

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Florence County

William H. Seals, Jr., Circuit Court Judge

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**S.C. Supreme Court**

LATISHA COCHRAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001388

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**A P P E N D I X**

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**  
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STATE OF SOUTH CAROLINA)  
COUNTY OF FLORENCE ) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)  
STATE,)

v.

LATISHA LEE COCHRAN )  
DEFENDANT.)

TRANSCRIPT OF RECORD  
09-GS-21-00422  
October 18, 2010  
Florence, South Carolina

**BEFORE:**

THE HONORABLE MICHAEL G. NETTLES, JUDGE; AND  
JURY

**APPEARANCES:**

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JESSE S. CARTRETTE, ESQ.  
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**EXHIBITS****STATE'S:**

| No.       | Description                 | I.D./EVD. |
|-----------|-----------------------------|-----------|
| 1         | Miranda form of<br>11/19/08 | 12/131    |
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**COURTS:**

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| 2   | Note from jury | 213       |

1           **THE COURT:** Ms. Parr, is there any objection on  
2 behalf of the State with regard to jury selection process?

3           **MS. PARR:** No, Your Honor, there's not.

4           **THE COURT:** Any from Defense?

5           **MR. CARTRETTE:** No, Your Honor.

6           **THE COURT:** Very good. All right.

7           **MS. PARR:** And Your Honor, I have a copy for...

8           **THE COURT:** Let's come to order. We're ready for  
9 the jury.

10 (WHEREUPON, the jury was returned to the courtroom, and  
11 the following proceedings commenced in open court.)

12           **THE COURT:** Yes, ma'am, I'm gonna ask if you can  
13 have a seat right there in that chair, yes, ma'am. Now  
14 you're the alternate?

15           **THE DEPUTY CLERK OF COURT:** Ms. Bess and  
16 Ms. Stone are the alternates.

17           **THE COURT:** Mr. Cook, I'm gonna ask you to have a  
18 seat right in the front. Mr. Cook, I'm gonna ask that you  
19 serve as the foreman of this jury. You, like everyone  
20 else when it comes time to deliberation, are gonna have  
21 one vote. But you're gonna have some additional  
22 responsibilities, one of which is to preside over the  
23 deliberations. That simply means to insure that  
24 everyone's voice is heard in the deliberation process. In  
25 addition to that, throughout the trial of this case there

1 might be concern or questions that develop amongst the  
2 members of the jury. I'm gonna ask them to communicate  
3 those concerns to you, and you can communicate through the  
4 bailiff, and if it's something we can answer and help you  
5 with we certainly will do that. At this time I'm gonna  
6 ask if you could, to stand and raise your right hand as  
7 the clerk administers the oath.

8 (WHEREUPON, the jury was sworn at 11:58 a.m.)

9 THE DEPUTY CLERK OF COURT: Please be seated.

10 THE COURT: Apparently the two witnesses were  
11 inadvertently omitted from the voir dire process, and I'm  
12 gonna ask, is anyone related by blood or marriage to Jerry  
13 Bush or Quentin Epps? If so, please stand.

14 (There was no response.)

15 THE COURT: No response. Thank you. All right.  
16 Mr. Foreman, ladies and gentlemen of the jury, we're gonna  
17 recess for lunch and I want to tell you, give you some  
18 instructions for your lunch break. You know, there's not  
19 anything in the world that you can't look up on the  
20 internet. And I'm gonna order, instruct, and demand that  
21 you not do any kind of research or do any kind of  
22 investigation with regard to the internet because you have  
23 taken a very solemn oath to base your decision on the  
24 evidence that comes forth in this courtroom and the law as  
25 I charge it to you. Do not do any independent

1 investigation. You haven't heard any evidence at this  
2 juncture as to where this allegation took place. But when  
3 you do hear that type information don't go and do any  
4 independent investigation. The – you need to base your  
5 decision on what transpires here in this courtroom. I bet  
6 you bottom dollar that when you return to your home for  
7 lunch or back, go back to your place of work, people are  
8 gonna say, well tell me what happened during the jury  
9 selection process. And I'm gonna order and demand that  
10 you not tell them about it. Don't talk to them even about  
11 the type case, and the reason for that is they might have  
12 some opinion about this type litigation. You need to base  
13 your decision on what transpires here in this courtroom.  
14 I'm gonna ask that y'all return back at 3:00.

15           Mr. Foreman, there are gonna be times where  
16 you're in the jury room waiting on the trial to start back  
17 up, and I'm gonna ask that you enforce the rule that there  
18 be no discussion about the case. You can't talk about the  
19 case. Y'all don't even know anything about it now; but  
20 throughout the trial, when you're in the jury room you  
21 cannot deliberate in any way, shape, or form. You can't  
22 comment on the evidence. And Mr. Foreman, I'm gonna ask  
23 that you enforce that rule because it's only after you  
24 hear all of the evidence and the law as I charge it to you  
25 that you can begin deliberations, and I will indeed give

1 you instructions as to what that is. Do not begin  
2 deliberations in any way, shape, or form.

3 Anything from the State before we release the  
4 jury for lunch?

5 MS. PARR: Nothing from the State, Your Honor.

6 THE COURT: Anything from Defense?

7 MR. CARTRETTE: Nothing, Your Honor.

8 THE COURT: All right. Mr. Foreman, ladies and  
9 gentlemen of the jury, we're gonna come back early because  
10 there are legal matters that we need to tend to and I  
11 don't want y'all to have to sit in the jury room while we  
12 do that. So I'm gonna ask that you be back at 3:00.  
13 We're gonna be back earlier than that taking care of some  
14 business getting ready for y'all's return. Once again, do  
15 not discuss the case amongst yourselves or with anyone  
16 else. Everyone remain seated as the jury exits the  
17 courtroom.

18 (WHEREUPON, the jury was removed from the  
19 courtroom at 12:00 p.m., and the following proceedings  
20 commenced in open court.)

21 THE COURT: Mr. Cartrette, you're recognized.

22 MR. CARTRETTE: Your Honor, may it please the  
23 Court, I'm Jesse Cartrette. I represent Miss Latisha  
24 Cochran on this charge of armed robbery and possession of  
25 a weapon during the commission of a violent crime. I do

1 have a motion that I would like to proffer to the Court to  
2 suppress certain evidence, Your Honor. If I may hand it  
3 up to the Court.

4 THE COURT: Certainly. All right. Mr. Cartrette  
5 has filed a motion to suppress the statements of the  
6 defendant.

7 Ms. Parr, are you in a position to proceed  
8 forward with the Jackson v. Denno hearing?

9 MS. PARR: Your Honor, I'm not — at this time,  
10 Your Honor, the — Mr. Franklin McAllister is upstairs in  
11 the other trial. They're drawing that jury and —

12 THE COURT: Okay.

13 MS. PARR: —he will be the one that will —

14 THE COURT: All right, well, you need to go and  
15 get him. He doesn't need to watch the jury selection  
16 process.

17 MR. CARTRETTE: Your Honor, if I may have a brief  
18 moment to run a copy of — the solicitor informed me she  
19 would like a copy of that.

20 THE COURT: If you can just share that original  
21 with her.

22 MR. CARTRETTE: Thank you, Your Honor.

23 THE COURT: Ms. Parr, I anticipate that we're  
24 gonna — you indicated that the Jackson v, Denno hearing  
25 would probably last about 30 minutes. I anticipate us

1 going ahead and tending to that before we break for lunch,  
2 and then we'll see what else needs to be tended to.

3 (Mr. McAllister enters courtroom.)

4 THE COURT: All right, Ms. Parr, you're  
5 recognized.

6 MS. PARR: Your Honor, at this time  
7 Mr. Richardson is going to conduct the Jackson v. Denno  
8 hearing.

9 THE COURT: Mr. Richardson, you're recognized.

10 MR. RICHARDSON: Thank you, Your Honor. The  
11 State would call Franklin McAllister to the stand.

12 THE COURT: Mr. McAllister, I'm gonna ask you if  
13 you could, to come forward and this Bible is right here  
14 beside the microphone. I'm gonna ask you to put it up on  
15 the ledge. Place your left hand on the Bible and raise  
16 your right hand as the clerk administers the oath.

17 WHEREUPON,

18 FRANKLIN "SKI" MCALLISTER,  
19 having been duly sworn by the Deputy Clerk of Court,  
20 testified as follows:

21 THE DEPUTY CLERK OF COURT: Please be seated and  
22 state your full name for the record.

23 THE COURT: Mr. McAllister, if you would speak  
24 loudly, clearly, and slow in order so that we can hear  
25 everything that you got to say.

Proffer - F. McAllister - Direct

1 THE WITNESS: Franklin "Ski" McAllister.

2 THE COURT: Very good.

3 MS. PARR: Thank you, Your Honor.

4 **DIRECT EXAMINATION**

5 BY MS. PARR:

6 Q Mr. McAllister, you had an occasion to take a couple of  
7 taped statements from the defendant in this case,  
8 Ms. Cochran, and that was part of your investigation; is  
9 that correct?

10 A Correct.

11 Q And at the time of this investigation you were employed  
12 by the Lake City Police Department; is that right?

13 A Correct.

14 Q What was the nature of your employment? What was your  
15 position?

16 A I was a sergeant over investigations. I was a  
17 supervisor in the criminal investigation division.

18 Q Okay, and this was in late 2008; is that right?

19 A Correct.

20 Q How long had you been with Lake City?

21 A Approximately five years at that time.

22 Q All right. And you are not so employed now. You're  
23 not with the Lake City Police Department?

24 A Correct.

25 Q When did you cease to be employed with them?



Proffer - F. McAllister - Direct

1 A November 23rd, 2009.

2 Q Okay. So you were employed in a position of  
3 investigator at the time this armed robbery took place and  
4 at the time Ms. Cochran gave these statements to you; is  
5 that correct?

6 A Correct.

7 Q All right. Investigator, you identified Ms. Cochran as  
8 a suspect in this armed robbery case?

9 A Correct.

10 Q All right. And you identified her as having what role  
11 in this robbery?

12 A She made the phone call to the victim by her cell  
13 phone, and she was in the vehicle with the co-defendants  
14 at the time of the robbery.

15 Q How were you able to identify her as a suspect?

16 A Initially, through the credit card uses of the victim's  
17 credit card which was used at McDonalds in Lake City. And  
18 upon further investigation the credit card she attempted  
19 to use at the Captain D's across the street on the same  
20 day. I was able to identify her by a vehicle she was  
21 driving. I brought her into the Lake City Police  
22 Department for the first initial interview.

23 Q Okay. She gave you a total of two statements; is that  
24 right?

25 A Correct.

Proffer - F. McAllister - Direct

1 Q And what date was the first one?

2 A I have to refer back to the Miranda form she signed.

3 Q Okay.

4 MR. RICHARDSON: I'd like to have these marked as  
5 State's Exhibit 1 and 2 for I.D.

6 (WHEREUPON, State Exhibits Nos. 1 and 2 were marked for  
7 identification only.)

8 BY MR. RICHARDSON:

9 Q Investigator, I want to show you what have been --  
10 what's been marked State's Exhibit 1 for identification.  
11 At this time do you recognize that document?

12 A Correct, I do.

13 Q All right. And what is that document?

14 A It is the statement Miranda rights that I presented and  
15 verbally read to her and had her initial one through five  
16 and signed the waiver that she was waiving her rights, and  
17 of course I witnessed it on November 19th, 2008, at 9:01.

18 Q So November 19th, 2008, is that the date of her first  
19 statement?

20 A Correct.

21 Q All right. And then this is the waiver of rights form  
22 that you gave her?

23 A Correct.

24 Q And she initialed by each portion of the Miranda  
25 rights?

## Proffer - F. McAllister - Direct

1 A Correct.

2 Q How did you present those rights to her on this  
3 particular day?

4 A I verbally read the statement of Miranda rights. She  
5 "had the right to remain silent. Anything you say can and  
6 will be used against you in a court of law. You have the  
7 right to talk to a lawyer and have him present with you  
8 while you're being questioned. If you cannot afford to  
9 hire a lawyer one will be appointed to represent you  
10 before any questions if you wish. You could decide to  
11 exercise these rights and not answer any questions and  
12 make any statements." And I also read the waiver of  
13 rights. "I read the statement of my rights and understand  
14 each of those rights. Having these rights in mind I waive  
15 them and willing to make a statement." And of course, she  
16 signed the waiver of rights and then I witnessed it.

17 Q Okay. So you read her her rights off of this form?

18 A Correct, and I also —

19 Q She —

20 A And I also had her read them as well and initial.

21 Q And she initialed by each one and then signed at the  
22 bottom?

23 A Correct.

24 Q And you also signed the form; is that correct?

25 A Correct.

Proffer - F. McAllister - Direct

1 Q Okay. Now when she came in for this first statement —  
2 before I get there, Your Honor, I'd like to have this item  
3 introduced into evidence.

4 THE COURT: Any objection?

5 MR. CARTRETTE: Your Honor, I'd like to see it  
6 first if I may. Your Honor, I would object. At this time  
7 my client informs me this is not her signature, Your  
8 Honor. These are not her initials.

9 THE COURT: All right. Well, based on that  
10 probably would go more towards the weight than  
11 admissibility. I understand that Mr. — Investigator  
12 McAllister indicated he read it to her and that he saw  
13 her sign it. And in view of that I'm going to allow it  
14 into evidence for purposes of this hearing only. Very  
15 good. It's in the evidence as Court's exhibit. State's  
16 exhibit will be fine.

17 MR. RICHARDSON: Thank you, Your Honor.  
18 (WHEREUPON, State Exhibit No. 1 was admitted into  
19 evidence.)

20 BY MR. RICHARDSON:

21 Q Investigator McAllister, when Ms. Cochran came in for  
22 this first interview, was she under arrest at that time?

23 A She was not under arrest.

24 Q Okay. So where were you located when you gave this,  
25 when she did this interview?

## Proffer - F. McAllister - Direct

1 A In my office at the Lake City Police Department.

2 Q Who was present in the room?

3 A Myself and Latisha Cochran.

4 Q Was she — wasn't in handcuffs or you hadn't locked up  
5 her in the room or anything?

6 A No.

7 Q All right. How long a period of time was she in the  
8 room with you?

9 A Approximately 20 to 25 minutes.

10 Q Okay. No other law enforcement officers were there?

11 A No.

12 Q Okay. And what's, if you could describe kind of the  
13 size of the room you're in and its location within the  
14 police department?

15 A It is on the back hall of the Lake City Police  
16 Department, very back office. The office is probably 9 by  
17 8 foot, desk with a office chair, and two chairs that were  
18 sitting in front of the desk.

19 Q Okay. How did you happen to get her to come in to see  
20 you?

21 A At that point I believe that I identified her by her  
22 vehicle, and I was given a — her name. And for what I  
23 remember, she — I put out in the community I was looking  
24 for her and to talk to her and she came forward to the  
25 police department.

**Proffer - F. McAllister - Direct**

1 Q Okay. So she voluntarily came up to talk with you?

2 A Correct.

3 Q All right. When she was back in your office was she  
4 free to leave?

5 A Correct.

6 Q Did you issue any threats or anything to coerce her to  
7 give a statement on that day?

8 A No, I did not.

9 Q Okay. She indicated to you that she was -- she  
10 understood the nature of the investigation?

11 A Correct.

12 Q And she was willing to make a statement at that time?

13 A Correct.

14 Q Very good. What did she tell you on this first  
15 interview?

16 A Once she was Mirandized and also on the audio recorded  
17 statement I asked her if she was previously advised of her  
18 Miranda rights, and on the audio statement I recorded that  
19 I advised her rights again. And she indicated to me that  
20 she found the victim's wallet in front of Ron McNair  
21 Middle School laying on the grass area on Carver Street,  
22 and she said she had her mother with her. And she found  
23 credit cards and wanted to see if they worked so that's  
24 when she went and tried the first credit card at McDonalds  
25 and the transaction went through. She said in her

Proffer - F. McAllister - Direct

1 statement she went back home and a relative or somebody,  
2 her family wanted something else to eat and she went back  
3 to Captain D's and tried to use the card there and that's  
4 when it declined. She stated to me -- I inquired about  
5 where the card was at this time and the black wallet of  
6 the victims, said she threw it out the window at somewhere  
7 behind Santee Cooper which on the corner of Westover and  
8 West Main Street in Lake City at that field, back there  
9 behind that.

10 Q Okay. And while you were taking this statement from  
11 her you mentioned something about a recording. Did you  
12 audio record that statement?

13 A Correct, I did.

14 Q Was the defendant aware that the statement was being  
15 recorded?

16 A Correct.

17 Q Okay. And did you have the recording device in front  
18 of you where she could see it and where y'all were both  
19 speaking into it?

20 A Correct.

21 Q Okay.

22 MR. RICHARDSON: I need to have this marked as  
23 well. Three?

24 THE COURT: Any objection to with regard to this  
25 particular item of evidence?

## Proffer - F. McAllister - Direct

1 MR. CARTRETTE: Statement one, Your Honor?

2 THE COURT: Yes.

3 MR. CARTRETTE: No, sir, Your Honor.

4 THE COURT: It's introduced into evidence as  
5 State's Exhibit Number 3.

6 (WHEREUPON, State Exhibit No. 3 was marked for  
7 identification and received into evidence.)

8 BY MS. PARR:

9 Q Investigator, this item that's been introduced as  
10 State's Number 3, that's the -- a recording of the  
11 statement you took from Ms. Cochran on November 19th,  
12 2008?

13 A Correct.

14 Q Okay. After you took this statement from Ms. Cochran  
15 you subsequently took another statement from Ms. Cochran;  
16 is that right?

17 A Correct.

18 Q What led up to you taking this second statement?

19 A I received information from a informant Marshinette  
20 Graham, which indicated to me what she was advised about  
21 the incident by Quentin Epps, and basically the  
22 investigation, that's what led to me interviewing her  
23 again.

24 Q All right. So Quentin Epps is another co-defendant --

25 A Correct.



## Proffer - F. McAllister - Direct

1 Q —; is that right? And Marshinette Graham was an  
2 acquaintance of Mr. Epps?

3 A Correct, at that time.

4 Q Okay. So based on information you got from Ms. Graham  
5 about Ms. Cochran, you wanted to talk to her again; is  
6 that right?

7 A Correct.

8 Q Okay. And did she come in to the office again to speak  
9 with you?

10 A Correct.

11 Q All right. This time around was she under arrest?

12 A At this time around I think I did obtain warrants from,  
13 I believe, I have to refer back to the incident report. I  
14 believe I had warrants —

15 Q Okay.

16 A —at this time.

17 Q The second statement. I want to show you what's been  
18 marked as State's Number 2 for identification only. Do  
19 you recognize this?

20 A Correct.

21 Q What is it?

22 A It is the waiver of Miranda rights that she signed on  
23 December 24th, 2008.

24 Q All right. And is this the item that you presented to  
25 her?

Proffer - F. McAllister - Direct

1 A Correct.

2 Q Okay.

3 A With my signature as witness and hers waiving the  
4 rights and the initials.

5 Q So the second time she came in was December 24th —

6 A Correct.

7 Q —of '08, a little over a month later?

8 A Uh-huh.

9 MR. CARTRETTE: Your Honor, I have to object on  
10 behalf of my client told me, maintains this is not her  
11 signature and not her initials.

12 THE COURT: Well, she — you'll be given an  
13 opportunity to present evidence in that regard, but this  
14 document, which is denominated as State's Exhibit Number  
15 2, is in the evidence for purposes of this hearing.

16 MR. RICHARDSON: Thank you, Your Honor.

17 BY MR. RICHARDSON:

18 Q Investigator, where was this interview conducted?

19 A It was conducted in my office in Lake City Police  
20 Department.

21 Q Okay. And same surroundings, correct? Only you and  
22 the defendant present?

23 A Correct.

24 Q Okay. And she was in custody at that time?

25 A Based on my knowledge of the incident, correct.

## Proffer - F. McAllister - Direct

1 Q Okay. And did you read her her Miranda warnings off  
2 that form just like you did the first time?

3 A Correct.

4 Q All right. And she initialed by each —

5 A Correct.

6 Q —warning? And she signed it at the bottom?

7 A That's correct.

8 Q And then you signed a witness to her signature?

9 A Correct.

10 Q All right. What was the content of her statement on  
11 that occasion?

12 A She indicated to me that they were planning a lick,  
13 which is the co-defendant's and her — they were coming  
14 from Florence according to her audio statement — that  
15 they were coming from Florence and that they went to the  
16 projects. She was the one that initiated the phone call  
17 to the victim to try to get him outside and inquired on  
18 that phone conversation if he was coming out to go to a  
19 club. Well, she indicated that they parked the car on one  
20 of the streets back, which would be Clover Street. And  
21 she said that Jerry Bush and the other co-defendants got  
22 out the car. Her and Quentin Epps stayed in the car.  
23 And they walked up to the back of the store and at that  
24 time the victim had not come out yet. According to her  
25 statement that one of the co-defendants did come back to

## Proffer - F. McAllister - Direct

1 get Quentin Epps. I think Quentin Epps went forward and  
2 actually knocked on the door of the victim's store, which  
3 is his residence in the back of the store. And Quentin  
4 came back and got in the driver's seat of the vehicle at  
5 that time. And then she heard, get down, and a lot of  
6 confrontation and yelling going on in that area. She told  
7 me that one of the co-defendants, Bo Bo Chas<sup>2</sup>, Chas<sup>2</sup>monte  
8 Brown, and Jerry Bush all had guns. She indicated to me  
9 that Quentin Epps, that Jerry Bush had a gun that was  
10 given by Quentin Epps. They got it someplace in Florence,  
11 went to somebody's house and got it someplace in Florence.  
12 She stated to me that Quentin got scared and started to  
13 drive off during this time, and they heard some gunshots  
14 ring out. And that the three co-defendants that had the  
15 weapons that was involved in the robbery, ran the car down  
16 and they hopped in the car. Her statement said they  
17 originally went back through Wedgefield Trailer Park and  
18 ended up going back to her residence, which Ladson (ph)  
19 Street Trailer Park. And at that time that's when they  
20 divided up the money. She indicated to me in the  
21 statement that all the other codefendants involved got  
22 approximately a hundred dollars in twenties. She watched  
23 them count out approximately a hundred dollars in  
24 twenties, and she didn't get anything out of the robbery.  
25 And she said that Quentin Epps took the wallet that night;

## Proffer - F. McAllister - Direct

1 and the next day, that's when Quentin gave the wallet to  
2 her with the credit cards. That's when she went  
3 to McDonalds and tried to use the credit cards. And she  
4 also stated that she did throw the wallet out of the  
5 window on Westover Street in the lot behind Santee Cooper  
6 in Lake City on Westover and Main Street.  
7 Q Okay. Was this statement tape recorded as well?  
8 A Correct.  
9 Q Same manner and method you used the first time?  
10 A Same manner and method.  
11 Q All right.  
12 MR. RICHARDSON: I'd like to have this item  
13 marked.  
14 THE COURT: Any objection from Defense with  
15 regards to the recording?  
16 MR. CARTRETTE: No, Your Honor.  
17 THE COURT: State's Exhibit 4 is in the evidence  
18 for purposes of this hearing.  
19 MR. RICHARDSON: Thank you, Your Honor.  
20 (WHEREUPON, State Exhibit No. 4 was marked for  
21 identification and admitted into evidence.)  
22 BY MR. RICHARDSON:  
23 Q Investigator McAllister, you indicated that during both  
24 of these encounters you had with Ms. Cochran, that you  
25 read her her rights, that she understood them?

## Proffer - F. McAllister - Direct

1 A Correct.

2 Q She signed, initialed. And at any time during either  
3 one of those encounters did she advise you she wished to  
4 speak to an attorney?

5 A At no time. At no time. And on both times read her  
6 previously to the audio recorded statement I read her her  
7 rights and she signed it, and also I asked her while audio  
8 recording had she previously been advised of her rights.  
9 She said yeah. On the record I read her rights again.

10 Q Okay. Did you do or say anything to threaten or coerce  
11 the defendant to gave statement against her interest?

12 A No, I did not.

13 Q Okay. At any point in time did she ask you to stop  
14 questioning her?

15 A No, sir, she did not.

16 Q Okay. Investigator, in your observation did the  
17 defendant appear to be in her right state or frame of mind  
18 when she was talking to you?

19 A Correct, she was. She understood the Miranda rights  
20 presented. And once again, she went through and initialed  
21 one through five and signed the waiver of rights and I  
22 witnessed it, the date and time on those sheets.

23 Q Very good. Mr. McAllister, please answer any questions  
24 Mr. Cartrette may have for you.

25 THE COURT: Cross-examination, Mr. Cartrette.

Proffer - F. McAllister - Cross

1 MR. CARTRETTE: Yes, sir, Your Honor, may it  
2 please the Court.

3 CROSS-EXAMINATION

4 BY MR. CARTRETTE:

5 Q Good afternoon, Mr. McAllister. How are you, sir?

6 A Doing good, sir.

7 Q You indicated that you worked with the Lake City Police  
8 Department until November 23rd, 2009; is that correct?

9 A Correct.

10 Q Were you dismissed from there or were you -- did you  
11 resign? How did that come about?

12 A No. Officially I gave a 15 day notice on in writing,  
13 but verbally it's probably about a month notice I was  
14 leaving.

15 Q You said officially. Was there an underlying other  
16 reason why?

17 A Correct. I was offered a position with the Berkeley  
18 County Sheriff's Office.

19 Q Okay. Was there ever any implication that you were let  
20 go for any misconduct in office?

21 A There was not.

22 Q You stated that Ms. Cochran's statements to you were  
23 given, that you read out the waiver of Miranda rights to  
24 her.

25 A Correct.

## Proffer - F. McAllister - Cross

1 Q Correct? And that you did that you said that you  
2 witnessed each time --

3 A Correct.

4 Q --her signature. And then initialed each of those  
5 paragraphs as you read them out?

6 A Correct.

7 Q Okay. Did she at any time appear nervous or scared or  
8 worried when she gave her statement to you?

9 A No, she did not. She was totally cooperative during  
10 the whole process.

11 Q The first time?

12 A The first time she was cooperative when I went through  
13 and then the second time she was cooperative.

14 Q Okay. Isn't it true you stated earlier, as I recall,  
15 that she came in voluntarily the second time as well.  
16 Isn't it true that, in fact, she had been picked up and  
17 then you were notified of that fact by the officer who  
18 picked her up?

19 A I said she was brought in -- at that time I had already  
20 obtained warrants and she was brought in. She was under  
21 arrest at the time of the second time for what I remember  
22 about the case.

23 Q Okay. At the time you questioned her on the second one  
24 when she gave her second statement, did she appear then at  
25 all nervous or concerned? Wouldn't you agree that it



## Proffer - F. McAllister - Cross

1 would be the normal course that someone might be somewhat  
2 nervous from —

3 A I didn't see any change in her demeanor from the first  
4 time to the second time, no, sir.

5 Q Okay. And you do acknowledge that the second time  
6 around when you read her, her rights the second time, she  
7 also — did she indicate that she understood? She didn't  
8 ask any questions of you?

9 A No, she indicated that she understood her rights. You  
10 know, I read her rights. I had her initial and sign it.  
11 I witnessed it. And then for the record, the audio  
12 recording, I asked her if she'd been previously advised of  
13 her rights and she indicated yes. And I, for the record,  
14 I advised her rights again on the recording for the  
15 record.

16 Q On the recorded statement. So your testimony here  
17 today is that you told her twice —

18 A Correct.

19 Q —what her rights were? Okay. The first time around  
20 you didn't get her to sign anything or was that the one  
21 you got her —

22 A That's when I got her to sign the waiver of rights.

23 Q Okay. So as you were reading it off on the record was  
24 this on State's Exhibit 4, you didn't have her go through  
25 the checklist at that time?

## Proffer - F. McAllister - Cross

1 A Not at that time, but I read from the checklist from  
2 that Miranda form on the record.

3 Q How much time elapsed between the first time you told  
4 her about Miranda and the second time?

5 A It was I think the 18th. Judge, may I refer to the  
6 exhibits?

7 Q Specifically on the second statement, the first time  
8 you told her off the record and the second time that you  
9 told her on the record.

10 A Probably with approximately five, ten minutes.  
11 Basically I Mirandized her and went through the statement  
12 with her and had her initial and sign everything, and then  
13 I started speaking with her. And pretty much everything  
14 she verbally told me prior to, that's when I went ahead  
15 and told her we need to do a tape recorded statement and I  
16 put it on the recorded statement.

17 Q Didn't you indicate to her before you got her recorded  
18 statement that you had talked to another co-defendant  
19 prior to?

20 A To my knowledge I don't recall.

21 Q Okay. Quentin Epps?

22 A Correct. I did interview Quentin Epps.

23 Q Okay. And your statement here today is you don't  
24 recall having told her that you spoke with —

25 A I don't recall —

## Proffer - F. McAllister - Cross

1 Q —Quentin Epps prior to talking to her?

2 A I don't recall having told her that, no, sir, I don't.

3 Q Okay.

4 A At some point I did interview Quentin Epps. I just  
5 don't know what in the — 'cause I — there's a audio  
6 recorded statement of him too. I just don't recall at  
7 what point.

8 Q You said both times that you interviewed Ms. Cochran,  
9 that it was just you and her at the Lake City Police  
10 Department, correct?

11 A Correct.

12 Q Okay. Is it protocol that only one officer would be,  
13 one male officer, would be with a female detainee?

14 A There isn't any protocol listed that in writing that an  
15 investigator cannot interview a female.

16 Q Is it standard there that y'all would do that?

17 A It is standard.

18 Q It is standard that you would do it that way?

19 A Uh-huh.

20 Q Okay. And is it not preferable that a female officer  
21 would join just for the sake of avoiding any impropriety?

22 A At that point we don't have a female investigations  
23 available —

24 Q Okay.

25 A —to interview.

Proffer - F. McAllister - Redirect

1 Q All right. I don't have any further questions.

2 THE COURT: Any redirect, Mr. Richardson?

3 **REDIRECT EXAMINATION**

4 BY MS. PARR:

5 Q Mr. McAllister, was it your observation that the  
6 defendant statements on both occasions were both freely  
7 and voluntarily made to you?

8 A Correct.

9 MR. RICHARDSON: That's all, Your Honor.

10 THE COURT: Okay, all right. Mr. Cartrette, you  
11 -- is that all you have from the State's perspective with  
12 regard to the Jackson v. Denno?

13 MR. RICHARDSON: Yes, Your Honor.

14 THE COURT: All right.

15 Yes, sir, Mr. Cartrette, you can introduce any  
16 evidence that you might have at this time.

17 You may step down.

18 MR. CARTRETTE: At this time I'd like to call  
19 Ms. Cochran to the stand to testify as to her making a  
20 statement.

21 THE COURT: Very good. Ms. Cochran, I'm gonna  
22 ask if you could to come forward, place your left hand on  
23 the Bible, and raise your right hand as the clerk  
24 administers the oath.

25 WHEREUPON,

Proffer - L. Cochran - Direct

1                                   **LATISHA LEE COCHRAN,**  
2   having been duly sworn by the Deputy Clerk of Court,  
3   testified as follows:  
4                   **THE DEPUTY CLERK OF COURT:** Please be seated,  
5   state your full name for the record.  
6                   **THE COURT:** Ms. Cochran, I'm gonna ask if you'd  
7   pull up real close to that microphone. Speak loudly,  
8   clearly, and slowly in order that we can hear everything  
9   that you've got to say. I'm gonna ask you start with your  
10   name.  
11                   **THE DEFENDANT:** Latisha Lee Cochran.  
12                   **THE COURT:** Spell that last name for me.  
13                   **THE DEFENDANT:** C-O-C-H-R-A-N.  
14                   **THE COURT:** Thank you, ma'am.  
15                   Mr. Cartrette.  
16                                   **DIRECT EXAMINATION**  
17   **BY MR. CARTRETTE:**  
18   **Q** Good afternoon, Ms. Cochran, how are you this  
19   afternoon?  
20   **A** Fine.  
21   **Q** You gave two statements to the police, is that correct,  
22   with regard to —  
23   **A** Yes, sir.  
24   **Q** —this matter?  
25   **A** Yes, sir.

## Proffer - L. Cochran - Direct

1 Q Okay. The first statement that you gave I think it was  
2 – let me go back to my notes. November the 19th of 2008?  
3 Is that correct?

4 A I can't remember the date but that sounds about right.

5 Q Okay. When you gave that statement you heard officer  
6 McAllister, Investigator McAllister, testify that you came  
7 in voluntarily; is that correct?

8 A Yes, I came in voluntarily.

9 Q Okay. And that you were at that time free to go. Were  
10 you under the understanding at that time you were free to  
11 go from there? You weren't going to be under arrest or  
12 any of that?

13 A Yes, he let me go.

14 Q You hadn't spent any jail time prior to that very first  
15 statement, had you?

16 A No.

17 Q Okay. With regard to the first statement.

18 A The first statement he called my cell phone and he told  
19 me that he needed to speak with me about a credit card  
20 that I used. And I told him that I will come in and speak  
21 with him about the credit card. I went in and it was him  
22 and Officer Tilton in Officer Tilton's office. And they  
23 questioned me about a credit card, and he asked me where  
24 did I get it from. And I lied where did I get the credit  
25 card from the first time. I told him that I found it.

## Proffer - L. Cochran - Direct

- 1 After we —
- 2 Q You understand that saying that on the record is a  
3 statement against interest and that my question to you  
4 about that is the only reason you would admit that here  
5 and now as far as the admissibility of this tape. Is that  
6 true that it will be simply for to be honest with the  
7 Court and open —
- 8 A Yes, I'm being honest.
- 9 Q —about the events of your questioning?
- 10 A Yes.
- 11 Q Again, you said Officer Tilton was there?
- 12 A Yes, Officer Tilton was with me the first time.
- 13 Q The first time, correct?
- 14 A Yes, sir.
- 15 Q Okay. Your statement, was it given freely and  
16 voluntarily then, the first time?
- 17 A The first time, yes.
- 18 Q Okay. And you said it was with regard to the credit  
19 card.
- 20 A Yes.
- 21 Q How you acquired the credit card?
- 22 A Yes.
- 23 Q Okay. Did you understand at that time that you had —  
24 you told me you didn't feel like you were going to be  
25 kept, that you could go, correct —

## Proffer - L. Cochran - Direct

1 A Yes, sir.

2 Q —here earlier? And as well, did you understand that  
3 you had a right at that time to talk with an attorney  
4 before you gave any kind of statement?

5 A No, sir.

6 Q You did not?

7 A No.

8 Q Okay. Was it — was it not made clear to you then by  
9 the officer that you had every right to —

10 A No, sir, they just questioned me.

11 Q With regard to that statement was that statement  
12 completely true according to the best of your knowledge?

13 A This first statement?

14 Q The first statement?

15 A No, it was not true.

16 Q It was not?

17 A No.

18 Q What part of it wasn't?

19 A Where did I — where did I get the credit card from.

20 Q Okay. And that's the only part of that statement  
21 that's not true?

22 A Yes.

23 Q Okay. With regard to your second statement, tell me  
24 how you came to be — came to see Investigator McAllister  
25 and the circumstances with regard to the second statement



## Proffer - L. Cochran - Direct

1 that you did?

