECOGNIZE THE SOLICITOR.

5 MS. HUEY: THANK YOU, JUDGE, MAY IT PLEASE
6 THE COURT.

7 THE COURT: YES, MA'AM.
8 OPENING STATEMENT ON BEHALF OF THE STATE:

9 MS. HUEY: ON MAY 24TH, 2007, THE DEFENDANT,
10 JEFFERY SCOTT EVANS, ENTERED A GOODWILL STORE LOCATED AT
11 2901 SOUTH MAIN STREET HERE IN ANDERSON COUNTY. HE
12 WALKED IN, PICKED UP SOME JEANS OR SOMETHING, PUT IT
13 ACROSS HIS ARM, AND PRETENDED TO SHOP LIKE HE WAS ANY
14 OTHER CUSTOMER IN THE STORE.

15 BUT WHEN PAULA AYERS WAS MAKING A
16 TRANSACTION AT HER REGISTER -- SHE WORKS AT THE GOODWILL
17 STORE -- WHEN HER REGISTER DRAWER CAME OPEN, THE
18 DEFENDANT CAME UP, PUT A KNIFE TO HER SIDE AND SAID,
19 "GIVE ME THE MONEY OR I'LL CUT YOU."

20 HE THEN GRABBED MONEY OUT OF THE REGISTER,
21 FLED OUT THE FRONT DOOR OF THE STORE, DROPPING THOSE
22 PANTS THAT HE HAD BEEN HOLDING IN HIS ARMS, AND FLED THE
23 SCENE.

24 AND LADIES AND GENTLEMEN, THAT IS WHY WE ARE
25 ALL HERE TODAY. THIS DEFENDANT, JEFFERY SCOTT EVANS,

1 CLERK.)

2 THE CLERK: PLEASE STATE YOUR FULL NAME AND
3 SPELL YOUR LAST NAME FOR THE RECORD.

4 THE WITNESS: MY NAME IS PAULA ANNETTE
5 PEPPER AYERS, A-Y-E-R-S.

6 WHEREUPON,

7 PAULA AYERS,
8 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
9 FOLLOWS:

10 DIRECT EXAMINATION BY MS. HUEY:

11 Q. MS. AYERS, HOW OLD ARE YOU?

12 A. I'M 44.

13 Q. HOW FAR DID YOU GO IN SCHOOL?

14 A. I GRADUATED HIGH SCHOOL AND I HAVE ONE YEAR OF
15 BUSINESS COLLEGE.

16 Q. WHERE DO YOU CURRENTLY WORK?

17 A. GOODWILL.

18 Q. HOW LONG HAVE YOU BEEN AT GOODWILL?

19 A. SIX YEARS.

20 Q. WERE YOU WORKING THERE IN MAY OF 2007?

21 A. YES, I WAS.

22 Q. AND WHICH PARTICULAR STORE WERE YOU WORKING?

23 A. THE ONE ON SOUTH MAIN.

24 Q. ALL RIGHT. AND WHERE WOULD YOU SAY THAT IS?

25 A. AT 2901 SOUTH MAIN STREET.

1 Q. AND IS THAT THE CORNER -- DO YOU KNOW THE
2 INTERSECTION THERE?

3 A. IT'S 28 AND SOUTH MAIN.

4 Q. NOW, DRAWING YOUR ATTENTION TO MAY 24TH OF 2007,
5 WERE YOU WORKING ON THAT PARTICULAR DAY?

6 A. YES, I WAS.

7 Q. AND WHAT WERE YOUR HOURS THAT DAY, DO YOU
8 REMEMBER?

9 A. I WAS WORKING FROM 1:30 TO 10:00.

10 Q. AND IS 10:00 CLOSING?

11 A. NO, 9:00 IS CLOSING.

12 Q. OKAY. AND SO WHY WOULD YOU HAVE TO STAY UNTIL
13 10:00?

14 A. WE HAVE TO STAY AN HOUR AFTER TO MAKE SURE THE
15 STORE IS CLEANED UP AND EVERYTHING.

16 Q. BUT 9:00 IS WHEN THE STORE ACTUALLY CLOSES?

17 A. YES, MA'AM.

18 Q. WERE YOU AWARE ABOUT HOW MANY PEOPLE WERE IN THE
19 STORE CLOSE TO CLOSING TIME?

20 A. THERE WERE A VERY MANY, THERE WERE A GOOD MANY
21 PEOPLE.

22 Q. AND WHERE WAS YOUR PARTICULAR JOB THAT EVENING?

23 A. I WAS RUNNING THE REGISTER.

24 Q. AND WHAT DO YOU DO WHEN YOU WORK THE REGISTER?

25 A. YOU CHECK PEOPLE OUT AND TAKE THEIR MONEY.

1 Q. OKAY. AND SO THAT'S WHAT YOU WERE DOING THIS
2 NIGHT?

3 A. YES.

4 Q. NOW, THE REGISTER WHERE YOU WERE WORKING, WHERE
5 IS THAT IN RELATION TO THE FRONT DOOR?

6 A. IT'S DIRECTLY NEXT TO THE FRONT DOOR.

7 Q. NOW, MS. AYERS, WHAT, IF ANYTHING, HAPPENED TO
8 YOU WHILE YOU WERE WORKING THAT REGISTER THAT EVENING?

9 A. OKAY. IT WAS A QUARTER TILL NINE. WE WERE
10 GETTING READY TO CLOSE. AND WE FINISHED UP CHECKING OUT
11 THE LAST FEW CUSTOMERS, CUSTOMERS IN THE STORE.

12 AND I WAS WAITING ON A CUSTOMER. AND WHEN I TOLD
13 HER HER AMOUNT. AND SHE GAVE ME A 20, MY DRAWER CAME
14 OPEN WHEN I HIT THE CASH REGISTER, AND ---

15 Q. LET ME STOP YOU RIGHT THERE. SO A CUSTOMER WAS
16 PAYING YOU, THEN?

17 A. YES, MA'AM.

18 Q. OKAY. AND WAS SHE PAYING IN CASH; IS THAT RIGHT?

19 A. YES.

20 Q. SO ONCE THE CASH TRANSACTION -- DO YOU HAVE TO
21 ENTER THAT INTO THE COMPUTER?

22 A. YES. IT CAME THROUGH THE REGISTER. WHEN YOU
23 ENTER THE AMOUNT OF CASH, THE DRAWER COMES OPEN.

24 Q. AND SO DOES IT ONLY COME OPEN DURING A
25 TRANSACTION LIKE THAT?

1 A. RIGHT, ONLY IF THEY PAY IN CASH.

2 Q. OKAY. AND SO THE REGISTER, IN FACT, CAME OPEN?

3 A. YES, IT DID.

4 Q. ALL RIGHT. SO THEN WHAT WAS THE NEXT THING YOU
5 REMEMBER HAPPENING?

6 A. OKAY. I WAS FIXING TO GIVE THE LADY HER CHANGE,
7 AND THE DEFENDANT ---

8 MR. POTTER: JUDGE, I'M GOING TO OBJECT AND
9 I NEED TO TAKE SOMETHING UP OUT OF THE PRESENCE.

10 THE COURT: ALL RIGHT. YOU HAVE AN
11 OBJECTION TO TAKE UP NOW?

12 MR. POTTER: SIR?

13 THE COURT: DID YOU SAY YOU HAVE AN
14 OBJECTION TO TAKE UP NOW?

15 MR. POTTER: YES, SIR.

16 THE COURT: MADAM FORELADY, LADIES AND
17 GENTLEMEN OF THE JURY, I'M GOING TO ASK YOU TO RETIRE TO
18 THE JURY ROOM JUST FOR A MOMENT. I NEED TO TAKE SOME
19 MATTERS UP WITH THE ATTORNEYS. AGAIN, DO NOT UNDERTAKE
20 DISCUSSION OF THE CASE AMONG YOURSELVES IN ANY WAY. IF
21 YOU WOULD, PLEASE, JUST RETIRE TO THE JURY ROOM.

22 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
23 3:23 P.M.)

24 THE COURT: MR. POTTER?

25 MR. POTTER: JUDGE, I WAS INFORMED BY THE

1 STATE THAT NONE OF THE WITNESSES WOULD BE ABLE TO POINT
2 OUT MY CLIENT IN COURT, AND BASED UPON THAT
3 REPRESENTATION WE DECIDED NOT TO HAVE AN I.D. MOTION TO
4 DETERMINE WHETHER OR NOT THE COURT IDENTIFICATION WAS
5 RELIABLE. SHE JUST IDENTIFIED MY CLIENT IN FRONT OF THE
6 JURY.

7 MS. HUEY: YOUR HONOR, IT IS MY
8 UNDERSTANDING -- AND I MAY NEED TO ASK A COUPLE OF
9 QUESTIONS OF MS. AYERS -- BUT SHE WAS UNABLE TO IDENTIFY
10 THE DEFENDANT THAT EVENING. I THINK SHE MAY HAVE JUST
11 GOTTEN CAUGHT UP AND REFERRED TO THE GENTLEMAN AS THE
12 DEFENDANT. FROM WHAT I UNDERSTAND FROM OUR
13 CONVERSATIONS JUST OVER AN HOUR AGO, SHE CAN GIVE A
14 DESCRIPTION, JUST NOT PICK HIM OUT OF THE PHOTO LINE-UP.
15 THAT'S WHY THERE WAS NO HEARING.

16 MR. POTTER: SHE JUST TOLD THE JURY THE
17 DEFENDANT WAS THE ONE WHO DID IT, AND THAT'S THE CONCERN
18 I HAVE.

19 THE COURT: ALL RIGHT. I'M GOING TO REQUIRE
20 THE SOLICITOR TO, WE MIGHT SAY, REHABILITATE THE WITNESS
21 IN THE SENSE THAT THE WITNESS WAS NOT ABLE TO IDENTIFY
22 THE INDIVIDUAL, ONLY A GENERAL DESCRIPTION, AND THAT
23 I'LL LEAVE IT TO YOU HOW TO DO THAT.

24 MS. HUEY: YES, SIR.

25 THE COURT: SO THAT THE JURY WILL

1 UNDERSTAND. AND IF I FEEL IT'S NECESSARY I'LL GIVE A
2 CURATIVE INSTRUCTION.

3 MS. HUEY: YES, SIR.

4 THE COURT: AND AGAIN, MY CURATIVE
5 INSTRUCTION IS BASED ON WHAT I JUST HEARD FROM COUNSEL,
6 BOTH FROM THE STATE AND THE DEFENSE, THAT THERE HAD NOT
7 BEEN AN I.D. BY ANY WITNESSES TO THE EVENT.

8 IS THAT CORRECT?

9 MS. HUEY: THAT IS CORRECT, YOUR HONOR.

10 THE COURT: WOULD THAT INCLUDE THIS WITNESS
11 AND ANY OTHERS?

12 MS. HUEY: ALL THE WITNESSES FROM THE
13 GOODWILL STORE, YOUR HONOR, WHERE THE INCIDENT TOOK
14 PLACE.

15 THE COURT: WOULD YOU GIVE ME, JUST SO I CAN
16 BE ALERT?

17 MS. HUEY: YES, SIR. THE FIRST FOUR
18 WITNESSES I WILL CALL, MS. AYERS, OF COURSE, WHO IS ON
19 THE STAND; AS WELL AS PAT FRENCH, BARBARA COOLEY, AND
20 SUZANNE SHIRLEY.

21 THE COURT: SO NONE OF THESE HAVE IDENTIFIED
22 THE PARTICULAR DEFENDANT?

23 MS. HUEY: NO, SIR, YOUR HONOR.

24 THE COURT: ALL RIGHT. SO AGAIN I'M GOING
25 TO ASK YOU TO, IN ORDER TO MAINTAIN THE TESTIMONY THAT

1 THE WITNESS AS TO THE OCCURRENCE, THAT THAT BE MADE
2 CLEAR BY YOUR PROFFER OF HER TESTIMONY. IN OTHER WORDS,
3 LAYING A FOUNDATION IN THE SENSE THAT HER REFERENCE IS
4 TO -- WELL, I DON'T KNOW -- I'LL HAVE A PROBLEM HOW SHE
5 CAN IDENTIFY, QUOTE, THE DEFENDANT. BUT AGAIN, I'M
6 GOING TO HAVE TO LEAVE IT TO YOU TO SEE WHAT HAPPENS AND
7 I WILL GIVE A CURATIVE INSTRUCTION.

8 DEFENDANT'S MOTION FOR MISTRIAL:

9 MR. POTTER: JUDGE, I'VE GOT A CONCERN. I
10 JUST SAID IN FRONT OF THE JURY DURING OPENING, SAYING
11 THAT NONE OF THEIR WITNESSES WOULD I.D. MY GUY. AND THE
12 FIRST THING SHE SAYS IS THE DEFENDANT AND IDENTIFIES MY
13 GUY. I GOT A CONCERN HOW THAT'S GONNA AFFECT THE JURY,
14 SO RESPECTFULLY WE REQUEST A MISTRIAL AND LET'S PICK
15 ANOTHER JURY.