2 A How did I get to make my second statement?

3 Q Uh-huh.

4 A I was driving my car and a former officer of his,  
5 Bobby — I don't know his last name — he stopped me. And  
6 I pulled over into a yard. And he told me to not move and  
7 that he was calling Officer Ski to come. And when he got  
8 there he jumped out of his car; and he was like, yeah, I  
9 got you, this where you've been staying, I been looking  
10 for you and you're going to jail. And he put me in  
11 handcuffs and he put me in the front seat of his car.

12 Q Okay. And then they took you to the Lake City Police  
13 Department?

14 A Yes, sir.

15 Q At that time how long was it between the time they  
16 picked you up and took you there before you gave a  
17 statement to the investigator?

18 A Seem like 30 minutes.

19 Q Okay, within 30 minutes. Were you scared at all?

20 A Yes.

21 Q Were you nervous?

22 A Yes.

23 Q Okay. Were you intimidated by —

24 A Yes.

25 Q —either of the officers involved before giving this

## Proffer - L. Cochran - Direct

1 statement?

2 A Yes.

3 Q In what way? Did they say anything out of the way or?

4 A Yes. His actions towards me and his anger, it was very  
5 frightening. And in my mind, you lock me up on Christmas  
6 Eve so it was basically involving my children not being  
7 home for Christmas, and I felt it was -- I was just very  
8 afraid.

9 Q Did they play on your emotions then to make you give a  
10 statement?

11 A Yes.

12 Q And then did you -- were you told any information given  
13 to the investigators about any other co-defendant?

14 A Yes. Yes, he stated that he really didn't need my  
15 statement. He had everything he needed already.

16 Q He did?

17 A Yes.

18 Q And what did he tell you with regard to your  
19 co-defendant statements and the relevance of your  
20 statement? You said he didn't need the statement, but  
21 even further than that, the material that you were given  
22 in your statement.

23 A He told me in order for me to go home with my children  
24 that I needed to cooperate with what he had.

25 Q You seem to -- and you did cooperate, correct?

## Proffer - L. Cochran - Direct

1 A Yes.

2 Q Did you tell them then everything you knew about the  
3 events in that second time that you recall?

4 A I explained to him what my guilt was of using his  
5 credit card and that I was sorry, but that wasn't enough  
6 for him.

7 Q Okay. Did he want you to incriminate yourself further  
8 or say anything that didn't seem to jive with what really  
9 happened or what you really —

10 A Yes.

11 Q —feel our involvement was?

12 A I kept telling him I didn't see it.

13 Q Okay. You didn't see what?

14 A I didn't see, like, what he was asking me, like.

15 Q What was he asking you about specifically, do you  
16 remember?

17 A He was asking me who did what to Junebug — well, his  
18 name is Mr. Hayes. And what kind of guns did they have  
19 and what was they wearing, and how did they look, and all  
20 that.

21 Q Okay. Did you answer him as truthfully as you could  
22 then?

23 A No.

24 Q Is there anything there that you would not want held  
25 against you that you'd like to set the record straight on

## Proffer - L. Cochran - Direct

1 as far as that statements?

2 A As I stated from the beginning, I was guilty of using  
3 his credit card, but I'm not guilty of armed robbery, and  
4 that is it.

5 Q Now specifically with your co-defendants and what they  
6 did there that day, is there anything on, that's on the  
7 tape, that you told him that would serve to — one moment,  
8 Your Honor, to collect my thought. Is there anything on  
9 that tape that would serve to show that perhaps you were  
10 coerced, something you were told to tell him that he  
11 expected to hear from you that you didn't actually witness  
12 or wasn't actually something that you saw that day?

13 A Yeah, he was telling me what it — telling me what,  
14 like, what did I see, and I stated to him that I didn't  
15 see anything. I didn't see.

16 Q You didn't see the actual armed robbery take place?

17 A No, I didn't see none of that.

18 Q Okay. And didn't you also state in that tape to him  
19 that you did not wish to participate —

20 MS. PARR: Your Honor, I would object to he's  
21 leading his witness.

22 THE COURT: I'll sustain the objection.

23 MR. CARTRETTE: Your Honor.

24 BY MR. CARTRETTE:

25 Q Did you indicate that in your statement —

## Proffer - L. Cochran - Direct

1 MS. PARR: Your Honor, he's still leading his  
2 witness.

3 THE COURT: Okay, I'll sustain the objection.

4 BY MR. CARTRETTE:

5 Q With regard to your statement you said that there were  
6 certain things that he wanted you to tell that you didn't  
7 see?

8 A Yes, sir.

9 Q Okay. What were those things?

10 A Who did it, their names, and that was it.

11 Q Okay. Is it your belief that the statement you gave  
12 those days was a true and accurate second statement?

13 You've already told me about the first.

14 A No.

15 Q Okay. And you said you felt intimidated; is that  
16 correct?

17 A Yes.

18 Q Okay. Do you believe now after the fact that your  
19 statement given that day —

20 MS. PARR: Your Honor.

21 MR. CARTRETTE: —was freely and voluntarily?

22 MS. PARR: Same objection, leading his witness.

23 THE COURT: Your Honor, I'll sustain the  
24 objection. Also calls for a conclusion that's left up to  
25 this Court as to whether or not it's voluntary. You can

## Proffer - L. Cochran - Direct

1 ask her what happened. It's probably a more relevant  
2 inquiry.

3 MR. CARTRETTE: Okay.

4 BY MR. CARTRETTE:

5 Q With regard to what happened that day were you  
6 Mirandized?

7 A No.

8 Q You were not?

9 A No.

10 Q Okay. Did you sign a Miranda statement saying that you  
11 acknowledge your rights and initialing each one of them,  
12 each particular Miranda statement?

13 A I don't remember signing nothing.

14 Q You don't recall —

15 A Until I went —

16 Q —signing anything?

17 A Until I went to my bond hearing.

18 MR. CARTRETTE: Your Honor, may I see the State's  
19 Exhibits 1 and 2.

20 THE COURT: Yes.

21 BY MR. CARTRETTE:

22 Q Ms. Cochran, this is State's Exhibits 1 and 2. This is  
23 the State's Exhibit 1, is the statement of Miranda rights  
24 and the waiver of the rights, which the prosecutors are  
25 offering to show that you signed away your Miranda rights

## Proffer - L. Cochran - Direct

1 on that day in order to give a statement. And that would  
2 be on November 19th, 2009 -- excuse me, 2008. Correct?  
3 A That first statement, that first Miranda rights?  
4 Q Uh-huh.  
5 A When I was called in the first time with that date they  
6 just give you, I was in front of him and another officer  
7 and they never asked me to sign anything. They questioned  
8 me about the credit card, and like I stated, after I lied  
9 about the credit card they let me go.  
10 Q Okay. And is this your signature here —  
11 A No.  
12 Q —on this waiver of rights? Are these your initials  
13 beside each of these particulars?  
14 A No.  
15 Q And did you understand any of these things when this  
16 statement was given at that time? Were these rights clear  
17 to you?  
18 A I was given no rights; I was just questioned.  
19 Q Okay. On the second, is this your signature?  
20 A No.  
21 Q Okay. Are these your initials?  
22 A No.  
23 Q Okay. With regard to that statement was that statement  
24 given freely and voluntarily with full knowledge of your  
25 ///

## Proffer - L. Cochran - Cross

1 rights?

2 A No.

3 Q Okay.

4 MR. CARTRETTE: Thank you, Your Honor.

5 THE COURT: Very good.

6 MR. CARTRETTE: I have no further questions.

7 THE COURT: Cross-examination from the State.

8 MR. RICHARDSON: Yes, sir.

9 **CROSS-EXAMINATION**

10 BY MR. RICHARDSON:

11 Q Ms. Cochran, you just said that these waiver of rights  
12 forms -- they're already in evidence -- you've never seen  
13 them before?

14 A No, that's the first.

15 Q Wasn't your signature, not your initials?

16 A No.

17 Q Nobody ever read you a Miranda right?

18 A No.

19 Q Ever?

20 A No.

21 Q All right. The first thing you say that you ever  
22 signed was your bond paperwork.

23 A Yes.

24 Q That would be on Christmas day --

25 A Yes.



## Proffer - L. Cochran - Cross

1 Q —2008; is that right? All right.

2 MR. RICHARDSON: I'd like to have this item  
3 marked.

4 THE COURT: That's State's 5.

5 (WHEREUPON, State Exhibit No. 5 was marked for  
6 identification only.)

7 THE COURT: Any objection from Defense?

8 MR. CARTRETTE: No objection, Your Honor.

9 THE COURT: All right, State's Exhibit Number 5  
10 is into evidence for purposes of this hearing.

11 MR. RICHARDSON: Thank you, Your Honor.

12 (WHEREUPON, State Exhibit No. 5 was admitted into  
13 evidence.)

14 BY MR. RICHARDSON:

15 Q Ms. Cochran, I'm gonna show you what's been marked as  
16 State's Exhibit Number 5, bond paperwork. Do you  
17 recognize the signature right there down at the bottom  
18 right-hand corner?

19 A It's not my signature. I can sign something for you  
20 now.

21 Q Well, do you admit that you have to sign off on your  
22 bond paperwork for them to let you out of jail; don't  
23 they?

24 A Yes.

25 Q And you signed it that day?

## Proffer - L. Cochran - Cross

1 A Yes.

2 Q Okay. So you claim that this bond paperwork that the  
3 clerk of court has in its records is a forgery?

4 A Sir, I can sign it for you right now. That is not my  
5 signature.

6 Q So this isn't either?

7 A (No response.)

8 Q All right. Now you claim again that no one ever in the  
9 course of this entire investigation read you any Miranda  
10 warnings off a card, off a waiver of rights form, off  
11 memory, anything? You never —

12 A No, sir.

13 Q Nothing?

14 MR. RICHARDSON: Your Honor, may we play the  
15 tapes?

16 THE COURT: Okay. I assume that the State — the  
17 tapes have a recitation of the Miranda rights?

18 MR. RICHARDSON: Both of them, yes, sir.

19 THE COURT: Are you in a position to stipulate  
20 that there is indeed a recitation of Miranda rights on the  
21 tape?

22 MR. CARTRETTE: Your Honor, there — I would  
23 stipulate that on the tape there is a recitation as to  
24 the authenticity of at least one. We do have a question.

25 THE COURT: All right.

1           MR. CARTRETTE: But yes, Your Honor. If you play  
2 the tape we would stipulate you do hear the recitation of  
3 Miranda.

4           THE COURT: Very good. That's all -- I think for  
5 purposes of this hearing that will suffice.

6           MR. RICHARDSON: Thank you, Your Honor. That's  
7 all.

8           THE COURT: All right. Anything -- you may step  
9 down.

10           Anything in redirect?

11           MR. CARTRETTE: Your Honor, no, sir.

12           THE COURT: Very good. You may step down.

13           All right, anything further with regard to this  
14 hearing, Mr. Cartrette?

15           MR. CARTRETTE: Your Honor, just that we would  
16 ask that the Court recognize that Ms. Cochran's statement  
17 given those days was not -- well, the first of course,  
18 she's admitted on the stand it is freely and voluntarily.  
19 But the second, she felt coerced. We would ask that the  
20 Court take that under advisement and exclude it from the  
21 record.

22           THE COURT: All right.

23           MR. CARTRETTE: And as an article evidence used  
24 today in this trial.

25           THE COURT: All right, very good. Mr. Cartrette,

1 one of the things that I'm sure you've advised your client  
2 of is that these issues with regard to the voluntariness  
3 of the statement are ultimately questions of fact for the  
4 jury to decide. And of course, it's incumbent upon me to  
5 make a finding of law as to whether or not the jury gets  
6 to hear the statements, and I hereby rule that they are  
7 indeed gonna hear the statements. And the reasoning  
8 behind that is, with regard to the first statement on  
9 11/19/2008, I specifically find that she was not in  
10 custody. She was -- she gave a statement. She was  
11 released shortly thereafter which would seem to indicate  
12 that she wasn't under arrest. Ms. Cochran testified in  
13 this hearing here today that she was not being detained;  
14 that she didn't feel like she was under arrest; she was  
15 giving voluntarily statement, and therefore, Miranda  
16 rights were not even triggered. However, it's further  
17 admissible in view of the fact that out of abundance of  
18 precaution Mr. McAllister, Investigator McAllister, gave  
19 him -- gave her her Miranda rights out of abundance of  
20 precaution.

21 I do indeed find as a matter of fact for purposes  
22 of this hearing that that is indeed her signature because  
23 Mr. McAllister said he saw her sign it. I, as far as the  
24 credibility of the witnesses between Mr. McAllister and  
25 Ms. Cochran, I find Ms. Cochran does indeed have an

1 interest in the, in her testimony, an interest in lying.  
2 I think that she's testified here on this stand that she  
3 indeed did lie with regard to this very investigation. So  
4 taking all those matters into consideration I find that  
5 Miranda warnings were given on the November 19th in period  
6 of interrogation; however, it was not necessary that they  
7 do so.

8 With regard to the December 24th, 2008, clearly  
9 she was indeed in custody and I find that she was,  
10 However, I find that it is indeed admissible and the jury  
11 can hear the statement. I find with particularity that  
12 the Miranda warnings were indeed given. They were given  
13 in a very concise form, which is set forth in Plaintiff's  
14 Exhibit -- I mean, State's Exhibit Number 1 and 2. We'll  
15 note for the record that each element of the Miranda  
16 rights were initialed and it bears the signature of  
17 Ms. Cochran and I have not seen the bond paper.

18 (Document tendered to the Court.)

19 THE COURT: And I do find in, just as a matter of  
20 fact, in my role as a fact finder in this hearing that the  
21 signature on the statement of Miranda rights is the same  
22 as that of the bond hearing; and of course, before you can  
23 get out of jail you have to sign the bond form so. I  
24 think that given that set of circumstances I find  
25 personally, as a matter of fact with regard to this

1 hearing, that that is indeed her signature.

2 Of course, Mr. Cartrette, you are well aware of  
3 the fact that issues of signature authenticity are matters  
4 of fact that the jury are to resolve. You — Ms. Cochran  
5 is free to take the witness stand and testify that that's  
6 not her signature. It will ultimately be a question for  
7 the jury to decide in that regard. I anticipate that  
8 neither the defendant nor the State have any handwriting  
9 exemplars or any handwriting experts, but I think that as  
10 it stands here today that it's question of fact for the  
11 jury duty to decide as to whether or not Miranda warnings  
12 were given and whether or not she signed the waiver. With  
13 regard to voluntariness, I find that each of the  
14 statements that were given were indeed voluntarily. I —  
15 no one has said what Ms. Cochran's age, but she is not a  
16 of tender year. I would anticipate she's probably in her  
17 20s. She very well could be in her 30's. She's certainly  
18 not a juvenile. I don't think that her youth contributed  
19 adversely to her giving this statement. It appears as  
20 though she's articulate on the witness stand. She does  
21 not appear to have a lack of education or low  
22 intelligence. The testimony with regard to the prison  
23 environment, or not necessarily prison environment but  
24 interrogation room, was not unduly burdensome. It was —  
25 I specifically find there was no coercion. She wasn't

1 surrounded by numbers of police officers with guns. I  
2 don't find there was any intimidation. There is some  
3 statement with regard to the fact that there was mention  
4 of her not being at home with her children. The United  
5 States Supreme Court has said that discussions of this  
6 type do not render a statement to be involuntary. I think  
7 that's well within their bounds to explain to them the  
8 ramifications of the trouble that they're in.

9 I do not find there was any coercion. I find  
10 specifically that there — the statement was voluntary;  
11 both statements were voluntary. There's been no testimony  
12 with regard to any kind of intoxication. To the contrary,  
13 the testimony has been that she understood everything that  
14 transpired. The length of the detention with regard to  
15 the second statement, there was only a 30 minute delay  
16 between the time that she was picked up and the time that  
17 the statement was given. I don't think that adversely  
18 weighs against the State in that regard. There was no  
19 threat of physical punishment, no deprivation of food or  
20 sleep, and therefore, I specifically find on the record  
21 that both statements were voluntarily given.

22 Mr. Cartrette, you understand the state of the  
23 law in South Carolina that this is ultimately a question  
24 of fact for the jury. You understand that?

25 MR. CARTRETTE: Yes, sir, Your Honor.

1           **THE COURT:** All right. And I rule as a matter of  
2 law that these statements are admissible and we'll proceed  
3 further. Any further motions, Mr. Cartrette?

4           **MR. CARTRETTE:** Yes, sir, if you would permit me  
5 just a minute, Your Honor.

6           **THE COURT:** Yes.

7           **MR. CARTRETTE:** My other motions, Your Honor, are  
8 oral at this time as opposed to written. We ask that  
9 during the hearing of this case all witnesses be  
10 sequestered.

11           **THE COURT:** Okay. I'll be glad to hear from the  
12 State, Mr. Richardson.

13           **MR. RICHARDSON:** Your Honor, I understand the  
14 Defense motion. We'd ask that the, at very least, the  
15 investigating officer and the victim be permitted to  
16 remain in the courtroom throughout the duration of the  
17 trial.

18           **THE COURT:** Very good. In view of the fact that  
19 the State acquiesces or consents to this motion I'll  
20 require that the chief investigating officer who I assume  
21 is Mr. McAllister?

22           **MR. RICHARDSON:** Yes, sir.

23           **THE COURT:** That he will be allowed to stay. And  
24 the victim, Mr. Junebug, Mr. Hayes -- is he the victim in  
25 this case?



1 MR. RICHARDSON: Yes, sir.

2 THE COURT: Very good. He'll be allowed to stay  
3 the entire time. Everyone else is gonna be sequestered.  
4 And I'm gonna ask, Mr. Richardson, that you instruct each  
5 one of the witnesses that the sequestration order not only  
6 requires they not be here in this court room, but they not  
7 discuss their testimony with other witnesses. And I'm  
8 gonna leave it upon you to make that very clear to them  
9 and explain to all of the witnesses that they are subject  
10 to contempt proceedings if they violate that order.

11 MR. RICHARDSON: Yes, sir.

12 THE COURT: You understand the order?

13 MR. RICHARDSON: Yes, sir.

14 THE COURT: Very good. Any -- there are no  
15 defense witnesses have been proffered in addition to the  
16 witnesses that are listed; is that correct?

17 MR. CARTRETTE: No, there are not, sir.

18 THE COURT: Very good. All right. Anything  
19 further, Mr. Cartrette?

20 MR. CARTRETTE: I would like to state for the  
21 record, Your Honor, on several occasions I've had  
22 opportunity to sit down with my client, go over the facts  
23 of her case, and to explain to her her possible options.  
24 And of those times she seemed to me to understand what  
25 those options were, and I explained to her the possible

1 penalties for both charges that she's facing under the  
2 indictment. I presented to her an affidavit to sign  
3 stating that I had done so, stating that I had given her  
4 my best advice as far as her best course of action with  
5 regard to this proceedings, and that she has chosen a  
6 trial over a plea. And I wanted to state that on the  
7 record, Your Honor, just for the purposes of letting the  
8 Court know that I have done so. Ms. Cochran and I earlier  
9 discussed it and there were some mention then that she  
10 felt that I had not adequately discussed with her the  
11 charge of possession of a weapon during the commission of  
12 a violent crime, which I recall on several occasions  
13 meeting with her in my office having done, Your Honor.

14 THE COURT: All right. Well, it appears as if  
15 based on your statement to the Court that you have indeed  
16 discussed these matters and she has been informed  
17 previously and here today. Mr. Cartrette, of course  
18 Ms. Cochran, I'm sure you've explained to her and I'm sure  
19 she understands, that whether she elects for a plea or to  
20 go to trial is a fundamental right that belongs to  
21 Ms. Cochran. She understands that; doesn't she?

22 MR. CARTRETTE: Yes, sir, Your Honor.

23 THE COURT: All right. And she's elected to  
24 undergo a jury trial; is that correct?

25 MR. CARTRETTE: Yes, sir, Your Honor.

1           THE COURT: That's absolutely her right to do so  
2 and she's entitled to that and we're right in the process  
3 of doing that. Anything further, Mr. Cartrette?

4           MR. CARTRETTE: No, sir. Your Honor, I just  
5 wanted to state that for the record to have that out there  
6 that she has been fully advised of her rights and that I  
7 have given my best effort to her defense and —

8           THE COURT: And the record —

9           MR. CARTRETTE: —make sure she knows that that  
10 —

11          THE COURT: The record does indeed reflect that.  
12 Any further motions?

13          MR. CARTRETTE: Your Honor, at this time I have  
14 no further motions.

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

17          MR. RICHARDSON: No, sir.

18          THE COURT: All right. We're gonna recess until  
19 3:00 and that will give us some, a period of time, and I  
20 anticipate giving a preliminary charge, opening  
21 statements. And how many witnesses do we have available  
22 here today?

23          MS. PARR: Your Honor, I have three witnesses  
24 available today.

25          THE COURT: Okay. We'll get through those three

1 witnesses and that probably will put us to the 5:00 hour.

2 All right, we'll stand at ease until then. And any  
3 objection to Ms. Cochran being out on bond at this  
4 juncture?

5 MS. PARR: Your Honor, the State does have some  
6 concern.

7 THE COURT: Is she on bond now?

8 MS. PARR: She is on bond now.

9 THE COURT: Okay. Well —

10 MR. CARTRETTE: Your Honor, I would — I believe  
11 she's not a flight risk, Your Honor. She actually showed  
12 up here today for trial. I don't think there's any  
13 problem with her going to lunch and returning. She's  
14 asked for her trial and she does want her day in court.

15 THE COURT: Ms. Cochran, I'm gonna allow you to  
16 remain on bond, but you understand that if you don't show  
17 up this trial is going on without you. Do you understand  
18 that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you understand that if you  
21 don't show up, ultimately you're gonna be picked up and  
22 you'll be sentenced to whatever this jury, whatever — if  
23 the jury were to find you guilty you'd be sentenced in  
24 your absence. Then ultimately you're gonna be picked up  
25 at some point in time and brought back before this court

1 and sentenced with regard to this offense in the event you  
2 were found guilty. You understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And if you don't show up, not only  
5 would you be subjected to that sentence but you'll be  
6 subjected to a sentence for failure to appear. You  
7 understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. And you need to be back  
10 at no later than 3:00, 3:00 sharp. The trial is beginning  
11 at 3:00 sharp. We'll stand at ease until three.  
12 (WHEREUPON, State Exhibit Nos. 6 through 8 were marked for  
13 identification only.)

14 THE COURT: Okay.  
15 (WHEREUPON, a lunch break was taken.)

16 THE COURT: Anything from the State before we  
17 bring the jury out?

18 MS. PARR: Nothing from the State.

19 THE COURT: Anything from Defense?

20 MR. CARTRETTE: No, sir. Your Honor, we don't  
21 have any. We would like a moment to interview the marked  
22 exhibits the State wishes to proffer so that my client can  
23 refresh herself with those if that's okay.

24 THE COURT: Well, we -- probably not at this  
25 juncture. We're going to go ahead with preliminary charge

1 and opening statements. We might take a break after that.

2 MR. CARTRETTE: Thank you, Your Honor.

3 THE COURT: We're ready for the jury.

4 (WHEREUPON, the jury was returned to the courtroom at  
5 approximately 3:06 p.m., and the following proceedings  
6 commenced in open court.)

7 THE COURT: Mr. Foreman, ladies and gentlemen,  
8 thank you for being here and being here on time. We're  
9 about to begin the case of the State of South Carolina  
10 versus Latisha Lee Cochran, indictment 2009-GS-21-0042.  
11 As I mentioned to you earlier, the fact that Ms. Cochran  
12 has been indicted has no evidentiary value whatsoever.  
13 That's merely an accusation. It's the piece of paper that  
14 brings us into court here today. To that accusation and  
15 to that indictment Ms. Cochran has pled not guilty, and  
16 when that happens certain constitutional safeguards come  
17 into play. Any time an American citizen is accused of  
18 violating the criminal codes of the State of South  
19 Carolina or any other State, or the federal government for  
20 that matter, the law presumes that their innocence — that  
21 they're innocent. That is a very real, substantial right.  
22 It's not just words that are put out there. We start with  
23 a presumption. Ms. Cochran is presumed to be just as  
24 innocent as me or you or the prosecutor. She is presumed  
25 to be innocent. We start from that frame of reference

1 right from the beginning.

2 Any time the State takes it upon themselves to  
3 prove someone guilty of a crime they have the burden of  
4 proof. They're the ones that have to produce the  
5 witnesses. There are some logical reasons behind that  
6 because they have all of the resources. They have the  
7 Lake City Police Department. They have the Sheriff's  
8 Department. They have SLED. They have all of the  
9 resources necessary to gather the evidence necessary to  
10 put before a jury in order to find someone guilty.  
11 There's some theoretical reasons behind that, the fact  
12 that the State has the burden of proof is, that we live in  
13 a free and democratic society. There is certain countries  
14 in this world, in the third world and some eastern  
15 European countries, where you can be accused of a crime,  
16 hauled before a court, and be required to prove your  
17 innocence. Thank God almighty in the United States of  
18 America you don't have to do that because we all know in  
19 our everyday lives that sometimes you can be accused of  
20 something and it's absolutely impossible to prove your  
21 innocence. But the law in the State South Carolina,  
22 United States America, does not require that.

23 The third safeguard is that the State has to meet  
24 the highest burden of proof known to our judicial system.  
25 Many of you have probably served on a civil jury before.

1 A good example of that would be a medical malpractice  
2 case, contract dispute, a car wreck. In those instances  
3 when a plaintiff brings a suit it will be one citizen  
4 against the other, and the thing that you'll be debating  
5 in a civil case would be money. And suppose with me, if  
6 you will, the scales of justice where the lady is  
7 blindfolded from all eyes and from and all prejudices.  
8 When the case starts the scales are even. But in order in  
9 a civil case for the plaintiff to prevail they just have  
10 to tilt the scales ever so slightly in their favor. In  
11 the law we call that a preponderance of the evidence. But  
12 in criminal court the proof is different than that. It's  
13 more — it requires more proof. It's the highest burden  
14 of proof known in our judicial system, proof beyond a  
15 reasonable doubt. I envision that as the scales being  
16 locked up. The State has to meet that highest burden of  
17 proof on each and every element of the offenses for which  
18 Ms. Cochran is accused.

19 Let me tell you a little bit how we're going to  
20 proceed. We're going to start with opening statements.  
21 The State is gonna have an opportunity to sort of set  
22 forth what evidence they intend to produce, talk to you a  
23 little bit about the offense itself, and perhaps the law.  
24 And the defendant is going to have an opportunity to make  
25 an opening statement as well and sort of set out what



1 evidence they anticipate being presented or the lack of  
2 evidence. Of course, the defendant doesn't have to  
3 produce an opening statement. They don't have to produce  
4 any witnesses because once again, the State has the burden  
5 of proof, but they will indeed have an opportunity to make  
6 an opening statement. After the opening statements which  
7 are sort of summary in fashion, we'll begin taking  
8 evidence in the case, receiving evidence. Most of that  
9 will come from the witness stand in the form of oral  
10 testimony. There are other forms, stipulations, sometimes  
11 affidavits. In some instances, depositions or  
12 stipulations of counsel. All those things are evidence,  
13 and that's what you need to base your decision on when it  
14 comes time to deliberate.

15           The State is gonna have the opportunity to go  
16 first. And then after they present all the witnesses to  
17 support their allegations, then the defendant is gonna  
18 have an opportunity to present witnesses if they want to.  
19 Once again, the defendant doesn't have to prove a thing.  
20 They need not – the defendant need not testify, need not  
21 present any witnesses. It's completely upon the State to  
22 meet their heavy burden of proof. Throughout the trial of  
23 this case as we're taking testimony from the witness  
24 stand, I've never participated in a trial where I haven't  
25 heard one of the lawyers stand up and say, I object, or I

1 would like to take up a matter of law outside of the  
2 presence of the jury. I want to tell you about what  
3 that's about because this is a procedure that's governed  
4 by the Rules of Evidence and the Rules of Civil Procedure,  
5 and that's my job as the arbitor of law to determine what  
6 evidence you get to hear. I also have the duty at the  
7 conclusion of case to charge you the substantive law, the  
8 law that prevails in this particular case. And when they  
9 object to a particular item of evidence I will either take  
10 the lawyers up here and talk outside of you're earshot, or  
11 you'll retire to the jury room. And I want to tell you  
12 from the beginning why we're doing that. Because the law  
13 does not allow me to comment on the facts throughout this  
14 trial. That is your sole and exclusive duty is to be the  
15 triers of the fact to determine what the truth is in this  
16 case. The law doesn't allow me to comment on, intimate,  
17 or make any statement with regard to the facts. And in  
18 ruling on the admissibility of the evidence quite often  
19 sometimes it requires I comment on the facts, but the law  
20 doesn't allow you to hear any comment that I might have in  
21 that regard so those things have to take place outside of  
22 your presence. I promise you at the conclusion of the  
23 case after the rendering of the verdict, there's a  
24 particular point of law that you have an interest in, if I  
25 can remember what it was I'd be happy to share it with you

1 at that time but it would be inappropriate to do it after  
2 the verdict because you are the sole and exclusive judges  
3 of the facts in this case.

4 Ladies and gentlemen of the jury, as being the  
5 sole and exclusive triers of the facts, in your collective  
6 wisdom you're gonna be — it's gonna be incumbent upon you  
7 to pass on the believability of witnesses. I want to tell  
8 you a little bit about the law. I'll charge you in great  
9 detail about the law in this regard. I just want to tell  
10 you from the beginning that you need to use your good  
11 common sense when the witnesses take the witness stand.  
12 You can believe what all of what one witness says, none of  
13 what one witness says, or a part thereof. That's  
14 completely within your sole discretion. And when you're  
15 evaluating the credibility of witnesses you need to use  
16 your good common sense, how you determine whether someone  
17 is telling the truth in your every day lives.

18 Many of you probably have teenage children like  
19 myself, and sometimes it's important to hear what they've  
20 got to say but the manner which they say it. The law says  
21 that you can take into considerations the way a witness  
22 acts on the witness stand, their demeanor, so pay very  
23 close attention, use your good common sense with regard to  
24 this process. I'm gonna tell you from the beginning that  
25 if I make an error with regard to what evidence you get to

1 hear or if I charge the law wrong, those errors are easily  
2 corrected. However, if there's an error in the findings  
3 of fact quite often that can't be corrected. So that's  
4 why it's very important for y'all to pay very close  
5 attention. This is an important case. It's important to  
6 the State of South Carolina. It's an important case to  
7 the defendant so pay very close attention.

8           At the conclusion of the presentation of evidence  
9 the lawyers will have an opportunity to give closing  
10 arguments. They're very similar in form to the opening  
11 statement. Lawyers have an opportunity to get up in front  
12 of you and give you a summary presentation, but these  
13 presentations are truly argumentative in nature because at  
14 that time you will have heard the evidence and they'll be  
15 able to point to the evidence that's come from this  
16 witness stand that supports their relative position. What  
17 they say is not evidence but it will assist you immensely  
18 in your deliberation process so pay very close attention  
19 as the lawyers give their closing statements. At the  
20 conclusion of that I'll charge you the law. And once  
21 again, it's inappropriate for y'all to have any  
22 deliberations whatsoever until such time as I give you  
23 instructions to do so. You cannot talk about the case.  
24 You can't talk about the lawyers. You can't talk about  
25 anything about that. Y'all can talk about the weather.

1 You can talk about Carolina/Clemson football, whatever you  
2 want to talk about. But you can't talk about the case  
3 until everything has been completed, you've received the  
4 charge on the law and I give you instructions to  
5 deliberate.

6 Mr. Foreman, I'm gonna ask you to enforce that  
7 rule. I'm gonna also order and instruct given the nature  
8 of this case and the length of this case, that y'all not  
9 take notes. I think — there's a reason for that and the  
10 reason for that is that some people might take good notes,  
11 some people might, some people might not. And you need to  
12 base your decision on your recollection of the witnesses  
13 and your recollection of the testimony so pay very close  
14 attention. Ladies and gentlemen of the jury, you're  
15 participating in a time tested system. You've taken a  
16 solemn oath to evaluate the evidence as it comes from the  
17 witness stand and render a verdict that speaks the truth  
18 and I'm convinced that you will do so.

19 Ms. Parr, Mr. Richardson, the State is  
20 recognized.

21 MS. PARR: May it please the Court.

22 THE COURT: Ms. Parr, you're recognized.

23 MS. PARR: Ladies and gentlemen, we're here today  
24 for a trial against Latisha Cochran. As you have heard  
25 already she has been charged with armed robbery and

1 possession of a weapon during the commission of a crime of  
2 violence. Today we will begin the trial, and at this time  
3 I'm just gonna give you a little overview as to what the  
4 State intends to prove. First of all, before I give you  
5 what the State intends to prove I'd like to tell you a  
6 little bit as to what we see sort of as the theme of this  
7 particular case. I know many of you are familiar with the  
8 the sport of fishing. If you haven't fished you know who  
9 has fished; and in thinking about fishing, in order to  
10 catch a fish you have to use some type of mechanism on  
11 your fishing pole or your fishing rod in order to get that  
12 fish in. And a lot of times fishermen use what's known as  
13 a lure. Well, in this particular case we have a lure as  
14 well, and that lure is the defendant. And the reason I  
15 tell you this is because the defendant, along with four  
16 others, committed an armed robbery against Mr. William  
17 Hayes, who is seated in the courtroom today. And you  
18 will hear from Mr. Hayes as to his account as to what  
19 happened to him on November 15th, 2008, in Lake City,  
20 South Carolina shortly after or around 11 p.m.

21 On that particular evening, as I said before, the  
22 defendant Latisha Cochran and four other persons,  
23 committed this armed robbery against Mr. Hayes. You will  
24 hear that Mr. Hayes operated a little convenience store in  
25 Lake City, South Carolina, and that his house adjoins that

1 store, connects to that store. You will hear that on that  
2 particular evening this defendant along with Quentin Epps,  
3 Jerry Bush, Montarrio Graham, and Chazmonte Brown were  
4 together, and that they were looking for someone to rob.  
5 You will also hear that the defendant at one point was the  
6 driver of the vehicle.

7 Now ladies and gentlemen, I told you a few  
8 minutes ago about a lure and that the defendant was the  
9 lure. Well, on this particular evening we submit that it  
10 was this defendant who called Mr. Hayes to lure him out so  
11 that they could rob him. We believe the evidence will  
12 show that she called Mr. Hayes. And you will also hear  
13 him referred to as Mr. Junebug because that was his  
14 nickname, or is his nickname. And that on that evening  
15 November 15th, 2008, the defendant called him up and asked  
16 him if he was going to come out to go to the club and  
17 asked him, you know, what time he was coming out. And low  
18 and behold she and the other four defendants went to his  
19 store and his home and waited for him to come out and at  
20 that time committed the armed robbery. Now the evidence  
21 will also show that the defendant waited in the car for  
22 him and that the three of the defendants that I had  
23 mentioned were armed with weapons. You will also have an  
24 opportunity to see one of the objects used known as a BB  
25 gun. We also will show the injury that Mr. Hayes

1     sustained that particular evening.