16 THE COURT'S RULING ON MISTRIAL MOTION:

17 THE COURT: I'M GOING TO HAVE TO DENY YOUR
18 MOTION FOR A MISTRIAL AT THIS TIME, BUT IT'S GOING TO
19 DEPEND ON WHETHER OR NOT -- AND THAT'S THE ASSUMPTION
20 AND THE CONFIDENCE THAT THE STATE WILL BE ABLE TO PUT
21 THE TESTIMONY IN THE PROPER PERSPECTIVE.

22 MS. HUEY: YES, SIR, JUDGE.

23 THE COURT: ALL RIGHT, VERY WELL.

24 MR. POTTER: THANK YOU, YOUR HONOR.

25 THE COURT: VERY WELL. ANYTHING ELSE FROM

1 THE STATE?

2 MS. HUEY: NO, SIR, YOUR HONOR.

3 THE COURT: FROM THE DEFENDANT?

4 MR. POTTER: NO, SIR.

5 THE COURT: ASK THE JURY TO JOIN US, PLEASE.

6 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
7 3:28 P.M.)

8 THE COURT: ALL RIGHT, MS. SOLICITOR, YOU
9 MAY PROCEED.

10 BY MS. HUEY:

11 Q. NOW, MS. AYERS, ISN'T IT TRUE THAT YOU WERE NEVER
12 ABLE TO PICK OUT FROM A PHOTO LINE-UP OR OTHERWISE WHO
13 COMMITTED THIS CRIME?

14 A. THAT'S TRUE.

15 Q. THAT'S TRUE? OKAY.

16 NOW, BACKING UP, THEN, THE GENTLEMAN THAT
17 APPROACHED YOU, WHAT, IF ANYTHING, DID HE SAY TO YOU
18 WHEN HE APPROACHED YOU?

19 A. OKAY. THE DOOR CAME OPEN AND HE CAME UP RIGHT
20 NEXT TO ME AND STARTED TAKING MONEY OUT OF MY DRAWER,
21 AND HE HAD THE KNIFE. AND HE SAID, "I'VE GOT A KNIFE
22 AND I'M GONNA TAKE THIS MONEY. IF YOU SAY ANYTHING, I
23 SWEAR TO GOD, I'LL CUT YOU."

24 Q. AND SO DID HE THEN, IN FACT, TAKE THE MONEY?

25 A. YES, HE DID.

1 Q. AND YOU DIDN'T TRY TO STOP HIM?

2 A. NO, I DID NOT.

3 Q. WHAT HAPPENED AFTER HE TOOK THE MONEY THEN?

4 A. HE, HE DROPPED THE KNIFE AND STARTED THEN JUST
5 RUNNING OUT THE DOOR, AND I HOLLERED TO MY MANAGER, "HE
6 JUST ROBBED ME." AFTER HE RAN OUT THE DOOR, SHE SAW HIM
7 AND SAW THE JEANS THAT WAS ON HIS ARM, AND HE LOOKED
8 AROUND AT HER AND RAN OUT TOO, AND I SAID, "THAT GUY
9 JUST ROBBED ME."

10 Q. NOW, HOW QUICKLY DID THIS ALL HAPPEN?

11 A. IT HAPPENED VERY QUICKLY.

12 Q. OKAY. CAN YOU GIVE ME ANY KIND OF TIME FRAME AS
13 TO HOW LONG THE WHOLE INCIDENT TOOK? WAS IT SECONDS,
14 MINUTES?

15 A. IT, IT SEEMED LIKE JUST SECONDS.

16 Q. OKAY. SO WERE YOU ABLE TO GET A GOOD LOOK AT HIM
17 FOR VERY LONG?

18 A. NO, NOT REALLY.

19 Q. WERE YOU ABLE TO GET ANY KIND OF DESCRIPTION
20 ABOUT THE MAN WHO ROBBED YOU?

21 A. WELL, I DID GIVE A DESCRIPTION OF THE DEFENDANT.

22 Q. TELL ME THE DESCRIPTION YOU GAVE THAT EVENING OF
23 THE PERSON WHO ROBBED YOU.

24 A. OKAY. I REMEMBERED HIS CLOTHES. HE WAS WEARING
25 A PLAID SHIRT AND JEANS, AND HE HAD A BEARD, AND HE HAD

1 DONE, THAT'S ALL THE QUESTIONS I HAVE FOR THIS WITNESS.

2 THE COURT: VERY WELL.

3 CROSS-EXAMINATION?

4 MR. POTTER: THANK YOU, YOUR HONOR, IF IT
5 PLEASES THE COURT.

6 CROSS-EXAMINATION BY MR. POTTER:

7 Q. MS. AYERS, LET'S SEE IF I UNDERSTAND THINGS. YOU
8 DON'T KNOW WHO IT WAS WHO ROBBED YOU THAT NIGHT; ISN'T
9 THAT TRUE?

10 A. I DIDN'T GET A GOOD LOOK AT HIM, IF THAT'S WHAT
11 YOU'RE ASKING.

12 Q. OKAY. SO YOU DON'T KNOW PERSONALLY WHETHER THE
13 DEFENDANT IS THE ONE WHO ROBBED YOU THAT NIGHT.
14 CORRECT?

15 A. WELL, UM...

16 Q. I MEAN YOU TESTIFIED THIS HAPPENED PRETTY QUICK
17 AND YOU HAD A KNIFE PULLED ON YOU?

18 A. I WAS AFRAID WHAT WOULD HAPPEN IF I TURNED AROUND
19 AND LOOKED.

20 Q. I UNDERSTAND. BUT YOU ARE NOT HERE TODAY SAYING
21 THIS IS THE ONE (POINTING) WHO ROBBED YOU; ISN'T THAT
22 CORRECT? WHEN I SAY "THIS IS THE ONE," I'M POINTING TO
23 THE DEFENDANT.

24 A. (PAUSES) YES.

25 Q. YES, HE'S THE ONE WHO ROBBED YOU, OR NO, YOU ARE

1 BY MS. HUEY:

2 Q. MS. FRENCH, ISN'T IT TRUE THAT YOU WERE NEVER
3 ABLE TO PICK OUT WHO ROBBED THE GOODWILL STORE THAT
4 NIGHT?

5 A. THAT'S CORRECT.

6 Q. THROUGH A PHOTO LINE-UP OR OTHERWISE?

7 A. THAT'S CORRECT.

8 Q. AND YOU CAN'T PICK OUT ANYONE IN THIS COURTROOM
9 TODAY?

10 A. NO, MA'AM, I CANNOT.

11 Q. OKAY. WERE YOU ABLE TO GIVE SOME SORT OF
12 DESCRIPTION, THOUGH, TO THE POLICE AS TO WHO ROBBED THAT
13 STORE?

14 A. THE ONLY THING THAT I COULD TELL THEM THAT NIGHT,
15 THAT HE WAS ABOUT 5'6", 5'7", WEIGHED ABOUT 160 POUNDS,
16 HAD A LIGHT BROWN, BLONDISH HAIR.

17 Q. YOU DID, IN FACT, GIVE THAT DESCRIPTION TO THE
18 POLICE?

19 A. YES, MA'AM.

20 Q. WHEN YOU GAVE THAT STATEMENT?

21 A. YES, MA'AM.

22 Q. NOW, MS. FRENCH, DID YOU EVER SEE, THE PERSON WHO
23 ROBBED THE STORE, DID YOU EVER SEE HIM WITH A KNIFE?

24 A. NO, MA'AM, I DID NOT.

25 Q. DID YOU HEAR THE THREAT AT ALL?

1 BARBARA COOLEY,
2 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
3 FOLLOWS:

4 DIRECT EXAMINATION BY MS. HUEY:

5 Q. NOW, MS. COOLEY, IF YOU DON'T MIND ME ASKING, HOW
6 OLD ARE YOU?

7 A. I AM 65 YEARS OLD.

8 Q. AND HOW FAR DID YOU GO IN SCHOOL?

9 A. I FINISHED HIGH SCHOOL AND TOOK SOME COLLEGE
10 PREPARATORY CLASSES.

11 Q. DO YOU CURRENTLY WORK, MS. COOLEY?

12 A. NO. I'M RETIRED FROM THE CITY OF ANDERSON.

13 Q. WHAT DID YOU DO FOR THE CITY OF ANDERSON?

14 A. I WORKED IN THE FAIR HOUSING COMMUNITY
15 DEVELOPMENT OFFICE.

16 Q. NOW, MS. COOLEY, DO YOU GO TO GOODWILL STORES A
17 GOOD BIT?

18 A. YES, I DO. MY VISIT TO THE GOODWILL STORES IS
19 MORE THAN JUST SHOPPING. I LIVE ALONE, SO THEREFORE I'M
20 IN CONTACT WITH A LOT OF PEOPLE, SO IT'S LIKE A LEISURE
21 TRIP FOR ME.

22 Q. AND WERE YOU AT A GOODWILL STORE ON MAY 24TH OF
23 2007?

24 A. YES, I WAS.

25 Q. OKAY. WHICH ONE WERE YOU AT AT THAT TIME?

1 A. I WAS AT THE GOODWILL STORE ON SOUTH MAIN STREET.

2 Q. DO YOU GO TO THAT STORE A GOOD BIT?

3 A. OFTEN.

4 Q. DO YOU REMEMBER ABOUT WHAT TIME YOU WERE THERE
5 THAT EVENING?

6 A. I CAN'T TELL YOU EXACTLY WHAT TIME. I DO KNOW I
7 HAD BEEN IN THE STORE FOR A WHILE. AND APPARENTLY IT
8 WAS GETTING CLOSE TO CLOSING BECAUSE IT WAS GETTING A
9 LITTLE DARK.

10 Q. WHAT, IF ANYTHING, DID YOU NOTICE WHILE YOU WERE
11 IN THE STORE?

12 A. THE STORE WAS SOMEWHAT CROWDED. AND I WAS IN THE
13 LADIES DEPARTMENT AREA WHERE THEY SELL WOMEN'S BLOUSES,
14 AND A GENTLEMAN CAME PAST ME AND BRUSHED UP AGAINST MY
15 POCKETBOOK. I JUST KIND OF GOT MY POCKETBOOK A LITTLE
16 CLOSER TO ME BECAUSE I COULDN'T FIGURE OUT WHAT WAS
17 GOING ON.

18 I CONTINUED TO SHOP A LITTLE BIT, AND I WAS
19 LOOKING THROUGH SOME BLOUSES, STILL, AND I NOTICED A
20 GENTLEMAN WAS COMING FROM BEHIND ME IN THAT SAME AISLE,
21 AND IT APPEARS TO BE THE SAME PERSON THAT HAD KIND OF
22 BUMPED MY POCKETBOOK, SO IT FRIGHTENED ME JUST A LITTLE
23 BIT. AND I TOOK MY BUGGY AND PROCEEDED TO THE CASHIER.

24 Q. AND THEN THIS GENTLEMAN THAT BUMPED YOU, THAT
25 MADE YOU GRAB YOUR POCKETBOOK AND THEN CAME BEHIND YOU

1 IN THE AISLE, WHAT DID HE LOOK LIKE?

2 A. HE WAS A WHITE GENTLEMAN, WITH MAYBE A RUGGED
3 BEARD ON HIS FACE, A PLAID SHIRT, I THINK; AND BROWN
4 HAIR.

5 Q. COULD YOU TELL ANYTHING ABOUT HIS HEIGHT OR
6 WEIGHT?

7 A. HE WAS KIND OF SKINNY, AND HE WASN'T AS TALL AS I
8 AM, AND I'M ABOUT 5'5" AND A HALF.

9 Q. SO WHEN YOU WENT UP TO THE CASH REGISTER THEN,
10 WHAT, IF ANYTHING, DID YOU NOTICE AT THAT POINT?

11 A. WHEN I FIRST SAW THIS GENTLEMAN COMING FROM THE
12 BACK OF ME, IT FRIGHTENED ME AND I PROCEEDED TO CHECK
13 OUT, HE WALKED DIRECTLY BEHIND ME AND STOOD. IT WAS A
14 LADY CHECKING HER STUFF OUT, AND THE CLERK, AND AS SOON
15 AS THE DRAWER OPENED ON THE CASH REGISTER, THE GENTLEMAN
16 BEHIND ME RUSHED AROUND ME AND WAS STANDING REAL CLOSE
17 TO THE CLERK. AND IT WAS HAPPENING SO FAST, ALL I
18 REMEMBER SEEING WAS HIS HAND AND MONEY KIND OF FALLING
19 OUT OF THE DRAWER.

20 Q. OKAY. SO THE SAME GENTLEMAN THAT YOU HAD NOTICED
21 AND YOU JUST DESCRIBED FOR US --

22 A. YES.

23 Q. -- YOU SAW TAKING MONEY OUT OF THE REGISTER?

24 A. YES.

25 Q. AND YOU SAID THAT HE WAS STANDING PRETTY CLOSE TO

1 THE CLERK?

2 A. VERY CLOSE.

3 Q. OKAY. COULD YOU HEAR IF THEY WERE HAVING A
4 CONVERSATION OR NOT?

5 A. NO, MA'AM.

6 Q. NOW, WERE YOU EVER ABLE TO PICK HIM OUT OF A
7 PHOTO LINE-UP OR ANYTHING?

8 A. NO, MA'AM.

9 Q. DID THIS ALL HAPPEN PRETTY QUICKLY?

10 A. IT HAPPENED REAL, REAL QUICKLY.

11 Q. CAN YOU GIVE ME ANY IDEA AS TO HOW LONG THE WHOLE
12 INCIDENT TOOK PLACE?

13 A. PROBABLY TWO, THREE MINUTES AT THE MOST.

14 Q. NOW, MS. COOLEY, THE REGISTER WHERE YOU WERE, HOW
15 FAR WOULD THAT REGISTER BE FROM WHERE THE ROBBERY WAS
16 TAKING PLACE?