2             Now, at the close of this case the judge will  
3     tell you what the law is. And one law or charge that he  
4     will give you, we submit, will be the hand of one. Now  
5     the hand of one applies to all. We would ask that when  
6     you go back in your jury room and you've had an  
7     opportunity to analyze the testimony that you will hear  
8     coming from this witness stand, all of the exhibits you  
9     will see, photographs taken on that particular evening, we  
10    also will submit a diagram of that area, so you can have  
11    an opportunity to get a clear picture of the scene where  
12    this occurred. You will also hear from a independent  
13    witness who heard the gunshot on that Saturday evening, a  
14    neighbor of Mr. Hayes. And that testimony will come from  
15    Mr. Rodriguez Russell. And it was Mr. Russell who, in  
16    fact, called the Lake City Police Department to report the  
17    incident after hearing the gunshots. You will also hear  
18    from a Ms. Mildred Montgomery who is actually an employee  
19    of Mr. Hayes. We believe that Ms. Montgomery will tell  
20    you that it was this defendant who apologized for that  
21    armed robbery on that particular evening. You will also  
22    hear from Mr. Hayes who will describe the ordeal that  
23    occurred that evening. You will also hear from two of the  
24    defendants who participated in this armed robbery, Jerry  
25    Bush and Quentin Epps. Lastly, you will hear from the



1 defendant herself, Latisha Cochran, giving her statement  
2 as to her participation in this armed robbery.

3 Now ladies and gentlemen, at the close of this  
4 case, as I told you, as I've told you, the judge will give  
5 you the charge, what the law is in this case. We would  
6 ask that you find this defendant guilty of armed robbery  
7 and guilty of possession of a weapon during the commission  
8 of a crime of violence. And we specifically ask that you  
9 pay close attention to the charge of the hand of one is  
10 the hand of all. That just because, just as if the other  
11 three had the weapons, and she waited in the car to drive  
12 off, she was integrally involved in this armed robbery and  
13 benefited from it as well. Thank you.

14 THE COURT: Mr. Cartrelle (ph), you're  
15 recognized. Mr. Cartrell.

16 MR. CARTRETTE: Yes, Your Honor. Thank you, Sir.  
17 Ladies and gentlemen, first of all, I'd like to thank you  
18 for being here today. I understand that your task is a  
19 particularly difficult one because you have to find the  
20 facts in this case. You have to give weight to what you  
21 hear and determine whether or not my client, Latisha  
22 Cochran, a mother of two, a ten year old and six year old,  
23 a student at Florence-Darlington Tech with just one year  
24 to go, is guilty or innocent of the commission of the  
25 crimes alleged. I would submit to you that she's not.

1           Just as the prosecutor said that they would make  
2 requests to the judge as far as a charge to give you and  
3 they want you to pay attention to the hand of one is the  
4 hand of all and she used the demonstration of a lure,  
5 well, I've been fishing many times in my life and I've  
6 never seen multiple hands pull the rod and reel and pull  
7 that fish in, in all the years I've been doing it. I will  
8 tell you this, Latisha Cochran is a young woman and I've  
9 never seen it before in my life where it more adequately  
10 fit, but on the night in question, was in the wrong place  
11 at the wrong time. Latisha doesn't hold herself out as  
12 someone who is totally without fault for any part she may  
13 have played, but she does unequivocally believe that she  
14 is not guilty of an armed robbery. And I believe, after  
15 you hear the testimony today, after you hear the tapes  
16 today should they be admitted into evidence, that you'll  
17 come to that same conclusion. I'm also going to ask the  
18 judge for certain jury charges, certain instructions. I  
19 believe that it is a very important part of this case that  
20 Ms. Cochran — and you'll hear it on tape — if you hear  
21 the tape, Ms. Cochran withdrew from any involvement in  
22 what happened after the victim was caught. And  
23 Ms. Cochran may have been there, but this little woman  
24 couldn't stop four headed grown men from doing what they  
25 did. I don't think it's logical to believe that she even

1 believed she'd be safe if she tried. I would ask you put  
2 yourself in her shoes on that night —

3 MS. PARR: Your Honor, the State —

4 MR. CARTRETTE: —all things considered.

5 MS. PARR: —would object to that.

6 THE COURT: I think to the extent that — I'll  
7 sustain the objection; you can move forward.

8 MR. CARTRETTE: Thank you, Your Honor.

9 I would ask you to consider everything you hear  
10 tonight, this afternoon excuse me, about the events of  
11 that night. And if based on what you hear you can't  
12 beyond a reasonable doubt unequivocally say this woman is  
13 guilty, I'm asking you to deliver a verdict of not guilty.  
14 Thank you.

15 THE COURT: Thank you, Mr. Cartrette.

16 Ms. Parr, you're recognized.

17 MS. PARR: Your Honor, may we approach.

18 THE COURT: You may.

19 (WHEREUPON, counsel approached the Bench for an  
20 off-the-record discussion.)

21 MS. PARR: Your Honor, at this time the State  
22 would call Mr. William Hayes to the stand.

23 THE COURT: Mr. Hayes, if you could come forward.  
24 I'm going to ask you if you could to place your left hand  
25 on bible raise your right hand as the clerk administers the

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1 oath.

2 WHEREUPON,

3 **WILLIE HAYES, JR.,**

4 having been duly sworn by the Deputy Clerk of Court,

5 testified as follows:

6 **THE DEPUTY CLERK OF COURT:** Please be seated  
7 and state your name for the record.

8 **THE COURT:** Mr. Hayes, pull up a chair there, and  
9 I'm going to ask you to pull up real close to the  
10 microphone. I ask you speak loudly, clearly, and slowly  
11 in order so that we can hear everything that you've got to  
12 say. Start with your full name and spell your last.

13 **THE WITNESS:** William Hayes, Junior, H-A-Y-E-S.

14 **DIRECT EXAMINATION**

15 **BY MS. PARR:**

16 **Q** Mr. Hayes, where do you live?

17 **A** [REDACTED], Lake City, South Carolina.

18 **Q** And how long have you lived in Lake City, South  
19 Carolina?

20 **A** About 31 years at that address.

21 **Q** Okay. And how old are you?

22 **A** 55.

23 **Q** And what do you do in Lake City?

24 **A** Well, I run a little convenience store in the  
25 neighborhood and that's most thing, work I do.

## SW - W. HAYES - DIRECT

1 Q Okay. And where is that convenience store located?

2 A [REDACTED].

3 Q Okay. And is -- where is that in relationship to where  
4 you live?

5 A I live behind the store. The store and the house is  
6 connected together.

7 Q Okay. And how long have you lived in that particular  
8 house?

9 A About 31 years.

10 Q Now on the evening of November 15th, 2008, do you  
11 recall that evening?

12 A Yes.

13 Q Okay. And would you please tell us what did you do,  
14 what you did that day?

15 A Well, I got a phone call from a lady. I didn't know  
16 who it was 'cause they had a private number, and they  
17 wanted to know was I going out that night and I told her I  
18 didn't know. They say they just left another club and  
19 wasn't nothing going on so they was going to the Elks,  
20 Lake City Elks, and I told them that I don't know whether  
21 I was going or not. And so later on I just stayed in the  
22 house. As soon as after 10:00 when I decided to walk out  
23 I locked the doors and cut -- walked around to the front  
24 of my store and cut the alarm off. And then when I came  
25 outside to get in my truck three people came out with

## SW - W. HAYES - DIRECT

- 1 masks, had guns, and they told me to get down, get down,  
2 you know. And I tried to pack up and run. I could not  
3 run so I got down in the middle of the road, and they held  
4 a gun to my head and then they said, give us your money,  
5 give us your money. So I reached in my pocket and hand it  
6 to them while I was on the ground, and one of them turned  
7 around and hit me in the head anyway. And then, sure  
8 enough, they left running and start shooting up in the  
9 air. I stayed down on the ground. I didn't get up —  
10 Q Okay.  
11 A —till I — it was good, you know, went down the road.  
12 I didn't get up till they was gone, you know, for a while.  
13 Q All right. Going back, now when you got the phone call  
14 what time was that?  
15 A It was after 10:00.  
16 Q Okay. And did the person, the lady you spoke to on the  
17 phone, indicate how she — why she called you, how she got  
18 your number?  
19 A No, I didn't know — I didn't know who it was. I was  
20 wondering, I say, how do you — why you dialing private.  
21 She didn't make an answer and she say, you know, you going  
22 to the club, you going to the club. And I said, I don't  
23 know, I just might, and then she hung up.  
24 Q Okay. I'm going to show you what has been marked as  
25 State's Exhibit Number 6.

## SW - W. HAYES - DIRECT

1 Your Honor, permission for the witness to come  
2 down.

3 THE COURT: Yes, you may step down.

4 BY MS. PARR:

5 Q And Mr. Hayes, I'm going to need you to stand to this  
6 side so the jurors can see. If you would stand on this  
7 side over here and talk nice and loud. Do you recognize  
8 this, State's -- what's been marked as State's Exhibit  
9 Number 6?

10 A Yes.

11 Q And would you please tell us what this is a map of?

12 A Okay.

13 Q What is that map of first?

14 A Lake City.

15 Q Okay.

16 A Okay. And this is --

17 THE COURT: All right, you're gonna have to speak  
18 up because --

19 JURORS: We can't see.

20 THE COURT: Okay, very good.

21 THE WITNESS: Okay, right here is where I live.

22 This is the store right here. And the store is on [REDACTED]

23 [REDACTED], this street right here, [REDACTED]. And this

24 is -- and I live in the back of the store right here.

25 Okay, right here is a lot separating my house and this

## SW - W. HAYES - DIRECT

1 apartment building right here which belongs to me also.  
2 My truck was on [REDACTED] right here. When I came out  
3 the store from the front and went to my truck right there,  
4 that's when the three people came out with guns and I ran  
5 back back to this point right here in the middle of [REDACTED]  
6 [REDACTED]. That's where I got down and that's where they  
7 robbed me.

8 Q Okay. And would you put an X there.

9 A (Complies by marking on exhibit.)

10 Q And now that's your property right there?

11 A Yes.

12 Q Okay. Is this the street here?

13 A Right, this the street right here.

14 Q Okay. Now were you in the street or where?

15 A Well, when I came back I backed up and I went kind of  
16 like in the middle of the street right here and that's  
17 where I got down and that's where they did the robbery,  
18 hit me in the head right here.

19 Q Okay, all right. Now would you, using your red pen,  
20 mark the perimeters of your property?

21 A Okay. (Complies by marking on exhibit.)

22 Q Okay, if you would write your name. Just your last  
23 name is fine. And if you will just have a seat.

24 MS. PARR: Your Honor, the State would move to  
25 enter into evidence State's Exhibit Number 6.



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- 1 THE COURT: Any objection from Defense?
- 2 MR. CARTRETTE: Your Honor, if I may show that to
- 3 my client.
- 4 (Pause while attorney shows diagram to defendant.)
- 5 MR. CARTRETTE: Your Honor, for purposes of
- 6 identifying the property, the tax map that the judge, the
- 7 Court wants to take judicial notice if they wish, we do
- 8 not at this time object to that coming in as evidence.
- 9 THE COURT: All right, and that is denominated as
- 10 State's Exhibit?
- 11 MS. PARR: Number 6.
- 12 THE COURT: Number 6 is in the evidence without
- 13 objection from the Defense.
- 14 (WHEREUPON, State Exhibit No. 6 was admitted into
- 15 evidence.)
- 16 BY MS. PARR:
- 17 Q Now Mr. Hayes, you said when you came out of your house
- 18 what was in the area? Did you see any vehicles in the
- 19 area?
- 20 A No.
- 21 Q Okay. And exactly what did you see when you came out?
- 22 A When I came out the house we had -- when I came out to
- 23 the truck I cut the alarm off and I came out. As soon as
- 24 I got in the truck I saw three people with masks came on,
- 25 came out, in front of the truck and all of them had guns.

## SW - W. HAYES - DIRECT

1 Q Can you describe the guns they saw -- you saw?

2 A Well, I didn't get a good look but I saw one of them,  
3 you know, was -- a good look at one of them that hit me in  
4 the head with it. And the other one was, had a gun on me.  
5 They had it in my face. And I just kept my head down. I  
6 didn't try to recognize what kind it was or nothing like  
7 that.

8 Q And how were they dressed?

9 A Only thing I know they just had on ski masks. You  
10 know, I couldn't see their face.

11 Q Okay. Were you able to recognize any voices?

12 A Well, a little, not much. I mean, you know, the only  
13 thing I heard them say, get down, get down, you know, give  
14 us your money, and this and that.

15 Q And how much money did they take from you?

16 A Five hundred dollars.

17 Q All right. Now I'm gonna show you what has been marked  
18 as State's Exhibit 7(a) and I'd like to see if you can  
19 identify this.

20 A Yes, this is the front of my store. This is Hazel  
21 Avenue, and right over on this side here is the side where  
22 the trash can is at, but my truck is parked on the side  
23 right there.

24 Q Okay. I'm gonna let you identify each photograph first  
25 and then we'll present it so they can see.

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1 THE COURT: Let him take a look at all of those  
2 if you could.

3 (Pause while attorney Cartrette and defendant review  
4 photographs.)

5 BY MS. PARR:

6 Q And would you identify State's Exhibit 7(b)?

7 A That's myself right there.

8 Q Okay. And State's Exhibit 7(c)?

9 A Those are my truck keys.

10 Q Okay. Is that an accurate representation?

11 A Yeah.

12 Q Okay. State's Exhibit 7(d), do you recognize that?

13 A Yeah, that's the gun they hit me in the head with right  
14 there.

15 Q Okay. And State's Exhibit 7(e)?

16 A That's part of it 'cause it broke when they hit me in  
17 the head.

18 Q Okay. And State's Exhibit 7(f)?

19 A Okay, this -- that's [REDACTED] and right there and  
20 the side of it is Hazel Avenue.

21 Q Is this an accurate representation?

22 A Yes.

23 Q Okay. And State's Exhibit 7(g).

24 A Yeah, that's me where they hit me in the back of the  
25 head with the gun at.

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1 Q Okay.

2 MS. PARR: Your Honor, the State would move to  
3 enter State's Exhibits 7(a) through 7(g) into evidence.

4 THE COURT: Any objection from Defense?

5 MR. CARTRETTE: Without objection, Your Honor.

6 THE COURT: All right. 7(a) through g?

7 MS. PARR: (a), yes, through (g).

8 THE COURT: They're in evidence without objection  
9 from Defense.

10 (WHEREUPON, State Exhibits Nos. 7(a) through 7(g) were  
11 received into evidence.)

12 MS. PARR: Your Honor, at this time we would ask  
13 for permission to publish the photographs to the jury by  
14 way of projecting them on the screen and have...

15 THE COURT: You may do so.

16 MS. PARR: Thank you, Your Honor.

17 BY MS. PARR:

18 Q And Mr. Hayes, if you would use this lazer pointer to  
19 indicate where you were.

20 A (Complies.)

21 Q All right. On State's Exhibit - and if you would  
22 describe State's Exhibit 7(a) please.

23 A Okay. That's the front of my store. This is Hazel  
24 Avenue. That's where I came out through the gates and  
25 came out to the side right there where the truck was

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1 parked. That's where they came out, and then I came right  
2 back to this point right here. That's where I got down in  
3 the road, and you know, gave them the money, lay down, let  
4 them get the money.

5 Q And State's Exhibit 7(b)?

6 A Okay, that's me right there.

7 Q And when was this picture taken? Was that the one?

8 A It had to be taken that night, I guess, it happened.

9 Q And State's 7(c)?

10 A Those my truck keys.

11 Q And how did your truck keys come to rest there?

12 A Well, it was -- they were trying to get the money out  
13 of my pocket. They were just ripping everything out, and  
14 I reached in there and hand them the money but the keys  
15 must have came out while they was trying to get the money  
16 out.

17 Q What did they get from you?

18 A Okay. They took the money and they took my wallet. I  
19 had some credit cards which I found out, you know, they  
20 used them and two credit cards. And I had a -- one of my  
21 degrees that I had where I went to school and then I had  
22 some lottery tickets in the wallet also where I bought  
23 some power ball tickets and they took those also.

24 Q Okay. Now what kind of credit cards were in your  
25 wallet?

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1 A Visa.

2 Q Okay.

3 A Citizen's Bank and one from Wachovia Bank.

4 Q Okay. And can you identify...

5 A That's the picture of the gun they hit me in the head  
6 with. That's a part of it where it broke.

7 Q And where is that located in relationship to your  
8 store?

9 A It's on the side right kind of like on [REDACTED],  
10 you know, on the side near the sidewalk.

11 Q Okay. And how did that gun break?

12 A I don't know. He hit me in the back of the head with  
13 it and it came apart. That's all I know. And this is  
14 [REDACTED]. That's the store and Hazel Avenue right

15 around on the side back there, but all this is [REDACTED]

16 [REDACTED] Right here where I was, was being robbed at right  
17 there.

18 Q Okay.

19 A And that's where they hit me in the back of the head  
20 with the gun.

21 Q And were you treated on the scene by EMS?

22 A They came, but I didn't go with them. I just stayed at  
23 home.

24 Q Okay. And then State's Exhibit 7(g). How long were  
25 they — how long was your encounter with them?

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1 A I would say about 20 minutes, about 20 minutes.

2 Q Okay. Now what were they wearing other than the ski  
3 mask?

4 A Well, seem like I saw one had on a hood and like, you  
5 know, it happened so fast that you know, they threw them  
6 guns in my face, I just got down. I didn't really see  
7 exactly what they was wearing.

8 Q Okay. Now you say that after you got down and they got  
9 your moneys and your wallet, then what happened?

10 A I stayed down for a while till I figured they were gone  
11 and then I got up and I reached in my pocket and got my  
12 cell phone and I called the police department. They came  
13 out. I stayed out there till they come in.

14 Q Now at what point did you hear the gunshots?

15 A After they done left me about less than some seconds,  
16 less than a minute, I heard the gunshots, and that's when  
17 I kept my head down further then and that's when I heard  
18 the gunshots.

19 Q And do you recall how many gunshots you heard?

20 A About five. Could have been six, but I heard five or  
21 six gunshots.

22 Q Okay. And were you able to determine in which  
23 direction they were going in?

24 A Well, they went down Hazel Avenue. You know, they ran  
25 down Hazel Avenue after that happened.

## SW - W. HAYES - DIRECT

1 Q Okay. Now I'm going to show you what has been marked  
2 as State's Exhibit 8. Permission to take it out the bag.  
3 And do you recognize?

4 A Yes, that's the gun they hit me with it and that's the  
5 one that broke.

6 Q Okay.

7 MS. PARR: Your Honor, it's been disabled.

8 THE COURT: Very good.

9 MS. PARR: I'll show it to.

10 (Pause while counsel and defendant view gun.)

11 MS. PARR: The State would move to enter it into  
12 evidence.

13 MR. CARTRETTE: Your Honor, I would ask that the  
14 State at least give us the chain of custody for said gun  
15 before admitting it into evidence.

16 THE COURT: All right. Well, you can mark it as  
17 a Court's exhibit.

18 MS. PARR: It's already marked as State's  
19 Exhibit.

20 THE COURT: Okay, State's Exhibit 8 for  
21 identification purposes.

22 BY MS. PARR:

23 Q But you do recognize this?

24 A Yes.

25 Q Okay, all right. Now Mr. Hayes, after this incident



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1 did you have an occasion to have a conversation with this  
2 defendant?

3 A Yes, I was off and my employee was working about 7:00.  
4 And she called me and I was in the back of the house, and  
5 Ms. Cochran came in. And she let her in, you know, and  
6 she talked to me at the back of my house and she came back  
7 there and apologized and told me she was sorry and you  
8 know what —

9 MR. CARTRETTE: Your Honor, I object. Hearsay.

10 THE COURT: All right. Well, she's a defendant  
11 in this party opponent and he's allowed to testify in that  
12 regard. It's not Hearsay or at the bare minimum exception  
13 to it. Very good.

14 BY MS. PARR:

15 Q Mr. Hayes, you said that you had an occasion to talk  
16 with the defendant; is that correct?

17 A Yes.

18 Q Okay. And first of all, do you know the defendant?

19 A Yes.

20 Q And how do you know the defendant?

21 A Being a customer, you know, she came in and  
22 occasionally she asked me to let her borrow some money one  
23 or two times and I did.

24 Q And so after this incident she came back to your store  
25 is that correct?

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- 1 A Yes.
- 2 Q Okay. Do you remember when that was?
- 3 A When she came back and apologized?
- 4 Q Yes.
- 5 A I don't remember the date, but she came back and
- 6 apologized and told me she was sorry and that the plan was
- 7 to rob the store while Ms. Mildred was in there and they
- 8 was, well, that's how they was plan to do it. But she
- 9 said they decided they wasn't going to do that, they'll
- 10 just get me, you know, just wait on me to come out and be
- 11 by myself.
- 12 Q Okay. And then what else did the defendant tell you?
- 13 A Well, like I say, she just apologized and told me how
- 14 sorry she was and that, you know, she had kids. And I
- 15 told her I was sorry too but, you know, especially that it
- 16 happened, you know, to me anyway.
- 17 Q Okay.
- 18 A She was crying and upset.
- 19 Q Now how - when did she apologize in relationship to
- 20 when this occurred?
- 21 A After everything, they had been arrested and
- 22 everything and about, I'll say, could have been a week or
- 23 two; I'm not sure. She came in the house and I was
- 24 shocked to see her. And she came in and told me that she
- 25 apologized, you know, from what she say, 'cause she knew

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1 that she would have asked me she needed something I  
2 probably would have gave it to her.

3 Q Mr. Hayes, would you please answer any questions  
4 Mr. Cartrette may have for you.

5 THE COURT: Mr. Cartrette.

6 **CROSS-EXAMINATION**

7 BY MR. CARTRETTE:

8 Q Mr. Hayes, you testified that three people came up to  
9 you that night, correct?

10 A Yes.

11 Q Three people held you at gunpoint?

12 A Right.

13 Q How many guns did you say you saw again? Didn't you  
14 say you saw one gun?

15 A No, it was three guns. All of them had guns.

16 Q Okay. So all of them had guns?

17 A Yeah.

18 Q And did all of them hold that gun on you?

19 A Well, I mean, all of them had guns, yeah. When I was  
20 on the ground all of them held a gun to my head.

21 Q Okay. Can you tell us today the gender of the three  
22 individuals that came up to you?

23 A Pardon me? I don't understand the question.

24 Q Can you tell us if they were male or female?

25 A I couldn't 'cause they had on ski masks. I couldn't

## SW - W. HAYES - CROSS

- 1 tell you that.
- 2 Q Did you believe they were male?
- 3 A Like I said, they had on ski masks.
- 4 Q Okay. With regard to Ms. Cochran, you said that
- 5 sometime after this happened she came by to visit, that
- 6 she knew Ms. Mildred?
- 7 A Correct.
- 8 Q That she told you the plan; is that correct?
- 9 A True.
- 10 Q Okay. Did she tell you who -- did she tell you --
- 11 isn't it true that she didn't tell you then that she
- 12 intended to help rob you; that she was simply apologizing
- 13 for what she went through, not necessarily admitting any
- 14 guilt to you or what?
- 15 A No, she said she apologized for what they done, she
- 16 done, I mean, 'cause she was involved.
- 17 Q Okay. And isn't it true that on that evening didn't
- 18 she tell you that the only thing she had done was use your
- 19 credit cards?
- 20 A Yeah, she used my credit cards. I found out later that
- 21 she used the credit cards.
- 22 Q Isn't that what she apologized for that night,
- 23 Mr. Hayes?
- 24 A No, she apologized for the acts and what they did, for
- 25 everything.

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1 Q Okay. Did you believe at the time that this incident  
2 occurred, you didn't believe that Latisha Cochran was any  
3 part of what happened to you, did you?

4 A When it first happened I didn't know who was involved

5 —

6 Q And you did tell her that —

7 A —and after she came and apologized —

8 Q (Inaudible.)

9 THE COURT REPORTER: Hold it.

10 THE COURT: One at a time.

11 THE COURT REPORTER: One at a time please.

12 MR. CARTRETTE: After she apologized —

13 THE COURT: Whoa, whoa, wait a minute. You ask  
14 the question, you provide the answers, and don't talk at  
15 the same time 'cause she can't write it down.

16 MR. CARTRETTE: Yes, sir, Your Honor.

17 BY MR. CARTRETTE:

18 Q I'll rephrase. Isn't it true that you did not — you  
19 were not able to identify Latisha Cochran that night?

20 A True.

21 Q Okay. You even said you didn't recognize the voice on  
22 the other end, correct?

23 A True.

24 Q Okay. So it could have been anybody's voice?

25 A True.

## SW - W. HAYES - CROSS

1 Q Okay. So you can't say conclusively that was Latisha  
2 Cochran who called you, correct?

3 A True.

4 Q Thank you, Mr. Hayes.

5 THE COURT: Any redirect?

6 MS. PARR: Nothing for this witness, Your Honor.

7 THE COURT: Very good. You may step down. Thank  
8 you, sir.

9 You may call your next witness.

10 MS. PARR: Your Honor, may we approach.

11 THE COURT: Yeah.

12 (WHEREUPON counsel approached the Bench for an  
13 off-the-record discussion.)

14 THE COURT: Yes, sir, if you could, place your  
15 left hand on the Bible, raise your right hand as the clerk  
16 administers the oath.

17 WHEREUPON,

18 **RODRIGUEZ RUSSELL,**  
19 having been duly sworn by the Deputy Clerk of Court,  
20 testified as follows:

21 THE DEPUTY CLERK OF COURT: Please be seated  
22 and state your full name for the record.

23 THE COURT: Pull up real close to that  
24 microphone. Pull up real and close sit up straight in the  
25 chair. Pull up real close. All right, I'm going to ask

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1 that you speak loudly, clearly, and slowly in order that  
2 we can hear everything that you've got to say. And start  
3 with your full name.

4 **THE WITNESS: Rodriguez Russell.**

5 **DIRECT EXAMINATION**

6 **BY MS. PARR:**

7 **Q Mr. Russell, where have you lived?**

8 **A I lived — I had lived [REDACTED].**

9 **Q Okay.**

10 **THE COURT: We're going to ask if you could, pull**  
11 **up real close to that microphone. Speak loudly.**

12 **THE WITNESS: I was living at [REDACTED].**

13 **BY MS. PARR:**

14 **Q Okay. You were living at [REDACTED]?**

15 **A Yes, ma'am.**

16 **Q Okay. And that was at the time of this incident in**  
17 **November of 2008?**

18 **A Yes, ma'am.**

19 **Q Okay. And how old are you?**

20 **A 22.**

21 **Q And are you employed?**

22 **A Nanya, Nanya Corporation.**

23 **Q All right. And what do you do for Nanya?**

24 **A Chip packing.**

25 **Q Now going back to the date of this incident,**

## SW - R. RUSSELL - DIRECT

- 1 November 15, 2008, did you work that particular day?
- 2 A No, ma'am, I didn't -- I wasn't working at Nanya then.
- 3 I was working at Sonic then.
- 4 Q Okay.
- 5 A And I had worked that night. I had came home.
- 6 Q Beg the Court's indulgence. And so you worked at Sonic
- 7 that night; is that correct?
- 8 A Yes, ma'am.
- 9 Q Now on [REDACTED] where is that in relations to
- 10 Mr. Hayes' store and his house?
- 11 A We -- like, both our backyards connected and it's
- 12 pretty close.
- 13 Q Okay. Now would you tell us, when you got home what
- 14 did you find, what did you see?
- 15 A When I got home, I usually park my car at the edge of
- 16 the road; and by the time I got in the house the car
- 17 pulled up like right beside like me and my car. And so I
- 18 thought somebody was going to mess with my car so that why
- 19 I sit and look and wait to see what was going to happen.
- 20 Q And what kind of car was it that pulled up by your
- 21 house?
- 22 A It was like a Camry. It was like -- my brother had
- 23 one. I think it was like a '94 Camry.
- 24 Q Okay. And do you know the color of that Camry?
- 25 A It was either black or purple.



## SW - R. RUSSELL - DIRECT

1 Q All right. And could you see how many people were in  
2 that vehicle?

3 A I didn't see -- I know somebody was driving after the,  
4 what happened. I seen like three people like run, run  
5 through the grass to the car.

6 Q Okay. Now when you got home that evening and you saw  
7 this Camry, do you know how long it was out there?

8 A No. Only thing what made me suspicious to it, they  
9 probably stay about five ten minutes and they left and  
10 then came back.

11 Q Okay.

12 A So it wasn't that long.

13 Q All right. Now I'm going to show you what has been  
14 entered into evidence as State's Exhibit Number 6 and I  
15 need you to come down and mark where your property is.  
16 And when you address the jury if you would talk nice and  
17 loud because they need to -- they need to hear you and the  
18 court reporter needs to hear you so if you would stand on  
19 this side so you will not block. First of all, do you  
20 recognize this map?

21 A Uh-huh.

22 Q Okay.

23 THE COURT: You need to answer audibly. Instead  
24 of uh-huh or huh-uh you need to say yes or no.

25 THE WITNESS: Yes, ma'am.

## SW - R. RUSSELL - DIRECT

1 BY MS. PARR:

2 Q Okay. And how are you able to recognize it?

3 A I see my home and I see the grocery store. I been — I  
4 lived there all my life so.

5 Q Okay. And would you indicate where — what would be  
6 your property?

7 A Right there.

8 Q Okay. And now, on that evening when you came home from  
9 work where did you park your vehicle?

10 A Like on the edge of the driveway, like close to the  
11 road.

12 Q Okay.

13 A Right there.

14 Q And then when you got out — and did you mark — did  
15 you draw a picture of where your vehicle?

16 MR. CARTRETTE: Your Honor, I object to where he  
17 parked his car. I don't see the relevance.

18 THE COURT: I overrule your objection.

19 BY MS. PARR:

20 Q Would you continue. So you parked your car there?

21 A Uh-huh.

22 Q And then did you go into the house immediately?

23 A No. I always clean my car out before I go in, but the  
24 Camry wasn't there then. By the time I went in the house  
25 and shut the door, locked the door, I heard the door shut.

## SW - R. RUSSELL - DIRECT

1 That's when I peeked out the door and I seen the Camry  
2 parked. It's a tree right here and the Camry was parked  
3 right in front of the tree, right pointing toward my car.

4 (Draws on exhibit.)

5 Q And how long was the Camry out there at that time?

6 A Maybe five, ten minutes.

7 Q Okay. And where were you in the house?

8 A I sitting in the living room and watched the car, and I  
9 watched. They left. Then that's when I went and went  
10 into the computer room my son was at. And then maybe  
11 five, ten minutes later, the Camry was came back out  
12 there. That's when I heard gunshots.

13 Q Now tell us which direction, if you know, the Camry was  
14 headed the first time it left from where it was parked by  
15 your car?

16 A Back out this way.

17 Q All right. And so you said five minutes after it was  
18 gone, about five minutes or so?

19 A Five, ten minutes or so, the Camry was back in the same  
20 exact spot.

21 Q Okay. And how many gunshots did you hear?

22 A I either heard three or four. It was a good bit of  
23 them.

24 Q And after you heard the gunshots what did you do?

25 A I went immediately to the front room and that's when I

## SW - R. RUSSELL - DIRECT

1 saw the Camry was directly in front of the house. And I

2 saw three people ran to it and they spin off, whatever.

3 Q Okay. And which direction was the Camry headed?

4 A This way.

5 Q Okay. And then -- okay, you may be seated.

6 A (Resumed seat on the stand.)

7 Q And what did you do after you heard the gunshots?

8 A I went to my girlfriend's father 'cause I had know  
9 something happened down the street so I told him, and he  
10 told me to call the law and we went and check on Bug.

11 Q Okay. And so did you call the Lake City Police  
12 Department?

13 A Yes, ma'am.

14 Q Okay. And then once you called Lake City Police  
15 Department, what did you do?

16 A Me and, like I say, her father, went down to check  
17 on -- check on Bug and see what happened.

18 Q When you say Bug --

19 A Junebug, William Hayes.

20 Q Mr. Hayes?

21 A Yes, ma'am.

22 Q Okay. And where did you find Mr. Hayes at that time?

23 A The police had done got there before I did. They was  
24 talking with them and checking his head.

25 Q Okay. And the car, or the Camry that came back and

**SW - R. RUSSELL - DIRECT**

1   picked up the three persons, was that the same vehicle you  
2   saw earlier?

3   A   Yes, ma'am.

4   Q   Okay. And can you describe the three people that got  
5   in the vehicle?

6   A   It was dark. Only thing I saw, I saw a tall one,  
7   short -- like a short person. I can't describe them.

8   Q   Okay. Could you tell what they had on?

9   A   No, it looked like they probably had on some coats. I  
10   don't know.

11   Q   Okay. When they were picked up were they walking,  
12   running, or what?

13   A   They was running.

14                MS. PARR:   Beg the Court's indulgence.

15   BY MS. PARR:

16   Q   Did you know this defendant prior to this incident?

17   A   Yeah, I know her. Uh-huh.

18   Q   Okay. Please answer any questions the Defense may have  
19   for you.

20                THE COURT:   Cross-examination.

21                       **CROSS-EXAMINATION**

22   BY MR. CARTRETTE:

23   Q   Mr. Russell?

24   A   Yes, sir.

25   Q   You said you knew my client?

## SW - R. RUSSELL - CROSS

1 A Yes, sir.

2 Q Isn't it true you went to school with her or —

3 A No, no, sir.

4 Q She went to school with a relative of yours?

5 A She probably went to school with one of my relatives.

6 Q Okay. You can't actually place Ms. Cochran as being  
7 one of the persons in that car that night, can you?

8 A No, sir.

9 Q And your testimony here, you claim you saw the car go  
10 around a couple of times?

11 A Hum.

12 Q A few minutes apart. But you can't really associate  
13 Latisha Cochran with firing a gun and you can't associate  
14 her with being in that car, can you?

15 A No, sir, it was males.

16 Q It was males?

17 A Uh-huh.

18 Q Okay.

19 MR. CARTRETTE: Thank you, Your Honor. I have no  
20 questions, no further questions.

21 THE COURT: Any redirect?

22 MS. PARR: No, Your Honor.

23 THE COURT: Very good. You may step down.

24 MS. PARR: Your Honor, at this time we would ask  
25 that this witness be excused.

**SW - M. MONTGOMERY - DIRECT**

1           **THE COURT:** Any objection from Defense?

2           **MR. CARTRETTE:** No objection, Your Honor.

3           **THE COURT:** You're free leave. Thank you, Sir.

4           **MS. PARR:** Your Honor, at this time we would call  
5 Mildred Montgomery.

6           **THE COURT:** Ms. Montgomery, please come forward.

7 Yes, ma'am, I'm gonna ask, if you could, place your left

8 hand on the Bible. Come forward. Watch your step here.

9 I'm gonna ask you to place your left hand on the Bible and

10 raise your right hand as the clerk administers the oath.

11 **WHEREUPON,**

12                           **MILDRED MONTGOMERY,**

13 having been duly sworn by the Deputy Clerk of Court,

14 testified as follows:

15           **THE DEPUTY CLERK OF COURT:** Please be seated,  
16 then state your full name for the record.