17 A. I WAS RIGHT AT THE REGISTER.

18 Q. OKAY. AND WERE YOU IN LINE BEHIND OTHER PEOPLE?

19 A. BECAUSE I HAD A BUGGY, AND I WAS COMING OUT OF,
20 OUT OF THE AREA OF THE LADIES' CLOTHING, I WAS KIND OF
21 STANDING CROSSWAYS. THE BUGGY WAS UP NEAR THE COUNTER
22 AND I WAS KIND OF BACK SOME.

23 Q. SO WAS THE BUGGY IN BETWEEN YOU AND THE CLERK
24 THEN?

25 A. YES. YES.

1 CLERK.)

2 THE CLERK: PLEASE STATE YOUR FULL NAME AND
3 SPELL YOUR LAST NAME FOR THE RECORD.

4 THE WITNESS: SUZANNE SHIRLEY,
5 S-H-I-R-L-E-Y.

6 WHEREUPON,

7 SUZANNE SHIRLEY

8 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
9 FOLLOWS:

10 DIRECT EXAMINATION BY MS. HUEY:

11 Q. MS. SHIRLEY, HOW OLD ARE YOU?

12 A. I'M 37.

13 Q. WHERE DO YOU WORK?

14 A. THE POST OFFICE.

15 Q. HOW LONG HAVE YOU BEEN AT THE POST OFFICE?

16 A. NINE AND A HALF YEARS.

17 Q. NOW, DO YOU GO TO GOODWILL STORES A LOT?

18 A. I DO.

19 Q. HOW LONG HAVE YOU BEEN DOING THAT?

20 A. FOR A LONG TIME.

21 Q. DO YOU GO TO ONE PARTICULAR ONE?

22 A. THE ONE THAT GOT ROBBED, YEAH.

23 Q. SO WERE YOU AT THE ONE THAT GOT ROBBED ON MAY
24 24TH OF 2007?

25 A. I WAS.

1 Q. WHO WERE YOU WITH THAT NIGHT?

2 A. JUST MYSELF.

3 Q. TELL ME ABOUT WHAT YOU WERE DOING IN THE STORE
4 THEN.

5 A. JUST SHOPPING, AND THEN I WENT TO CHECK OUT.

6 Q. AND WHEN YOU WENT TO CHECK OUT WHAT, IF ANYTHING,
7 DID YOU NOTICE?

8 A. I WAS, HAD MADE A TRANSACTION. I WAS WAITING ON
9 MY CHANGE AND THEN THAT'S WHEN IT HAPPENED. SHE OPENED
10 THE DRAWER AND THAT'S WHEN SHE GOT ROBBED.

11 Q. OKAY. NOW, SO WERE YOU THE CUSTOMER, THEN, AT
12 THE REGISTER WHEN THE ROBBERY TOOK PLACE?

13 A. YEAH. I WAS LIKE RIGHT HERE AND SHE WAS RIGHT
14 THERE, I WAS LIKE RIGHT THERE (INDICATING).

15 Q. HAD YOU PAID FOR YOUR TRANSACTION IN CASH?

16 A. OH, YES, I HAD.

17 Q. AND SO DO YOU REMEMBER HOW MUCH YOU HAD ON YOU
18 THAT YOU WERE ---

19 A. I GAVE HER A TWENTY AND I WAS WAITING ON MY
20 CHANGE.

21 Q. OKAY. AND THEN WHAT'S THE NEXT THING YOU
22 REMEMBER SEEING?

23 A. I REMEMBER SOMEBODY COMING UP BESIDE ME KIND OF
24 CLOSE, AND I DIDN'T THINK ANYTHING OF IT. AND THEN I
25 WAS KIND OF FEELING IN MY WALLET, AND THEN I NOTICED A

1 MAN AT THE REGISTER WITH HER, AND I HEARD HIM TELL HER
2 TO GIVE HIM THE MONEY OR HE WAS GONNA CUT HER, AND I SAW
3 THE KNIFE.

4 Q. YOU HEARD HIM SAY IT?

5 A. YES, I DID.

6 Q. AND YOU ALSO SAW THE KNIFE?

7 A. YES, I DID.

8 Q. DID YOU GET -- COULD YOU DESCRIBE THIS MAN THAT
9 YOU SAW ROB HER?

10 A. WELL, I REMEMBER HIM BEING WHITE, AND I REMEMBER
11 HIM KIND OF BLONDISH, PETITE, BUT I DIDN'T GET A GOOD
12 LOOK.

13 Q. AND WERE YOU ABLE TO PICK HIM OUT OF A PHOTO
14 LINE-UP AT THAT TIME?

15 A. NO, I WASN'T.

16 Q. AFTER YOU SAW HIM TAKE THE MONEY OUT OF THE
17 REGISTER, WHAT THEN DID YOU SEE, IF ANYTHING?

18 A. HE JUST WAS GRABBING THE MONEY AND I DIDN'T
19 HOLLER BECAUSE I DIDN'T KNOW WHAT WOULD HAPPEN TO HER.
20 AND THEN HE TOOK OFF AND DROPPED THE KNIFE AND I JUST
21 TURNED AROUND AND TOLD THEM THAT SHE HAD GOT ROBBED.
22 AND I JUST WAS IN SHOCK. I DIDN'T...

23 Q. AND DID YOU EVENTUALLY GIVE A STATEMENT TO POLICE
24 THAT NIGHT, THEN?

25 A. I DID.

1 (WHEREUPON, THE WITNESS WAS SWORN.)

2 THE CLERK: PLEASE STATE YOUR FULL NAME,
3 SPELLING YOUR LAST NAME FOR THE RECORD.

4 THE WITNESS: KEVIN DAVID MATHESON, THE
5 SPELLING OF MY LAST NAME IS M-A-T-H-E-S-O-N.
6 WHEREUPON,

7 KEVIN MATHESON,
8 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
9 FOLLOWS:

10 DIRECT EXAMINATION BY MS. HUEY:

11 Q. MR. MATHESON, WHERE DO YOU WORK?

12 A. I WORK FOR THE ANDERSON COUNTY SHERIFF'S OFFICE.

13 Q. AND HOW LONG HAVE YOU BEEN THERE?

14 A. I'VE BEEN THERE FOR APPROXIMATELY TEN YEARS.

15 Q. WHAT DIVISION DO YOU WORK IN?

16 A. IN CRIMINAL INVESTIGATION DIVISION.

17 Q. AND WHAT DOES THAT MEAN?

18 A. THAT I AM A DETECTIVE, I INVESTIGATE CRIMES.

19 Q. AND AS A DETECTIVE IN INVESTIGATING CRIMES, WHAT
20 ARE SOME OF YOUR GENERAL DUTIES?

21 A. RIGHT NOW I'M CURRENTLY ASSIGNED TO HOMICIDES AND
22 CRIMES AGAINST CHILDREN PRIMARILY. WE ALSO MIGHT COVER
23 ANYTHING ELSE THAT COMES IN DURING THE DAY OR OTHER
24 THINGS WE MIGHT BE WORKING, INCLUDING ROBBERIES
25 BURGLARIES, LARCENIES, AND THINGS OF THAT NATURE.

1 Q. DID YOU HAVE AN OCCASION TO RESPOND TO 2901 SOUTH
2 MAIN STREET, THE GOODWILL STORE HERE IN ANDERSON?

3 A. YES, MA'AM, I DID.

4 Q. IS THAT IN ANDERSON COUNTY?

5 A. YES, MA'AM.

6 Q. WHY DID YOU GO TO THAT STORE?

7 A. I WAS ACTUALLY ACCOMPANIED WITH ANOTHER DETECTIVE
8 THAT EVENING WHO WAS WORKING SECOND SHIFT. WE GOT A
9 CALL TO GO OUT THERE, THAT AN ARMED ROBBERY HAD OCCURRED
10 AT THE GOODWILL STORE ON SOUTH MAIN. AS WE WERE THE
11 DETECTIVES ON CALL, WE WENT AHEAD AND RESPONDED AS
12 QUICKLY AS WE COULD.

13 WHEN WE ARRIVED, WE ACTUALLY FOUND THE RESPONDING
14 OFFICER HAD ALREADY BEGUN TO SEPARATE OUR WITNESSES AND
15 PUT UP A CRIME SCENE TAPE TO ESTABLISH THE CRIME SCENE
16 AND KEEP EVERYTHING AS CLEAN AS POSSIBLE.

17 Q. WHEN YOU FIRST GOT THERE, OTHER THAN OBSERVING
18 THE CRIME SCENE TAPE AND THAT SORT OF THING, WHAT ELSE
19 DID YOU OBSERVE?

20 A. WHEN I GOT THERE -- I ALWAYS TRY TO DO LIKE A
21 GENERIC JUST KIND OF WALKTHROUGH TO TRY TO FIGURE OUT
22 WHAT WE'VE GOT ON SCENE. I USUALLY TRY TO SIT WITH THE
23 DEPUTY THAT WAS THERE FIRST AND OBTAIN THE INFORMATION
24 THAT HE MAY HAVE OBTAINED THAT WOULD BE ESSENTIAL TO MY
25 INVESTIGATION.

1 Q. OKAY. SO THEN WHAT'S YOUR NEXT STEP?

2 A. THERE AGAIN, WE DON'T HAVE THE DATABASE THAT
3 TELEVISION WOULD HAVE YOU BELIEVE WE HAVE; WE CAN'T PUT
4 ANYTHING IN AND JUST RANDOMLY RUN PICTURES. AT THAT
5 POINT -- PARDON THE PUN -- IT'S JUST OLD-FASHIONED
6 POLICE WORK. WE JUST TRY AND HIT THE STREETS AND START
7 TRYING TO GET AS MUCH INFORMATION AS WE CAN AND SEE IF
8 ANYBODY IS TALKING; JUST ANYTHING, ANY KIND OF
9 INFORMATION WE CAN FIND.

10 WITH THAT BEING SAID, IT'S ALREADY MENTIONED THAT
11 I WAS THE LEAD DETECTIVE. NOW, BEING A LEAD DETECTIVE
12 DOES NOT MEAN I'M THE ONLY DETECTIVE WHO'S ACTUALLY
13 WORKING THE CASE. THERE ARE SEVERAL OTHER DETECTIVES
14 THAT MAY BE TRYING TO GATHER BITS OF INFORMATION FOR ME
15 WHEN THEY CAN.

16 THIS PARTICULAR WEEK I WAS ON CALL, SO, IT WAS A
17 SECOND-SHIFT THING, SO I DIDN'T COME BACK IN BRIGHT AND
18 EARLY THAT NEXT MORNING, SO I HAD OTHER DETECTIVES THAT
19 WERE WORKING ON THE CASE, AS WELL, IN MY ABSENCE. IN
20 THIS PARTICULAR INSTANCE, THAT'S WHAT WE DID, IS WE
21 STARTED ATTEMPTING TO GAIN INFORMATION THAT WAY.

22 Q. OKAY. AND WERE YOU ABLE TO GAIN ANY INFORMATION?

23 A. WE WERE. I WAS ACTUALLY CONTACTED BY ONE OF THE
24 OTHER DETECTIVES AT THE SHERIFF'S OFFICE ON MY WAY IN
25 THAT DAY, THAT HE HAD ACTUALLY OBTAINED SOME INFORMATION

1 THAT THE POSSIBLE PERPETRATOR -- LIKE I SAID, I ALSO
2 ALWAYS SAY "POSSIBLE" AT THIS POINT BECAUSE WE DON'T
3 KNOW, WE'RE JUST GETTING INFORMATION -- BUT HE ALLEGED
4 THAT THE POSSIBLE PERPETRATOR'S NAME WAS SCOTT, AND THAT
5 WE HAD LEARNED THAT HE POSSIBLY STAYED AT THE SUNRISE
6 MOTEL IN ROOM 2. SO THIS WAS, THIS WAS DEFINITELY
7 INFORMATION WE WANTED TO CHECK OUT.

8 AT THAT TIME I ACTUALLY CONTACTED DETECTIVE CHRIS
9 BEUSSE, ANOTHER DETECTIVE, AND HAD HIM GO TO FOLLOW UP
10 WITH THAT INFORMATION. BECAUSE, LIKE I SAID, AT THE
11 TIME WE'D GOT OTHER INFORMATION WE WERE TRYING TO FOLLOW
12 UP ON, AND A LOT OF US WERE GOING IN SEVERAL DIFFERENT
13 DIRECTIONS AT THE SAME TIME.