17           **THE COURT:** Ms. Montgomery, have a seat there  
18 please, ma'am. I ask you take your time, pull up real  
19 close to that microphone. I want you to speak loudly,  
20 clearly, and slowly in order so that we can hear  
21 everything that you got to say. And start with your full  
22 name please, ma'am.

23           **THE WITNESS:** Mildred Montgomery.

24                           **DIRECT EXAMINATION**

25 **BY MS. PARR:**

## SW - M. MONTGOMERY - DIRECT

- 1 Q And Ms. Montgomery, how old are you?
- 2 A 70.
- 3 Q Where do you live?
- 4 A In Lake City, South Carolina, [REDACTED].
- 5 Q And how long have you lived in Lake City?
- 6 A All my life.
- 7 Q Are you employed?
- 8 A Yes, I am.
- 9 Q And where do you work?
- 10 A I work at Levells Diner and Hayes Grocery.
- 11 Q How long have you worked for Hayes Grocery?
- 12 A Approximately ten years.
- 13 Q And who is the owner of Hayes Grocery?
- 14 A William Hayes, Jr.
- 15 Q What hours do you normally work?
- 16 A From 7 to 10.
- 17 Q Now do you know the defendant Latisha Cochran?
- 18 A Yes, I do.
- 19 Q How do you know Ms. Cochran?
- 20 A She's a relative of mine and I've known her since she
- 21 was born.
- 22 Q Okay. Now let's go back to November 15th, 2008. Do
- 23 you recall whether you worked on that particular day?
- 24 A Yes, I worked on that particular day.
- 25 Q Okay. And what hours did you work that day?



## SW - M. MONTGOMERY - DIRECT

1 A From 7 till 10.

2 Q And when you left at 10, what was going on at that  
3 time?

4 A Nothing was going on at that time. Mr. Hayes was in  
5 the house locking up when I left out. He said he was  
6 gonna stay in; he wasn't going out that night.

7 Q Okay. And when were you scheduled to return to work?

8 A At 7:00 the next day.

9 Q Did you go to work the next day?

10 A Yes, I did.

11 Q Now sometime after the event of November 15th, 2008,  
12 did you have an occasion to talk with Latisha Cochran?

13 A Yes, I did.

14 Q Okay. And how did you end up talking to her?

15 A I was at work and she came in and —

16 Q Where was this?

17 A At Hayes Grocery.

18 Q And you said she came in?

19 A She came in and she asked me could she speak to  
20 William. And I told her, yeah. And I called him and  
21 informed him that she was coming to the back. She went to  
22 the back. I don't know what transpired between them at  
23 that time. When she came back to the front she told me  
24 that she wanted to apologize to me also because she had

25 —

## SW - M. MONTGOMERY - DIRECT

1 MR. CARTRETTE: I object.

2 THE COURT: Just one moment. Your objection?

3 MR. CARTRETTE: Your Honor, I would object to  
4 that further line because that's hearsay.

5 THE COURT: All right.

6 MS. PARR: Your Honor, it's the State's position  
7 it's not Hearsay. She talked with the defendant directly.

8 THE COURT: All right. Your objection is  
9 overruled. She can say what the defendant said. That's  
10 not hearsay. If it's a third person I want to make sure  
11 that that's what she was talking about because she's  
12 saying she said. But —

13 THE WITNESS: Latisha said.

14 THE COURT: —I understand this is from the  
15 defendant, therefore, it's not hearsay, it's party  
16 opponent. And she can testify as to what the defendant  
17 said but not third parties. Very good.

18 Ms. Parr.

19 BY MS. PARR:

20 Q And would you continue, Ms. Montgomery?

21 A Well, anyway, she came back up front to the counter  
22 where I was working.

23 Q Now was this the grocery store?

24 A The grocery store. And she just told me that she  
25 wanted — she had apologized to Mr. Hayes and she also

## SW - M. MONTGOMERY - DIRECT

1 wanted to apologize to me because they started to rob the  
2 store during the time that I was there but decided to wait  
3 until the store closed and then do it.

4 Q Okay. And did she say — what did she specifically say  
5 in regards to that?

6 A That was about as specific as I can remember, recall,  
7 'cause it was a good while back, like in 2009. I do know  
8 she just — she told me that they had planned to rob the  
9 store while I was there, and they decided not to do it  
10 because of the fact that I was in there and they was —  
11 they would do it later after the store closed.

12 Q Would you please answer any questions Mr. Cartrette has  
13 for you.

14 A I would.

15 THE COURT: Mr. Cartrette, you're recognized.

16 MR. CARTRETTE: I don't have no questions for  
17 Ms. Montgomery.

18 THE COURT: Very good. You may step down.

19 MS. PARR: Your Honor, we would ask that  
20 Ms. Montgomery be excused.

21 THE COURT: Any objection from Defense?

22 MR. CARTRETTE: Your Honor, I would object. We  
23 may need to call her.

24 THE COURT: I'll ask that she remain in the  
25 waiting room over there. You're still under subpoena. We

1 ask that you remain with us.

2 MS. PARR: Your Honor, may we approach.

3 THE COURT: You may.

4 (WHEREUPON, counsel approached the Bench for an  
5 off-the-record discussion.)

6 THE COURT: Mr. Foreman, ladies and gentlemen of  
7 the jury, that concludes the testimony that we're going to  
8 receive today. I'm going to ask that you recess until  
9 9:30 in the morning. Be back up here at 9:30. I see all  
10 of you are proudly wearing your juror badge, that very  
11 attractive orange badge. I want y'all to show -- to have  
12 that on when you get out of the car in the morning because  
13 it could be that some of the witnesses or some of the  
14 lawyers are riding in the same elevators with you and they  
15 need to know that you're a juror so they won't  
16 inadvertently discuss the case in your presence. That can  
17 cause problems. Once again, if anyone were to try to  
18 contact you or try to speak with you about this case and  
19 your service as a juror, that's clearly against the law  
20 and I don't anticipate that were to happen. If someone  
21 were to try talk with you about this case do your best to  
22 try to identify them, and I will deal with them  
23 accordingly. But I don't anticipate that's going to  
24 happen.

25 Once again, if you show back up at your house

1 your spouse is gonna say, well tell me what happened  
2 today. This is one occasion where you don't have to tell  
3 them. Tell them that I specifically ordered that you not  
4 discuss the case. Tell them that at the conclusion of  
5 case you'll talk to them until they don't want to hear it  
6 anymore, if you so chose to do so. But you are not to  
7 talk about the case until the conclusion of the  
8 deliberations. Once again, do not do any independent  
9 investigation. Do not get on the internet and look up  
10 anything having to do with criminal law, the facts of this  
11 case, or the law of this case. You need to base your  
12 decision on what transpires here in this courtroom. I'm  
13 going to ask that everyone remain seated as the jury exits  
14 the courtroom. Thank you.

15 (WHEREUPON, the jury was removed from the  
16 courtroom at 4:17 p.m., and the following proceedings  
17 commenced in open court.)

18 THE COURT: Anything from the State before we  
19 recess for the evening?

20 MS. PARR: Your Honor, we would ask that the  
21 defendant be taken into custody. Technically her bond  
22 where she comes to court is no longer good unless the  
23 Court is going to issue another bond.

24 THE COURT: Okay. Well, I don't find that to be  
25 the case. I'm going to allow her to remain on bond and

1 she understands if she doesn't show up the trial is going  
2 on without you. And you understand there's additional  
3 criminal liability if you don't show up. You understand  
4 that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Very good. I'm going to allow her to  
7 remain on bond.

8 THE DEFENDANT: Thank you, sir.

9 THE COURT: Anything else?

10 MS. PARR: The State doesn't have anything else,  
11 Your Honor.

12 THE COURT: Anything from Defense?

13 MR. CARTRETTE: No, sir, Your Honor.

14 THE COURT: All right, very good. How many  
15 witnesses do y'all anticipate calling tomorrow?

16 MS. PARR: Your Honor, three and possibly four.

17 THE COURT: Okay. Do you anticipate concluding  
18 the State's presentation by lunch perhaps?

19 MS. PARR: Most likely we will.

20 THE COURT: Very good. All right.

21 Mr. Cartrette, you need to prepare accordingly.

22 MR. CARTRETTE: Yes, sir.

23 THE COURT: We'll recess until 9:30 in the  
24 morning.

25 (WHEREUPON, the proceedings were concluded for the day at

1 4:20 p.m to be reconvened on October 19th at 9:30 a.m.)

2 THE COURT: All right, we're ready for the jury.

3 (WHEREUPON, the jury was returned to the courtroom at  
4 approximately 9:30 a.m., and the following proceedings  
5 commenced in open court.)

6 THE COURT: Mr. Foreman, ladies and gentlemen of  
7 the jury, good morning, everybody looks bright eyed and  
8 rested. Thank you for being here and thank you for being  
9 here on time. Mr. Richardson, you're recognized.

10 MR. RICHARDSON: Thank you, Your Honor. The  
11 State would call Quentin Epps. Mr. Epps, if you could,  
12 please come forward. Please come forward. I'm going to  
13 ask if you could come forward, place your left hand on the  
14 Bible, and raise your right hand as the clerk administers  
15 the oath. I'm going to ask you to take your hands out of  
16 your pocket. Stand right here. Stand right over here.  
17 Place your left hand on the Bible and raise your right  
18 hand.

19 WHEREUPON,

20 QUENTIN EPPS,  
21 having been duly sworn by the Deputy Clerk of Court,  
22 testified as follows:

23 THE DEPUTY CLERK OF COURT: Please be seated  
24 and state your full name for the record.

25 THE COURT: Pull up a seat in the witness chair.

**SW - Q. EPPS - DIRECT**

1 Pull up real close to that microphone. Speak loudly,  
2 clearly, and slowly. Start with your full name and spell  
3 that last one for us.

4 THE WITNESS: Quentin Epps.

5 THE COURT: Now how you spell your last name?

6 THE WITNESS: E-P-P-S.

7 THE COURT: Very good. No "e" on the end.

8 THE WITNESS: No.

9 THE COURT: Very good. Mr. Richardson, you're  
10 recognized.

11 MR. RICHARDSON: Thank you, Your Honor.

12 **DIRECT EXAMINATION**

13 BY THE COURT:

14 Q Good morning, Mr. Epps.

15 A Good morning.

16 Q Mr. Epps, how old are you?

17 A 26.

18 Q 26? And where do you live?

19 A Lake City.

20 Q Lake City. You've lived in Lake City all your life?

21 A Yes, sir.

22 Q You lived in Lake City back in 2008 then?

23 A Yes, sir.

24 Q Okay. Mr. Epps, before we get started you have some  
25 prior convictions; is that right?



## SW - Q. EPPS - DIRECT

1 A Right.

2 Q Okay. And those include a burglary conviction and also  
3 a drug conviction; is that right?

4 A Yeah.

5 Q Okay. If you could, speak up a little bit. Now  
6 Mr. Epps, you are a co-defendant to Ms. Cochran in this  
7 case; is that right?

8 A Right.

9 Q Okay. So you two are charged with armed robbery and  
10 possession of a weapon during the commission of a violent  
11 crime?

12 A Right.

13 Q Okay. Mr. Epps, back in 2008 November of 2008, when  
14 this crime took place, were you present with the defendant  
15 and the other co-defendants in this case on that day?

16 A Yes, sir.

17 Q Okay. And that was November 15th, 2008?

18 A Yes, sir.

19 Q Okay. Tell the jury how you and these other  
20 co-defendants came together that day. Where did y'all  
21 meet up?

22 A At Latisha's house.

23 Q At Latisha's house?

24 A Yeah.

25 Q About what time day did y'all get together?

## SW - Q. EPPS - DIRECT

- 1 A Sometime like before it's dark.
- 2 Q Right when it was first dark?
- 3 A Yeah.
- 4 Q What was the reason y'all all got together?
- 5 A Find somebody to rob.
- 6 Q Okay. And what was the --- so Mr. Anderson said you
- 7 met at Ms. Cochran's house. Where did Ms. Cochran live at
- 8 the time?
- 9 A In Lake City.
- 10 Q Okay. And what area of Lake City?
- 11 A Lassie Trailer Park.
- 12 Q Lassie Trailer Park? Okay. When you met up at her
- 13 house what all was there?
- 14 A All the co-defendants.
- 15 Q Okay. Would that be -- could you name them all?
- 16 A Me, Montarrio, Jerry, and Chaz.
- 17 Q Montarrio Graham?
- 18 A Right.
- 19 Q Jerry Bush?
- 20 A Right.
- 21 Q Chazmonte Brown?
- 22 A Right.
- 23 Q And then Ms. Cochran?
- 24 A Right.
- 25 Q Okay. So when y'all met up at Ms. Cochran's house what

## SW - Q. EPPS - DIRECT

- 1 was the first thing y'all did after y'all decided to go  
2 rob somebody?
- 3 A Went to Florence to get some weed.
- 4 Q Okay. And so you left Lake City and went to Florence?
- 5 A Right.
- 6 Q Okay. And when you went to Florence were y'all  
7 actively seeking someone to rob at that point?
- 8 A No.
- 9 Q Okay. So at what point did y'all decide to try to go  
10 find somebody to rob?
- 11 A Everybody figure it was getting too late, wanting to go  
12 back in the house.
- 13 Q Okay. At what point did y'all figure out who you  
14 wanted to rob?
- 15 A That's when the phone call was made.
- 16 Q Okay. Tell us a little bit about how that decision  
17 took place. How did y'all pick Mr. Hayes?
- 18 A I can't even remember how that came.
- 19 Q I need you to speak up a little bit, okay. So you said  
20 a phone call was made?
- 21 A Right.
- 22 Q Okay. Who made a phone call?
- 23 A Latisha.
- 24 Q All right. And who did she call?
- 25 A Mr. Hayes.

## SW - Q. EPPS - DIRECT

1 Q Okay. How did you know it was Mr. Hayes that she was  
2 calling?

3 A He was over speakerphone.

4 Q He was on speakerphone? Okay. Did you know before the  
5 call was made that it was going to be Mr. Hayes that got  
6 called?

7 A Right.

8 Q You did? Okay. Did you know Mr. Hayes?

9 A No, not personally.

10 Q Okay. Where were y'all when the call was made?

11 A Kennedy Park.

12 Q In a park?

13 A In Kennedy Park.

14 Q In Kennedy Park. Were y'all in a vehicle?

15 A Right.

16 Q What car were you in?

17 A My car.

18 Q Your car? What kind of car do you have?

19 A A Camry.

20 Q All right. What color is that Camry?

21 A Like purplish looking color.

22 Q Okay. And do you remember what year model it is?

23 A '92.

24 Q Okay, early 90's? All right. So you're in Kennedy  
25 Park and Ms. Cochran makes a phone call to Mr. Hayes. Do

## SW - Q. EPPS - DIRECT

1 you recall what Ms. Cochran said to Mr. Hayes, what the  
2 nature of that conversation was?

3 A Asked him was he coming out to the club.

4 Q Okay. And could you hear him respond over the  
5 speakerphone?

6 A Yes, sir.

7 Q Okay. So was that pretty much all the conversation?

8 A Yes, sir.

9 Q What was the intent of that conversation? Why did she  
10 make that call?

11 A Get him outside.

12 Q Get him outside? Did you know where his store and  
13 house was at the time?

14 A Yes, sir.

15 Q Okay. So after the call was made y'all then did what?

16 A Parked to the side and Chaz — Montarrio and Jerry  
17 jumped out the car.

18 Q Okay. So y'all — did y'all drive anywhere after the  
19 call was made or were y'all already sitting where you were  
20 going to be?

21 A Yeah, went and parked.

22 Q You did what now?

23 A Went and parked.

24 Q You went somewhere else and parked, okay. So do you  
25 remember who picked Mr. Hayes as being a victim?

## SW - Q. EPPS - DIRECT

1 A (No verbal response.)

2 THE COURT: You need to answer.

3 THE WITNESS: No, sir.

4 BY MS. PARR:

5 Q But Mr. Hayes was definitely the target; is that right?

6 A Yes, sir.

7 Q Okay. So when y'all parked your car you said that

8 Mr. Bush, Mr. Brown, Mr. Graham got out of the car?

9 A Right.

10 Q Okay. What did they do?

11 A They jumped out the car and robbed Mr. Hayes.

12 Q Okay. Did they have any weapons with them?

13 A Yes, sir.

14 Q What kind of weapons were present?

15 A Hand - two handguns and shotgun.

16 Q Okay. What did you and Ms. Cochran do while the other  
17 three went to get Mr. Hayes?

18 A Sat in the car.

19 Q Okay. And were y'all waiting on them to get back?

20 A Yeah.

21 Q Okay. Could you see anything from where you were?

22 A No, sir.

23 Q Okay. It was dark outside, right?

24 A Right.

25 Q Okay. How long did it take them to come back to the

## SW - Q. EPPS - DIRECT

- 1 car? Do you remember?
- 2 A Not long 'cause we had pulled off. We had -- once we
- 3 heard the commotion we pulled off.
- 4 Q You pulled off?
- 5 A (No verbal response.)
- 6 Q Before they got back?
- 7 A Yeah.
- 8 Q Okay. But did you come back and get them?
- 9 A No, they ran to the car.
- 10 Q Oh, they ran to the car. All right, what kind
- 11 commotion did you hear?
- 12 A Mr. Hayes screaming.
- 13 Q Okay. So you were close enough to hear Mr. Hayes. You
- 14 were parked close enough?
- 15 A I just could hear it. I couldn't see it.
- 16 Q Right, okay. When they got back to the car what did
- 17 they do?
- 18 A Got in the car.
- 19 Q Okay. Where did y'all go then?
- 20 A To Latisha house.
- 21 Q Okay. What had they gotten from Mr. Hayes?
- 22 A His wallet.
- 23 Q His wallet?
- 24 A Yeah.
- 25 Q Did it have any money?

## SW - Q. EPPS - DIRECT

- 1 A Yes, sir.
- 2 Q Okay. About how much money do you remember?
- 3 A Five hundred dollars.
- 4 Q Okay. Did it also have any credit cards, debit cards,  
5 anything like that?
- 6 A Yes, sir.
- 7 Q Okay. How did y'all split up the money and the cards?
- 8 A Everybody -- everybody got pretty much some money and  
9 the cards was left in my car.
- 10 Q Okay. So there was five hundred dollars and a couple  
11 of cards. And there were five of y'all. Do you remember  
12 how that money was split up?
- 13 A It wasn't split evenly.
- 14 Q It wasn't split even? Did everybody get some money?
- 15 A (No verbal response.)
- 16 Q Okay. What ended up happening to the credit cards?
- 17 A I tried to use them.
- 18 Q You tried to use them?
- 19 A Uh-huh.
- 20 Q All right. And do you know what happened to the other  
21 one?
- 22 A I gave it to Jerry.
- 23 Q Okay, all right. So once y'all got back to Latisha's  
24 house, y'all split the money, did you do anything else or  
25 did y'all go your separate ways?



## SW - Q. EPPS - DIRECT

1 A Go our separate ways.

2 Q Okay. Now who drove the vehicle -- it's your car,  
3 right?

4 A Right.

5 Q Who drove the car throughout this process?

6 A Latisha.

7 Q Okay. Why did you not drive? It's your car.

8 A I had no license.

9 Q You were worried about not having a license, okay. So  
10 Latisha drove to Florence in your car?

11 A Yes, sir.

12 Q Is that a yes?

13 A Yes, sir.

14 Q Okay. And then when y'all go -- got back to Lake City,  
15 she called Mr. Hayes to set up the robbery; is that right?

16 A Right.

17 Q And she drove the car to the location where the robbery  
18 took place?

19 A Right.

20 Q Okay. And did she drive the car away from the robbery  
21 too?

22 A Yes, sir.

23 Q Okay. And she drove back to her house?

24 A Yes, sir.

25 Q And that's when y'all split up the money?

## SW - Q. EPPS - DIRECT

1 A Yes, sir.

2 Q All right. You mentioned earlier that you couldn't see  
3 anything but you heard Mr. Hayes screaming. At any point  
4 in time what did you hear in terms of gunshots?

5 A I just heard gunshots go off.

6 Q You did hear gunshots?

7 A Uh-huh.

8 Q Could you see where they came from?

9 A No, sir.

10 Q Okay. So the next thing you knew those three fellows  
11 got back to the car?

12 A Yes, sir.

13 Q Okay. Mr. Epps, do you recall -- you mentioned three  
14 guys did the robbery and there were three guns. Do you  
15 remember who had what gun?

16 A Yes, sir.

17 Q Who -- who had what?

18 A I think, as a matter of fact, Chad had two -- had a  
19 pistol. Montarrio had a pistol and Jerry had a shotgun.

20 Q Okay. And do you remember what they were wearing,  
21 like, to disguise themselves?

22 A Camouflage clothes and ski masks.

23 Q Had on ski masks? Okay. Mr. Epps, have you been  
24 offered anything special to testify here today?

25 A No, sir.

**SW - Q. EPPS - CROSS**

1 Q You hadn't been offered any sort of special plea deal  
2 in order for you to testify here today; is that right?

3 A Right.

4 Q Okay.

5 MR. RICHARDSON: Beg the Court's indulgence one  
6 moment.

7 BY MR. RICHARDSON:

8 Q Mr. Epps, thank you, sir. Please answer any questions  
9 Mr. Cartrette may have for you.

10 THE COURT: Mr. Cartrette, you're recognized.  
11 Cross-examination.

12 MR. CARTRETTE: Thank you, Your Honor.

13 **CROSS-EXAMINATION**

14 BY MR. CARTRETTE:

15 Q Good morning, Mr. Epps, how are you, sir?

16 A All right.

17 Q You said y'all met up at Latisha's house at first dark,  
18 correct?

19 A Right.

20 Q Okay. You said there were three guns; is that right?

21 A Right.

22 Q And you said that your co-defendants Chazmonte Brown,  
23 Montarrio Graham, and Jerry Bush had those guns, correct?

24 A Right.

25 Q Isn't it true that one of those guns, however, was

## SW - Q. EPPS - CROSS

1 yours?

2 A No, sir.

3 Q Is it not true that you -- one of the purposes you went  
4 to Florence for was not just drugs, but to get a gun?

5 A No, sir.

6 Q Is one of those pistols a BB gun?

7 A Yes, sir.

8 Q Okay. How about the shotgun, can you tell us anything  
9 else about the shotgun?

10 A No, sir.

11 Q Shotgun wasn't yours?

12 A No, sir.

13 Q You said you weren't offered anything special to  
14 testify today?

15 A No, sir.

16 Q Isn't it true, though, that you anticipate the  
17 possibility of a better deal or you wouldn't be here  
18 today?

19 A No, sir.

20 Q So you're willing to make a statement against interest  
21 knowing that it can be used against you in a court of law  
22 later?

23 A Right.

24 Q You been offered no deal?

25 A No, sir.

## SW - Q. EPPS - CROSS

1 Q Isn't it true that you hope to get a better deal  
2 because of your cooperation today?

3 A Yes, sir.

4 Q You said Latisha drove the car to Florence and then  
5 back to Lake City, correct?

6 A Right.

7 Q And then from while you were in Lake City to the  
8 victim's store, correct?

9 A Right.

10 Q And then away from the store to her house?

11 A Right.

12 Q When y'all headed out first and your codefendants had  
13 to catch up to you, isn't it true y'all headed out because  
14 you were scared —

15 A Yes.

16 Q —'cause you heard the commotion? Isn't it true y'all  
17 intended to get away?

18 A Yes, sir.

19 Q And not to be part of what was going on?

20 A Right.

21 Q And when I say "y'all," I mean you and Latisha Cochran,  
22 correct?

23 A Right.

24 Q And again, you state for the record that you do hope  
25 that there might be a deal in store for your testimony

**SW - Q. EPPS - REDIRECT**

1 here today?

2 A That's right.

3 Q Would you say that more clearly?

4 A Yes, sir.

5 Q Thank you, sir.

6 THE COURT: Any redirect?

7 MR. RICHARDSON: Briefly, Your Honor.

8 **REDIRECT EXAMINATION**

9 BY MR. RICHARDSON:

10 Q Mr. Epps, when this incident took place back in  
11 November of 2008 you were brought in by Lake City Police  
12 at one point; is that right?

13 A Right.

14 Q And when they brought you in you gave them a taped  
15 confession; is that right?

16 A Right.

17 Q Okay. And that was before you knew you'd be in this  
18 position here today.

19 A Right.

20 Q Okay. And when you gave that statement to the police  
21 back in 2008 you didn't have a lawyer with you, did you?

22 A No, sir.

23 Q Okay. And you just decided to cooperate?

24 A Yes, sir.

25 Q Okay. Thank you very much. That's all.

## SW - Q. EPPS - REDIRECT

1 THE COURT: All right, you may step down.

2 MR. CARTRETTE: Your Honor, may I re-cross?

3 THE COURT: No, no. There is no such thing as  
4 re-cross. The way the procedure works is it's direct  
5 examination, cross-examination, then redirect. It's  
6 incumbent upon you to object to anything new that he  
7 brings out on redirect. And that goes for both sides.

8 You may step down.

9 THE COURT: You may call your next witness.

10 MR. RICHARDSON: Your Honor, may we approach  
11 briefly.

12 THE COURT: Yes, sir.

13 (WHEREUPON, counsel approached the Bench for an  
14 off-the-record discussion.)

15 THE COURT: Mr. Foreman, ladies and gentlemen of  
16 the jury, I'm going to ask, if you could, to retire to the  
17 jury room for just one moment. Do not discuss the case.

18 (WHEREUPON, the jury was removed from the  
19 courtroom at 9:50 a.m.)

20 THE COURT: We'll stand at ease for ten minutes.

21 (WHEREUPON, a recess was taken from the  
22 proceedings.)

23 THE COURT: We're ready for the jury.

24 (WHEREUPON, the jury was returned to the courtroom at  
25 approximately 10:13 a.m., and the following proceedings

**SW - F. MCALLISTER -DIRECT**

1 commenced in open court.)

2 **THE COURT:** Mr. Richardson, you're recognized.

3 **MS. PARR:** Thank you, Your Honor. The State  
4 would call Investigator Skeet McAllister.

5 **THE COURT:** Mr. McAllister, place your left hand  
6 on the Bible and raise your right hand as the clerk  
7 administers the oath.

8 **WHEREUPON,**

9 **FRANKLIN SKI MCALLISTER,**  
10 having been duly sworn by the Deputy Clerk of Court,  
11 testified as follows:

12 **THE DEPUTY CLERK OF COURT:** Please be seated,  
13 state your name for the record.

14 **THE COURT:** Pull up real close to that  
15 microphone. Speak loudly, clearly, and slowly.

16 **THE WITNESS:** Franklin Ski McAllister.

17 **MR. RICHARDSON:** Thank you, Your Honor.

18 **DIRECT EXAMINATION**

19 **BY MR. RICHARDSON:**

20 **Q** Investigator McAllister, who do you work for now?

21 **A** I'm actually employed as part-time as a Scranton police  
22 officer maintaining class one certification, and I'm a  
23 licensed polygraph examiner operating private business  
24 corporate polygraphs.

25 **Q** Okay. Back in November of 2008 where were you



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1 employed?

2 A I was a sergeant with the City of Lake City in the  
3 crime investigation division.

4 Q All right. And how long were you with Lake City?

5 A Approximately six years.

6 Q All right. And were you the on-call investigator when  
7 an armed robbery took place on November 15th, 2008?

8 A Correct.

9 Q Okay. Mr. Hayes was the victim of that armed robbery?

10 A Correct.

11 Q Okay. When you got notified about this incident what  
12 did you do?

13 A I responded to the incident location which was  
14 November 15th, 2008, at [REDACTED], which is Hayes  
15 Grocery. And I met with the on-duty supervisor, which was  
16 Charles Filyaw, and patrolman Matthew Smith. At that  
17 point they advised me that they -- Mr. William Hayes was  
18 robbed by three males with dark colored clothing, had  
19 faces covered up, all of them had guns. At that point I  
20 interviewed Mr. William Hayes in the front of my car and  
21 audio recorded the statement with them at that point from  
22 my card which, you know, he indicated in his statement,  
23 you know, that he received a unknown or anonymous phone  
24 call from a restricted number to his cell phone from a  
25 female asking him if he was going to the Elks Club for a

## SW - F. MCALLISTER -DIRECT

1 drink.

2 Q Okay.

3 A And insinuated, you know, meeting this individual, this  
4 female caller for a drink.

5 MR. CARTRETTE: Your Honor, I object. I object  
6 to what Mr. Hayes told her.

7 THE COURT: I will sustain the objection. That  
8 will be double hearsay. Very good.

9 BY MR. RICHARDSON:

10 Q Investigator, when you went out to the crime scene did  
11 you have an opportunity to take a look around and survey  
12 the items of evidence?

13 A Correct, I did.

14 Q Okay. And did you see any weapons?

15 A I seen a plastic gun that was in two parts.

16 Q Okay. Where was it located?

17 A The handle of the plastic pistol was laid in the  
18 roadway and the top portion which would have been a slide  
19 portion was laying at the edge of the curb there at the  
20 store.

21 Q Okay. I want to show you what's been marked State's  
22 Exhibit Number 8 for identification, ask you if you can  
23 recognize the items in this bag. Do you recognize those?

24 A Yes, I do. That was the plastic gun handle portion was  
25 laying in the roadway and the slide portion was laying

## SW - F. MCALLISTER -DIRECT

- 1 beside the curb right at the store, the victim's store.
- 2 Q Do these items appear to be in the same condition they
- 3 were in on the night that you saw them?
- 4 A Correct.
- 5 Q Okay.
- 6 MR. RICHARDSON: Your Honor, I'd ask to have this
- 7 exhibit placed into evidence at this time.
- 8 THE COURT: Any objection from Defense?
- 9 MR. CARTRETTE: Without objection.
- 10 THE COURT: Pardon?
- 11 MR. CARTRETTE: Without objection.
- 12 THE COURT: Okay. That's denominated as State's
- 13 exhibit number —
- 14 MR. RICHARDSON: 8, Your Honor.
- 15 THE COURT: 8 is in the evidence without
- 16 objection.
- 17 (WHEREUPON, State Exhibit No. 8 was admitted into
- 18 evidence.)
- 19 BY MR. RICHARDSON:
- 20 Q Investigator, after you interviewed the victim and took
- 21 a look around at the crime scene, what did you do?
- 22 A At that point I was given information of a Russell
- 23 Rodriguez who had some information about seeing a vehicle
- 24 located on Clover Street. At that point I met with him
- 25 and got his statement from him as well.

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1 Q Okay, you talked to Mr. Russell. And after you met  
2 with him what did you do?

3 A At that point I went, I think the following day I got  
4 some information where the victim's credit cards were used  
5 at the Florence Wal-Mart and at that point I did go and  
6 obtain video surveillance from the outside camera as well  
7 as the inside cash register.

8 Q And who had attempted, or who used Mr. Hayes' credit  
9 card at the Super Wal-Mart?

10 A Quentin Epps as later identified as Quentin Epps.

11 Q Okay, and he's a co-defendant to Ms. Cochran; is that  
12 right?

13 A Correct.

14 Q All right. So you're able to identify Mr. Epps. Did  
15 you eventually talk with Mr. Epps?

16 A I did eventually talk to Mr. Epps and later upon  
17 investigation.

18 Q Based on your conversation with Mr. Epps what did you  
19 do with regard to Ms. Cochran?

20 A At that point after, arrest warrants were issued for  
21 Quentin Epps. And I audio recorded a statement. Of  
22 course he was Mirandized at that point and statement  
23 indicated that she was the female who made the call to the  
24 victim. She was involved along with the other  
25 co-defendants. At that point I did obtain a arrest

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- 1 warrant for armed robbery for Ms. Cochran.
- 2 Q Now at any time before you obtained an arrest warrant
- 3 for Ms. Cochran, did you have an opportunity to interview
- 4 Ms. Cochran?
- 5 A Correct, I did.
- 6 Q Okay. Now when was the first time you interviewed
- 7 Ms. Cochran?
- 8 A It was November the 19th.
- 9 Q Okay. That's 2008; is that right?
- 10 A Correct.
- 11 Q And where did this interview take place?
- 12 A The interview took place at my office at the Lake City
- 13 Police Department.
- 14 Q Okay. So this would have been about four days after
- 15 the robbery?
- 16 A Correct.
- 17 Q Okay. So did she come into your office voluntarily?
- 18 A Correct, she did.
- 19 Q And she was not under arrest at that point?
- 20 A She was not.
- 21 Q Okay. And you had not secured the warrants at that
- 22 point?
- 23 A No, I had not.
- 24 Q Okay. When she came in to the Lake City Police
- 25 Department you took her where?

## SW - F. MCALLISTER -DIRECT

1 A Back to my office at the Lake City Police Department.

2 Q Okay. And what's the layout of your office?

3 A There's a desk, an office chair, a two chairs in front  
4 of it and then a computer desk back behind it.

5 Q Okay. Was she free to leave that interview —

6 A Correct.

7 Q —at any time?

8 A Correct.

9 Q What did you tell her about her reason for being there?

10 A Based on the information where the victim's credit  
11 cards were used, there's a transaction the following day  
12 of the robbery used at the McDonalds in Lake City, which  
13 the transaction did go through of 15-dollars. And then  
14 the same day shortly after transaction at the McDonalds I  
15 went to Captain D's where the credit card was used but  
16 declined at that point. And I was able to get a vehicle  
17 description from both the Captain D's staff as well as  
18 some video at the McDonalds identified on the videotape.  
19 Based on the vehicle information I was able to trace it  
20 back during subject to investigation to it being  
21 Ms. Cochran, and that's when I was able to get in contact  
22 with her.

23 Q Okay. So she came in, went to your office. And before  
24 you took a statement or before you questioned her, did you  
25 read her Miranda warnings?

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1 A Correct, I did.

2 Q Okay. And how did you go about providing these Miranda  
3 warnings?

4 A May I refer to State's Evidence?

5 Q Okay. I'll show you what's been marked as State's  
6 Number 1 for identification.

7 (Exhibit shown to defense counsel.)

8 BY MR. RICHARDSON:

9 Q Investigator, could you identify State's Exhibit Number  
10 1?

11 A Sure. This is the statement of Miranda rights that was  
12 given to Ms. Cochran on November 19th, 2008. I read the  
13 Miranda statement of: "You have the right to remain  
14 silent. Anything you say can and will be used against you  
15 in a court of law. You have the right to talk to a lawyer  
16 and have him present with you while any questioning. If  
17 you cannot afford to hire a lawyer one will be appointed  
18 to represent you before any questioning if you wish. You  
19 can decide at any time to exercise these rights and not  
20 answer any questions or make any statements." I also read  
21 the waiver of rights to her. "I've read the above  
22 statement of my rights, understand each of those rights.  
23 Having these rights in mind I waive them and willing to  
24 make a statement." And I had her go back through and read  
25 it one by one and initial, her initials by each, 1 through

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1 5 Miranda rights, and go back through and sign it. And I  
2 witnessed it at Lake City Police Department in my office  
3 on November 19th, 2008.

4 Q Okay. Now are these Miranda forms or waiver of rights  
5 form, are they typical procedural for law enforcement when  
6 questioning a suspect?