14 Q. AND WAS HE ABLE TO GET ANY INFORMATION AT THE
15 HOTEL?

16 A. YES, MA'AM. HE DID ACTUALLY GO TO THE MOTEL AND
17 HE WAS ABLE TO OBTAIN INFORMATION FROM THERE SHOWING
18 THAT SOMEONE BY THE NAME OF ---

19 MR. POTTER: JUDGE, I'M GOING TO OBJECT AT
20 THIS POINT IN TIME TO THIS WHOLE LINE OF QUESTIONING.
21 THIS IS INFORMATION AND TESTIMONY THAT'S BEING GLEANED
22 FROM ANOTHER WITNESS.

23 THE COURT: MADAM SOLICITOR?

24 MS. HUEY: YOUR HONOR, I BELIEVE HE'S JUST
25 TESTIFYING AS TO WHAT STEPS HE TOOK AS A RESULT.

1 **THE COURT:** WELL, THEN THAT WOULD BE FINE IF
2 HE DID, WHEN HE RECEIVED INFORMATION FROM WHICH HE
3 RELIED, AND IF HE KNEW SOMETHING IN RELIANCE ON THAT
4 INFORMATION ---

5 **MS. HUEY:** YES, SIR.

6 **THE COURT:** --- BUT NOT JUST AS TO THE
7 SOURCE OF THE INFORMATION OR WHAT MIGHT BE THE SPECIFICS
8 OF IT THAT RELATES TO WHAT SOMEBODY ELSE TOLD HIM. ALL
9 RIGHT.

10 **MS. HUEY:** IF I MAY?

11 **THE COURT:** CERTAINLY. JUST RESTATE YOUR
12 QUESTION.

13 **MS. HUEY:** YES, SIR.

14 BY MS. HUEY:

15 Q. AS A RESULT OF INFORMATION YOU RECEIVED AT THE
16 HOTEL, WHAT HAPPENED NEXT?

17 A. AT THAT TIME WE HAD RECEIVED A NAME FROM THERE.
18 I WAS ACTUALLY BROUGHT SOME ITEMS FROM THE MOTEL FROM
19 HIM, SO I ACTUALLY HAD SOME THINGS IN MY POSSESSION THAT
20 CAME FROM THERE. WE WERE ABLE TO OBTAIN A NAME AT THAT
21 POINT THAT WAS MATCHING THE INFORMATION THAT WE HAD
22 RECEIVED PREVIOUSLY.

23 WE HAD ACTUALLY PRIOR -- AND LET ME BACK UP A
24 LITTLE BIT SO THIS WILL MAKE SENSE, I DON'T WANT TO
25 CONFUSE YOU. WHEN WE FIRST ARRIVED ON SCENE THAT NIGHT,

1 THAT EVENING, WE ACTUALLY HAD A WITNESS WHO HAD GIVEN US
2 A POSSIBLE TAG NUMBER. THE REASON I SAY "POSSIBLE" IS
3 BECAUSE THIS STUFF IS HAPPENING FAST, A LOT OF THINGS
4 ARE GOING ON, AND SOMETIMES WITNESSES ARE LOOKING AT
5 THINGS THEY'RE NOT SURE THEY'RE GONNA HAVE TO TESTIFY TO
6 LATER OR TELL ANYONE ABOUT.

7 BUT SHE WAS ABLE TO ACTUALLY GIVE US A TAG
8 NUMBER. AND IT WAS INTERESTING BECAUSE AS A RESULT OF,
9 THE MOTEL, THE TAG NUMBER, PART OF THE TAG NUMBER
10 ACTUALLY MATCHED FROM THAT INFORMATION, AS WELL. SO WE
11 WERE READY TO KIND OF LOOK AND SAY, WELL, THIS IS KIND
12 OF CREDIBLE INFORMATION, IT'S STARTING TO LOOK BETTER
13 AND BETTER.

14 WE TOOK THE NAME THAT WE HAD OBTAINED FROM THE
15 MOTEL THAT EVENING, AND WE OBTAINED A PHOTOGRAPH OF THAT
16 PERSON TO BE ABLE TO COMPARE IT TO THE STILLS THAT WE
17 OBTAINED FROM GOODWILL.

18 Q. OKAY. AND SO WHAT PHOTOGRAPH, THEN, DID YOU
19 PULL? WHOSE PHOTOGRAPH DID YOU PULL?

20 A. WE PULLED JEFFERY SCOTT EVANS' PHOTOGRAPH.

21 Q. AND ONCE YOU PULLED HIS PHOTO, WHAT DO YOU THEN
22 DO WITH IT?

23 A. AT THAT POINT WE TAKE THE PHOTO AND WE COMPARE IT
24 AGAINST THE STILLS. AND THIS IS NOT, THIS IS NOT JUST
25 ME IN AN OFFICE BY MYSELF WITH THESE PHOTOS AND LOOKING

1 AND MAKING A DECISION. THIS IS SOMETHING THAT A LOT OF
2 TIMES THE WHOLE FLOOR, AND WHEN I SAY THE FLOOR, I MEAN
3 THE OTHER DETECTIVES AT THE OFFICE GET INVOLVED IN. I
4 START GRABBING PEOPLE, SAYING, "COME HERE, LOOK AT THIS,
5 SEE WHAT YOU THINK," BASICALLY.

6 AND A LOT OF PEOPLE DID THAT. THE MORE WE LOOKED
7 AT IT, THE MORE WE WERE CONVINCED THAT THEY WERE ONE AND
8 THE SAME.

9 Q. AND SO THEN YOU STARTED LOOKING FOR JEFFERY SCOTT
10 EVANS?

11 A. YES, I DID.

12 Q. AND HOW DID THAT COME ABOUT?

13 A. I WAS UNABLE TO FIND HIM THE FIRST COUPLE OF
14 DAYS. WE ACTUALLY FOUND HIM THROUGH OTHER FAMILY
15 MEMBERS AND THINGS OF THAT NATURE. WE STARTED GETTING
16 DIFFERENT INFORMATION ABOUT WHERE HE MAY BE. WE
17 ACTUALLY LOCATED A PERSON WHO KNEW HIM AND SAID THAT
18 THEY WERE PRETTY SURE HE WAS ON GEORGE ALBERT LAKE ROAD.

19 SO, WITH THAT BEING SAID, I HAD TWO UNIFORMED
20 DEPUTIES THAT WERE ACCOMPANYING ME THAT DAY BECAUSE WE
21 DIDN'T KNOW, YOU KNOW, WHAT WE WERE GONNA ENCOUNTER. WE
22 HEADED TOWARDS GEORGE ALBERT LAKE ROAD, AND THERE'S A
23 CHURCH -- I DON'T KNOW IF YOU GUYS ARE FAMILIAR WITH
24 IT -- THERE'S A CHURCH RIGHT IN FRONT OF GEORGE ALBERT
25 LAKE ROAD ON THE RIGHT.

1 WE HAD THEM -- I HAD THEM STAY THERE SO THAT I
2 COULD DRIVE DOWN GEORGE ALBERT LAKE ROAD IN MY UNMARKED
3 CAR TO SEE BY MYSELF TO SEE IF I SAW THE VEHICLE THAT WE
4 WERE ALSO LOOKING FOR. AS I DROVE DOWN GEORGE ALBERT
5 LAKE ROAD, INSTEAD OF SEEING THE VEHICLE, I ACTUALLY
6 TURNED AND SAW THE DEFENDANT SITTING ON A PORCH ON
7 GEORGE ALBERT LAKE ROAD.

8 AT THAT TIME I TURNED AROUND AND I GOT ON OUR
9 RADIO COMMUNICATION AND CONTACTED THE OTHER TWO
10 DEPUTIES, WHO RESPONDED DOWN TO THE HOUSE WITH ME.

11 Q. NOW, BACKING UP TO THE CAR, THEN, DID YOU
12 EVENTUALLY SEE THE CAR, AS WELL?

13 A. YES, MA'AM. THE CAR WAS THERE IN THE YARD.

14 Q. OKAY. AND AGAIN, DID FORENSICS RESPOND?

15 A. YES, MA'AM.

16 Q. AND WHAT WAS THE PURPOSE OF FORENSICS COMING UP
17 TO THE CAR?

18 A. AS I SAID, WE HAD A WITNESS AT THE GOODWILL THAT
19 NIGHT WHO DESCRIBED THE VEHICLE AS POSSIBLY A
20 GRAY-IN-COLOR FOUR DOOR, A POSSIBLE DESCRIPTION. AND,
21 ACTUALLY, LIKE I SAID, THE INFORMATION THAT WE GOT FROM
22 THE MOTEL, WE FOUND THAT THAT CAR DESCRIPTION THAT WAS
23 LOGGED THERE WAS ACTUALLY FITTING THE WITNESS
24 DESCRIPTION.

25 SO ALL OF THESE THINGS IN ACCOUNT ONCE WE FOUND

1 VOLUNTARILY?

2 THE FACT THAT THE COURT HAS ADMITTED AND I
3 HAVE RULED PRIOR THAT IT WOULD BE ADMITTED, THE
4 STATEMENT INTO EVIDENCE SHOULD NOT BE CONSIDERED BY YOU
5 AS ANY EVIDENCE WHATSOEVER THAT THE DEFENDANT MADE SUCH
6 A STATEMENT AND THAT THE REQUIRED CONSTITUTIONAL
7 SAFEGUARDS WERE, IN FACT, PROVIDED AND WAIVED BY THE
8 DEFENDANT, AND THAT THE STATEMENT WAS VOLUNTARILY GIVEN.
9 THESE ISSUES ARE FOR YOU TO DECIDE. YOUR DETERMINATION
10 MUST BE BEYOND A REASONABLE DOUBT AS TO EACH ONE.

11 YOU MAY PROCEED.

12 MS. HUEY: THANK YOU, JUDGE.

13 BY MS. HUEY:

14 Q. MR. MATHESON, I DON'T KNOW IF YOU WOULD RATHER
15 SIT OR STAND IN FRONT OF THE JURY, WHICH WOULD BE
16 BETTER, BUT IF YOU COULD PUBLISH, READ ALOUD THE
17 DEFENDANT'S STATEMENT TO THE JURY?

18 A. YES, MA'AM. THE STATEMENT STARTS OUT AS ALL OUR
19 STATEMENTS DO (READING):

20 DETECTIVE KEVIN MATHESON IS WRITING THIS
21 STATEMENT FOR ME -- AND I LIKE TO MAKE IT CLEAR TO
22 WHOEVER IS READING THE STATEMENT IS THAT THE PERSON
23 GIVING THE STATEMENT DIDN'T ACTUALLY, WASN'T THE ONE
24 THAT WAS AT THE KEYBOARD -- AND THIS PARTICULAR ONE SAYS
25 IN THE PRESENCE OF DETECTIVE CHAD MCBRIDE, SO I LABEL

1 WHO WAS THERE, AS WELL.

2 WOULD YOU LIKE ME TO READ THE STATEMENT?

3 Q. YES, PLEASE.

4 A. OKAY (READING):

5 MY GIRLFRIEND, KIM ADDY, WENT TO
6 WORK AT THE ANMED HEALTH CENTER AND I
7 BORROWED HER CAR. IT IS A GRAY BUICK
8 FOUR-DOOR.

9 I WENT RIDING INTO AROUND
10 WHITENER. I COME UP ON A BLACK GUY NAMED
11 JOE AND HE GOT IN THE CAR WITH ME. WE
12 PICKED UP KATHY AND MARGARET WHO WERE
13 WALKING DOWN THE STREET. WE WENT AND GOT
14 A MOTEL ROOM AT THE SUNRISE MOTEL AND
15 STAYED IN ROOM 2. WE STAYED THERE FOR
16 ABOUT TWO OR THREE HOURS.

17 WE LEFT THERE AND I TRIED TO USE
18 MY CREDIT CARD TO GET SOME MORE CASH. WE
19 WENT TO THE STORE RIGHT ACROSS FROM THE
20 SUNRISE FIRST BUT THE MACHINE SAID IT WAS
21 TEMPORARILY OUT OF CASH. WE THEN DROVE
22 OVER TO THE BI-LO ON SOUTH MAIN STREET.
23 KATHY AND MARGARET WENT INTO BI-LO AND I
24 TRIED TO USE THE ATM OUTSIDE BUT IT SAID
25 IT WAS OVER LIMIT.

1 I WALKED DOWN TO THE GOODWILL
2 WITH THE INTENTION OF SNATCHING A
3 POCKETBOOK. I WENT INSIDE AND WALKED
4 AROUND. I REMEMBER BUMPING INTO A BLACK
5 LADY BUT SHE HELD ON TO HER PURSE REAL
6 TIGHT. AFTER THAT, I WAS THINKING TO
7 MYSELF THAT THIS WAS STUPID AND I NEEDED
8 TO GET OUT OF THERE.

9 I WALKED AROUND THE STORE AND WAS
10 HEADED OUT. I PICKED UP SOME CLOTHES AND
11 HAD THEM IN ARM CAUSE I DIDN'T WANT TO
12 LOOK SUSPICIOUS. I REMEMBER STANDING IN
13 LINE FOR A SECOND WHEN I SEEN THE CASHIER
14 OPEN HER DRAWER, AND I COULDN'T HELP IT.
15 I WENT AROUND BEHIND HER AND TOLD HER ALL
16 I WANTED WAS THE MONEY. I TOOK THE MONEY
17 OUT OF HER DRAWER AND RAN OUT.