7 A Correct, they are.

8 Q Okay. And you indicated that you read this to her and  
9 got her to initial and sign it; —

10 A Correct.

11 Q —is that right? And you signed it as a witness?

12 A Correct.

13 Q Okay. And is this the document that she initialed to  
14 sign and you signed that day?

15 A Correct.

16 Q On November 19th.

17 MR. RICHARDSON: Your Honor, I'd ask to have  
18 State's Exhibit Number 1 admitted into evidence.

19 THE COURT: Any objection from Defense?

20 MR. CARTRETTE: Your Honor, I would object  
21 because there is some question as to the authenticity of  
22 Ms. Cochran's signature.

23 THE COURT: Subject to your objection I'm going  
24 to introduce it subject to your objection. You're gonna  
25 have plenty of opportunity to cross-examine him in that



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1 regard, offer any evidence that you might have with regard  
2 to the authenticity. But it is in evidence.

3 (WHEREUPON, State Exhibit No. 1 was admitted into  
4 evidence.)

5 MR. CARTRETTE: Thank you, Your Honor.

6 BY MR. RICHARDSON:

7 Q All right. Investigator, on November 19th after you  
8 went through the waiver of rights form with Ms. Cochran,  
9 did she indicate to you that she understood it?

10 A Correct.

11 Q Did she indicate that she wished to give a statement to  
12 you without a lawyer?

13 A Correct.

14 Q Okay. At any point in time did she ask to stop?

15 A No point whatsoever.

16 Q Okay. When you take a statement from a suspect at the  
17 police department, is the typical protocol to tape record  
18 that conversation?

19 A Correct.

20 Q And did you do that in this case?

21 A Yes, I did.

22 Q All right, in this particular statement. I want to  
23 show you what has been marked as State's Exhibit Number 3.

24 Can you identify this disk?

25 A Correct.

## SW - F. MCALLISTER -DIRECT

1 Q Okay, what is that?

2 A That is the audio recorded statement taken from my  
3 office on November 19th, 2008, where she was Mirandized on  
4 audio statement as well, and that's when she indicated how  
5 she come in contact with the cards.

6 MR. RICHARDSON: Okay. Your Honor, I ask to have  
7 State's Number 3 admitted into evidence at this time.

8 THE COURT: Any objection from Defense?

9 MR. CARTRETTE: Your Honor, I would object to  
10 admission of this one as well.

11 THE COURT: Okay. Your objection is overruled.

12 That is denominated as State's Exhibit Number 3 is in the  
13 evidence over Defense's objection.

14 (WHEREUPON, State Exhibit No. 3 was admitted into  
15 evidence.)

16 BY MS. PARR:

17 Q Now Investigator, before you start the tape do you  
18 Mirandize suspect?

19 A Correct. And that is proper procedure that's been  
20 followed throughout my career.

21 Q Okay. And then once the tape begins do you also  
22 Mirandize them again?

23 A Correct.

24 Q And did you do that in this case?

25 A Correct, I did.

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1 MR. RICHARDSON: Your Honor, at this time I ask  
2 permission to publish the contents of the disk to the  
3 jury.

4 THE COURT: All right, you may do so.  
5 (State's Exhibit 3 was played for the jury.)

6 BY MR. RICHARDSON:

7 Q Investigator McAllister, when you finished this initial  
8 interview with Ms. Cochran did you subsequently interview  
9 Quentin Epps?

10 A No, not at this time. From what I recall, was that it  
11 was around the 14th of December 2008 when I got some  
12 information that a Marshinette Graham, which was involved  
13 in a relationship with Quentin Epps, had some information  
14 on this case; it was a Sunday. And I came out and picked  
15 her up and took her back to Lake City Department where I  
16 interviewed her at that time and that's where my  
17 information originally came from on this case.

18 Q Okay, so that was the middle of December?

19 A Correct.

20 Q So you interviewed Ms. Cochran November 19th on the  
21 credit card issue?

22 A Correct.

23 Q Okay. And then in the middle of December is when you  
24 got a hold of Quentin Epps' girlfriend and then Mr. Epps?

25 A I was contacted by a informant. They gave me some

## SW - F. MCALLISTER -DIRECT

1 information that Marshinette Graham had some information  
2 on the case and wanted to come forward.

3 Q Okay. And based on the information that you got in the  
4 middle of December, did you subsequently speak to Ms.  
5 Cochran again?

6 A I did after I already obtained arrest warrants for her  
7 arrest for armed robbery.

8 Q Okay. And what day did you interview her the second  
9 time?

10 A Can I refer to the Miranda?

11 Q Yeah. I want to show you what's been marked as State's  
12 Exhibit Number 2. You can identify this item.

13 A Correct. This is the Miranda rights form that was  
14 presented to Ms. Cochran on December the 24th, 2008.

15 Q Okay. And did you go through the same protocol that  
16 you did previously?

17 A Correct, same protocol.

18 Q You read each statement of the rights?

19 A Correct.

20 Q And she signed and initialed?

21 A Correct.

22 Q And you witnessed it?

23 A Correct.

24 Q All right.

25 MR. RICHARDSON: Your Honor, I'd ask to have

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1 State's Number 2 admitted into evidence.

2 THE COURT: Any objection from Defense?

3 MR. CARTRETTE: Your Honor, I do object. There  
4 is some question as to the authenticity of that.

5 THE COURT: Very good. This exhibit will be  
6 introduced into evidence over Defense's objection and it's  
7 denominated as State's Exhibit Number?

8 MR. RICHARDSON: 2.

9 THE COURT: 2. It's in the evidence.

10 (WHEREUPON, State Exhibit No. 2 was admitted into  
11 evidence.)

12 BY MR. RICHARDSON:

13 Q Mr. McAllister, you obtained warrants on Ms. Cochran  
14 for armed robbery and she came in, or you talked to her  
15 again on December 24th —

16 A Correct.

17 Q —of 2008. When you met with her again she was in  
18 custody?

19 A Correct.

20 Q And where did you meet with her that time?

21 A Lake City Police Department in my office.

22 Q Same location?

23 A Same location.

24 Q Okay. And did you mirandize her before you pressed  
25 record on audio?

## SW - F. MCALLISTER -DIRECT

1 A Correct.

2 Q And did you mirandize her again on the tape?

3 A Correct.

4 Q At any point in time in that exchange did she indicate  
5 to you that she did not want to talk or that she wanted a  
6 lawyer?

7 A No, sir, not at all.

8 Q And did she at any point in time tell you she wanted to  
9 stop talking?

10 A At no point, no, sir.

11 Q Okay. I want to show you what's been marked as State's  
12 Exhibit Number 4 for identification. Can you identify  
13 this item?

14 A Correct. That is the CD statement taken by myself with  
15 the defendant present in this court -- in my office at the  
16 Lake City Police Department.

17 Q Is that the one from December 24th?

18 A Correct.

19 MR. RICHARDSON: Your Honor, I'd ask that State's  
20 Exhibit Number 4 be placed into evidence.

21 THE COURT: Any objection from Defense?

22 MR. CARTRETTE: Your Honor, them too.

23 THE COURT: All right, subject to Defense's  
24 objection it's into evidence.

25 (WHEREUPON, State Exhibit No. 4 was admitted into

1 evidence.)

2 MR. RICHARDSON: Your Honor, permission to play  
3 the tape.

4 THE COURT: You may publish.

5 (State's Exhibit 4 was played for the jury.)

6 MR. CARTRETTE: Your Honor, objection.

7 THE COURT: All right. Mr. Foreman, ladies and  
8 gentlemen of the jury, I'm gonna ask if you can retire to  
9 the jury in order for us to take up a matter of law with  
10 the Court. Do not discuss the case.

11 (WHEREUPON, the jury was removed from the  
12 courtroom at 10:45 a.m., and the following proceedings  
13 commenced in open court.)

14 THE COURT: Yes, sir, you're recognized.

15 MR. CARTRETTE: Your Honor, Ms. Cochran has some  
16 question as to authenticity of the tape. By virtue of the  
17 fact that if you listen to the very first part where he is  
18 assuring, counsel is assuring that she has been read her  
19 rights and she understands them, there's a small portion  
20 there where he's muffled and it sounds like it may have  
21 been spliced and she brought that to my attention,  
22 believes that it may be worth looking into, Your Honor.

23 THE COURT: All right. Well, when were you  
24 provided a copy of this tape?

25 MR. CARTRETTE: I was provided a copy of this

1 tape several months ago, Your Honor.

2 THE COURT: All right. You know, there is a  
3 method by which you can investigate that and there are  
4 people who you can send it to. And the last person I did  
5 when I practiced law, there's an outfit out of Florida  
6 that does that. They look at tapes and determine whether  
7 or not the recording has been taken off or whatever. I  
8 assume that you had this tape in a timely fashion; and in  
9 the event that was an issue, perhaps that would have been  
10 the best way to address that issue. But of course, we're  
11 in the trial now and the tape is being played to the  
12 extent that you maintain that the tape is not — or has  
13 been tampered with, I imagine you can introduce whatever  
14 evidence you have in that regard, or the tape speaks for  
15 itself. If you feel as though the tape is muffled, you  
16 can argue that to the jury that obviously the tape has  
17 been tampered with. You can do whatever you want to in  
18 that regard, but at this juncture I'm not in a position to  
19 suppress the statement. It's already in the process of  
20 being played. Any objections in that regard is perhaps  
21 been waived. But to the extent that you've raised them  
22 they're overruled.

23 Anything from the State?

24 MR. RICHARDSON: No, sir, Your Honor.

25 THE COURT: All right.



1           EQUIPMENT TECHNICIAN: Do we need to start over?

2           THE COURT: Just go from there unless I hear  
3 differently from the State.

4           MR. RICHARDSON: No, sir, Judge, that's fine.

5           THE COURT: Mr. Cartrette?

6           MR. CARTRETTE: Your Honor, I would like to hear  
7 it from the beginning if that might be all right with you.

8           THE COURT: All right. Might counsel approach  
9 the Bench.

10 (WHEREUPON, counsel approached the Bench for an  
11 off-the-record discussion.)

12           THE COURT: We're ready for the jury.

13 (WHEREUPON, the jury was returned to the courtroom at  
14 approximately 10:52 a.m., and the following proceedings  
15 commenced in open court.)

16           THE COURT: Mr. Foreman, ladies and gentlemen of  
17 the jury, thank you for your patience. Those of you – I  
18 don't know whether they during the break were able to get  
19 you any refreshments, but feel free to bring refreshments  
20 out you if you like. Very good.

21           Mr. Richardson, you're recognized, yes, sir. You  
22 may resume playing the recording.

23           (State's Exhibit 4 was played for the jury.)

24 BY MR. RICHARDSON:

25 Q Investigator McAllister, this whole incident took place

1 in Florence County; is that right?

2 A That's correct.

3 Q Okay. And the individual that you interviewed on  
4 November 19th and December 24th of 2008, do you see her in  
5 the courtroom?

6 A Correct. She's sitting beside her defense attorney  
7 wearing a black blouse.

8 Q And after this statement was made she was taken into  
9 custody and processed?

10 A Correct.

11 Q In the traditional manner?

12 A Correct.

13 Q All right, very good.

14 MR. RICHARDSON: I beg the Court's indulgence,  
15 Your Honor.

16 Mr. McAllister, please answer any questions  
17 Mr. Cartrette may have for you.

18 THE WITNESS: Okay.

19 THE COURT: Cross-examination, Mr. Cartrette.

20 **CROSS-EXAMINATION**

21 BY MR. CARTRETTE:

22 Q Officer McAllister, how are you today?

23 A Great, sir.

24 Q You told us before that you and Latisha alone in your  
25 office, correct?

## SW - F. MCALLISTER - CROSS

1 A Correct.

2 Q Wouldn't you agree that a male police officer with a  
3 female defendant and no one there extra to watch what's  
4 going on, she might be somewhat intimidated?

5 A I would not agree with that whatsoever.

6 Q Would you agree with me that on the day that  
7 Ms. Cochran gave you this second statement she was  
8 nervous?

9 A I would not agree that either. She was volunteering  
10 information quicker than I could ask the question.

11 Q That's fine. You're aware that Ms. Cochran gave this  
12 statement -- you said that the waivers given for the first  
13 and second statement, but specifically for the second  
14 statement, were voluntary. You said that you saw her sign  
15 that waiver statement; is that correct?

16 A Correct.

17 Q You understand she has some question as to whether or  
18 not you're being truthful there because she is not certain  
19 that that is her signature?

20 A I'm aware that that's what's being alleged; but once  
21 again, she -- and it's protocol on all my cases that they  
22 initial and sign and I witness right there in front of  
23 them and also put it on audio recorded statement.

24 Q Is it protocol that when you meet with a defendant to  
25 interrogate that defendant that you would do so alone as

1       opposed to with another officer present?

2       A   It was a interview, not so-to-speak an interrogation.  
3       It was a voluntary interview, and therefore, you know, it  
4       was not necessary to have another officer 'cause it was —  
5       she was freely and voluntarily giving the statement. At  
6       any time she could have stopped then.

7               MR. CARTRETTE:   Your Honor, I have no further  
8       questions.

9               THE COURT:   Any redirect, Mr. Richardson?

10              MR. RICHARDSON:   No, sir, Your Honor.

11              THE COURT:   You may step down.

12              You may call your next witness, Mr. Richardson.

13              MR. RICHARDSON:   That's the State's case, Judge.

14              THE COURT:   Very good. Mr. Foreman, ladies and  
15       gentlemen of the jury, we have reached a juncture in the  
16       trial where we have to take up matters of law. Once again  
17       I'm gonna ask that you retire to the jury room. Do not  
18       discuss the case. Thank you very much.

19                   (WHEREUPON, the jury was removed from the  
20       courtroom at 1:09 p.m., and the following proceedings  
21       commenced in open court.)

22              THE COURT:   Glad to entertain motions at this  
23       time, Mr. Cartrette.

24              MR. CARTRETTE:   Your Honor, I'd like to make a  
25       motion for a directed verdict on behalf of my client at

1 this time on the grounds that the State's evidence as  
2 given does not put a gun in Ms. Cochran's hand at the  
3 commission of this crime, does not put Ms. Cochran  
4 committed an armed robbery. Elements of armed robbery  
5 include using a weapon to take property from the person of  
6 another without intent to return it. They have not shown  
7 that is what she, in fact, intended to do. Your Honor, I  
8 would submit to you that the evidence is all over the  
9 place and there is certainly reasonable doubt as to  
10 whether or not she was there.

11 THE COURT: Okay. Well, of course, at this  
12 juncture it's not really, that's not really the standard I  
13 have to go by is reasonable doubt, got to take the light  
14 the evidence in right most favorable to the State.  
15 Wouldn't you agree?

16 MR. CARTRETTE: Yes, Your Honor.

17 THE COURT: All right. I — but I think your  
18 point is very well taken with regard to the possession of  
19 a weapon during the commission of a violent crime. I'll  
20 be glad to hear from the State in that regard.

21 MS. PARR: May it please the Court, Your Honor,  
22 with both charges the State is proceeding under the theory  
23 of the hand of one is the hand of all. Your Honor, it's  
24 the defendant was integrally involved in this scheme to  
25 rob Mr. Hayes. Your Honor, she was the driver of the car.

1 She made the initial call to Mr. Hayes and she even gave  
2 a statement apologized to Mr. Hayes and Ms. Montgomery as  
3 to her involvement in this matter. Your Honor, it's the  
4 State's position that the armed robbery, it would not be  
5 an armed robbery had there not been a weapon. And what is  
6 attributed to one principal, the principal in the matter,  
7 is attributable to all those involved in it and it's our  
8 position that she was integrally involved in it so she  
9 would be held —

10 THE COURT: That very well might be for the  
11 underlying offense with regard to amend robbery because I  
12 think the hand of one could be the hand of all if the jury  
13 were to make that determination. However, isn't  
14 possession of a weapon during the commission of a violent  
15 crime what sets out those who have a gun from those who  
16 don't have gun? Is there — I'm asking because I don't  
17 know. Is that something that requires actual possession?

18 Mr. Richardson, I'll be glad to hear from you in  
19 that regard.

20 MR. RICHARDSON: Your Honor, not to my knowledge.  
21 My understanding is that it's a offense that, you know,  
22 typically an armed robbery situation you'll have every  
23 defendant charged with a series of other things whether it  
24 be conspiracy, grand larceny, possession of a weapon  
25 during a violent crime. All those things typically are

1 under an umbrella. And in this particular case the  
2 defendant was indicted for the armed robbery and the  
3 possession of weapon charge. And my understanding of it  
4 is that the crimes applicable to each individual  
5 individually would also apply to the others. That'd be  
6 the State's position, Your Honor.

7 THE COURT: All right. It's very interesting. I  
8 understood that would probably be the State's position in  
9 view of the fact that you've indicted it and presented it  
10 to the jury in that fashion, but is there any law to  
11 support that?

12 MR. RICHARDSON: Your Honor, I believe the  
13 statute may exhibit the only controlling law that we have.

14 THE COURT: Read that statute out loud for us.

15 MR. RICHARDSON: Your Honor, I can run and get  
16 the code book real quick to read the statute. I don't  
17 have the exact language in front of me.

18 THE COURT: Okay. Ron — hang on just one  
19 second, we'll get it.

20 (Pause.)

21 THE COURT: There doesn't seem to be any evidence  
22 that the State has presented that would put the gun in the  
23 defendant's hand at any time. There's been no testimony  
24 of that.

25 MR. RICHARDSON: No, sir. Yeah, that was never

1 an allegation that the defendant personally presented any  
2 weapon.

3 THE COURT: All right, hang on just one second.  
4 We're gonna read the statute together here. This is the  
5 charge that will be given to the jury. "The defendant is  
6 charged with possession of a weapon during the commission  
7 of or attempt to commit a violent crime. The State must  
8 prove beyond a reasonable doubt that the defendant was in  
9 possession of a firearm or visibly displayed what appeared  
10 to be a firearm during the commission of a violent crime.  
11 A firearm means any machine gun, automatic rifle,  
12 revolver, a pistol, or any weapon which will and is  
13 designed to or may be readily converted to expel  
14 projectile. In order to find the defendant guilty of  
15 possession of a weapon during the commission of a violent  
16 crime you must first find the defendant guilty of either  
17 committing a violent crime or attempting to commit a  
18 violent crime."

19 But it does seem to say specifically that you've  
20 got to prove beyond a reasonable doubt that she had  
21 commission, I mean, had possession of it during the  
22 commission of the crime.

23 MR. RICHARDSON: Your Honor, I was comparing the  
24 armed robbery charge, armed robbery charge to that. And I  
25 think the, I mean, each individual crime is gonna lay out



1 the elements for an individual but having proceeded with  
2 this case under the theory of the principal hand of one is  
3 the hand of all, we simply submit that each one, each  
4 individual involved, would be under that umbrella, hand of  
5 one hand of all.

6 THE COURT: Well, I understand the argument. The  
7 conundrum that we have here is I'm just looking for  
8 authority to say one way or the other, and I, you know,  
9 the statute specifically says that you, for the charge  
10 that's been sanctioned by the South Carolina Supreme  
11 Court, says that the State must prove beyond a reasonable  
12 doubt that defendant was in possession of a firearm  
13 visibly displayed of what appeared to be a firearm.

14 MR. CARTRETTE: Your Honor, that was the basis  
15 for the motion on the possession of the weapon charge.  
16 They've put up nothing to prove that the weapon and the  
17 battery or any other weapon ever was in the possession of  
18 my client, that it ever belonged to her, or that you know,  
19 she ever used it on anyone.

20 THE COURT: Anything further, Mr. Richardson?

21 MR. RICHARDSON: No, sir, Your Honor.

22 THE COURT: Just one second. Listen to this  
23 language of hand of one hand of all. I'm sure you're  
24 familiar with it but, Mr. Richardson, it says if two of  
25 more people are together, acting together, assisting each

1 other in the committing -- in committing the offense, the  
2 act of one is the act of all or as it's sometimes said the  
3 hand of one is the hand of all, which would seem to  
4 indicate that the defendant would have to be there  
5 assisting them in order for it to apply.

6 MR. RICHARDSON: To the weapons charge?

7 THE COURT: Or -- yes. It says, prior knowledge  
8 that the crime is going to be committed without more is  
9 not sufficient to make a person guilty of that crime.  
10 Mere knowledge that another person is going to commit a  
11 crime even if the defendant is present when the crime is  
12 committed is not sufficient to convict the defendant as a  
13 principal.

14 MR. RICHARDSON: Well, Your Honor, with the --  
15 the main substantive offense here is the armed robbery. I  
16 mean, the defendant by her own mouth indicates that  
17 throughout the duration of this plan she made the call to  
18 get the victim out so the guys can get him. And I think  
19 that whole idea or that whole transaction, if you will,  
20 was the armed robbery in its totality. But for that  
21 whole, I mean, she played a part, they played a part, they  
22 had the guns. And I get the position about the possession  
23 of weapon during violent crime. There is no allegation  
24 that she literally possessed a gun; but in terms of the  
25 armed robbery, I think that the hand of one hand of all is

1 a classic case that, you know, she was -- she was not, you  
2 know, literally with the three guys with the guns. She  
3 was slightly down the road but she initiated the whole  
4 thing. And that is the basis of the State's position in  
5 this matter.

6 MR. CARTRETTE: Your Honor, with all due respect  
7 I would take issue and disagree with the State. By my  
8 client's testimony and by Quentin Epps, Your Honor, she is  
9 not the instigator of this action. She was along for the  
10 ride, if that. Your Honor, under the hand of one hand of  
11 all they have to be acting in concert under a common  
12 scheme. She withdrew. She clearly stated -- and so did  
13 Quentin for that matter -- we don't want anything to do  
14 with robbing anybody, and then they tried to leave. Your  
15 Honor, but a reasonable jury looking at that and I know  
16 that we're not at the jury, but I do believe that by her  
17 own admission and the State hanging their hat on this  
18 tape, she withdrew from any involvement in any activity.

19 THE COURT: Those are all questions of fact.  
20 Really what we're debating here is the question of law,  
21 whether or not the hand of one is the hand of all applies  
22 to possession of weapon during the commission of a violent  
23 crime.

24 MR. CARTRETTE: Yes, sir, Your Honor.

25 MR. RICHARDSON: Your Honor, if it makes it

1 simpler we'll just concede to the pistol, the weapons  
2 charge, if that...

3 THE COURT: Very good. Well, that makes it --  
4 that does make it very simple; doesn't it?

5 MS. PARR: We'll just proceed on the armed  
6 robbery.

7 THE COURT: Very good. Mr. Cartrette, you  
8 prevailed in that regard.

9 MR. CARTRETTE: Thank you, Your Honor.

10 THE COURT: Very good. Anything further from the  
11 Defense?

12 MR. CARTRETTE: Your Honor, I would ask we have a  
13 brief recess so I can speak to my client for a bit.

14 THE COURT: Okay, we will do that. And you need  
15 to speak with her, and certainly you need to talk with her  
16 about whether or not she's gonna testify and you need to  
17 explain to her that I'm gonna go over that with her on the  
18 record. You need to explain to her what her Fifth  
19 Amendment rights are, and we'll reconvene here momentarily  
20 to find out whether or not she understands these things  
21 and what her decision is. And we'll -- everybody else  
22 will stay right here while you do that. Mr. Cartrette,  
23 you're excused and you can go in that little conference  
24 room right there outside the courtroom.

25 MR. CARTRETTE: Thank you, Your Honor. If I may,

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1 before we step out I do have some proposed jury  
2 instructions for the Court to review.

3 THE COURT: Let's get through this first if we  
4 could.

5 (WHEREUPON, a recess was taken from the proceedings.)

6 (WHEREUPON, counsel approached the Bench for an  
7 off-the-record discussion.)

8 THE COURT: Ms. Cochran, I'm going to ask, if you  
9 could please, ma'am, stand right where you are and raise  
10 your right hand as the clerk administers the oath.

11 WHEREUPON,

12 LATISHA COCHRAN,

13 was sworn by the Deputy Clerk of Court.

14 THE COURT: Ms. Cochran, at this time I'm going  
15 to explain you certain of your rights. If you do not  
16 understand anything I said please let me know. If you  
17 want me to explain anything in more detail please let me  
18 know. Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. We have now reached the  
21 stage in this trial where you may present your defense.  
22 You have the right to claim the protections given to you  
23 by the Fifth Amendment to the Constitution of the United  
24 States of America which provides in relevant part: "No  
25 person shall be compelled in any criminal case to be a

1 witness against him or herself." This means that you  
2 cannot be required to testify in this case. You have the  
3 right to testify on your own behalf, however, no one can  
4 make you testify. This is a personal right and no one can  
5 waive this right except you. If you decide to testify  
6 you'll be subject to the same rules that govern other  
7 witnesses and you may be examined or cross-examined on any  
8 relevant issue in this case.

9 In addition, if you have any convictions  
10 involving dishonesty or false statements or for crimes  
11 punishable by imprisonment more than one year and this  
12 Court determines that the probative value of admitting  
13 this evidence outweighs its prejudicial effect to you, the  
14 solicitor will be able to introduce your record to attack  
15 your credibility. If you decide to testify this decision  
16 on your part must be freely, voluntarily, and  
17 intelligently made with knowledge of the protection given  
18 to you by the Fifth Amendment of the United States  
19 Constitution and the consequences of your decision to  
20 testify. If you decide not to testify I will instruct the  
21 jury that they could not give the fact that you did not  
22 testify any consideration whatsoever, that there is to be  
23 absolutely no prejudice to you because you did not  
24 testify.

25 It's left entirely up to you whether or not to

1 testify. You may talk with your lawyer, your family, and  
2 friends or anyone else, but the final decision will be  
3 left entirely up to you. You understand what I've  
4 explained to you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. You have any questions  
7 about what I've explained to you, Ms. Cochran?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. Have you discussed this  
10 matter with your lawyer?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you wish to talk to your lawyer  
13 any further? Have you already spoken with him about it?

14 THE DEFENDANT: I spoke with him, sir.

15 THE COURT: Do you need to speak with him any  
16 further?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you wish to testify?

19 THE DEFENDANT: No, sir.

20 THE COURT: Very good. You may be seated.  
21 Anything further from the State before we bring  
22 the jury out?

23 MR. RICHARDSON: No, sir, Your Honor.

24 THE COURT: Anything from Defense?

25 MR. CARTRETTE: Your Honor, we would like to

1 reiterate our motion for directed verdict in favor of the  
2 defendant.

3           **THE COURT:** Very good. And I have ruled in that  
4 regard. I have ruled in your favor with regard to — or  
5 the State has conceded to not go forward on possession of  
6 a weapon during the commission of a violent crime.  
7 However, the other matter is clearly within the province  
8 of the jury to determine under the concepts of the hand of  
9 one is the hand of all. And you're familiar with that  
10 law, and it's clearly a question of fact for the jury to  
11 decide. And I'm gonna bring the jury out and recognize  
12 the Defense, and then I anticipate we're gonna recess for  
13 lunch. And then we'll come back with arguments and  
14 charge. We're ready for the jury.  
15 (WHEREUPON, the jury was returned to the courtroom at  
16 approximately 11:40 a.m., and the following proceedings  
17 commenced in open court.)

18           **THE COURT:** Mr. Foreman, ladies and gentlemen of  
19 the jury, the State has rested. They have concluded their  
20 presentation of evidence. And at this time,  
21 Mr. Cartrette, you're recognized.

22           **MR. CARTRETTE:** Your Honor, at this time the  
23 Defendant rests.

24           **THE COURT:** Very good. Mr. Foreman, ladies and  
25 gentlemen of the jury, we have reached a juncture in the



1 trial where all of the evidence has been presented. As I  
2 mentioned to you at the very beginning of the trial, the  
3 next part of this procedure will be that the lawyers will  
4 have an opportunity to give you a closing argument, a  
5 summation, very similar to opening statements; but they're  
6 truly argumentative in nature in that they all of the  
7 evidence is in and they're gonna be able to point to the  
8 evidence that supports their relative position. What they  
9 say is not evidence, but I promise you that it's very  
10 important for you to pay attention to what they have to  
11 say because it will aid you immensely in your deliberation  
12 process.

13 I'm gonna -- we're gonna recess until 2:00.  
14 We'll reconvene with closing arguments, then the charge to  
15 the jury. And once again, do not discuss this case with  
16 anyone. Do not discuss it amongst yourselves or with  
17 anyone else. I'm going to ask all of you to discuss play  
18 your juror badges as you come back in to avoid any  
19 inadvertent communication about this case. I'm gonna ask  
20 everyone to remain seated as the jury exits the courtroom.  
21 Be back at 2:00 sharp, 2:00 sharp.

22 (WHEREUPON, the jury was removed from the  
23 courtroom at 11:43 a.m., and the following proceedings  
24 commenced in open court.)

25 THE COURT: Mr. Cartrette, I'll be glad to

1 entertain any requests to charge at this time.

2 MR. CARTRETTE: Your Honor, I have a copy for the  
3 Court and a copy for the prosecution as well to review.

4 THE COURT: Will indeed charge number one. I  
5 will not charge number two. There's only one charge  
6 that's been presented to the jury at this juncture. I  
7 will indeed charge the presumption of innocence. I'll  
8 charge reasonable doubt. I will indeed explain the duties  
9 of the judge and the trial jury, credibility and  
10 circumstantial evidence. What's the State's position in  
11 that regard?

12 MR. RICHARDSON: Your Honor, I think all the  
13 evidence is pretty much direct. I don't know there is any  
14 circumstantial evidence. I don't see the necessity in  
15 that particular charge.

16 THE COURT: All right. I don't think there's any  
17 case that is presented that there isn't some aspect of  
18 circumstantial evidence.

19 MR. CARTRETTE: Your Honor, I would agree with  
20 that assessment.

21 THE COURT: I'm gonna — I will indeed charge  
22 that. I will indeed charge law with regard to how to  
23 evaluate the credibility of the witnesses. This next  
24 charge, Mr. Richardson, aiding, abetting, accomplice  
25 liability.

1           **MR. RICHARDSON:** Your Honor, we'd ask that you  
2 not charge that. I don't believe the evidence shows that.  
3 She's not charged with anything relating to being an  
4 accomplice as far as accessory. This is a straight-up  
5 armed robbery, armed robbery charge. I think the evidence  
6 that's been presented goes to that. We'd ask that the  
7 Court not charge that particular item.

8           **MR. CARTRETTE:** Your Honor, with all due respect  
9 the hand of one is the hand of all is a theory of  
10 accomplice liability. It is hinged on aiding and  
11 abetting. They've repeatedly brought up the theme of hand  
12 of one is the hand of all. I think my client is entitled  
13 to this jury charge to distinguish the difference between  
14 a principal and one who is simply an accomplice. They've  
15 only charged her as a principal under the hand of one is  
16 the hand of all with armed robbery. They had every  
17 opportunity to charge her with lesser included offense and  
18 did not.

19           **THE COURT:** All right, I am indeed going to  
20 charge hand of one hand of all. Let's look at the two  
21 charges, mere presence and aiding and abetting accomplice  
22 liability. Both of them deal with the issue of mere  
23 presence. What is your position with regard to the charge  
24 on mere presence?

25           **MR. CARTRETTE:** My position, Your Honor, or the

1 State's?

2 THE COURT: I'm asking the State. You've asked  
3 for both of them.

4 MR. RICHARDSON: Well, Your Honor, I understand  
5 the Defense position on that particular charge. I think  
6 by looking at it from their perspective that would be the  
7 appropriate request and for these particular facts. But  
8 again, I think the evidence shows a consistent course of  
9 conduct on behalf, on the part of the defendant. I don't  
10 think mere presence applies in this situation. I'd ask  
11 the Court not charge it.

12 MR. CARTRETTE: Your Honor, I respectfully  
13 disagree with my colleague that. In fact, mere presence  
14 does apply here, Your Honor. If my client was merely  
15 there, I mean, but/for the fact she was there she wouldn't  
16 get convicted. I think it's very relevant that the jury  
17 hear this because this gives them the discretion coupled  
18 with the facts that were presented to them to make the  
19 decision, an informed decision, to the law with regard to  
20 her presence at the scene or alleged presence at the scene  
21 of the crime.

22 THE COURT: You know, the essence of aiding and  
23 abetting and accomplice liability the request and mere  
24 presence in my mind are the same thing. How would you  
25 differentiate the two, Mr. Richardson?

1           MR. RICHARDSON: Mere presence seems to go to the  
2 fact that an individual who just happened to be at the  
3 wrong place, wrong time, and had no involvement.

4           THE COURT: Right. Of course, and the fact —  
5 y'all are gonna be able to argue the facts about the fact  
6 that, you know, there was some telephone call and that  
7 there was some discussion about robbing and all that's out  
8 there. But I think the jury needs to be informed what the  
9 law is and I'm gonna charge one or both of them. My  
10 question to you is how do you differentiate mere presence  
11 from aiding and abetting?

12           MR. RICHARDSON: Well, aiding and abetting tends  
13 to go to someone's conduct being a participant in some  
14 part or aspect of the crime whether it be, you know, some  
15 accessory before or after, whereas mere presence I think  
16 goes —

17           THE COURT: Goes to the principal offense.

18           MR. RICHARDSON: Sort of the wrong place, wrong  
19 time situation.

20           THE COURT: Right.

21           MR. RICHARDSON: I think they are different in  
22 that regard. I think —

23           THE COURT: So you think that aiding abetting  
24 would be more appropriate when they're charged accessory  
25 before the fact or after the fact.

1 MR. RICHARDSON: Yes, sir.

2 THE COURT: And of course they're not charged in  
3 that. I think the mere presence -- I think the essence of  
4 what the Defendant's theory is is encompassed in mere  
5 presence.

6 MR. RICHARDSON: Yes, sir.

7 THE COURT: And I think the aiding and abetting  
8 probably, although it's repetitive and it puts forth the  
9 same principles of law, I think probably would be more  
10 appropriate for accessory before the fact and after the  
11 fact.

12 What do you think about that, Mr. Cartrette?

13 MR. CARTRETTE: Your Honor, I'm fine with that if  
14 the State believes that -- excuse me, if Your Honor  
15 believes it's a test. With all due candor I offer it for  
16 the sake of, you know, and our position would be, Your  
17 Honor, that more often the jury hears that instruction the  
18 more clear it is for them.

19 THE COURT: We aren't into repeating stuff,  
20 Mr. Cartrette. I mean, but I understand your point. My  
21 initial inclination is to charge mere presence and not  
22 accomplice liability.

23 MR. CARTRETTE: Thank you, Your Honor.

24 THE COURT: What about the issue of  
25 identification? I don't think that's really an issue.

1 That's not an issue in this trial.

2 MR. RICHARDSON: No, sir, Your Honor.

3 THE COURT: Why do you want to do that,  
4 Mr. Cartrette?

5 MR. CARTRETTE: Your Honor, I want to withdraw.

6 THE COURT: All right, very good. That's what

7 —

8 MR. CARTRETTE: Actually, Your Honor —

9 THE COURT: I'm sorry, go ahead.

10 MR. CARTRETTE: We did cross-examine Mr. Hayes  
11 and ask him when we cross-examined him if did you identify  
12 Latisha Cochran at the scene of the crime, did you know  
13 when you received that phone call who it was calling you.  
14 He was never able to make that identification.

15 THE COURT: Well, I think the Defense admitted  
16 that she made the call, didn't she, in the statement?

17 MR. CARTRETTE: The statement, of course, does  
18 reflect that she made the call, Your Honor.

19 THE COURT: All right. Well, is it really an  
20 issue?

21 MR. CARTRETTE: That she made the call?

22 THE COURT: You intend to argue that it wasn't  
23 her?

24 MR. CARTRETTE: Your Honor, at this point, no, I  
25 did not intend to argue it was not her except that she was

1 not present at the scene at the actual vicinity where —

2 THE COURT: I understand. That really goes more  
3 towards mere presence. But as far as the identification  
4 there is no reasonable question of fact with regard to  
5 identification. Would you agree to that?

6 MR. CARTRETTE: Yes, sir, Your Honor.

7 THE COURT: Do you withdraw your request for  
8 identification charge?

9 MR. CARTRETTE: Yes, sir, Your Honor.

10 THE COURT: Very good. Prior inconsistent  
11 statement, I am indeed gonna charge. You've requested  
12 prior record of the defendant. That — obviously that  
13 doesn't apply because she didn't testify. This request  
14 about punishment, why would you want me to charge that?

15 MR. CARTRETTE: Your Honor, I prepared these with  
16 anticipation that they might, that the jury might be  
17 presented with that and I —

18 THE COURT: Okay. I'm gonna charge the law with  
19 regard to the statement of defendant. I'll charge armed  
20 robbery. All right, he's asked to charge common law  
21 robbery or just robbery. I don't know, my initial  
22 inclination is that when the overwhelming evidence is that  
23 they — it's uncontroverted there was weapon used. It's  
24 either armed robbery or it's nothing. Do you agree?

25 MR. CARTRETTE: Yes, sir, I do agree.



1           THE COURT: Very good. You withdraw that request  
2 for common law robbery?

3           MR. CARTRETTE: Yes, sir, Your Honor, I would.

4           THE COURT: Very good. All right, how about this  
5 request for attempt?

6           MR. CARTRETTE: Your Honor, I anticipated the  
7 jury might hear more and that the prosecution might try to  
8 cover their bases and go for a lesser included.

9           THE COURT: Well, that -- you're withdrawing the  
10 request for an attempt charge?

11          MR. CARTRETTE: Yes, sir, Your Honor.

12          THE COURT: All right, possession with intent to  
13 distribute -- possession of a weapon during the commission  
14 of a violent crime has been withdrawn. Coercion and  
15 duress, that's not before the jury.

16          MR. CARTRETTE: Yes, sir, Your Honor.

17          THE COURT: Okay, very good. What is the State's  
18 position with regard to withdrawal? I'm inclined to  
19 charge that.

20          MR. RICHARDSON: Your Honor, the gist of  
21 withdrawal is that the defendant must have withdrawn from  
22 further participation after or before anything happened  
23 before mere preparation. I think driving to the scene,  
24 making a call to get the victim out of the house, is way  
25 past preparation. That's -- that's the meat on the bones

1 of the offense. And I mean, very quickly in time. Then  
2 they hear these gunshots and try to take off. You know,  
3 they're trying to abandon their compadres in the middle of  
4 the robbery. They went way past preparation by the time  
5 she tried to flee. And I don't think that's an  
6 appropriate charge.

7 MR. CARTRETTE: Your Honor, I would respectfully  
8 disagree.

9 THE COURT: Hang on just one second,  
10 Mr. Cartrette. What would be the real harm, Mr.  
11 Richardson, in -- of course, there has been some mention  
12 in the statement that was offered by the State that she  
13 didn't want to take part in any robbery. I mean, that  
14 comes from her mouth. And don't you think that it very  
15 well might be reversible error for me not to charge  
16 withdrawal? And of course, what you're maintaining is  
17 that the crime was already under way; and of course, in  
18 order to have the defense withdrawal from a criminal  
19 enterprise it must take place before the crime was  
20 committed. And of course, that very well could be a  
21 factual issue for the jury to resolve. You think that it  
22 would be reversible error not to charge that?

23 MR. RICHARDSON: I don't think that it would be,  
24 but I see the Court's trepidation in that regard. I mean,  
25 I think if the Court did choose to charge that particular

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THE COURT: It would be incumbent upon you to argue about why —

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MS. PARR: Right. And I think that would be pretty easy to argue based on the facts that have been presented.

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MR. RICHARDSON: Yes, sir.

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THE COURT: Very good. And I will indeed charge failure to testify. Do you — any requests from the State?

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MR. RICHARDSON: Your Honor, we already addressed hand of one hand of all. We had that one. And the armed robbery. I believe that was all.

23

24

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THE COURT: Okay. Well, I think that we're in good shape in that regard. We'll reconvene at 2:00.

MR. RICHARDSON: Thank you, Your Honor.

1 (WHEREUPON, a lunch break was taken.)

2 THE COURT: Anything from the State before we  
3 bring the jury out?

4 MR. RICHARDSON: No, sir, Your Honor.

5 THE COURT: Anything from Defense?

6 MR. CARTRETTE: No, sir, Your Honor.

7 THE COURT: All right. Who is gonna give the  
8 closing argument?

9 MR. RICHARDSON: I will, Your Honor.

10 THE COURT: All right. Mr. Richardson, under  
11 this set of circumstances you will go first.

12 MR. RICHARDSON: Yes, sir.

13 THE COURT: Very good, all right. We're ready  
14 for the jury.

15 (WHEREUPON, the jury was returned to the courtroom at  
16 approximately 1:55 p.m., and the following proceedings  
17 commenced in open court.)

18 THE COURT: Mr. Foreman, ladies and gentlemen of  
19 the jury, thank you for being back here and being here not  
20 only on time but early so we're able to get started. We  
21 are gonna proceed forward with closing arguments. At the  
22 close of the State's case the legal issue was presented to  
23 me with regard to possession of a weapon during the  
24 commission of a violent crime. That matter has already  
25 been resolved so it won't be for your consideration. Mr.

1 Richardson, you're recognized.

2 MR. RICHARDSON: Thank you, Your Honor. Mr.  
3 Cartrette, ladies and gentlemen, I didn't have an  
4 opportunity to be introduced to all of you at the  
5 beginning when y'all were selected to serve on this case.  
6 I was attending to some other matters. But I'm David  
7 Richardson. I'm assistant solicitor here in the Twelfth  
8 Circuit and prosecute cases and assisting Ms. Parr in this  
9 case. Of course, you've been here the last couple of days  
10 for the trial of Latisha Cochran charged with armed  
11 robbery. Now when y'all deliberate on this case you have  
12 to understand what an armed robbery is. And I know it's  
13 sort of intuitive, but the judge is going to charge you on  
14 the law of armed robbery. Essentially what that is, is  
15 when somebody has a weapon or what appears to the victim  
16 to be a weapon, and uses it in the commission of a robbery  
17 or taking of some property from a person. And you heard  
18 from Mr. Hayes, the victim in the case, that he was jumped  
19 basically by three individuals and they had guns and they  
20 robbed him of five hundred dollars and his credit cards.  
21 So that is the armed robbery. Now Ms. Cochran plays an  
22 interesting role in this whole thing. Of course when you  
23 look at it on its face, she was not one of those three  
24 individuals who was holding the gun and who jumped Mr.  
25 Hayes. So why then is she charged with armed robbery? An

1 answer to that question lies in a theory of law or a  
2 principle of law that is alive and well in the State of  
3 South Carolina. And that is a principle called the hand  
4 of one is the hand of all. And you heard Ms. Parr in her  
5 opening statement refer to Ms. Cochran as a lure and, you  
6 know, fishing vernacular, and that is the part that she  
7 played. She did not have the gun; she did not actually  
8 take the money. But she is just as guilty of the armed  
9 robbery as the three fellows who did. And that is because  
10 of her participation in setting up this armed robbery,  
11 driving the vehicle to the location, making a telephone  
12 call to the victim Mr. Hayes in order to get him out of  
13 the house and allowing her codefendants to do the dirty  
14 work, if you will.

15 Now when you get back in the jury room you're  
16 only allowed to consider the evidence that has come from  
17 that witness stand so I want to go over that with you here  
18 now. There's been a number of exhibits put into evidence  
19 and there have been a number of witnesses who have  
20 testified. And you'll consider the credibility of each  
21 witness that has testified and you also consider the  
22 weight of the evidence including the exhibits.

23 Now, the first witness in this case was Mr.  
24 Hayes, the victim. He's seated over here. And he  
25 testified to you that he is the owner of a store in Lake

1 City, and he lives in a house that's attached to that  
2 building. And on the night of November 15th he received a  
3 phone call, and he testified he didn't know who it was  
4 that called him. It was from a blocked or private number,  
5 female voice. And this female voice asked him if he  
6 planned on going out that night, to which he replied maybe  
7 or maybe later, something, whatever he said. In any  
8 event, we heard about that later on a taped statement. So  
9 Mr. Hayes comes out of his house and low and behold three  
10 individuals lie in wait wearing ski masks. He can't  
11 identify them. They jump him, take his money, his cards,  
12 and leave him laying in the middle of the road. As they  
13 run off he hears gunshots. You also heard Mr. Hayes say  
14 at some time later an individual comes to his store, that  
15 individual being the defendant Ms. Cochran. She makes her  
16 way back to where he is at his house and proceeds to  
17 apologize to him for the robbery that she and her  
18 co-defendants orchestrated. And he testified to that  
19 fact. You also heard from his employee, Ms. Montgomery,  
20 who testified that after Ms. Cochran apologized to  
21 Mr. Hayes for the robbery they committed that Ms. Cochran  
22 came to her and gave an apology to the effect that, you  
23 know, our plan was to rob the store but you were in there  
24 so we waited for Mr. Hayes to be alone. So Ms. Montgomery  
25 also testified that she is a relative of Ms. Cochran.

1           You also heard from Mr. Rodriguez Russell, who is  
2 a neighbor, who testified that he got home from work and  
3 this suspicious vehicle pulled up next to his car. He was  
4 afraid that whoever was in this car was going to mess with  
5 his. It was uncomfortably close to his car. So he  
6 watched them and he watched them leave and then come back.  
7 And then he sees three individuals running to the car and  
8 hears these gunshots go off. Now Mr. Rodriguez couldn't  
9 identify anybody or anything. His role was basically to  
10 corroborate time and place that the armed robbery  
11 happened, and that's what he did. The meat and potatoes,  
12 if you will, of the evidence came today when we heard from  
13 Quentin Epps and then we heard the tapes of the defendant  
14 herself. Quentin Epps readily admitted he is a  
15 co-defendant in the case. He's charged with the same  
16 thing she's charged with, and he testified that his role  
17 basically was he provided the car. It was his car that  
18 was used, that purple Camry. And he road with Ms. Cochran  
19 and the other three guys to Florence and back. And he  
20 testified that their plan was to find somebody to rob.  
21 They needed some money. So at some point Mr. Hayes' name  
22 comes up, Junebug as he's affectionately known. And  
23 Quentin Epps testified that Latisha Cochran was driving  
24 his car this whole time. Drove it to Florence and came  
25 back. And drove it to a location near Mr. Hayes' store.



1 And Quentin Epps also testified that the defendant,  
2 Ms. Cochran, used her cell phone to call Mr. Hayes and  
3 asked him if he was going out. And he said he knew what  
4 was going on because the call was on speakerphone. And  
5 the plan was to get Mr. Hayes out, rob him of his money.  
6 Of course, Mr. Epps testified that he and Ms. Cochran  
7 remained in the vehicle and waited on the other three guys  
8 to go do the dirty work. Those three guys went to rob  
9 Mr. Hayes; and when these gunshots go off and they hear --  
10 or before that, they hear Mr. Hayes screaming, they get  
11 spooked. They don't want to be around anymore so they try  
12 to abandon their three codefendants, leave them there.

13 Well, for however it happened, the three  
14 co-defendants get back to the car and they head straight  
15 to Ms. Cochran's house where they divvy up the loot. A  
16 couple of days later Ms. Cochran is tracked using the  
17 victim's credit cards, or at least attempting to. And  
18 Mr. Epps was also caught trying to use credit cards at a  
19 Wal-Mart in Florence separate and apart from Ms. Cochran.  
20 So that leads us to the investigation. Ski McAllister,  
21 the investigator at the time of Lake City Police  
22 Department, testified to you that he responded out to the  
23 scene, conducted the initial interviews of the victim, and  
24 he was present when this gun -- actually it's a BB gun --  
25 was located. And he testified this item was found on the

1 ground in kind of two separate locations at the scene, and  
2 this was the item that was used to bash Mr. Hayes over the  
3 head according to Mr. Hayes. And you saw the photograph  
4 of the back of Mr. Hayes' head where it has the blood and  
5 the knot, and you also saw the photographs of the  
6 locations of the gun. And when you get the case back in  
7 the jury room you'll be allowed to take those photographs  
8 back there with you so you can examine them for yourself.

9 Also showed you a map showing the victim's  
10 residence and store here in Lake City, and the relation to  
11 where Mr. Rodriguez Russell, the witness, testified he saw  
12 the vehicle, all in this same general area. You'll be  
13 allowed to have that map as well. So Investigator  
14 McAllister goes out and he interviews Mr. Hayes and ends  
15 up talking to Mr. Russell, both of whom called the police  
16 to report this incident. Then he's on the trail of who  
17 did it. Well, he finds out that Latisha Cochran has been  
18 trying to go use the victim's credit cards. And at this  
19 point, like three or four days later, he has no reason  
20 really to believe that she was involved in the robbery but  
21 she's got the cards. So he calls her up and asks her to  
22 come in for an interview. She agrees to come in. At this  
23 point she's not under arrest for anything and she agrees  
24 to be questioned. And Investigator McAllister testified  
25 that he presented her with this, which is a waiver of

1 rights form. And this form provides an individual with  
2 their rights when it comes to interrogation. You have the  
3 right to remain silent. Anything you say can and will be  
4 used against you. You know, you hear it on television all  
5 the time. Well, this is the real deal. This is the  
6 waiver of rights form that Investigator McAllister  
7 presented to Ms. Cochran on November 19th, 2008. He  
8 testified that she signed and initialed by each portion of  
9 those rights as he explained them to her, and he read her  
10 those rights before he took any taped statement. So  
11 according to his observation, any statement she gave that  
12 day was a voluntary statement. She was free to leave.  
13 She wasn't under arrest; she wasn't in custody. He was  
14 trying to find out about the use of these cards. So she  
15 testifies on tape here that she found these cards.  
16 Fortunate. She just finds some cards. Didn't pay  
17 attention to the name that was on them, just tried to use  
18 them. And then once the goody was gone she has them  
19 discarded in a field.

20 Well, time progresses, the investigation  
21 progresses, and Investigator McAllister is presented with  
22 some information. He gets a hold of Quentin Epps who you  
23 heard from. He finds out that Ms. Cochran knows a little  
24 more than she was telling so he gets warrants for her  
25 arrest. She's brought in. December 24th, 2008, and he

1 questions her again. Now again, he presented her with the  
2 same form which she's initialed by each part of her  
3 Miranda warnings, signed and witnessed by Investigator  
4 McAllister. And this is to show that she gave a statement  
5 voluntary. And you heard the tape played for you and this  
6 story is vastly different than the first time around. She  
7 knows everything now. She admits driving the car, taking  
8 them to wherever they went, being part of the group of  
9 five individuals. She names the other individuals, says  
10 that she was aware that they wanted to rob someone. They  
11 went to a location near Mr. Hayes' store. She used her  
12 cell phone to make the call to Mr. Hayes to get him out.  
13 And there's the lure analogy. They wait on him to come  
14 out, and you're aware of what happens next.

15           Now she denies in the statement getting any of  
16 the money, but she did get the cards afterwards and she  
17 did try to use those cards. And this leads us back to the  
18 principle of the hand of one is the hand of all. These  
19 three guys attack Mr. Hayes, but Ms. Cochran may as well  
20 have. She's equally as guilty as they are because of the  
21 conduct she displayed in the commission of this robbery.  
22 She drove the vehicle to the robbery scene. She used the  
23 phone to get him out. She got away and went back to her  
24 house to split it up. She's an integral component.  
25 Without her this thing doesn't come off.

1           Now when the judge charges you the law he is  
2 going to charge you on the law of withdrawal. And there  
3 was a portion on the tape where Ms. Cochran states that  
4 when they heard the screaming from Mr. Hayes and these  
5 gunshots, that she and Mr. Epps didn't want anything to do  
6 with it anymore, and they got scared. They were gonna  
7 leave their buddies behind to take the rap if they got  
8 caught. So they tried to leave. Well, they end up  
9 picking their friends up anyway. But the charge on  
10 withdrawal is gonna say something along the lines of, if  
11 somebody withdraws from the commission of a crime, that if  
12 that crime is just in preparation stage, that they're not  
13 guilty. Well, the facts of this case show that when they  
14 tried to withdraw, this case — this arm robbery was well  
15 in progress. They've already driven there; she's already  
16 driven there. She's already made the call. Her buddies  
17 are in the middle of the robbery. This whole thing is  
18 going down right then. And just because she's not the one  
19 out there with the gun doesn't mean she's innocent and she  
20 can just choose to walk away at that point. That robbery  
21 was way beyond mere preparation. It was in its  
22 commission. So I submit that to you so when you hear the  
23 charge about withdrawal that you'll know, you know, have  
24 an understanding what that means and what the evidence  
25 shows in regard to that.

1           Now of course, the State always has a burden to  
2 prove a case to you beyond a reasonable doubt, and that's  
3 a heavy burden. But I submit to you that we have met it  
4 and the evidence here is overwhelming. You've got  
5 testimony from a co-defendant who is with the defendant  
6 the whole time, the victim and the victim's employee with  
7 the information about the apology, the statements from the  
8 defendant. You know, one can say, you know I'm up here  
9 talking to you but nothing I say is evidence, you know.  
10 You can choose to believe what I say or disregard it and  
11 it doesn't matter. But don't listen to me, listen to her.  
12 She lays it out for you in that last statement about what  
13 the plan was, what they did, what their goal was; it's  
14 clear.

15           So finishing up this thing wholly comes down to  
16 the hand of one is the hand of all and the judge is gonna  
17 charge you on that as well. And he's gonna explain the  
18 ins and outs of what that means, about how when you got  
19 more than one person committing a crime that each one is  
20 as guilty as the other for whatever one does. So just  
21 because she wasn't the trigger man or didn't have the gun,  
22 doesn't mean she's absolved from responsibility. She's  
23 still accountable for what the whole group did. And I  
24 believe that when you take those charges on the law into  
25 consideration, have an opportunity to view the evidence

1 and take into consideration the statements that you heard,  
2 and the evidence that you heard from the witness stand,  
3 you will come to the inevitable conclusion that beyond a  
4 reasonable doubt Ms. Cochran is certainly guilty of the  
5 armed robbery. And I ask you to find that and appreciate  
6 your attention in this case. Thank you very much.

7 THE COURT: Thank you, Mr. Richardson.

8 Mr. Cartrette, you're recognized.

9 MR. CARTRETTE: Thank you, Your Honor. Ladies  
10 and gentlemen, I want you to know I have greatest respect  
11 for the service you've given us today. I want you to know  
12 that my client, Ms. Cochran, has great respect and  
13 appreciation for what you've done today and yesterday for  
14 here in hearing this case. Ms. Cochran opted to take her  
15 case before a jury because she believed she would get the  
16 fairest shake at her constitutional rights by presenting  
17 it to a jury of her peers, her fellow citizens, to hear  
18 out the facts of her case and to determine based on the  
19 facts presented to them whether or not she's guilty of the  
20 commission of an armed robbery. She is placing great  
21 trust in you today in your ability to view this evidence  
22 and to weigh it fairly and impartially.

23 We believe that a not guilty verdict is necessary  
24 because the State has failed to prove beyond a reasonable  
25 doubt that Ms. Cochran did not withdraw, did not step away

1 from this crime; in fact, she did. She vocally and twice  
2 on the tape you'll hear her say, I didn't want anything to  
3 do with an armed robbery, I told them when I found that  
4 night that's what they were going to I didn't want  
5 anything to do with an armed robbery. I didn't want to  
6 rob Mr. Hayes, or Junebug, as they affectionately call  
7 him. She even tried to leave when she heard the commotion  
8 because she knew she was in the wrong place at the wrong  
9 time, and she knew the severity of what these guys went  
10 out and did. The State failed to place that gun in  
11 Latisha Cochran's hand which is why we're not looking at  
12 the other count on the indictment which was possession of  
13 a weapon during the commission of a violent crime.  
14 Ms. Cochran is asking you today to weigh the evidence, and  
15 based on what you've heard and what you've seen to give  
16 her the benefit of the reasonable doubt.

17           You've heard the State talk about the hand of one  
18 is the hand of all. You've also heard them say why you  
19 should discount the fact that she withdrew any intent from  
20 committing such a crime. Well, one might reason would  
21 bind their argument if, in fact, they had charged her with  
22 aiding and abetting. Certainly making the phone call,  
23 driving to the location, if it's aiding and abetting. I  
24 would argue you here today that it doesn't want fit  
25 anything more than that. And certainly, she withdrew



1 before it rose to the level of a full scale armed robbery.  
2 They have charged her with armed robbery. They had every  
3 right and ability to take it before a grand jury and to  
4 charge her aiding and abetting or any other lesser  
5 included crime they wanted to charge her with and they  
6 failed to do that. The prosecution wants all or nothing.  
7 Either she's totally guilty because her co-defendants went  
8 out there and robbed someone, or she's not guilty at all.  
9 My client, Ms. Cochran, is a 26 year old mother of two  
10 children, one age 6, one age 10.

11 MS. PARR: Your Honor, I would object. None of  
12 that is in evidence.

13 THE COURT: It's closing argument. I'll allow  
14 him to go forward.

15 MR. CARTRETTE: She's a 26 year old mother of two  
16 children, age 10 and 6. She's got a child on the way.  
17 She's trying to get her life straightened out, got a new  
18 place to live in. She's almost done with her education  
19 and ready to make herself a productive member of this  
20 society. She's asking you for the benefit of a doubt, the  
21 reason being, you heard all kind of testimony about  
22 whether or not she apologized or what she knew or what  
23 someone else thought she knew. But you also heard  
24 testimony from the only one of her co-defendants or  
25 alleged codefendants who showed up on the stand, who said

1 Latisha Cochran and I wanted to leave, we didn't want  
2 anything to do with the armed robbery. I don't know how  
3 more unequivocal it gets than that. Someone's charged  
4 with an armed robbery; and like I said, they want all or  
5 nothing. They're charged with possessing a weapon.  
6 They're charged with holding a weapon on someone in order  
7 to get something off of them. The facts clearly do not  
8 yield that Ms. Cochran held a weapon on anybody, or  
9 encouraged anybody to hold a weapon on anybody. As a  
10 matter of fact, she told her co-defendants, I don't want  
11 anything to do with it, I don't want to rob Junebug,  
12 huh-uh, no, and she wanted to go.

13           You heard the prosecution say she drove the  
14 vehicle to the location. She called the victim and she  
15 set it up. You also said that -- you also heard them say  
16 that she got money. She didn't get any money that night  
17 but that she got money. In fact, she didn't get anything  
18 at all. If you listen to her tape, she didn't take any  
19 money. Her co-defendant Jerry Bush brought her two credit  
20 cards after this occurred the next day. He said, here, go  
21 see if these work. She's not charged with credit card  
22 fraud; she's charged with armed robbery. You heard the  
23 victim say he heard a female voice, but even the victim  
24 could not tell you it was Latisha Cochran. The victim  
25 told us on the stand that he'd known Latisha Cochran for

1 years, for years. He's done business with her in his  
2 store. He's hung out with her. He's known her since she  
3 was a kid. Certainly he would be able, whether he sees it  
4 on caller ID or not, to identify whose voice it is on the  
5 other end of the line if it's somebody he knows that well.

6 The fact that Ms. Montgomery is a relative of my  
7 client is inconsequential. Who among us doesn't get along  
8 with our relatives sometimes or see eye to eye but. I've  
9 got relatives. Certainly they would — if they disagreed  
10 with me on something call it out. But the reasonable  
11 minds can disagree. For the same manner that they propose  
12 that she is a relative of Latisha Cochran, she's also a  
13 loyal, and has been working with for years, employee of  
14 Mr. Junebug, Mr. Hayes. I suspect her statement with  
15 regard to Latisha showing up that day is just as much  
16 about her support for her employer and keeping a job as  
17 anything.

18 You heard Quentin Epps claim he provided the car.  
19 He said that the plan was to rob someone. He's charged  
20 with armed robbery, just like my client. He's also still  
21 charged with possession of a weapon during the commission  
22 of a violent crime. And he has already by his own  
23 admission told you on the stand he committed an armed  
24 robbery before, which is a crime —

25 MR. RICHARDSON: Your Honor, I would object.

1 THE COURT: I'll sustain.

2 MS. PARR: That was not in evidence.

3 THE COURT: I'll sustain the objection.

4 MS. PARR: And we would ask that be stricken from  
5 the record.

6 THE COURT: All right. Might counsel approach  
7 the Bench for a moment.

8 (WHEREUPON, counsel approached the Bench for an  
9 off-the-record discussion.)

10 THE COURT: The objection is sustained and that  
11 particular statement as it was stated is stricken from the  
12 record.

13 MR. CARTRETTE: I'll rephrase. You heard  
14 Mr. Epps state that he committed a burglary — burglary,  
15 excuse me — that he was convicted of the commission of a  
16 burglary which is also a crime of dishonesty. You heard  
17 him say here on the stand that he hopes to get a better  
18 deal in exchange for his testimony against my client  
19 Ms. Cochran. Ladies and gentlemen, I don't think it can  
20 be any clearer that Quentin Epps is looking out for  
21 himself. Quentin Epps is looking to throw anybody under  
22 the bus and Latisha Cochran is as good as any of those  
23 others that had a gun as long as he gets to go free, as  
24 long as he doesn't do as much time, as that he would be  
25 exposed to if he were tried. That's why he cooperated,

1 and that's why he said what he said. And I'm asking you,  
2 my client Ms. Cochran asks you, to do with what he gave in  
3 testimony. Give to it the weight you would somebody who  
4 is trying to save their own skin because that's what was  
5 happening when he testified today.

6 Now I would submit to you that Mr. Epps'  
7 testimony was given because he doesn't care what happens  
8 to Ms. Cochran. He only cares what happens to him. I  
9 can't go so far as to tell you he was truthful or not  
10 truthful. I dare not. That's your job to decide. But I  
11 would give it the weight it's due. As far as the waiver  
12 of rights goes. Latisha Cochran has repeatedly objected  
13 to waiver of the rights and that she —

14 MR. RICHARDSON: Objection.

15 THE COURT: Sustained.

16 MR. RICHARDSON: No evidence.

17 MR. CARTRETTE: As far as Rodriguez Russell goes  
18 in his testimony, the State puts him as a witness close to  
19 the scene. I think they even referred to him as an  
20 eyewitness. How can an eyewitness who doesn't see my  
21 client, who admits he didn't see my client and didn't  
22 identify her with the commission of this crime and he  
23 didn't see the crime that took place, all he saw was the  
24 car going around. Again, I would ask you, give that the  
25 weight it's due. That's by a standard. That's someone

1 who heard something and came out to look and see after the  
2 fact, after the fact. They say that she was aware that  
3 they wanted to rob somebody. The tape is clear that she  
4 says that she guessed. She guessed they were looking for  
5 somebody to rob. She wasn't sure that's what they wanted  
6 to do. But it is clear in that tape that when she  
7 realized for certain that that is what they wanted to do,  
8 she said no. She tells us twice on that tape, no, I did  
9 not want to rob Mr. Hayes, I know Mr. Hayes, I wouldn't  
10 rob Mr. Hayes, I wouldn't do that.

11 I've already addressed the fact that they claim  
12 she got a portion of the proceeds. Again, listen to the  
13 tape. Mr. Epps wasn't able to tell you if she got  
14 anything or not. He's the only one of the co-defendants  
15 that said anything. But her tape says, I got them  
16 afterwards, I got them the next day, I wanted to take them  
17 out. I got some food at McDonalds and then I tried it at  
18 Captain D's to get some food for my cousin and it didn't  
19 work. They were canceled. Was that wrong? Yes,  
20 absolutely. But again, Ms. Cochran was not charged with  
21 credit card fraud. She's charged with armed robbery,  
22 which I would submit to you are worlds apart.

23 You'll also hear the jury charge about mere  
24 presence. You've heard about the hand of one is the hand  
25 of all. You'll get an instruction on that, that the hand

1 of one is the hand of all, and that someone can be  
2 committed of the commission of a crime committed by their  
3 co-defendants even if they didn't actually carry out the  
4 crux of the work or the crux of the deed. But the  
5 singular piece that's missing here is that she withdrew.  
6 She clearly said, I don't want anything do with it, I  
7 don't want to rob him. At some point the argument of the  
8 hand of one is the hand of all is broken because if she  
9 wanted to commit that crime, if she wanted any of the  
10 proceeds of what they had done, she would have stuck in  
11 for the long hall. She would have vehemently protested  
12 not getting a cut of the money that night when they were  
13 out divying up. In fact, on her tape she says and she  
14 tells them when they offered her a card that night she  
15 said, I don't want any of that, y'all go, y'all go.  
16 Listen to the tape; it's on there. I don't want any of  
17 that, y'all go. She knew where that came from and it  
18 disgusted her.

19 Now they've said someone withdraws it must be  
20 during the prep stage. Again, I would reiterate, the prep  
21 stage is aiding and abetting. They didn't charge her with  
22 aiding and abetting. They charged her with straight cut  
23 armed robbery, which carries a penalty of between 10 and  
24 30 years —

25 MS. PARR: Your Honor —

1           MR. RICHARDSON: Objection.

2           THE COURT: I'll sustain the objection.

3           MR. CARTRETTE: Ms. Cochran did withdraw. You'll  
4 also hear about mere presence because Ms. Cochran was in  
5 the car before this gentleman got out to leave and before  
6 she said I don't want anything do with robbing Junebug,  
7 I'm not doing that. She was present in the car according  
8 to the tape. But the law is clear that mere presence  
9 without more is not sufficient to find someone guilty.  
10 It's not enough to find someone guilty of the crime of  
11 principals of their co-defendants.

12           I would submit to you and I ask you, and  
13 Ms. Cochran asks you, for a verdict of not guilty for the  
14 crime of armed robbery. Again, the State could have  
15 charged any number of crimes and they chose this one, and  
16 they knew the burden was very high. And they're using a  
17 stretch tactic with the hand of one is the hand of all to  
18 get you to convict her. Thank you for your service.  
19 Thank you for your time.

20           MS. PARR: Your Honor, we have a matter we'd like  
21 to take up.

22           THE COURT: Mr. Foreman, ladies and gentlemen of  
23 the jury, I'm gonna ask that you retire to the jury room.  
24 Throughout the trial I've told you when you went to the  
25 jury room do not begin deliberation. That instruction



1 still applies. We're getting to the short rows now, but  
2 we aren't there yet. Retire to the jury room but do not  
3 discuss the case.

4 (WHEREUPON, the jury was removed from the  
5 courtroom at 2:35 p.m., and the following proceedings  
6 commenced in open court.)

7 THE COURT: Ms. Parr, you're recognized.

8 MS. PARR: May it please the Court, Your Honor,  
9 counsel's closing arguments have gone into waters that  
10 have been found to be illegal. First of all, he has  
11 talked about penalties. He has put things -- he has  
12 argued what he alleged to be facts that have not been  
13 entered into evidence. Your Honor, his argument in  
14 totality has manifest and it's necessary for us to move  
15 for a mistrial.

16 THE COURT: All right. Clearly the law prohibits  
17 reference to sentencing. That is completely within my  
18 province as trier of law to determine what the punishment  
19 is. I've heard some lawyers and say many of them will  
20 quite often make statements like, she's being charged with  
21 armed robbery and we're playing for keeps, that kind of  
22 sort of insinuation or this is serious stuff. But you  
23 can't be telling the jury what the penalty is, and I think  
24 you said from 10 to 30 years, didn't you?

25 MR. CARTRETTE: Yes, sir, Your Honor.

1 THE COURT: Did you say minimum mandatory?

2 MR. CARTRETTE: No, sir, Your Honor.

3 THE COURT: All right.

4 MR. CARTRETTE: Your Honor, certainly I — a slip  
5 of the tongue on my part. I was unaware that I could not  
6 mention that in my closing argument, and I would ask if  
7 Your Honor sees fit to offer a curative instruction.

8 MS. PARR: May it please the Court.

9 THE COURT: Just one moment. All right. This  
10 puts the Court in sort of a bad position because Ms.  
11 Cochran has been exposed to jeopardy. She's in a position  
12 where she's already — the jury's been impaneled. That is  
13 a fundamental substantial right, only be tried once and  
14 once only. Although I am concerned about the fact that  
15 you indicate that you didn't know you couldn't do that  
16 when one of the proposed charges that you gave me  
17 enumerates that. You gave me a charge that deals with  
18 discussions about punishment, which would seem to indicate  
19 to me that you did, in fact, know that you weren't  
20 supposed to do that. I will admonish you that that is not  
21 proper and you should not do that, and I am indeed going  
22 to give a curative charge in that regard. And I'm gonna  
23 hold the matter for a mistrial in abeyance until the  
24 conclusion of this case.

25 Any other motions from the State?

1 MR. RICHARDSON: No, sir, Your Honor.

2 THE COURT: Any from Defense?

3 MR. CARTRETTE: None, Your Honor, except I do  
4 offer my humble apology. I did not intend to get so  
5 impatient.

6 THE COURT: All right. Did you read the charges  
7 you submitted to me?

8 MR. CARTRETTE: Yes, sir, Your Honor, I just,  
9 absence of mind at the moment when I spoke.

10 THE COURT: All right, very good. Mr. Propps,  
11 lock the door to make sure that no one else comes in or  
12 leaves. Very good. We're ready for the jury.  
13 (WHEREUPON, the jury was returned to the courtroom at  
14 approximately 2:40 p.m., and the following proceedings  
15 commenced in open court.)

16 THE COURT: Mr. Foreman, ladies and gentlemen of  
17 the jury, we're about to give a charge on the jury, the  
18 substantive law that governs this case. I want to commend  
19 you because I've watched you throughout the trial of this  
20 case, and y'all have paid very close attention. When the  
21 witness was testifying you were looking at the witness.  
22 When they were asking questions you were looking at the  
23 attorneys. It's clear that y'all paid very close  
24 attention to the facts that come from the witness stand.  
25 Clearly, you've taken your solemn oath very seriously, but

1 only half of your duties have been fulfilled. In order  
2 for you to render a verdict that speaks the truth you have  
3 to know what the law is. You have to apply the facts as  
4 you see them to the law. You know, there's not an easy  
5 way to do it. It's almost like taking medicine, ain't no  
6 easy way to do it. But these are very important matters.  
7 Although this case did not take very long to try because  
8 of the factual scenario, it doesn't lessen the importance  
9 of it. I'm here to tell you that this is an important  
10 case for the State of the South Carolina. It's an  
11 important case for the defendant Ms. Cochran. So I'm  
12 gonna ask that you perk up a little bit. I know that  
13 we've probably all had a big lunch. Sometimes we kind of  
14 have a lull in the middle of the afternoon. I'm gonna ask  
15 you to perk up, sit on the edge of your seat, and pay very  
16 close attention because this is serious stuff.