18 I WAS SO NERVOUS THAT I DROPPED
19 MY KNIFE. IT WAS A UTILITY KNIFE LIKE A
20 LEATHERMAN.

21 I RAN BACK TO THE CAR AND
22 MARGARET AND JOE WERE ALREADY SITTING IN
23 THE CAR. KATHY WAS COMING ACROSS THE
24 PARKING LOT FROM BI-LO. WE GOT IN THE
25 CAR AND DROVE OFF. I TOLD THEM THAT I

1 HAD JUST ROBBED THE STORE AND WE NEEDED
2 TO GET OUT OF THERE. I WAS DRIVING THE
3 CAR.

4 WE WENT BACK TO THE SUNRISE AND
5 WENT BACK INTO THE ROOM. JOE AND KATHY
6 LEFT IN MY CAR WHILE ME AND MARGARET
7 STAYED IN THE ROOM. WHEN THEY GOT BACK,
8 I GAVE EACH OF THEM, I THINK, ABOUT
9 \$30.00 EACH SINCE THEY WERE WITH ME.

10 KATHY WALKED AROUND FOR A LITTLE
11 WHILE, BUT CAME BACK SOMETIME LATER AND
12 WANTED TO BORROW THE CAR. I LET THEM
13 BORROW THE CAR AGAIN BUT THIS TIME THEY
14 NEVER CAME BACK. MARGARET LEFT WALKING
15 LATER AND I CALLED MY BROTHER-IN-LAW TO
16 COME AND GET ME. I DIDN'T TELL THEM
17 ABOUT THE ROBBERY.

18 KIM WANTED TO REPORT THE CAR
19 STOLEN, BUT I TALKED HER OUT OF IT AND
20 SAID WE'D FIND THE CAR IN CRACK TOWN THE
21 NEXT DAY. SURE ENOUGH, THE NEXT DAY MY
22 NIECE AND HER BOYFRIEND FOUND THE CAR
23 BEHIND THE SPINX STATION OUT OF GAS.

24 I'M VERY SORRY FOR ALL OF THIS.
25 I DIDN'T REALLY KNOW WHAT I WAS DOING.

1 STATE RESTS.

2 **THE COURT:** MADAM FORELADY, LADIES AND
3 GENTLEMEN OF THE JURY, THE STATE HAS NOW RESTED, AND I
4 NEED TO TAKE UP SOME MATTERS WITH THE ATTORNEYS, SO I'M
5 GOING TO ASK YOU TO RETIRE TO THE JURY ROOM FOR A FEW
6 MINUTES SO I CAN CONSULT WITH THE ATTORNEYS AND THEN --
7 WELL, I JUST CAN'T TELL YOU HOW LONG IT WILL BE, SO YOU
8 MIGHT WANT TO MAKE YOURSELVES COMFORTABLE, BUT IT MIGHT
9 NOT BE TOO LONG. I'M JUST NOT SURE UNTIL I DO TALK TO
10 THE ATTORNEYS. SO THEREFORE I'M GOING TO ASK YOU TO
11 RETIRE TO THE JURY ROOM.

12 REMEMBER, YOU HAVEN'T HEARD THE WHOLE CASE
13 YET. THIS IS ONLY THE STATE'S CASE, AND SO DO NOT
14 UNDERTAKE DISCUSSION OF THE CASE AMONG YOURSELVES IN ANY
15 WAY. SO IF YOU WOULD, PLEASE, RETIRE TO THE JURY ROOM.

16 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
17 11:38 A.M.)

18 **THE COURT:** ALL RIGHT. ANYTHING ELSE FROM
19 THE STATE?

20 **MS. HUEY:** NO, SIR, YOUR HONOR.

21 **THE COURT:** ANYTHING FROM THE DEFENDANT?

22 **MR. POTTER:** JUDGE, NOT AT THIS TIME. I
23 HAVE DISCUSSED WITH MY CLIENT HIS RIGHT TO TESTIFY, IF
24 YOUR HONOR WISHES TO ADDRESS HIM AT THIS TIME, HOWEVER
25 YOU WANT TO DO THAT. I WOULD ANTICIPATE US NOT CALLING

1 WHAT I'VE EXPLAINED TO YOU?

2 THE DEFENDANT: NO, SIR.

3 THE COURT: HAVE YOU DISCUSSED WITH YOUR
4 LAWYER WHETHER YOU SHOULD OR SHOULD NOT TESTIFY?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: DO YOU WISH TO TALK TO YOUR
7 LAWYER ANY MORE AT THIS TIME?

8 THE DEFENDANT: NO, SIR.

9 THE COURT: DO YOU WISH TO TESTIFY?

10 THE DEFENDANT: NO, SIR.

11 THE COURT: VERY GOOD. ALL RIGHT. YOU MAY
12 BE SEATED.

13 MR. POTTER: THANK YOU, YOUR HONOR.

14 THE COURT: LET'S SEE. IT'S A QUARTER TO
15 12. ARE YOU ALL READY TO GO FORWARD?

16 DEFENDANT'S MOTION FOR DIRECTED VERDICT, ARMED ROBBERY:

17 MR. POTTER: JUDGE, I DO FOR THE RECORD HAVE
18 A MOTION TO MAKE.

19 THE COURT: CERTAINLY.

20 MR. POTTER: AT THIS TIME THE DEFENSE WOULD
21 MOVE FOR A DIRECTED VERDICT ON THE ISSUE OF THE ARMED
22 ROBBERY. MY UNDERSTANDING OF THE ELEMENTS UNDER STATE
23 V. WILLIAMS, WHICH IS 266 S.C. 325, 223 S.E.2D 38
24 (READING):

25 TAKING AND CARRYING AWAY PERSONAL

1 PROPERTY OF ANOTHER WITH THE INTENT TO
2 DEPRIVE WITH USE OF FORCE OR A DEADLY
3 WEAPON.

4 YOUR HONOR, OUR POSITION IS THAT THE
5 ELEMENTS HAVE NOT BEEN MET BY THE STATE SPECIFICALLY
6 REGARDING THE PERSONAL PROPERTY OF ANOTHER. THE
7 PROPERTY AS INDICATED WAS MONEY TAKEN FROM A CASH
8 REGISTER OWNED BY GOODWILL, AND THE WITNESS TESTIFIED
9 THAT SHE WAS AT THE CASH REGISTER. THERE WAS NO
10 TESTIMONY IN REGARDS TO ANY PERSONAL PROPERTY BEING
11 TAKEN DIRECTLY FROM HER, AND WE WOULD SUBMIT THAT THE
12 ELEMENTS HAVE NOT BEEN MET.

13 **MS. HUEY:** YOUR HONOR, WE WOULD SUBMIT THAT
14 THEY HAVE --

15 **THE COURT:** MADAM SOLICITOR?

16 **MS. HUEY:** THANK YOU, JUDGE. WE WOULD
17 SUBMIT THAT THEY HAVE, IN THAT MS. AYERS HAD CUSTODY AND
18 CONTROL OF THAT CASH REGISTER AS AN EMPLOYEE OF
19 GOODWILL.

20 **THE COURT:** ARE YOU SAYING SHE DIDN'T GIVE
21 THE MONEY IN THE CASH REGISTER TO THE DEFENDANT?

22 **MS. HUEY:** SHE DID NOT GIVE IT ---

23 **THE COURT:** OR THE PERSON THAT TOOK THE
24 MONEY?

25 **MS. HUEY:** YES, SIR. SOMEONE STOLE THAT

1 MONEY FROM HER AS WELL AS THREATENED HER WITH A KNIFE IN
2 ORDER TO DO SO.

3 THE COURT: ALL RIGHT, MR. POTTER, ANYTHING
4 ELSE?

5 MR. POTTER: NO, YOUR HONOR.

6 COURT'S RULING ON DEFENDANT'S MOTION:

7 THE COURT: ALL RIGHT. I DO FIND THAT THERE
8 IS SUFFICIENT EVIDENCE TO GO FORWARD TO THE JURY ON THE
9 QUESTION OF ARMED ROBBERY AND DENY YOUR MOTION FOR A
10 DIRECTED VERDICT ON THE INDICTMENT FOR ARMED ROBBERY.

11 MR. POTTER: THANK YOU.

12 THE COURT: ALL RIGHT. ANYTHING ELSE?

13 MR. POTTER: I WOULD ASK FOR 15, 20 MINUTES
14 JUST TO COMPOSE MYSELF.

15 THE COURT: LET'S DO THAT. AND THEN GO TO
16 THE JURY?

17 MS. HUEY: WELL, JUDGE, I'M NOT SURE. I
18 DON'T KNOW IF IT'S TOO EARLY. YOU TYPICALLY SEND THEM
19 TO LUNCH, RIGHT, JUDGE?

20 THE COURT: NOT NECESSARILY. IF YOU ARE
21 GOING TO THE JURY, WHAT I WOULD PROBABLY DO IS ASK OUR
22 CLERK OR HER REPRESENTATIVE TO MAYBE TAKE SOME SORT OF
23 MENU IN OR SOMETHING -- IF WE HAVE ONE.

24 THE CLERK: YES, YOUR HONOR.

25 THE COURT: -- AND GET THEIR ORDER IN DURING

1 **THE COURT:** IF YOU WOULD. VERY GOOD. THANK
2 YOU. AND AS I SAY, THIS WILL CONCLUDE YOUR SERVICE THIS
3 WEEK AS WELL AS FOR THREE YEARS. THANK YOU SO MUCH.

4 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
5 2:08 P.M.)

6 SENTENCING OF THE DEFENDANT:

7 **THE COURT:** ALL RIGHT. IF THE DEFENDANT
8 WOULD COME AROUND.

9 ARE THERE ANY MOTIONS FROM THE DEFENDANT AT
10 THIS TIME?

11 **MR. POTTER:** NO, YOUR HONOR.

12 **THE COURT:** MADAM SOLICITOR, DO YOU HAVE A
13 SENTENCING SHEET?

14 **MS. HUEY:** YES, SIR, YOUR HONOR. WHILE HE'S
15 DOING THAT, IF I MAY MAKE THIS A COURT'S EXHIBIT.

16 (COURT'S EX. # 2, LIFE WITHOUT PAROLE NOTICE,
17 WAS MARKED FOR IDENTIFICATION.)

18 **MS. HUEY:** YOUR HONOR, I PASS UP COURT'S
19 EXHIBIT 2. IT WAS NOTICE OF OUR INTENTION TO SEEK LIFE
20 WITHOUT PAROLE IN THIS CASE, YOUR HONOR.

21 **THE COURT:** ALL RIGHT. MR. POTTER, HAVE YOU
22 SEEN WHAT CONSTITUTES COURT'S EXHIBIT 2?

23 **MR. POTTER:** I HAVE, JUDGE.

24 **THE COURT:** IT DOES APPEAR THAT THE TEN
25 DAYS' NOTICE WAS SERVED ON APRIL THE 29TH, 2008.

1 **MS. HUEY:** YES, SIR, YOUR HONOR.

2 **THE COURT:** IS THAT CORRECT, MR. POTTER?

3 **MR. POTTER:** YES, SIR.

4 **THE COURT:** IS THAT CORRECT, MR. EVANS?

5 **THE DEFENDANT:** YES, SIR.

6 **THE COURT:** AND THAT'S THE TEN DAYS' NOTICE
7 REQUIRED BY SECTION 17-25-45(H).

8 ALL RIGHT. ANYTHING FROM THE STATE?

9 **MS. HUEY:** NO, SIR, YOUR HONOR.

10 **THE COURT:** WELL, I DO FIND THAT THE
11 DEFENDANT, JEFFERY SCOTT EVANS, PLED GUILTY TO THE
12 CHARGE OF ARMED ROBBERY IN INDICTMENT NUMBER
13 95-GS-04-586 ON MARCH THE 9TH, 1995, FOR WHICH HE
14 RECEIVED A TERM OF 20 YEARS; AND BURGLARY AND ARMED
15 ROBBERY, OF COURSE, IS A MOST SERIOUS OFFENSE PURSUANT
16 TO SECTION 17-25-45(C), PURSUANT TO SECTION 16-11-338.

17 HE ALSO PLED GUILTY TO INDICTMENT NUMBER
18 95-GS-04-600, ARMED ROBBERY, AGAIN ON MARCH THE 9TH,
19 1995, AND RECEIVED A 20-YEAR SENTENCE.

20 AND UNDER INDICTMENT 95-GS-04-650 PLED
21 GUILTY TO INDICTMENT FOR BURGLARY IN THE FIRST DEGREE,
22 WHICH IS ALSO A MOST SERIOUS OFFENSE UNDER 16-11 DASH --
23 BURGLARY, FIRST DEGREE, UNDER 16-11-311 UNDER SECTION
24 17-25-45(C).

25 AND UNDER INDICTMENT 95-GS-04-660, PLED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)

INDICTMENT FOR

ARMED ROBBERY

16-11-330 (A) [0139]

POSSESSION OF A KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on 16-23-0490 [0549] AUG 28 2007

the Grand Jurors of ANDERSON County present upon their oath:

COUNT 1: ARMED ROBBERY

That Jeffrey S. Evans did in Anderson County on or about May 24, 2007 take and carry away from the person of Paula Ayers, an employee of the Goodwill Store, an unknown amount of cash by means of force, threats or intimidation with intent to deprive the owner permanently of such property while armed with a deadly weapon. All in violation of Section 16-11-330 (A), Code of Laws of South Carolina, (1976), as amended.

COUNT 2: POSSESSION OF A KNIFE DURING THE COMMISSION OF A VIOLENT
CRIME

That Jeffrey S. Evans did in Anderson County on or about May 24, 2007 possess a knife during the commission of a violent crime, to wit: Armed Robbery in violation of Code Section 16-3-10/16-3-20, Code of Laws of South Carolina, 1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Catherine J. Hugg
 SOLICITOR

WITNESSES

K. MATHESON - ACSD

ARREST WARRANT NO. J710558
DIRECT

ACTION OF GRAND JURY

TRUE BILL

AUG 28 2007

Foreman of Grand Jury

Foreperson

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2007-GS-04-2532

The State of South Carolina,
ANDERSON

County of

COURT OF GENERAL SESSIONS

AUG 28 2007 TERM

CTH

THE STATE

vs.

JEFFREY S. EVANS

Indictment for

ARMED ROBBERY
16-11-330(A) [0139]
POSSESSION OF A KNIFE DURING THE
COMMISSION OF A VIOLENT CRIME
16-23-0490[0549]

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 22nd, 2009



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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY S. EVANS,

APPELLANT

SUPPLEMENTAL
RECORD ON APPEAL

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1 SAYING THAT YOU CAN'T SAY HE'S THE ONE WHO ROBBED YOU?

2 A. (NO RESPONSE).

3 Q. I'M SORRY. THAT QUESTION WAS VERY BAD. PARDON
4 ME.

5 YOU DON'T KNOW IF THE DEFENDANT IS THE ONE WHO
6 ROBBED YOU; IS THAT RIGHT?

7 A. I BELIEVE HE IS.

8 Q. OKAY. BUT YOU DON'T KNOW THAT FOR SURE, DO YOU?
9 IT HAPPENS OVER A FAST PERIOD OF TIME, RIGHT?

10 A. THAT'S RIGHT.

11 Q. SECONDS. HE HAD A KNIFE PULLED ON YOU. THAT'S A
12 PRETTY STRESSFUL EVENT, ISN'T IT?

13 A. YES, IT WAS.

14 Q. AND YOU HAVE TOLD THE SOLICITOR THAT YOU CANNOT
15 PICK HIM OUT OF THE LINE-UP OR ANYTHING LIKE THAT, "HIM"
16 BEING THE DEFENDANT; IS THAT RIGHT?

17 A. THAT'S CORRECT.

18 Q. IS THE FACT THAT HE'S THE ONLY ONE SITTING AT THE
19 DEFENSE TABLE MAKE YOU BELIEVE HE'S THE ONE WHO DID IT?

20 A. NO.

21 Q. SO YOU DON'T KNOW IF HE DID ROB YOU THAT NIGHT OR
22 NOT. "HE" BEING THE DEFENDANT.

23 A. I BELIEVE HE IS.

24 Q. OKAY. BUT ARE YOU MAKING AN ASSUMPTION BASED
25 UPON THE FACT HE'S SITTING NEXT TO ME AT DEFENSE TABLE?

1 A. I DID, I DID SEE HIM AFTER, WHEN HE WAS RUNNING
2 OUT THE DOOR.

3 Q. OKAY. BUT THEN YOU TOLD THE SOLICITOR THAT YOU
4 COULDN'T PICK HIM OUT OF THE LINE-UP, CORRECT?

5 A. CORRECT.

6 Q. YOU SAID THE DEFENDANT HAD STRAWBERRY BLOND HAIR;
7 IS THAT RIGHT?

8 A. YES.

9 Q. AND HE HAD CURLY HAIR; IS THAT RIGHT?

10 A. RIGHT.

11 Q. YOU ALSO SAID THAT HE HAD A BEARD AND WAS
12 UNSHAVEN; IS THAT RIGHT?

13 A. RIGHT.

14 **MR. POTTER:** NOTHING FURTHER, JUDGE.

15 **THE COURT:** RE-EXAM?

16 **MS. HUEY:** YOUR HONOR, I DON'T HAVE ANYTHING
17 FURTHER FOR THIS WITNESS.

18 **THE COURT:** ALL RIGHT. YOU MAY STEP DOWN.
19 THANK YOU, MA'AM.

20 (WITNESS LEAVES STAND.)

21 **THE COURT:** YOU MAY CALL YOUR NEXT WITNESS.

22 **MS. HUEY:** THANK YOU, JUDGE. YOUR HONOR,
23 THE STATE CALLS PAT FRENCH.

24 (WHEREUPON, THE WITNESS WAS SWORN BY THE
25 CLERK.)

1 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND
2 SPELL YOUR LAST NAME FOR THE RECORD.

3 **THE WITNESS:** PATRICIA A. FRENCH,
4 F-R-E-N-C-H.
5 WHEREUPON,

6 PATRICIA FRENCH,
7 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
8 FOLLOWS:

9 DIRECT EXAMINATION BY MS. HUEY:

10 Q. MS. FRENCH, IF YOU DON'T MIND MY ASKING, HOW OLD
11 ARE YOU?

12 A. 62.

13 Q. AND HOW FAR DID YOU GO IN SCHOOL?

14 A. I GRADUATED HIGH SCHOOL.

15 Q. WHERE DO YOU WORK RIGHT NOW?

16 A. I WORK AT GOODWILL NUMBER SIX ON THE NORTH END OF
17 TOWN NOW.

18 Q. NOW, HAVE YOU ALWAYS WORKED AT THAT PARTICULAR
19 STORE?

20 A. NO, MA'AM, NO, I DIDN'T. I WORKED AT THE ONE ON
21 2901 SOUTH MAIN.

22 Q. AND WERE YOU WORKING AT THE ONE ON SOUTH MAIN IN
23 MAY OF 2007?

24 A. YES, MA'AM.

25 Q. NOW, SPECIFICALLY ON MAY 24TH OF 2007, DO YOU

1 REMEMBER WHAT YOU WERE DOING THAT EVENING?

2 A. YES, MA'AM. I WAS THE MANAGER THEN, AND I WAS
3 COMING OUT OF THE BACK ROOM COMING UP FRONT TO CHECK ONE
4 OF THE CASHIERS OUT. AND I WAS GOING TO PAULA'S
5 REGISTER, BUT SHE WAS BUSY SO I WENT TO NUMBER ONE
6 REGISTER INSTEAD.

7 Q. OKAY. SO YOU WERE GOING TO PAULA REGISTER BUT
8 YOU WENT TO NUMBER ONE INSTEAD. OKAY. NOW, WHAT WAS
9 PAULA'S REGISTER, DO YOU REMEMBER?

10 A. HER REGISTER WAS NUMBER THREE.

11 Q. OKAY. NOW HOW FAR APART ARE NUMBER THREE AND
12 NUMBER ONE?

13 A. PROBABLY ABOUT AS FAR AS WE ARE APART.

14 Q. SO WHEN YOU GOT TO REGISTER ONE, WHAT HAPPENED,
15 IF ANYTHING?

16 A. I WAS GONNA TALK TO THE CASHIER AND HELP HER, AND
17 I LOOKED UP AND I SEEN THE DEFENDANT RUNNING OUT ---

18 **MR. POTTER:** OBJECTION, YOUR HONOR. I NEED
19 TO TAKE THIS UP OUT OF THE JURY'S HEARING.

20 **THE COURT:** ALL RIGHT. MADAM FORELADY,
21 LADIES AND GENTLEMEN OF THE JURY, PLEASE RETIRE TO THE
22 JURY ROOM. DO NOT UNDERTAKE DISCUSSION OF THE CASE
23 AMONG YOURSELVES, PLEASE.

24 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
25 3:44 P.M.)

1 **THE COURT:** MADAM SOLICITOR?

2 **MS. HUEY:** JUDGE, I THINK WE'RE RUNNING INTO
3 THE SAME PROBLEM AGAIN. THEY ARE NOT KNOWING HOW TO
4 REFER TO THE SUSPECT, AND SO ---

5 **THE COURT:** WELL, WOULD IT NOT BE EASIER
6 JUST TO SAY, "I SAW SOMEONE RUNNING OUT"?

7 **MS. HUEY:** I AGREE, JUDGE. AND MAYBE IF I
8 HAVE A MOMENT TO DISCUSS WITH FUTURE WITNESSES ---

9 **THE COURT:** WHY DON'T WE TAKE A SHORT BREAK,
10 AND LET'S DO THAT. ALL WITNESSES THAT ARE GOING TO BE
11 ALONG THIS LINE ---

12 **MS. HUEY:** YES, SIR. I THINK THEY'RE
13 GETTING CAUGHT UP IN THE MOMENT, JUDGE.

14 **THE COURT:** WELL, LET'S SEE IF WE CAN'T --
15 THE THING IS THAT IF YOU DON'T KNOW, THEN YOU JUST REFER
16 TO IT AS YOU SAW SOMEONE. THAT'S APPARENTLY WHAT HAS
17 BEEN THE STATEMENT.

18 **MS. HUEY:** YES, SIR, YOUR HONOR, IT IS.

19 **THE COURT:** ALL RIGHT, VERY GOOD. WE'LL
20 TAKE A SHORT RECESS.

21 YES, MR. POTTER.

22 **MR. POTTER:** I APOLOGIZE, JUDGE. JUST FOR
23 THE RECORD, I'M GONNA MOVE FOR ANOTHER MISTRIAL. THIS
24 IS THE SECOND WITNESS THAT HAS SAID MY GUY.

25 **THE COURT:** THAT'S WHY I'M GIVING THESE --

1 I'M GOING TO DENY YOUR MOTION AT THIS TIME.

2 MR. POTTER: YES, SIR.

3 THE COURT: I'M TAKING IT UNDER ADVISEMENT
4 BECAUSE AS EACH OF THE TESTIMONY BEGINS, IT BECOMES
5 COMPOUNDED.

6 MS. HUEY: YES, SIR.

7 THE COURT: AND AT SOME POINT THE POUNDS
8 WILL HAVE GREATER WEIGHT THAN PERHAPS DESERVING.

9 MS. HUEY: YES, SIR, YOUR HONOR.

10 MAY I APPROACH THIS WITNESS?

11 THE COURT: I'M GOING TO LET THE WITNESS
12 STEP DOWN. AND DO YOU HAVE ANY OTHER WITNESSES?
13 MR. AYERS HAS FINISHED HER TESTIMONY.

14 MS. HUEY: YES, SIR. THERE ARE TWO OTHERS
15 ALONG THE SAME VEIN.

16 THE COURT: WHY DON'T YOU TAKE THE OTHERS
17 AND DISCUSS NOT THEIR TESTIMONY, AS SUCH, AS TO WHAT
18 THEY WILL TESTIFY TO BUT TO WHAT THEY CAN'T TESTIFY TO.

19 MS. HUEY: YES, SIR, JUDGE. THANK YOU.

20 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT
21 RECESS. THANK YOU, MA'AM.

22 ALL RIGHT. WE'LL STAND AT EASE.

23 (WHEREUPON, A RECESS WAS TAKEN.)

24 THE COURT: AGAIN, I'M GOING TO ASK YOU
25 RATHER POINTEDLY, MADAM SOLICITOR: ARE YOU READY TO

1 PROCEED?

2 MS. HUEY: (NODDED HEAD.)

3 THE COURT: IF THERE IS A PROBLEM, IT CAN
4 BE, AS I SAID EARLIER BEFORE WE TOOK THE RECESS, YOU
5 NEED TO TALK TO YOUR POTENTIAL WITNESSES. BUT IF
6 THERE'S ANOTHER STATEMENT THAT SUGGESTS MORE THAN THE
7 RECORD OF THE INVESTIGATION HAS REVEALED, THE COURT WILL
8 HAVE TO TAKE IT INTO CONSIDERATION IN ADDRESSING THE
9 QUESTION OF WHETHER OR NOT THERE IS PREJUDICE THAT CAN
10 BE OVERCOME BY CROSS-EXAMINATION.

11 MS. HUEY: YES, SIR, YOUR HONOR.

12 THE COURT: VERY GOOD. YOU MAY PROCEED.
13 ANYTHING FROM THE DEFENSE?

14 MR. POTTER: NO, YOUR HONOR.

15 THE COURT: SUBJECT TO YOUR PRIOR MOTION AND
16 MY RULINGS.

17 MR. POTTER: YES, SIR.

18 THE COURT: ASK THE JURY TO JOIN US, PLEASE.
19 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
20 3:55 P.M.)

21 THE COURT: ALL RIGHT. LET THE RECORD
22 REFLECT THE JURY AND ALTERNATE ARE IN THE JURY-BOX.

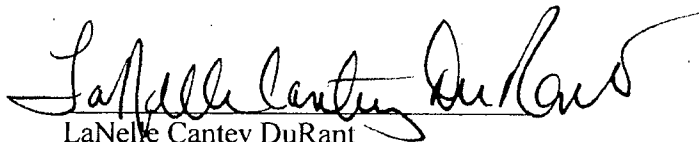
23 WE WILL NOW PROCEED WITH THE EXAMINATION OF
24 THIS WITNESS.