17 Ladies and gentlemen of the jury, the indictment  
18 charges the defendant with armed robbery. I remind you  
19 that the fact the defendant was arrested, charged and  
20 indicted is not evidence and cannot be considered by you  
21 as evidence of guilt, nor does it create any presumption  
22 or inference of guilt. This document is simply the formal  
23 written instrument which contains the charge made against  
24 the defendant. It is the formal document by which this  
25 case is brought into this court. The defendant has pled

1 not guilty to this indictment. And that plea puts the  
2 burden on the State to prove the defendant guilty. A  
3 person charged with committing a criminal offense in South  
4 Carolina is never required to prove himself innocent. I  
5 charge you that as an important rule of the law that the  
6 defendant in a criminal trial, no matter what the  
7 seriousness of the charge may be, will always be presumed  
8 to be innocent of the crime for which the indictment was  
9 issued unless guilt has been proven by evidence satisfying  
10 you of that guilt beyond a reasonable doubt.

11 Presumption of innocence does not end when you  
12 begin your deliberation. It accompanies the defendant  
13 throughout the trial until you reach a verdict of guilt  
14 based on evidence satisfying you of that guilt beyond a  
15 reasonable doubt. The presumption of innocence is like a  
16 robe of righteousness placed about the shoulders of the  
17 defendant which remains with the defendant until it has  
18 been stripped from the defendant by evidence satisfying  
19 you of the defendant's guilt beyond a reasonable doubt.  
20 Presumption of innocence is not a mere legal theory; it's  
21 not just a legal phrase. It is a constitutional right to  
22 which every defendant is entitled unless you, the jury,  
23 are satisfied from the evidence and the defendant's guilt  
24 beyond a reasonable doubt.

25 What is reasonable doubt in the law? Reasonable

1     doubt is the kind of doubt that would cause a reasonable  
2     person to hesitate to act. The State has the burden of  
3     proving the defendant guilty beyond a reasonable doubt.  
4     Some of you may have served as jurors in civil cases where  
5     you were told that it's only necessary to prove that a  
6     fact is more likely true than not true, such as by a  
7     greater weight or preponderance of the evidence. In  
8     criminal cases the State's proof must be more powerful  
9     than that. It must be beyond a reasonable doubt. Proof  
10    beyond a reasonable doubt is proof that leaves you firmly  
11    convinced of the defendant's guilt. Ladies and gentlemen  
12    of the jury, there are very few things in the world that  
13    we know with absolute certainty. In criminal cases the  
14    law does not require proof that overcomes every possible  
15    doubt. If based on your consideration of evidence you are  
16    firmly convinced that the defendant is guilty of the crime  
17    charged you must find the defendant guilty. If on the  
18    other hand, you think there's a real possibility the  
19    defendant is not guilty, you must give the defendant the  
20    benefit of the doubt and find her not guilty.

21           Ladies and gentlemen of the jury, I remind you  
22    that during this trial you and I have certain duties to  
23    perform. As the trial judge it's my responsibility to  
24    preside over the trial of this case. I also have the duty  
25    to rule on the admissibility of the evidence offered

1 during this trial. You're to consider only the competent  
2 evidence before you. You're to consider only the  
3 testimony which has been presented from this witness  
4 stand, any exhibits which have been made a part of the  
5 record in this case, any stipulations of counsel. I have  
6 the additional duty to charge you the law applicable to  
7 this case. As the presiding judge I'm the sole judge of  
8 the law of this case, and it is your duty as jurors to  
9 accept and apply the law as I now state it to you. If you  
10 already have an idea as to what the law is or what the law  
11 ought to be and it does not agree with what I now tell you  
12 what the law is, you must abandon this idea because you're  
13 sworn to accept and apply the law exactly as I state it to  
14 you.

15 In every case tried in this court before a jury  
16 the jury becomes the sole and exclusive judge of the facts  
17 in a case. The trial judge cannot intimate, state,  
18 comment on or make any statement to a trial jury about the  
19 facts in a case. Since you, the jury, are the sole judge  
20 of the facts in this case, you are not to infer from what  
21 I've said during the progress of this trial and ruling  
22 upon admissibility of the evidence or otherwise, or  
23 anything that I say now during the course of this  
24 instruction to you that I have any opinion about the facts  
25 in this case. The law does not allow me to have an

1 opinion about the facts this case. This is a matter  
2 solely for you, the jury, to determine. As jurors it is  
3 your duty to determine the effect, value, weight, and  
4 truth of the evidence presented during this trial.

5 Ladies and gentlemen of the jury, there are two  
6 types of evidence which are generally presented during a  
7 trial, direct evidence and circumstantial evidence.

8 Direct evidence is the testimony of a person who claims to  
9 have actual knowledge of a fact, such as an eyewitness.

10 It is evidence which immediately establishes the main fact  
11 to be proved. Circumstantial evidence is proof of a chain  
12 of facts and circumstances indicating the existence of a

13 fact. It is evidence which immediately establishes  
14 collateral facts from which the main fact may be inferred.

15 Circumstantial evidence is based on inference and not on  
16 personal knowledge or observation. The law makes

17 absolutely no distinction between the weight or value to  
18 be given to either direct or circumstantial evidence, nor

19 is a greater degree of certainty required of substantial  
20 evidence than of direct evidence. You should weigh all of

21 the evidence in this case. After weighing all of the

22 evidence, if you're not convinced of the guilt of

23 defendant beyond a reasonable doubt, you must find the  
24 defendant not guilty.

25 Necessarily, you must determine the credibility



1 of witnesses who have testified in this case. Credibility  
2 simply means believability. It becomes your duty as  
3 jurors to analyze and evaluate the evidence, determine  
4 which – and to determine which evidence convinces you of  
5 its truth. In determining the believability of witnesses  
6 who have testified in this case you may believe one  
7 witness over several witnesses, or several witnesses over  
8 one witness. You may believe a part of the testimony of a  
9 witness and reject the remaining part of the testimony of  
10 that same witness. You may believe the testimony of a  
11 witness in its entirety or reject the testimony of a  
12 witness in its entirety. You may consider whether any  
13 witness has exhibited to you any interest, bias,  
14 prejudice, or other motive in this case. You may also  
15 consider the appearance and manner of the witness while on  
16 the witness stand, their demeanor.

17 A person who has a past criminal record is  
18 competent to testify during a trial. A past record does  
19 not affect the ability of that witness to testify. The  
20 past record may only be considered by you, if at all, in  
21 determining the witness's believability. Remember, you  
22 are the sole judges of the facts in this case and the  
23 believability of any and all of the witnesses. A  
24 statement alleged to have been made by the defendant has  
25 been admitted into evidence in this case. While the Court

1 has determined that the statement is admissible, I  
2 instruct you that you make the ultimate decision of  
3 whether or not the defendant made the statement. If the  
4 defendant did make the statement you must determine  
5 whether the statement was made by the defendant  
6 voluntarily and of her own free will. This means that the  
7 statement was not caused by pressure, force, fear,  
8 threats, coercion, or intimidation, or by hope or of  
9 promise of leniency or a reward of any kind. In  
10 determining whether the statement was voluntarily you  
11 should consider both characteristics of the defendant and  
12 the details of the questioning. Some of the factors that  
13 you may consider include, but are not limited to, the age  
14 of the defendant, defendant's education or lack of  
15 education, defendant's mental ability or capacity,  
16 defendant's IQ or intelligence, defendant's background and  
17 environment, place and length of detention, the nature of  
18 the questioning, advice or lack thereof to the defendant  
19 of her constitutional rights including but not limited to  
20 the right to remain silent, that any statement could be  
21 used against her in a court of the law, right to have a  
22 lawyer present, if she could not afford one a lawyer would  
23 be appointed to represent her without any cost, and that  
24 she could stop making a statement at any time. You must  
25 carefully consider all the surrounding circumstances

1 before you give any weight to any alleged statement.

2 The State has the burden of proving beyond a  
3 reasonable doubt that the alleged statement was voluntary.  
4 If you determine it was, you may give the statement any  
5 further consideration that you deem proper. You must  
6 decide what weight, if any, should be given to the alleged  
7 statement. If you determine that the alleged statement  
8 was not a free and voluntary statement of the defendant  
9 you should not consider the statement at all.

10 Ladies and gentlemen of the jury, I instruct and  
11 emphasize that the fact that the defendant did not testify  
12 is not a factor to be considered by you in any way in your  
13 deliberation and in your consideration on the question of  
14 guilt or the innocence of the defendant. It must not be  
15 considered by you in any manner whatsoever. The defendant  
16 has a constitutional right to remain silent, and the  
17 assertion of this right must not be considered by you in  
18 your deliberations. I repeat, under your oath, you're to  
19 draw no conclusion whatsoever from the fact that the  
20 defendant in this case did not testify. The fact that  
21 this defendant did not testify should not have even  
22 discussed — should not even be discussed in the jury  
23 room. Mr. Foreman, I'm gonna ask that you enforce that  
24 rule. That is not a proper point of deliberation or  
25 discussion. The burden of proof is, as I have stated to

1 you, is on the State. The defendant is not required to  
2 prove her innocence. The burden of proof remains on the  
3 State to prove guilt beyond a reasonable doubt.

4 Ladies and gentlemen of the jury, pay very close  
5 attention as I charge you the substantive law with regard  
6 to armed robbery. The defendant is charged with armed  
7 robbery. In order to prove this offense the State must  
8 prove beyond a reasonable doubt that the defendant took  
9 personal property from the person or presence of another  
10 person. Property is in the presence of a person if it is  
11 within the person's reach, inspection, observation, or  
12 control so that the person could, if not overcome with  
13 violence or prevented by fear keep possession of the  
14 property. The State must also prove beyond a reasonable  
15 doubt that defendant carried the property away intending  
16 to permanently deprive the owner of the property and to  
17 keep the property for the defendant's own use. The  
18 slightest removal of property or the complete possession  
19 of the property even for an instant by the defendant is  
20 sufficient to show taking and carrying away of the  
21 property. The taking and carry away of the property must  
22 have been done with violence or by putting the owner of  
23 the property in fear of violence.

24 Finally, the State must prove beyond a reasonable  
25 doubt the defendant was armed with a deadly weapon during

1 the robbery. A deadly weapon is any article, instrument,  
2 or substance which is likely to cause death or great  
3 bodily harm. Whether an instrument has been used as a  
4 deadly weapon depends on the facts and circumstances of  
5 each case. The following are examples of instruments  
6 which may be deadly weapons: A pistol, a shotgun, a  
7 rifle, a dirk, a dagger, a knife, a slingshot, metal  
8 knuckles, a razor, gasoline, a fire bomb, a Molotov  
9 cocktail, and lighter fluid. A gun may be a deadly weapon  
10 even if it is not operating. Whether a toy gun, which has  
11 appearance of or is believed to be a real gun, is the  
12 deadly weapon is a factual question for you to determine.  
13 Whether a BB gun is a deadly weapon is a factual question  
14 for you, the jury, to determine.

15 Ladies and gentlemen, I'm going to charge you the  
16 principle of law known as the hand of one is the hand of  
17 all. If a crime is committed by two or more people who  
18 are acting together in committing a crime the act of one  
19 is the act of all. A person who joins with another to  
20 commit an unlawful act is criminally responsible for  
21 everything done by the other person which happens as a  
22 probable and natural consequence of acts done in carrying  
23 out the common plan and purpose. For example, two people  
24 can be guilty of killing another person when only one of  
25 the two had a gun, there was only one bullet and only one

1 of the two fired the shot that caused the death. If two  
2 or more people are together, acting together, assisting  
3 each other in committing the offense, the act of one is  
4 the act of all, or as it is sometimes stated, the hand of  
5 one is the hand of all. Prior knowledge that a crime is  
6 going to be committed without more is not sufficient to  
7 make a person guilty of that crime. Mere knowledge that  
8 another person is going to commit a crime, even if the  
9 defendant is present when the crime is committed, is not  
10 sufficient to convict the defendant as a principal -- as a  
11 principal. Guilt as a principal is shown by actual or  
12 constructive presence at the scene as a result of prior  
13 arrangement; therefore, a finding of a prior arranged plan  
14 or common scheme is necessary for a finding of guilt as a  
15 principal.

16       The State must prove beyond a reasonable doubt by  
17 competent evidence the theory of the hand of one is the  
18 hand of all. A principal in a crime is one who either  
19 actually commits the crime or who is present aiding,  
20 abetting, or assisting in committing the crime. When a  
21 person does an act in the presence of, with assistance of  
22 another, the act is done by both with two or more acting  
23 with a common plan or intent are present at the commission  
24 of a crime. It does not matter who actually commits the  
25 crime, all are guilty. The hand of one is the hand of

1 all. Present at the commission of a crime means to be  
2 sufficiently near to aid and abet and assist in the  
3 commission of the crime. However, mere presence at the  
4 scene of the crime is not sufficient to convict one as a  
5 principal on the theory of aiding and betting.

6 Intent is also a necessary element for there must  
7 have been a common design or intent to commit the crime.  
8 The crime must have been committed pursuant thereto with a  
9 person aiding abetting by some overt act. Intent means  
10 intending the result which actually occurs, not  
11 accidentally or involuntarily. Intent may be shown by  
12 acts and conduct of the defendant and other circumstances  
13 from which you may naturally and reasonably infer intent.  
14 The State must prove these elements beyond a reasonable  
15 doubt.

16 Ladies and gentlemen of the jury, mere presence at  
17 the scene is not sufficient to prove someone guilty of a  
18 crime. A defendant's presence where a crime is being  
19 committed or mere association with a person who commits a  
20 crime does not make the defendant an accomplice or an  
21 aider or abettor or abettor of a person committing the  
22 crime. The burden is on the State to prove every element  
23 of the crime charged. If you find after reviewing all of  
24 the evidence that the State has proved that the defendant  
25 was only present at the scene of the crime and that they

1 have not proved beyond a reasonable doubt any other  
2 participation in the crime, then you must find the  
3 defendant not guilty. The law is that proof of the  
4 defendant being at the scene of the crime is not  
5 sufficient in and of itself to find someone guilty.

6 I want to explain to you the principle of law known  
7 as withdrawal. The defendant had raised the defense of  
8 withdrawal from the criminal enterprise before the crime  
9 was committed. Withdrawal is a complete defense and may  
10 be shown if: One, the defendant withdrew entirely from  
11 the enterprise; two, withdrawal was before some act in  
12 furtherance of the commission of the felony beyond just  
13 preparation; there was an affirmative act by the defendant  
14 such as voicing withdrawal which announced the withdrawal  
15 to others involved in the crime; and the withdrawal was  
16 made under circumstances would allow the others involved  
17 in the crime to also withdraw from the criminal enterprise  
18 if they choose. Involuntary withdrawal because of the  
19 failure and the attempt or because of other unanticipated  
20 difficulty is no excuse. The State has the burden of  
21 proving that the defendant did not withdraw from the  
22 enterprise. If you find that the defendant withdrew from  
23 the criminal enterprise you must find the defendant not  
24 guilty.

25 Ladies and gentlemen of the jury, you've heard



1 argument concerning the penalty a person can serve for the  
2 crime of armed robbery. In determining the guilt or  
3 innocence of the defendant, you cannot, and I repeat, you  
4 cannot consider any possible penalty for any particular  
5 crime. The punishment for the crime is a matter for me to  
6 determine and should they never be considered by you in  
7 any way whatsoever in arriving at a fair and impartial  
8 verdict as to the guilt or innocence of the defendant.

9 Bear with me as I come forward to share with you  
10 the verdict form. And Ms. Johnette Bess and Emily  
11 Stonerock, I'm gonna ask y'all remain with us and do not  
12 go back into the jury room. Mr. Foreman, I'm gonna ask if  
13 you can stand right here. I'm gonna go over this verdict  
14 form. And of course, it's conveniently denominated as  
15 verdict form. And it's got: In the Court of General  
16 Sessions, Twelfth Judicial Circuit, Florence County. And  
17 it's got the indictment number, State of South Carolina  
18 versus Latisha Lee Cochran, defendant. The only matter  
19 for y'all to determine is whether or not the State has  
20 proven beyond a reasonable doubt the offense of armed  
21 robbery. You'll see the language that's placed on there.  
22 It's very simple. We, the jury, find by unanimous consent  
23 that the State has failed to prove beyond a reasonable  
24 doubt each and every element of the defense of armed  
25 robbery; therefore, we find the defendant not guilty.

1 That's one option.

2           The other option is: We, the jury, find by  
3 unanimous consent the State has proven beyond a reasonable  
4 doubt each and every element of the offense of armed  
5 robbery; therefore, we find the defendant guilty. You  
6 know, on these verdict forms one has to go first, either  
7 guilty or not guilty. There's certainly no significance  
8 to be drawn from the order in which it is put on there.  
9 Simply one has to come first; it's completely arbitrary.  
10 There's a place for you to sign here. It says: The  
11 verdict must be unanimous. It can't be a 11 to 1. It  
12 can't be 10 to 2, 6 to 6. Everyone has to agree. That's  
13 a very important principle.

14           Mr. Cook, you are the foreman of the jury. You're  
15 to insure everybody's voice is heard. You're to preside  
16 over the deliberation process and you're also responsible  
17 for determining that everybody's voice is heard and the  
18 verdict is indeed unanimous. I'm gonna ask that you  
19 please notify the bailiff upon reaching a verdict and  
20 there's a place for you to sign and date. I tell you to  
21 knock on the door and notify the bailiff. I hear-tell in  
22 some counties the jury stayed back there a day-and-a-half  
23 and didn't knock on the door. So we don't want y'all to  
24 stay back there so when you reach a verdict we do want you  
25 to knock on the door.

1           You can have a seat.

2           I want to talk you a little bit about the  
3 deliberation process. If there are questions that develop  
4 during the deliberation process feel free to reduce those  
5 questions to writing and give them to the foreman and  
6 he'll give it to the bailiff. And if it's something I can  
7 answer I'll be happy to do so. I'll tell you from the  
8 very beginning that the difficult questions in this case  
9 are left up to you. You're the triers of the fact, the  
10 facts in this case, and I can't render an opinion in that  
11 regard. If there's, you know, if you have a question  
12 about the law or just write that down I'll be happy to  
13 answer it. But I don't anticipate that you're gonna have  
14 any questions because y'all have paid very close attention  
15 to the facts in this case. You know what your  
16 responsibility is to do. Apply your collective wisdom to  
17 determine what the truth is in this case. Y'all all paid  
18 attention to my charge on the law so you'll have all of  
19 the equipment necessary to resolve this case.

20           If there is a question in your mind as to whether  
21 or not it's a question of fact or question of law, all you  
22 got to do is write it down. If it's a question of fact  
23 I'll tell you that and you're gonna have to resolve that  
24 amongst yourselves. If it's a question of law I will be  
25 happy to answer it in that regard. I have told you

1 throughout the trial of this case when you go back to the  
2 jury room do not begin deliberations. And once again I'm  
3 gonna tell you that again 'cause I have to talk with these  
4 very fine lawyers to determine whether or not they have an  
5 objection as to the manner which I've charged the law,  
6 whether I've left something out or inadvertently changed  
7 something in an incorrect manner. And once we make that  
8 determination then we're gonna gather up all the  
9 documentary evidence which has been introduced into this  
10 trial. We'll get it together. And if there is I'm gonna  
11 have to bring you back in to recharge you the law in any  
12 way, shape, or form. Then I'm gonna get the evidence.  
13 The bailiff is gonna put them in a pile and go in and  
14 knock on the door and tell you to begin deliberations.  
15 But once again, do not begin deliberations until you've  
16 been given the instructions by the bailiff. Mr. Foreman,  
17 ladies and gentlemen of the jury, I'm gonna ask you retire  
18 to the jury room but do not discuss the case.

19 (WHEREUPON, the jury was removed from the  
20 courtroom at 3:06. p.m., and the following proceedings  
21 commenced in open court.)

22 THE COURT: Ms. Bess and Ms. Stonerock, thank  
23 y'all for your time. In the short time that I've been on  
24 the Bench I can recall probably a dozen times where we  
25 used alternates. Sometimes conflicts develop; sometimes

1 people get sick. And if we didn't have y'all here,  
2 particularly in a criminal case, it's important that 12  
3 people deliberate the fate of Ms. Cochran here today. If  
4 we didn't have you here we'd have to start over again. I  
5 never really have done it, but it would be a scary thought  
6 to calculate how much resources have been put towards the  
7 trial of this case including y'all's handsome salary of --  
8 how much is it a day?

9 THE DEPUTY CLERK OF COURT: Ten dollars.

10 THE COURT: Ten dollars a day and ten cents a  
11 mile so. Thank you so much for your being here. I know  
12 y'all feel like y'all have been invited to a dance and  
13 didn't get to dance. But if you have any questions, I  
14 told you from the beginning if you have any questions I'll  
15 be happy to answer them. Do y'all have any questions?

16 (There was no response.)

17 THE COURT: All right. Well, thank you for being  
18 here. Thank you for your patience.

19 (Alternates were excused.)

20 THE COURT: Ms. Parr, Mr. Richardson, who wants  
21 to respond? You have heard my curative charge with regard  
22 to the closing argument that pertains to the penalty. Do  
23 you move for a mistrial?

24 MS. PARR: Your Honor, we heard your curative  
25 statement. The State's concern is also in totality of

1 everything that Defense counsel said in his closing  
2 argument in addition to the penalty.

3 THE COURT: Okay, all right. Well, my question  
4 to you is, with regard to the penalty do you want a  
5 mistrial?

6 MS. PARR: Based upon Arnold (ph) versus Kenny,  
7 Your Honor, we would like a mistrial based upon manifest  
8 and necessity in order so that we could retry and not be  
9 penalized and we do not think double jeopardy should  
10 attach.

11 THE COURT: Okay. Anything further,  
12 Mr. Richardson?

13 MR. RICHARDSON: No, sir, Your Honor.

14 THE COURT: Mr. Cartrette, be glad to hear from  
15 you.

16 MR. CARTRETTE: Your Honor, I have apologized to  
17 the Court and as much as I can do is a rookie mistake and  
18 when I prepared my jury charges. There certainly is no  
19 excuse even for the rookie mistake, Your Honor. I  
20 wholeheartedly concede that. When I prepared my jury  
21 charges I did read them very thoroughly. It, however, was  
22 2:30 in the morning before I finished them up and went to  
23 bed, got up early, came to work. I got impassioned there,  
24 Your Honor. I don't think that should prejudice  
25 Ms. Cochran's right to a fair trial and a verdict by her

1 peers.

2 THE COURT: Okay, very good. All right. Any  
3 objections with regard to the jury trial -- I mean, to the  
4 jury charge?

5 MR. RICHARDSON: No, sir, Your Honor.

6 MS. PARR: No, sir.

7 THE COURT: Any objections with regard to the  
8 jury charge from the Defense?

9 MR. CARTRETTE: No, sir.

10 THE COURT: All right. I am gonna hold in  
11 abeyance the motion for mistrial at this time. And I'm  
12 gonna ask, if you could, to come forward and I'm gonna ask  
13 that the -- each article of evidence be placed on this  
14 table over here in sequential fashion, and we're gonna  
15 make a determination that everything that's in that pile  
16 is indeed in evidence and there's not anything in the pile  
17 that's not in evidence.

18 (Attorneys review exhibits.)

19 THE COURT: Mr. Richardson, everything that's in  
20 evidence is it indeed in that pile?

21 MR. RICHARDSON: Yes, sir, Your Honor.

22 THE COURT: Is there anything in that pile that's  
23 not in evidence?

24 MR. RICHARDSON: No, sir.

25 THE COURT: All right, Mr. Cartrette. Is

1 everything that's in that pile in evidence?

2 MR. CARTRETTE: Your Honor, I do believe despite  
3 my best objections everything in this pile is indeed in  
4 evidence.

5 THE COURT: Is there anything in that pile that's  
6 not in evidence?

7 MR. CARTRETTE: No, sir, Your Honor.

8 THE COURT: All right. I'm gonna ask that these  
9 articles of documentary evidence be given to the bailiff  
10 and take that in there with the blank sheets of paper and  
11 the writing utensils and tell them to begin deliberations.

12 (Jury began deliberations at 3:12 p.m.)

13 THE COURT: A question has been presented  
14 essentially says, instructions on the hand of one is the  
15 hand of all. Signed, Herman Cook 10/9/2000— it says two  
16 hundred but I assume it means two thousand ten. I think  
17 that's fairly straightforward and I'm inclined just to  
18 recharge the law on hand of one is the hand of all.

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: Mr. Cartrette?

21 MR. CARTRETTE: Yes, sir, Your Honor.

22 THE COURT: All right. That's indeed what I will  
23 do.

24 Ready for the jury.

25 (WHEREUPON, the jury was returned to the courtroom at 3:33



1 p.m., and the following proceedings commenced in open  
2 court.)

3 THE COURT: Mr. Foreman, you have requested  
4 instructions with regard to the hand of one hand is all;  
5 is that correct?

6 THE FOREMAN: Yes, sir.

7 THE COURT: Pay very close attention as I give  
8 you the law in that regard. If a crime is committed by  
9 two or more people who are acting together in committing a  
10 crime, the act of one is the act of all. A person who  
11 joins with another to commit an unlawful act is criminally  
12 responsible for everything done by the other person which  
13 happens as a probable and natural consequence of the acts  
14 done in carrying out the common plan and purpose. For  
15 example, two people can be guilty of killing another  
16 person when only one of the two had a gun. There was only  
17 one bullet and only one of the two fired the shot that  
18 caused the death. If two or more people are together,  
19 acting together, assisting each other in committing the  
20 offense, the act of one is the act of all, or as it is  
21 sometimes said, the hand of one is the hand of all. Prior  
22 knowledge that a crime is going to be committed without  
23 more is not sufficient to make a person guilty of that  
24 crime. Mere knowledge that another person is going to  
25 commit a crime, even if the defendant is present when the

1 crime is committed, is not sufficient to convict the  
2 defendant as a principal. Guilt as a principal is shown  
3 by actual or constructive presence at the scene as a  
4 result of prior arrangement. Therefore, a finding of a  
5 prior arranged plan or common scheme is necessary for a  
6 finding of guilt as a principal.

7           The State must prove beyond a reasonable doubt by  
8 competent evidence that the theory of the hand of one is  
9 the hand of all. A principal in a crime is one who either  
10 actually commits the crime or who is present aiding and  
11 abetting or assisting in the committing of the crime.  
12 When a person does an act in the presence of or with the  
13 assistance of another the act is done by both. Where two  
14 or more acting with a common plan or intent or present at  
15 the commission of the crime, it does not matter who  
16 actually commits the crime, all are guilty, the hand of  
17 one is the hand of all. Present at the commission of the  
18 crime means to be sufficiently near to aid and abet and  
19 assist in the commission of the crime. However, mere  
20 presence at the scene of the crime is not sufficient to  
21 convict one as a principal on the theory of aiding and  
22 abetting.

23           Intent is also a necessary element for there must  
24 have been a common design or intent to commit the crime,  
25 and the crime must have been committed pursuant thereto

1 with a person aiding and abetting by some overt act.  
2 Intent means intending the result which actually occurs,  
3 not accidentally or involuntarily. Intent may be shown by  
4 acts and conduct of the defendant and other circumstances  
5 for which you may naturally and reasonably infer intent.  
6 The State must prove these elements beyond a reasonable  
7 doubt.

8 Mr. Foreman, you may take the jury back to the  
9 jury room and resume deliberations.

10 (WHEREUPON, the jury was removed from the  
11 courtroom at 3:56 p.m., and the following proceedings  
12 commenced in open court.)

13 THE COURT: Any objection with regard to the  
14 charge?

15 MR. RICHARDSON: No, sir.

16 MS. PARR: No.

17 MR. CARTRETTE: No, sir, Your Honor.

18 THE COURT: Very good.

19 (WHEREUPON, Court's Exhibit No. 2 was marked and made a  
20 part of the record.)

21 (WHEREUPON, a recess was taken from the proceedings.)

22 THE COURT: I understand we have a verdict. You  
23 may bring the jury in.

24 (WHEREUPON, the jury was returned to the courtroom at  
25 approximately 3:51 p.m., and the following proceedings

1 commenced in open court.)

2 THE COURT: Mr. Foreman, have you reached a  
3 verdict?

4 THE FOREMAN: Yes sir, we have.

5 THE COURT: Is it indeed unanimous?

6 THE FOREMAN: Yes, sir, it is.

7 THE COURT: I want to ask if you can give it to  
8 the clerk.

9 (Verdict form is tendered to the Court.)

10 THE COURT: The verdict form seems to be in  
11 order. I'll give it to the clerk for publishing.

12 THE DEPUTY CLERK OF COURT: State of South  
13 Carolina, County of Florence, in the court of General  
14 Sessions, Twelfth Judicial Circuit, indictment number  
15 2009-GS-21-422. State of South Carolina versus Latisha  
16 Lee Cochran, armed robbery: We, the jury, find by  
17 unanimous consent that the State has failed to prove —  
18 I'm sorry, I'm sorry. We, the jury, find by unanimous  
19 verdict the State has proven beyond a reasonable doubt  
20 each and every element of the offense of armed robbery;  
21 therefore, we find the defendant guilty. Signed Herman  
22 Cook, foreman, dated October 19th, 2010.

23 Members of the jury, if this is your verdict  
24 please raise your right hand.

25 (All jurors complied by raising their hand.)

1 THE DEPUTY CLERK OF COURT: That's everybody,  
2 Judge.  
3 THE COURT: Any additional requests for polling?  
4 MS. PARR: None from the State, Your Honor.  
5 MR. CARTRETTE: I would ask for polling.  
6 THE COURT: All right. Madam Clerk, if you could  
7 poll the jury.  
8 THE DEPUTY CLERK OF COURT: Okay, each member,  
9 I'm gonna call your name. When I call your name please  
10 stand. I'm gonna ask you two questions. I'm gonna say,  
11 was this your verdict then, meaning in the jury room. And  
12 is this your verdict now. You have to answer yes or no to  
13 each question.  
14 Wanda Simon, was this your verdict then?  
15 JUROR SIMON: Yes.  
16 THE DEPUTY CLERK OF COURT: Is it still your  
17 verdict now?  
18 JUROR SIMON: Yes.  
19 THE DEPUTY CLERK OF COURT: Robert Hyman, is this  
20 your verdict then?  
21 JUROR HYMAN: No.  
22 THE DEPUTY CLERK OF COURT: Is it still your  
23 verdict now?  
24 JUROR HYMAN: Yes.  
25 THE COURT REPORTER: Did he say no to the other?

1 I thought he said —  
2 THE COURT: I thought he said no to the first  
3 question.  
4 THE COURT REPORTER: I thought he did too.  
5 JUROR HYMAN: You're asking for in here, correct?  
6 THE DEPUTY CLERK OF COURT: Before you came out,  
7 yes, sir.  
8 JUROR HYMAN: I'm sorry.  
9 THE COURT: Re-ask both of the questions.  
10 THE DEPUTY CLERK OF COURT: Okay. Was this,  
11 Mr. Robert Hyman, was this your verdict then, before you  
12 came out of the jury room?  
13 JUROR HYMAN: Yes.  
14 THE DEPUTY CLERK OF COURT: And is it still your  
15 verdict now?  
16 JUROR HYMAN: Yes.  
17 THE DEPUTY CLERK OF COURT: Ryan Brown, was this  
18 your verdict then?  
19 JUROR BROWN: Yes.  
20 THE DEPUTY CLERK OF COURT: Is it still your  
21 verdict now?  
22 JUROR BROWN: Yes.  
23 THE DEPUTY CLERK OF COURT: Herman Cook, is this  
24 your verdict then?  
25 JUROR COOK: Yes.

1           THE DEPUTY CLERK OF COURT: Is it still your  
2 verdict now?  
3           JUROR COOK: Yes.  
4           THE DEPUTY CLERK OF COURT: Charles Harwell, is  
5 this your verdict then?  
6           JUROR HARWELL: Yes.  
7           THE DEPUTY CLERK OF COURT: Is it still your  
8 verdict now?  
9           JUROR HARWELL: Yes.  
10          THE DEPUTY CLERK OF COURT: William Cantey, was  
11 this your verdict then?  
12          JUROR CANTEY: Yes.  
13          THE DEPUTY CLERK OF COURT: Is it still your  
14 verdict now?  
15          JUROR CANTEY: Yes.  
16          THE DEPUTY CLERK OF COURT: Tamara Carroll, is  
17 this your verdict then?  
18          JUROR CARROLL: Yes.  
19          THE DEPUTY CLERK OF COURT: Is it still your  
20 verdict now?  
21          JUROR CARROLL: Yes.  
22          THE DEPUTY CLERK OF COURT: Iva Haney, is this  
23 your verdict then?  
24          JUROR HANEY: Yes.  
25          THE DEPUTY CLERK OF COURT: Is it still your

1 verdict now?

2 JUROR HANEY: Yes.

3 THE DEPUTY CLERK OF COURT: Linda Godwin, is this  
4 your verdict then?

5 JUROR GODWIN: Yes.

6 THE DEPUTY CLERK OF COURT: Is it still your  
7 verdict now?

8 JUROR GODWIN: Yes.

9 THE DEPUTY CLERK OF COURT: Sharese Alexander,  
10 was this your verdict then?

11 JUROR MMBO-KEITH: Yes.

12 THE DEPUTY CLERK OF COURT: Is it still your  
13 verdict now?

14 JUROR MMBO-KEITH: Yes.

15 THE DEPUTY CLERK OF COURT: Maud Mmbo-Keith,  
16 was this your verdict then?

17 JUROR MMBO-KEITH: Yeah.

18 THE DEPUTY CLERK OF COURT: Is it still your  
19 verdict now?

20 JUROR MMBO-KEITH: Yes.

21 THE DEPUTY CLERK OF COURT: Jacobe Benjamin,  
22 was this your verdict then?

23 JUROR BENJAMIN: Yes.

24 THE DEPUTY CLERK OF COURT: Is it still your  
25 verdict now?



1 JUROR BENJAMIN: Yes.

2 THE DEPUTY CLERK OF COURT: That's it, Judge.

3 THE COURT: Mr. Foreman, ladies and gentlemen of  
4 the jury, I want to thank you for your time and  
5 consideration. It's clear that y'all paid very close  
6 attention to the facts and I think you in your  
7 deliberation process zeroed in to the real dispute that we  
8 had here today and you've rendered a verdict. And I  
9 certainly do appreciate that. I wish that there was a way  
10 that I could release you for the week 'cause y'all have  
11 certainly participated and done that. At 9:30 in the  
12 morning we're going to select another jury. Keep your  
13 fingers crossed and maybe you'll get to serve two in one  
14 week. Wouldn't that be amazing? At any rate you are  
15 getting paid handsomely. Remember that ten dollars a day  
16 and ten cents a mile. And I told you in the beginning if  
17 you had any questions about the procedure or questions of  
18 law I would answer then now and if you have any questions  
19 I'll be happy to do that.

20 (There was no response.)