25 MADAM SOLICITOR?

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 3, 2009



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY S. EVANS,

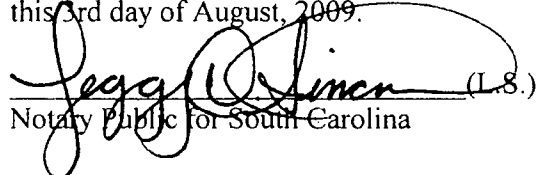
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Supplemental Record on Appeal in the above referenced case has been served upon Julie M. Thames, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 3rd day of August, 2009.

Warren T. Ferguson
Administrative Assistant

SUBSCRIBED AND SWORN TO before me
this 3rd day of August, 2009.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY S. EVANS,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in denying appellant's motion for a mistrial after two prosecution witnesses referred to appellant as the robber which was outside the scope of evidence because no witness had identified appellant as the robber?
2. Did the trial court err in denying appellant's motion for a directed verdict on the armed robbery charge when the state did not prove the elements of armed robbery because no personal property had been taken from Paula Ayers, an employee of the Goodwill Store?

STATEMENT OF THE CASE

On August 28, 2007, the Anderson County Grand Jury indicted Jeffrey Scott Evans on the charges of armed robbery (AR) and possession of a knife during the commission of a violent crime. On August 4-5, 2008, Evans proceeded to trial before the Honorable Alexander S. Macaulay and a jury. The jury returned verdicts of guilty as indicted. Judge Macaulay sentenced Evans to life without the possibility of parole (LWOP) as required by S.C. Code Section 17-25-45. Evans had prior convictions for burglary and armed robbery. ROA. 49, ll. 12 – 25; ROA. 50, ll. 1 – 24. Evans' attorney filed a notice of appeal. This appeal follows.

ARGUMENT

1.

The trial court erred in denying appellant's motion for a mistrial after two prosecution witnesses referred to appellant as the robber which was outside the scope of evidence because no witness had identified appellant as the robber.

On May 24, 2007, Paula Ayers was working at the Goodwill Store on South Main Street in Anderson as the cashier. Several customers were still in the store as it was near closing time. As she was checking out a customer, a man who she could not identify put a knife to her side and demanded the money from the cash register. The man then ran from the store with the money. ROA. 14, ll. 7 – 23; ROA. 15, ll. 4 – 25; ROA. 16, ll. 1 – 25; ROA. 17, ll. 1 – 25; ROA. 22, ll. 16 – 25; ROA. 23, ll. 1 – 18.

Kevin Matheson, investigator for the Sheriff's Department, was assigned to this case. He obtained information through other investigators that the robber's name was "Scott" and that he was at the Sunrise Motel. He also had a partial tag number for the car the robber was driving from a witness. As result of the investigation and looking at the surveillance video from the store, he focused on Jeffrey Scott Evans. ROA. 33, ll. 4 – 18; ROA. 34, ll. 1 – 25; ROA. 35, ll. 1 – 25; ROA. 36, ll. 1 – 25; ROA. 37, ll. 1 – 25; ROA. 38, ll. 1 – 20.

Evans was arrested at the home where he was staying. ROA. 39, ll. 9 – 25; ROA. 40, ll. When he was questioned by Investigator Matheson, Evans gave a statement admitting the robbery. ROA. 41, ll. 14 – 25; ROA. 42, ll. 1 – 25; ROA. 43, ll. 1 – 25; ROA. 44, ll. 1 – 25. During the pretrial hearing, Evans testified that he only gave a statement because Investigator Matheson told him that the most time he would probably get would be ten

years. Evans said he had been up six days smoking crack and ice at the time of the statement. ROA. 1, ll. 1 – 25; ROA. 2, ll. 1 – 25; ROA. 3, ll. 1 – 25.

When Paula Ayers testified, she said in response to the state's questions:

- Q. Okay. And so the register, in fact, came open?
- A. Yes, it did.
- Q. All right. So then what was the next thing you remember happening?
- A. Okay. I was fixing to give the lady her change, and the defendant.

ROA. 18, ll. 2 – 7.

At that point, defense counsel immediately objected and asked to consider an issue outside the presence of the jury. ROA. 18, ll. 7 – 25. Counsel argued to the court that he had been informed by the state that none of the witnesses could identify Evans as the robber. Based on that, counsel did not request a hearing to determine if the identification was reliable. He argued that the witness had just identified Evans as the robber by stating that the “defendant” had robbed the cash register. ROA. 19, ll. 1 – 6.

The state responded that the witness, Ms. Ayers, had not been able to identify Evans as the robber and could not pick him out of a photo line-up. That was the reason there was no hearing. She could give a description. ROA. 19, ll. 7 – 15.

The judge instructed the state to rehabilitate the witness since the witness was not able to identify but would leave it the solicitor as to how to do it. The judge said he would give a curative instruction if he felt it was necessary. ROA. 19, ll. 19 – 25; ROA. 20, ll. 1 – 14. The solicitor told the judge that none of the witnesses from the Goodwill Store could identify Evans as the robber. ROA. 20, ll. 10 – 23. The judge told the state to make it clear

in the testimony that the witness could not identify the robber. He again said he might have to issue a curative instruction. ROA. 20, ll. 24- 25; ROA. 21, ll. 1 – 1 – 7.

Defense counsel then made a motion for a mistrial because he believed that the identification might have an effect on the jury. He explained that the state said in their opening statement that no witness could identify Evans as the robber and then the very first State's witness identified him. Counsel asked for a new trial. The judge denied his motion for the time because the judge said it would depend on if the state "put the testimony in the proper perspective." ROA. 21, ll. 9 – 25.

The state was able to get Paula Ayers to testify that she was not able to pick out from a photo line-up "or otherwise" the person who committed this crime. ROA. 22, ll. 8 – 14.

The second witness, Pat French, was working at the Goodwill Store at the time of the incident. When she testified, she said:

Q. So when you got to Register one, what happened if anything?

A. I was gonna talk to the cashier and help her, and I looked up and I seen the defendant running out.

Supp. ROA. 3, ll. 1 – 25; Supp. ROA. 4, ll. 1 – 17.

Defense counsel again objected and moved for a mistrial again. The court instructed the state to take a break and talk with future witnesses to say "they saw someone." He instructed her to tell them what they could testify to and what they could not testify to. The judge denied defense counsel's motion for a mistrial. However, the judge stated that he was taking it under advisement "because as each of the testimony begins, it becomes compounded" and "at some point the pounds will have greater weight then deserving". Supp. ROA. 4, ll. 18 – 25; Supp. ROA. 5, ll. 1 – 25; Supp. ROA. 6, ll. 1 – 24.

The judge warned the state that if the problem continued, he would have to consider whether the prejudice could be overcome by cross-examination. He said that court would proceed subject to defense counsel's prior motions and his rulings. Supp. ROA. 7, ll. 3 – 18. The judge did not give a curative instruction to the jury either time the motion for a mistrial was made. ROA. 22, ll. 1 – 25; Supp. ROA. 7, ll. 1 – 25; ROA. 25, ll. 1 – 25.

The other two witnesses, Barbara Cooley and Suzanne Shirley, testified that a "gentleman" took money from the cash register and Ms. Shirley said "somebody" did it. Both stated they could not pick out the robber from a photo line-up. ROA. 26, ll. 1 – 25; ROA. 27, ll. 18 – 25; ROA. 28, ll. 1 – 25; ROA. 29, ll. 1 – 8; ROA. 30, ll. 4 – 25; ROA. 31, ll. 1 – 25; ROA. 32, ll. 15.

The decision to grant or deny a motion for a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Culbreath, 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008); State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct.App. 1999); State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999); State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455 (Ct. App. 2005).

The granting of the motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way. State v. Vazquez, 364 S.C. 293, 613 S.E.2d 359 (2005), State v. Patterson, 337 S.C. 251, 522 S.E.2d 845 (Ct. App.1999); State v. Edwards, 373 S.C. 230, 644 S.E.2d 66 (Ct. App. 2007).

When an objection is timely made to improper remarks of counsel, the judge should rule on the objection, give a curative charge to the jury, and instruct offending

counsel to desist from improper remarks. State v. Primus, 341 S.C. 592, 535 S.E.2d 152 (Ct.App.2000) citing State v. Harry, 321 S.C. 273, 468 S.E.2d 76 (Ct.App.1996).

In order to receive a mistrial, a defendant must show error and resulting prejudice. State v. Culbreath, *supra*.

In State v. Pickens, 320 S.C. 528, 466 S.E.2d 364 (1996), the Supreme Court reversed the trial court and remanded the case because the trial court should have issued a curative instruction where the solicitor referred to the defendant's failure to call witnesses. The Supreme Court ruled this was necessary although the solicitor made only one reference to defendant's failure to call witnesses.

In Evans' case, the state allowed two witnesses to say the "defendant" committed the robbery which they did not know was so. The trial court should have granted a mistrial or at least issued a curative instruction after the second witness gave inadmissible testimony. The trial court did not do either.

The trial court certainly should have granted the mistrial after the second witness identified Evans as the robber by saying the "defendant". The judge did not give a curative instruction although he admitted the testimony was prejudicial. He used the term "compounded with each testimony" and was considering granting the mistrial motion as indicated by the fact he said he was taking it under advisement. Supp. ROA. 6, ll. 3 – 5.

Evans was prejudiced because the testimony of two primary eyewitnesses stated "the defendant" was the robber, even though they did not know this was so. The judge commented on that when he said he would have to consider if the prejudice could be overcome by cross-examination. Supp. ROA. 7, ll. 3 – 10.

The state should have instructed the future witnesses on what they could testify to or not immediately after the first witness made the error of referring to Evans as the robber. The judge made it clear to her at that point that it was not admissible testimony.

The prejudice was sufficient to require the court to grant a mistrial and select a new jury. There was a reasonable probability that the idea that Evans was the robber was in the minds of the jurors when the first two eyewitnesses identified him by saying the defendant did it.

The trial court erred in denying appellant's motion for a directed verdict on the armed robbery charge when the state did not prove the elements of armed robbery because no personal property had been taken from Paula Ayers, an employee of the Goodwill Store.

After the state presented its case and rested and the judge talked to Evans about his right to testify or not, defense counsel made a motion for a directed verdict on the armed robbery charge. ROA. 45, ll.1; ROA. 45, ll. 22 – 25; ROA. 46, ll. 2 – 25. Counsel argued that the state had not met all of the elements of armed robbery but particularly the element regarding the taking of the personal property of another. ROA. 47, ll. 4 – 12.

Counsel said one of the elements was the taking and carrying away personal property of another with the intent to deprive with the use of force or a deadly weapon. He argued that there was no testimony that any personal property was taken from Paula Ayers. The property was money taken from a cash register owned by Goodwill. ROA. 46, ll. 25; ROA. 47, ll. 1 – 12.

The state argued in response that Ms. Ayers had custody and control of the cash register as an employee of Goodwill. She stated that someone stole the money from Ms. Ayers. ROA. 47, ll. 13 -25; ROA. 48, ll. 1 – 2.

The court ruled that there was sufficient evidence for the armed robbery to go to the jury. He denied the motion for a directed verdict. ROA. 48, ll. 5 – 11.

In a pretrial motion, defense counsel made a motion to quash the indictment on armed robbery because the language in the indictment indicated that Evans did take away property from the person of Paula Ayers. Counsel argued then that the indictment was

defective because the money was taken from the cash register owned by the Goodwill Store and not Paula Ayers. ROA. 10, ll. 6 – 20.

The judge ruled that it was clear that the owner was the Goodwill Store because the indictment said Paula Ayers was an employee of the Goodwill Store. The judge ruled that the indictment regarding the armed robbery was proper because Paula Ayers was in possession of the property. ROA. 11, l. 25; ROA. 12, ll. 1 – 5.

A trial judge should grant a directed verdict when the evidence merely raises a suspicion that the accused is guilty. State v. Arnold, 361 S.C. 386, 605 S.E.2d 529 (2004).

A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged. State v. Gentry, 363 S. C. 93, 610 S. E. 2d 494 (2005). In reviewing a motion for a directed verdict, a trial judge is concerned with the existence of the evidence, not with its weight. Id.

The offense of armed robbery occurs when a person commits a robbery while armed with a deadly weapon, and the display of the deadly weapon is not essential element of the crime. State v. Nix, 288 S.C. 492, 343 S.E.2d 627 (Ct. App. 1986); State v. Douglas, 359 S.C. 187, 597 S.E.2d 1 (Ct. App. 2004). “Robbery” is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting person in fear. State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003).

In State v. Philips, 73 S.C. 236, 53 S.E.370 (1906), the Supreme Court held that in an indictment for larceny the property may be laid in one who had merely the lawful possession. In that case, a cow was stolen from W. J. Bates who was the agent for the estate of Ms. Cornelia Bates. He was also her son. Evans’s case is distinguished because Paula

Ayers was the cashier, and not the designated agent for Goodwill Stores as Mr. Bates was the designated agent for the estate of his mother.

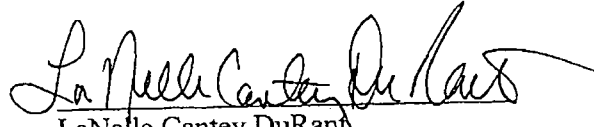
The state should have put in the indictment that the money belonged to Goodwill Stores but the indictment was not clear. See Indictment ROA. 51. From a reading of the indictment, the money could have belonged to Paula Ayers who just happened to be an employee of Goodwill. In this case, the indictment was not clear to whom the money belonged.

The court should have granted a directed verdict on the armed robbery.

CONCLUSION

Based on the above reasons, the convictions and sentences of the trial court should be reversed and the case remanded for a new trial.

Respectfully submitted,

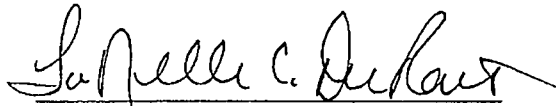

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of August, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

A handwritten signature in black ink, reading "Lanelle C. Durant". The signature is fluid and cursive, with the first name "Lanelle" being more prominent than the last name "Durant".

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STATE OF SOUTH CAROLINA

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Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

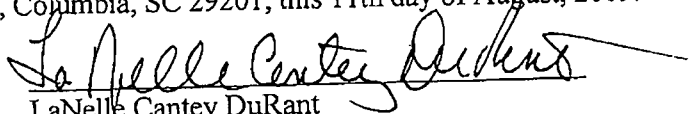
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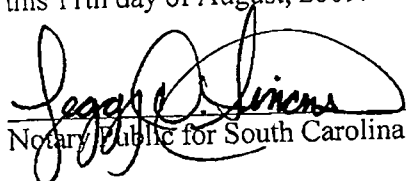
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie M. Thames, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of August, 2009.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of August, 2009.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

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STATEMENT OF ISSUES ON APPEAL

I.

Did the trial court correctly deny Appellant's motion for mistrial when no witnesses referred to Appellant as the "robber" and when no prejudice arose from the witnesses' testimony that referred to the "defendant?"

II.

Did the trial court correctly deny the motion for a directed verdict when there was sufficient evidence presented to send the case to the jury?

STATEMENT OF THE CASE

For purposes of this Brief, the Respondent concurs with the Statement of the Case provided by Appellant.

ARGUMENT

I.

The trial court did not err in denying the motion for mistrial when no witnesses referred to Appellant as the “robber” and when no prejudice arose from the witnesses’ testimony that referred to the “defendant.”

The Respondent submits that no witnesses referred to the Appellant as the “robber.” Two witnesses did refer to the “defendant” as part of their testimony, but the objections from defense counsel came so quickly that neither one of the witnesses actually testified that the “defendant” did anything. In addition, on both occasions, after the trial court admonished the solicitor, the witnesses testified extensively that they could not identify the robber, that they did not know him, that they could not pick him out of a line-up, and that they could not identify him in court as the person who robbed the Goodwill Industries store. Thus, no prejudice arose from this testimony.

The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002). An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support. State v. Irick, 344 S.C. 460, 545 S.E.2d 282 (2001). In order for an error to warrant reversal, the error must result in prejudice to the appellant. See Rule 103, SCRE; State v. Crocker, 366 S.C. 394, 621 S.E.2d 890 (Ct. App.2005). Error without prejudice does not warrant reversal. State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct. App 2005).

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an

error of law. State v. Crim, 327 S.C. 254, 257, 489 S.E.2d 478, 479 (1997). Our courts favor the exercise of wide discretion of the trial judge in determining the merits of such motion in each individual case. State v. Howard, 296 S.C. 481, 483, 374 S.E.2d 284, 285 (1988). "It is only in cases of abuse of discretion which result in prejudice that this court will intervene and grant a new trial." Id. A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons. State v. Patterson, 337 S.C. at 227, 522 S.E.2d at 851.

Appellate courts will not generally set aside convictions due to insubstantial errors which do not affect the result. State v. Douglas, 369 S.C. 424, 632 S.E.2d 845 (2006). In determining if an error is harmless, the appellate court will review the entire record to determine what effect the error had on the verdict. Id. "An insubstantial error not affecting the result of the trial is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. State v. White, 372 S.C. 364, 386, 642 S.E.2d 607, 618 (Ct. App. 2007).

The State's first witness was Paula Ayers. She was an employee of the Goodwill Industries and was working one of the cash registers when the robbery occurred. (R.pp.15-17). She testified that she was ringing up purchases for a woman and "I was fixing to give the lady her change, and the defendant. . ." Defense counsel objected before Ms. Ayers could finish her sentence and the jury was removed from the courtroom. (R.p.18). Ms. Ayers had not previously said anything about the robbery, or any suspicious activity. Defense counsel argued that he had been informed that none of the witnesses could identify the robber. He also complained that he had stated in his opening statement that no witnesses could identify

the perpetrator. He moved for a mistrial, arguing that the testimony could affect the jury. (R.pp.19-21). The trial judge denied the motion and required the solicitor to rehabilitate the witness "in the sense that the witness was not able to identify the individual. . ." (R.p.19, lines 19-22).

Upon the jury's return, the first question the solicitor asked Ms. Ayers was, "Now, Ms. Ayers, isn't it true that you were never able to pick out from a photo line-up or otherwise who committed this crime?" She responded, "That's true." (R.p.22, lines 11-14).

On cross-examination, Ms. Ayers was questioned extensively about her inability to identify Appellant as the perpetrator. She testified that she did not get a good look at him, that the event happened very quickly, and that she was scared of what might happen if she turned around and looked. (R.p.24, Supp.R.pp.1-2).

The next witness for the State was Patricia French, who testified that she was the manager of the Goodwill Industries store and on the evening of the robbery, she was coming out of the back room to check out one of the cashiers in preparation of closing the store for the evening. Because Ms. Ayers had a lot of customers, Ms. French went to the other register. Ms. French testified that when she got there, "I was gonna talk to the cashier and help her, and I looked up and I seen the defendant running out..." (Supp.R.p.4; lines 16-17; Supp.R.pp.3-4). Defense counsel again objected before the witness could finish her sentence and the jury was again removed from the courtroom. (Supp.R.p.4). Defense counsel again moved for a mistrial. The trial court denied the motion but warned the solicitor that each time it happened, the problem became more compounded. The judge cautioned the solicitor and instructed her to take time to instruct her witnesses not to refer to Appellant as the

"defendant." He also warned that if it happened again, he would have to consider "whether or not there is prejudice that can be overcome by cross-examination." (Supp.R.pp.5-7; p. 7, lines 9-10).

When the jury returned, the solicitor asked Ms. French, "Isn't it true that you were never able to pick out who robbed the Goodwill store that night?" Ms. French responded, "That's correct." Ms. French testified that she could not pick out the robber through a photo line-up or otherwise, and that she could not pick him out in the courtroom that day. (R.p.25).

The Respondent submits that defense counsel's prompt objections prevented any prejudice from arising. Neither witness actually testified to any illegal activity. Ms. Ayers in particular said she was preparing to give change to the customer she was waiting on, "and the defendant. . ." She did not testify that he did *anything*. Ms. French testified she saw the "defendant running out." Again, defense counsel objected before any damage could be done. Both witnesses were questioned thoroughly about the fact that they could not identify the defendant as the robber. Ms. Ayers and Ms. French both very clearly indicated that they could not identify the defendant in a photo line-up or in person in the courtroom. While both witnesses did use the word "defendant," neither witness actually testified that the defendant was the robber and neither witness identified the defendant as the robber. Because no prejudice arose to the defendant, the Respondent submits the trial judge did not err in denying the motion for mistrial.

Further, the Respondent submits that even if the trial judge did err, a review of the entire record demonstrates that the error did not effect the verdict in light of the conclusive evidence of guilt. State v. Douglas, supra; State v. White, supra. Appellant confessed to the

crime in a statement given to law enforcement one week after the robbery. While Appellant did say he had been up for days and had been smoking crack and ice, he admitted during the Jackson v. Denno¹ hearing that he understood his rights and that he gave the statement voluntarily. (R.pp.1-9; p.8, line 18 - p.9, line 2). Appellant does not challenge the voluntariness of this statement on appeal. Thus, Appellant's confession constitutes overwhelming evidence and negates any harm caused by the witnesses' testimony referring to him as the "defendant."

¹378 U.S. 368, 84 S. Ct. 1774, 12 L.Ed.2d 908 (1964).

II.

The trial court did not err in denying the motion for a directed verdict when there was sufficient evidence presented to send the case to the jury.

The Respondent submits the trial court did not err in denying the motion for a directed verdict when there was sufficient evidence presented to send the case to the jury.

“When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight.” State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). Furthermore, a defendant is entitled to a directed verdict at the trial level when the State does not produce evidence of the offense charged; however, if the State presents *any* evidence at trial which reasonably tends to prove the defendant's guilt, the case must go to the jury. State v. Gentry, 363 S.C. 93, 103, 610 S.E.2d 494, 500 (2005); State v. Ezell, 321 S.C. 421, 468 S.E.2d 679 (Ct. App.1996) (emphasis added).

In deciding whether the trial court erred in failing to direct a verdict in favor of a defendant in a criminal case, the appellate court must view the testimony in the light most favorable to the State. State v. Massey, 267 S.C. 432, 229 S.E.2d 332 (1976).

Armed robbery occurs when a person commits robbery while either armed with a deadly weapon or alleging to be armed by the representation of a deadly weapon. S.C. Code Ann. § 16-11-330 (2003). Included in armed robbery is the lesser-included offense of robbery, which is defined as “the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.” State v. Al-Amin, 353 S.C. 405, 424, 578 S.E.2d 32, 42 (Ct. App.2003). Larceny, which is a lesser included offense in the crime of robbery, is defined

as the felonious taking and carrying away of the goods of another against the owner's will or without his consent. Id. "Thus, it is the use or alleged use of a deadly weapon that distinguishes armed robbery from robbery, and the employment of force or threat of force that differentiates a robbery from a larceny." State v. Moore, 374 S.C. 468, 477, 649 S.E.2d 84, 89 (Ct. App.2007).

The Respondent notes that while Appellant's issue is framed as an attack on the judge's denial of the motion for a directed verdict, the argument itself focuses on the indictment. Appellant argues that the indictment was not clear as to who was the owner of the money that was stolen and that the State should have been required to include in the indictment that the money belonged to Goodwill. However, Appellant does not challenge the sufficiency of the indictment in the issue on appeal and cannot include this argument in his brief. Rule 208(b)(1)(B), SCACR. See Langehans v. Smith, 347 S.C. 348, 554 S.E.2d 681 (Ct. App. 2001) (In order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal). See also State v. Culbreath, 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008)(same).

In support of the argument that the judge erred in denying the motion for a directed verdict, Appellant cites State v. Phillips, 73 S.C. 236, 53 S.E.370 (1906). Appellant argues that his case is distinguishable from Phillips because in that case, Bates was an agent of the owner of the cow that was stolen. Appellant argues Ms. Ayers was not the agent of Goodwill.

Defense counsel argued in support of his motion for a directed verdict, "the elements have not been met by the State specifically regarding the personal property of another."

(R.p.47, lines 4-6). He argued there was no testimony that any personal property was taken from Ms. Ayers. (R.p.47). The solicitor argued that Ms. Ayers had custody and control of the money in the register as an employee of Goodwill. The Court denied the motion and found that there was sufficient evidence to send the case to the jury. (R.pp.47-48).

The Respondent submits the testimony clearly demonstrated that Ms. Ayers was an employee of Goodwill Industries and that she had custody and control of the money in the cash register that was taken. She testified that she was a six-year employee of Goodwill and was at work on the evening of the robbery. Her job that evening was to run the register. The robber took the money from her cash register drawer while she was standing at the register. He took the money while holding a knife to her side. The robber also threatened to cut Ms. Ayers if she said anything. (R.pp.15-16; p.22). Ms. French testified that she was the manager that night and that Ms. Ayers was assigned to register three that night. (Supp.R. pp.3-4).

There is no question that the robber took money of another by putting Ms. Ayers in fear. He held a knife to her side, threatened to cut her, took money out of the cash register, and fled. The fact that the money belonged to Goodwill is irrelevant as Ms. Ayers was acting as an employee of Goodwill in running the register. Appellant's argument seems to focus on an alleged flaw in the indictment. This was argued at trial and was denied by the trial judge (R.pp.10-13), but was not set out in the issue on appeal and cannot be the basis of the argument that a directed verdict motion should have been granted.

The Respondent submits the trial judge did not err in denying the motion for a direct verdict when there was ample evidence presented to send the case to the jury. State v.

Gentry, supra. That evidence included a voluntary confession given by Appellant. In addition, although not challenged on appeal, the trial judge did not err in denying Appellant's pre-trial motion to quash the indictment. The indictment clearly was sufficient to put Appellant on notice as to what charges he was facing. Id.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

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August 14, 2009.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Anderson County
Alexander S. Macaulay, Circuit Court Judge

THE STATE,

Respondent,

vs.

JEFFREY S. EVANS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

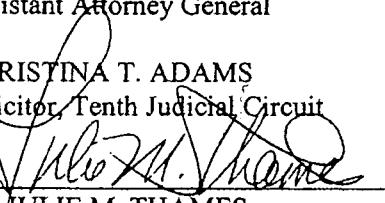
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PROOF OF SERVICE

I, Jena K. Breedlove, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.

This 14th day of August, 2009.


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