21 THE COURT: I see that there are no questions. I  
22 have given you an instruction throughout the trial of this  
23 case that you're not to discuss this case with anyone  
24 else. I'm releasing you from that order. You can talk to  
25 anybody you want to about this case. However, if someone

1 were to contact you about this case and you did not want  
2 to discuss it, tell them that. And if they persist in  
3 their efforts to try to speak with you, get their name and  
4 number, report it to me, and I'll deal with them  
5 accordingly. I don't anticipate that would happen, but  
6 certainly you're free to talk to anybody you would like to  
7 about this as long as you would like. You know, when we  
8 went over the jury charge I explained that your job was to  
9 be the triers of the fact, find out what the truth was,  
10 and apply it to the law. My job was to be the trier of  
11 the law, which means rule on the admissibility. I will  
12 charge you the law and I also sentence the individual.  
13 You have discharged your duty. However, this is a public  
14 forum. Momentarily, we're gonna take about a five minute  
15 recess. We're gonna give y'all an opportunity to leave  
16 the courtroom. This is a public forum. And in ten  
17 minutes or so Ms. Cochran is gonna be brought before the  
18 court and we will sentence her for what she's been found  
19 guilty to. You do not have to participate in that. You  
20 don't have to watch, but it is a public forum. You're  
21 free to do so.

22 We're gonna ask everyone to remain seated as you  
23 exit the courtroom. And those of you who would like to  
24 come back in you can come back into the area and watch.

25 Anything from the State at this time?

1 MS. PARR: Your Honor, I would withdraw my other  
2 motion.

3 THE COURT: Very good. Mr. Cartrette?

4 MR. CARTRETTE: Your Honor, I would like to make  
5 a motion at this time if I may.

6 THE COURT: You may.

7 MR. CARTRETTE: To set aside the jury verdict and  
8 to grant my client a new trial.

9 THE COURT: Very good. I think that it was  
10 clearly a question of fact for the jury to resolve. And  
11 they have come to their conclusion, and I don't find any  
12 legal reason to disturb their verdict and your motion is  
13 indeed denied. Everyone remain seated as the jury exits  
14 the courtroom.

15 (WHEREUPON, the jury was removed from the  
16 courtroom at 4:00 p.m., and the following proceedings  
17 commenced in open court.)

18 THE COURT: Mr. Cartrette, you may bring  
19 Ms. Cochran around.

20 Mr. Richardson, I'll be glad to hear from the  
21 State with regard to sentencing. And it might be good to  
22 explain the history of the case and what brings us here  
23 today. I think it might be good to put that on the  
24 record.

25 MS. PARR: Your Honor, may it please the Court,

1 this incident started November 15th, 2008, as came out in  
2 the facts or the testimony. Your Honor, this defendant,  
3 from the information that we received was the girlfriend  
4 of one of the co-defendants, Mr. Chazmonte Brown. They  
5 had planned to, on that particular day, planned to rob  
6 Mr. Hayes. They were look— well, they didn't pick him  
7 out initially but they were planning to rob someone. And  
8 the information we had that they had been riding around  
9 looking for someone, but they knew that he was a business  
10 owner. Ms. Cochran had his telephone number in her cell  
11 phone number and made the call to him. Initially, how  
12 they found out who was involved in this matter, the credit  
13 card was used of Mr. Hayes at the Super Wal-mart here in  
14 Florence. At that time at one point it was denied,  
15 declined, and they — Ski McAllister was able to get a  
16 video showing that the co-defendant Quentin Epps was —

17 THE COURT: Ms. Parr, I will be glad to hear you  
18 through — I'm certainly aware of the facts that bring us  
19 here today. I'm really inquiring more about the State's  
20 position with regard to sentencing. And if you want to  
21 put on the record what brought us here today, why  
22 co-defendant is being tried before the gunman. You can do  
23 whatever you want to do. That's what I was focusing on.  
24 I understand the facts. I was here when it was tried.

25 MS. PARR: Okay. And Your Honor, I was getting

1 to the point that she — they came to her second and got a  
2 statement after Mr. Quentin Epps had first gave a  
3 statement. And she gave a statement implicating herself  
4 the second time and all the other co-defendants as well as  
5 Mr. Epps. The — when we got ready to try this case,  
6 initially, we were gonna try the other co-defendants first  
7 and one of the other co-defendants said that he was going  
8 to testify and she refused to testify in this matter  
9 against anyone else and she wanted to just go forward with  
10 this matter, and that's how we came to try her first.

11 THE COURT: Okay.

12 MS. PARR: But initially —

13 THE COURT: What is the State's position with  
14 regards to sentencing? This is a violent offense which  
15 adversely affects her custody status. It's a most serious  
16 offense subject to the two strike rule, meaning if she  
17 were to get a subsequent most serious offense she would be  
18 subject to life imprisonment. Bearing this in mind and  
19 the fact it's a nonparoleable offense and that she will  
20 serve it day for day subject to the 85 percent rule, and  
21 that she will be subjected community supervision at her  
22 release, what is the State's position as to what sentence  
23 ought to be rendered?

24 MS. PARR: Your Honor, initially we had  
25 recommended the minimum sentence; but given the fact that

1 we proceeded in this matter and with consultation with the  
2 victim, Mr. Hayes actually wants the maximum in this  
3 matter. But we do think she should get something more  
4 than the minimum sentence in this matter.

5 THE COURT: Okay. When do you anticipate trying  
6 the co-defendants?

7 MS. PARR: Your Honor, we hope to try them on  
8 next term of court.

9 THE COURT: All right, very good. Mr. Cartrette.  
10 Anything further Mr. Richardson?

11 MR. RICHARDSON: No, sir, Your Honor.

12 THE COURT: All right. Mr. Cartrette, I'll be  
13 glad to hear from you with regard to sentencing.

14 MR. CARTRETTE: Your Honor, Ms. Cochran of course  
15 today was found guilty by a jury of her peers. We believe  
16 the evidence shows that her involvement was minimal at  
17 best, Your Honor. She has expressed remorse. She's, as  
18 we mentioned several times on the record, she's a 26 year  
19 old mother of two. She's got a baby on the way. She's a  
20 student. And she would like to speak to the Court, Your  
21 Honor, but we would ask the Court for leniency in  
22 sentencing and we'd ask for the lowest possible sentence,  
23 Your Honor.

24 THE COURT: All right. Ms. Cochran, I'll be glad  
25 to hear from you.

1           **THE DEFENDANT:** Yes, Your Honor. At the  
2 beginning of this I never once denied my involvement. It  
3 was only the fact that I was afraid, as I am afraid today,  
4 to leave my children. They only have me. I have a ten  
5 year old and a five year old, and I'm all they got. I was  
6 a foster child and I don't wish for them to grow up like I  
7 did. But the mistake that I made, I know I deserve a  
8 punishment; but out of my children life that long when I  
9 didn't actually commit it, I don't feel like that's fair  
10 to my behalf or my children or my child inside me. And  
11 within the two years that this has gone by, I have made  
12 myself better as a person as attending school, taking care  
13 of my children, joining the church, and I have never  
14 harmed anybody in my life. This is my first offense.  
15 That's it, Your Honor.

16           **THE COURT:** Ms. Cochran, it's clear from what's  
17 transpired here today that there was plenty of discussion  
18 about the armed robbery. There were weapons involved.  
19 You didn't separate yourself from them. And it was clear  
20 to me from the testimony that came forth in this trial  
21 that if there was any effort to withdraw, it was after the  
22 shots were fired, and I agree with the jury's verdict in  
23 that regard. But this is serious business. I feel sorry  
24 for you; I feel sorry for your children. And it appears  
25 as if you have an unborn child. But one thing that cannot

1 be tolerated in civilized society is people sticking a gun  
2 in somebody's face and taking their money.

3 THE DEFENDANT: I did not do this, sir.

4 THE COURT: Well, I understand but you were right  
5 there, a part and parcel of it, and the South Carolina  
6 legislature in their infinite wisdom has made the  
7 determination that this is a nonparoleable offense and  
8 which means that you will serve it day for day and —

9 THE DEFENDANT: I didn't do this, sir, I'm sorry.

10 THE COURT: I know based on the evidence what you  
11 did and I understand that. And because of that I'm not  
12 going to give you the maximum, but I'll do the very best I  
13 can. With regard to indictment 2009-GS-21-422, armed  
14 robbery, the sentence of the Court is that you be  
15 committed to State Department of Corrections for a period  
16 of 13 years. Under this sentencing scheme that is  
17 equivalent to a 36 year sentence under the old rules.

18 THE DEFENDANT: I didn't do it, sir.

19 THE COURT: Good luck to you. Wish you the best  
20 of luck.

21

22 \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*

23

24

25



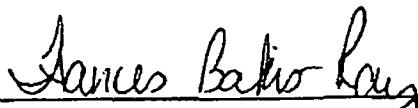
**CERTIFICATE OF REPORTER**

**STATE OF SOUTH CAROLINA)**  
**COUNTY OF FLORENCE }**

**I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.**

**I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.**

**Witness my hand at Florence, South Carolina, this 13rd day of December, 2010.**



**FRANCES BAKIS-RAY, RPR**  
**My Commission Expires: 9-13-2014**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Florence County

Michael G. Nettles, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

LATISHA COCHRAN,

APPELLANT

---

INITIAL BRIEF OF APPELLANT

---

ELIZABETH A. FRANKLIN-BEST  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUE ON APPEAL

Did the trial court judge err in by allowing appellant's purported confession to be admitted into evidence when the statement was given on Christmas Eve, by a mother of two young children, and when the statement was given under circumstances inherently coercive?

STATEMENT OF THE CASE

Latisha Lee Cochran was indicted by the Florence County grand jury for armed robbery. She was tried before the Hon. Michael G. Nettles and a jury on October 18, 2010. She was represented by Jesse S. Cartrette, Esquire. The State was represented by Patricia S. Parr and David A. Richardson. She was convicted and sentenced to 13 years incarceration.

This appeal timely follows.

### ARGUMENT

The trial court judge erred in by allowing appellant's purported confession to be admitted into evidence when the statement was given on Christmas Eve, by a mother of two young children, and when the statement was given under circumstances inherently coercive.

Latisha Lee Cochran was convicted for events that the State alleged occurred on November 15, 2008 in Lake City, South Carolina. On that date, Mr. William Hayes, also known as "Junebug" was robbed in the convenience store that he owns and operates. Hayes's house is adjoined to the store.

On November 15th, Hayes received a telephone call from a lady asking him if he was going to go to the Elks Club that evening. He informed the caller that he did not know whether he would go or not. At 10:00 PM, he walked to the front of his store and cut off the alarm. He then walked outside to get into his truck and three people approached him wearing masks and carrying guns. They told him to get down on the ground. They held a gun to his head and asked for his money. He was also hit in the head with the gun. The victim gave his assailants the \$500 that was in his pocket. The victim testified that he did not know the identity of the woman who called him earlier. Tr. 70 – 76.

Also stolen from the victim was his wallet which contained credit cards. Tr. 79. As they were leaving, his assailants fired their guns, and the victim testified he heard five or six shots. Tr. 81. At some point later, Hayes testified that the appellant entered his store and spoke with "Ms. Mildred." The appellant was crying and upset. Tr. 84.

Mildred Montgomery testified that she is related to the appellant and has known her since appellant was born. Tr. 98. She testified that appellant apologized to her for robbing the store. Tr. 100 -- 101.

Appellant's codefendant, Quentin Epps, testified that he, appellant, and the other codefendants agreed to rob someone, and they met at appellant's house earlier that evening. He testified that appellant made the phone call to Mr. Hayes. Epps and appellant were sitting in the car as the others committed the robbery, and pulled off when they heard the commotion. Tr. 113. The parties then split the proceeds of the crime. Tr. 115 -- 116.

Investigator McAllister was a sergeant with the city of Lake City at the time of this event. He responded to the incident location and interviewed the victim. The day after the robbery, McAllister received information that the victim's credit cards were used at a Wal-Mart in Florence, and Quentin Epps was developed as a suspect. He gave a statement to McAllister and implicated appellant. McAllister had initially interviewed appellant on November 19, 2008 after he discovered other credit cards connected with this robbery were used by her. Tr. 127. Appellant told McAllister that she found them. McAllister interviewed her again on December 24, 2008. Tr. 134. The statement she gave was recorded and entered into evidence at trial. Tr. 135. Trial counsel initially objected to the admission of the tape in a pretrial hearing. Tr. 7 -- 47. The trial court determined the tape was admissible. Tr. 48 -- 49. When the tape was entered into evidence during trial, counsel again objected to its admission. Tr. 137.

The trial court judge erred when he allowed the statement given on December 24, 2008 to be admitted into evidence because the statement was coerced by virtue of the circumstances under which it was taken.

Appellant testified during the pretrial hearing that she was driving when a police officer stopped her. She was placed in handcuffs and taken to the Lake City Police Department. She testified she was scared and nervous. Tr. 35. She further testified that she



was frightened. It was Christmas Eve and she was afraid that she would not be at home for Christmas with her children. Tr. 36. The officers told her that in order for her to go home with her children she needed to cooperate. Tr. 36. She ultimately gave the statement but felt intimidated into doing so. Tr. 39.

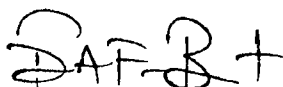
The test for voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession. Dickerson v. United States, 530 U.S. 428, 434 (2000). When considering the voluntariness of the statement, the court and jury should consider "not only the crucial element of police coercion; the length of the interrogation; its location; its continuity; the defendant's maturity; education; physical condition; and mental health." Withrow v. Williams, 507 U.S. 680, 693 (1993). Coercion is determined from the perspective of the suspect. State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007). "The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006).

The trial court judge abused his discretion by allowing appellant's purported confession into evidence when, as the mother of two young children, and being subjected to interrogation on Christmas Eve, the circumstances of her statement were inherently coercive. Under these conditions, her will was overborne by the tactics of the law enforcement officers. Arizona v. Fulminante, 499 U.S. 279 (1991). Her statement was therefore involuntary, and the trial court judge erred by allowing it into evidence. Appellant was denied her right to due process, and she respectfully asks this Court to reverse her conviction.

CONCLUSION

For the preceding reason, appellant respectfully asks this Court to reverse her conviction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "EAFB+", is written over a horizontal line.

Elizabeth A. Franklin-Best  
Appellate Defender

ATTORNEY FOR APPELLANT.

This 17th day of May, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Florence County

Michael G. Nettles, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

LATISHA COCHRAN,

APPELLANT  
\_\_\_\_\_

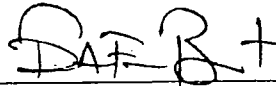
**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**  
\_\_\_\_\_

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Tr. Pages 7- 226
- (3) DVD of statement, Christmas Eve, 2008.

I certify that this designation contains no matter which is irrelevant to this appeal.

May 17, 2011



\_\_\_\_\_  
Elizabeth A. Franklin-Best  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

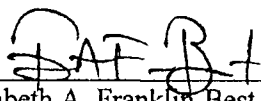
V.

LATISHA COCHRAN,

APPELLANT

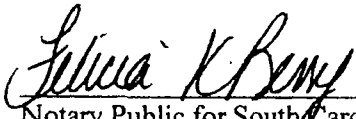
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of May, 2011.

  
Elizabeth A. Franklin-Best  
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me  
this 17th day of May, 2011.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: June 21, 2020

## STATE OF SOUTH CAROLINA

## IN THE COURT OF APPEALS

---

Appeal From Florence County  
Honorable Michael G. Nettles, Judge

---

THE STATE,

Respondent,

vs.

LATISHA LEE COCHRAN,

Appellant.

---

**INITIAL BRIEF OF RESPONDENT**

---

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Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

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**STATEMENT OF ISSUE ON APPEAL**

The defendant says that she is the mother of two young children and made her statement on Christmas Eve under inherently coercive circumstances. She then asks whether the trial court erred in admitting this purported confession into evidence.



**STATEMENT OF THE CASE**

The Florence County Grand Jury charged the defendant with armed robbery and possession of weapon during commission of violent crime (2009-GS-21-00422). The defendant and her counsel came to trial on October 18, 2010 before the Honorable Michael G. Nettles, Judge, and a jury. During trial, the state elected to proceed on only the armed robbery charge (Tr. p. 50), and the jury found the defendant guilty. The court imposed a sentence of imprisonment for thirteen years. The defendant served opposing counsel a timely notice of appeal.

## ARGUMENT

### The trial court soundly admitted the defendant's confession.

#### The Armed Robbery and the Defendant's Confession

Quentin Epps testified the defendant, Montarrio Graham, Jerry Bush, Chazmonte Brown, and he got together on November 15, 2008 at the home of the defendant for the purpose of finding someone to rob. The defendant telephoned the victim to get him outside. Later, Epps and the defendant sat in the car while their armed and masked confederates robbed the victim. After hearing a commotion, they "pulled off" and their confederates had to run to the car. The defendant drove to and from the robbery, since Epps had the car but no license. They went to the defendant's house and divided the spoils – some five hundred dollars and credit cards. (Tr. pp. 105-116).

Willie Hayes, Jr. had lived some 31 years in his connected store and house. On November 15, 2008 a strange woman telephoned and, oddly, asked him whether he were going to a club. Later, around 10:00 PM he went outside, and three, armed masked men held him at gunpoint. He handed over his money as directed, and one confederate still hit him in the head. The assailants also took his wallet and credit cards. Hayes knew the defendant as a customer, but he neither identified her that night nor recognized her voice. After her arrest, the defendant - noting that she had kids - apologized. (Tr. pp. 70-72; pp. 79-80; pp. 83-88).

The defendant also apologized to her 70 year old relative, Mildred Montgomery, who had known her since birth and who worked in the store - since they had planned to rob the store while she was there but decided to wait until the store closed. Ms. Montgomery also saw the defendant come in and go back to talk to the victim. (Tr. pp. 97-101)

Frank McAllister investigated the armed robbery for the Lake City Police. The victim told him about the anonymous phone call before the armed robbery. (Tr. pp. 122-124). He saw the video of Quentin Epps using one of the victim's credit cards, talked to Epps, and got an arrest warrant for the defendant. Before the arrest, he interviewed her (November 19, 2008) after she presented the victim's credit cards at McDonald's and Captain D's. (Tr. pp. 122-128).

#### How the Issue on Appeal Was Raised at Trial

The defendant says that she is the mother of two young children and made her statement on Christmas Eve under inherently coercive circumstances. She then asks whether the trial court erred by admitting this purported confession into evidence. (Appellant's Statement of Issue on Appeal).

Officer McAllister took a second statement (December 24, 2008) after he had information from Quentin Epps by way of an informant. The defendant was under arrest, but there was no apparent change in her demeanor from the time of the first statement. McAllister again gave her Miranda rights, and she acknowledged receiving them. She understood her rights. She did not exercise her rights. She was not coerced or threatened. She was cooperative. She understood her rights, and she did not exercise the rights. The defendant's statements were made freely and voluntarily. She said that a co-defendant and she had planned a lick, and she made the telephone call to try to get the victim outside. She stayed in the car while others got out. They got about 100 dollars. Epps gave her the wallet with credit cards. After attempting to use the cards, she threw away the wallet. (Tr. p. 3; p. 18, line 14 - p. 30).

The defendant denied getting an advisement of her rights during the course of the entire investigation. She remembered signing nothing until her bond hearing. Further, she was nervous and intimidated. The officer's anger and actions toward her were very frightening. She said, "And in my mind, you lock me up on Christmas Eve so it was basically involving my children not being home for Christmas, and I felt it was – I was just very afraid." The officer told her that to go home with her children she needed to cooperate with what he had. The police told her that making a statement was not necessary since they already had the evidence. She had seen no part of the armed robbery taking place. She used the victim's credit cards, but she was not guilty of armed robbery. At the time of her second statement she felt intimidated. Her purported statement was not made freely and voluntarily, and it was not true and accurate. (Tr. pp. 34-44).

In camera the court found that the December 24 statement resulted from custodial questioning, and it was admissible. The Miranda rights were given, and the defendant acknowledged each element. The court noted the defendant's maturity and how articulate she was during her in camera testimony. The court found that the defendant was not coerced, and there was no intimidation. Mention of her children was within bounds of explaining the difficulty in which she had placed herself. The defendant had made the statement voluntarily, and it was admissible. (Tr. pp. 47-50, line 3).

At trial the defendant objected to the December 24, 2008 statement on the ground of the defendant's receiving Miranda rights. (Tr. pp. 135-139).

### Discussion

A party cannot present a ground for objection to the trial court and then argue another ground on appeal. State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989). Assume for argument that the appellate court may find that the present assignment of error - that the statement was erroneously admitted into evidence since it was made under inherently coercive circumstances - was contemporaneously raised by the defendant and ruled upon by the court when the statement was admitted into evidence.

The ultimate test remains that which has been the only clearly established test in Anglo-American courts for two hundred years: the test of voluntariness. Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overcome and his capacity for self-determination critically impaired, the use of his confession offends due process. The line of distinction is that at which governing self-direction is lost and compulsion, of whatever nature or however infused, propels or helps to propel the confession.

Culombe v. Connecticut, 367 U.S. 568, 81 S.Ct. 1860, 1879, 6 L.Ed.2d 1037 (1961)(citation omitted). The State must prove by a preponderance of the evidence that the defendant voluntarily waived his rights and confessed. If there is conflicting evidence about the voluntariness of a confession, the court must make a finding as to the validity of the statement before it is submitted to the trier of fact. The court's determination of voluntariness should not be reviewed unless it so erroneous as to show an abuse of discretion. State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996). The trial judge's careful findings of fact, including the defendant's maturity and receiving her Miranda rights, support the determination that the defendant was not coerced, and the statement was voluntary and admissible.

**CONCLUSION**

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.  
Senior Assistant Attorney General

E. L. CLEMENTS, III  
Solicitor, Twelfth Judicial Circuit

BY: Harold M. Coombs, Jr.  
Harold M. Coombs, Jr.

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ATTORNEYS FOR RESPONDENT

October 17, 2011

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal From Florence County  
Honorable Michael G. Nettles, Judge

THE STATE,

Respondent,

vs.

LATISHA LEE COCHRAN,

Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Elizabeth A. Franklin-Best, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

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

This 17<sup>th</sup> day of October, 2011.

Harold M. Coombs, Jr.  
HAROLD M. COOMBS, JR.

Office of Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal From Florence County  
Honorable Michael G. Nettles, Judge

---

THE STATE,

Respondent,

vs.

LATISHA LEE COCHRAN,

Appellant.

---

**DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

---

In addition to the matter designated by the Appellant, Respondent proposes the following to be included in the Record on Appeal:

**additional trial transcript Tr. pp. 1-3 (title page, index)**

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers. Additionally, Respondent notes personal data identifiers and other sensitive information should be redacted from the transcript or other documents pursuant to the South Carolina Supreme Court Order dated August 13, 2007.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.



ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.  
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ATTORNEYS FOR RESPONDENT

October 17, 2011

237  
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.

Latisha Lee Cochran, Appellant.

---

Appeal From Florence County  
Michael G. Nettles, Circuit Court Judge

---

Unpublished Opinion No. 2012-UP-310  
Submitted April 2, 2012 – Filed May 16, 2012

---

**AFFIRMED**

---

Appellate Defender Elizabeth A. Franklin-Best, of Columbia,  
for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney  
General John W. McIntosh, Senior Assistant Deputy  
Attorney General Salley W. Elliott, and Assistant Attorney  
General Harold M. Coombs Jr., all of Columbia; and  
Solicitor E.L. Clements III, of Florence, for Respondent.

**PER CURIAM:** Latisha Lee Cochran appeals her conviction of armed robbery, arguing the trial court erred in admitting a purported confession given under inherently coercive circumstances. We affirm<sup>[1]</sup> pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Dye, 384 S.C. 42, 46, 681 S.E.2d 23, 26 (Ct. App. 2009) ("On review, the [trial] court's conclusions on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion."); State v. Pittman, 373 S.C. 527, 566, 647 S.E.2d 144, 164 (2007) (holding the voluntariness of a confession is determined based on "the totality of the circumstances surrounding the defendant's giving the confession" (citation omitted)); Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973) (holding the totality of the circumstances includes "both the characteristics of the accused and the details of the interrogation").

**AFFIRMED.**

**HEW, C.J., HUFF and SHORT, JJ., concur.**

---

<sup>1]</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

2012 CP 21 1713

STATE OF SOUTH CAROLINA

COUNTY OF County of RichlandLatisha L Cochran # 343301  
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR  
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Camille C. Crenshaw Corr. Inst. Columbia S.C.
2. Name and location of Court which imposed sentence Florence County Gen-Sess. 180 W. Irby St. Florence S.C.
3. Name(s) of co-defendant(s) (if any) Quentin Epps - Chaz Monte Brown - Jerry Bush  
Montario Graham
4. The indictment number or numbers (if known) upon which and the offenses for which

sentence was imposed:

- (a) 09-422
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) October 19, 2010 - 13 yrs
- (b) \_\_\_\_\_

Revised 3/2003

Mailed 7/23/12  
cc: Cochran  
(with cc file)

- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty ☒ \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. May 16, 2012
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State vs. DYE 681 SE 2nd 23 (2009)
- ii. State vs. Pittman 1647 SE 2nd 144 (2007)
- iii. Schneckloth vs Bustamonte 412 U.S. 218 (1973)
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Coerced into making a false confession

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) Investigator promised me that if I would testify

(b) against my co-defendants, that I could go home

(c) to my children, because it was Christmas.

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

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. Appeal

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. S.C. Court of Appeals, Columbia, S.C.

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(c) the disposition thereof:

i. Denied

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(d) the date of each such disposition:

i. may 16, 2012

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Same as Question (8) d

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Same as Question (8) d

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. Appeal

ii. \_\_\_\_\_

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A

(b) \_\_\_\_\_

(c) \_\_\_\_\_

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Jesse S. Cartrette, 201 W Evans St, Florence S.C.
- ii. Elizabeth A. Franklin - Best, P.O. Box 11433, Columbia, SC
- iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment, trial, Sentencing
- ii. Appeal
- iii. \_\_\_\_\_

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

Lesser charge

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

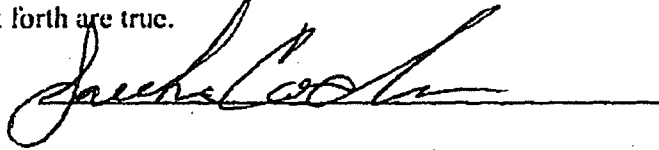
NO

STATE OF SOUTH CAROLINA )

County of Florence )

## VERIFICATION

I, \_\_\_\_\_, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 20th  
day of June, 2012.

Kathy L. Garner (L.S.)  
Notary Public

My Commission Expires: My Commission Expires August 12, 2015

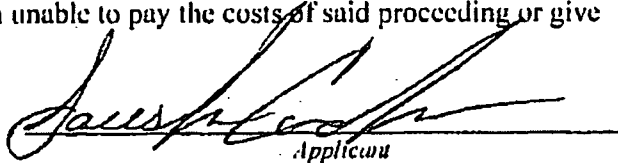
FILED  
2012 JUL -2 PM 3:23  
CLERK OF COURT  
FLORENCE COUNTY, SC



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

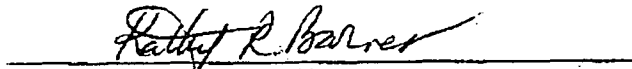
I, \_\_\_\_\_, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

  
Applicant

SWORN or affirmed to and subscribed before me this

28<sup>th</sup> day of June, 2012.

  
Notary Public

My Commission Expires: My Commission Expires August 12, 2015

FILED  
2012 JUL -2 PM 3:23  
COMPTON, STEPHAN  
PCSF & CS  
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA )

COUNTY OF FLORENCE )

Latisha L. Cochran, 343301 )

Applicant, )

v. )

State of South Carolina, )

Respondent. )

IN THE COURT OF COMMON PLEAS

2012-CP-21-1713

**RETURN**

Respondent, making its Return to the Application for post conviction relief (PCR) filed October 2, 2012, would respectfully show this Court:

## I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the April 2009 term of the Florence County Grand Jury for armed robbery and possession of a weapon during a violent crime (2009-GS-21-422). Jesse S. Cartrette, Esquire, represented Applicant.

On October 19, 2010, Applicant was tried and convicted, and was sentenced by the Honorable Michael Nettles to thirteen years imprisonment. Applicant filed a timely notice of intent to appeal. The South Carolina Court of Appeals affirmed the conviction and the Remittitur was also filed on June 8, 2012.

Attached herewith and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and the guilty plea transcript.

Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Coerced into making a false confession"

## III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

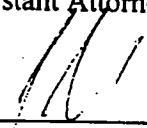
Respectfully submitted,

ALAN WILSON  
Attorney General

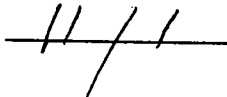
JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

, 2012.

STATE OF SOUTH CAROLINA )

COUNTY OF FLORENCE )

IN THE COURT OF COMMON PLEAS

2012-CP-21-1713

LATISHA L. COCHRAN, #343301 )

Applicant, )

vs )

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA, )

Respondent. )

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Pheobe Annette Clark, Esquire**  
**P.O. Box 13057**  
**Florence, SC 29504**

DATED this 1<sup>st</sup> day of November, 2012.

  
 Norma Bigbee, Legal Assistant  
 For Respondent

**STATE OF SOUTH CAROLINA** **FILED** **IN THE COURT OF COMMON PLEAS**  
**COUNTY OF FLORENCE** **FOR THE TWELFTH JUDICIAL CIRCUIT**

2013 MAR -1 AM 8:41

Case No.: 2012-CP-21-1713

**LATISHA COCHRAN #343301**

**MOTION TO PRECLUDE THE STATE**  
**FROM ASSERTING THAT APPLICANT'S**  
**CODEFENDANT, QUENTIN EPPS**  
**DID NOT HAVE A DEAL WITH THE**  
**PROSECUTION**

vs.

**THE STATE OF SOUTH CAROLINA**

**Defendant.**

Pursuant to the doctrine of collateral estoppel, Applicant moves to preclude the State from arguing that a Quentin Epps did not have a plea deal with the prosecution prior to testifying.

**PROCEDURAL AND FACTUAL HISTORY**

Applicant was indicted for armed robbery and possession of a weapon during the commission of a violent crime by the Florence County Grand Jury. On October 18, 2010, Applicant was called to trial before the Honorable Michael G. Nettles and a jury. Applicant was represented by Jesse Cartrette and the State was represented by Patricia Parr and David Richardson. Applicant was convicted. Applicant was sentenced to thirteen years.

Applicant appealed her conviction. The Court of Appeal affirmed Applicant's conviction and sentence on May 16, 2012. Then Applicant filed an Application for PCR on July 2, 2012. The State filed a return on November 1, 2012.

### FACTUAL BACKGROUND

On November 15, 2008, William Hayes received a call from an unknown female on a blocked line. The unknown female asked if he was going out to the club that night. Tr. 71, ll. 15-18. Later that evening Hayes was attacked and robbed by three masked men as he was leaving his home. Tr. 71, l. 22 — Tr. 72, l. 9. Two of the men were armed with real firearms, and the other was armed with a toy pistol. The robbers ordered Hayes on to the ground, and one of the masked men hit him with a toy pistol. The robbers stole five hundred dollars in cash and several credit cards from Hayes. While leaving, one of the robbers fired a real pistol into the air. Around the same time that the shots were fired, neighbors saw a group of men jumping into a dark colored Toyota Camry.

After the robbery, Quentin Epps was seen using one of the stolen credit cards at Wal-Mart. Police questioned Epps who gave a statement. Epps was the owner of a dark purple Toyota Camry. Epps admitted knowing about the robbery, but he tried to deny any involvement in the robbery claiming he was merely present. Epps even denied driving the car from the scene. Epps gave the names of several people that he claimed were also involved in the robbery. Epps claimed that Applicant had made the call to Hayes, and that she was the getaway driver after the robbery happened. Tr. 109, ll. 22-25. No physical evidence was ever collected linking Applicant to the crime. Epps, Applicant, and three other co-defendants were charged with armed robbery.

Right before Christmas 2008, after speaking with Epps, police spoke with Applicant. Applicant asserts that she gave this statement because the police told her she needed to cooperate in order to get home to her kids. Tr. 36, ll. 3-24. Applicant gave a statement consistent with Epps' version of what occurred. Applicant maintains this story was not accurate and that her statement was not voluntarily given.

Prior to Applicant's trial the State offered Epps a plea deal in exchange for his testimony against the others. The State promised Epps that they would reduce his armed robbery charge to



some other charge if Epps testified against Applicant and the other co-defendants. The State did not inform Epps of what his armed robbery would be reduced to. Nevertheless, Epps agreed to testify in order to avoid a mandatory minimum ten year sentence. The State did not disclose this deal to Trial Counsel.

Because of the lack of physical evidence, the State's case at trial was primarily based on Epps' testimony and the statement Applicant claimed was involuntary. However, the deal with Epps was never disclosed to the defense, and the following exchange takes place during Epps' direct examination:

Richardson: Mr. Epps, have you been offered anything special to testify here today?

Epps: No, Sir.

Richardson: You hadn't been offered any sort of special plea deal in order for you to testify here today; is that right?

Epps: Right.

Tr. 116, l. 23 --Tr. 117, l. 3. The State never informed the Court or Trial Counsel that Epps had testified untruthfully. Applicant was convicted at trial.

On December 15, 2010, Applicant's codefendant, Montarrio Graham, was called to trial before Judge Nettles and a jury. Graham had not given a statement to police and his case rested solely upon the Epps' testimony. Again Epps falsely testified that he had made no deal with the prosecution. Graham was convicted and sentenced to twenty-two years.

Several weeks after Graham's trial, the State reduced Epps' armed robbery charge to accessory after the fact. On January 24, 2010, Epps pled guilty to accessory after the fact and received an eighteen month sentence concurrent with a probation revocation.

Graham appealed his conviction. During the course of his appeal, Graham discovered that he Epps had falsely testified concerning his deal. Graham withdrew his appeal and filed an application for PCR. An evidentiary hearing was convened before the Honorable Thomas Russo. Epps' trial attorney, Henry Anderson, testified that the State had offered to drop Epps' Armed Robbery to some other charge in exchange for his testimony against Applicant and the other co-defendants.

In an order dated November 2, 2012, Judge Russo granted Graham's PCR pursuant to *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173 (1959) and *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006). In this order, Judge Russo specifically found that "Mr. Anderson credibly testified that the State had offered to reduce Epps's armed robbery charge in exchange for his testimony." See Attachment A. On December 6, 2012, Graham was informed that the State would not appeal Judge Russo's decision.

On February 19, 2013, Applicant informed the State, via e-mail, that he would be asserting ineffective assistance of counsel and the same due process violation argued in Graham's PCR. Applicant further notified the State that this motion would be made.

### ARGUMENT

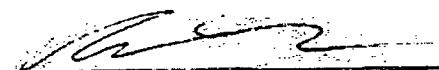
The doctrine of issue preclusion or collateral estoppel prevents a party from re-litigating an issue in a subsequent actions. *Judy v. Judy*, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009). The party asserting collateral estoppel must show that the issue they wish to preclude was: (1) actually litigated previously; (2) directly determined; and (3) was necessary to support the prior judgment. See *Carolina Renewal v. S.C. Dept. of Transportation*, 385 S.C. 550, 684 S.E.2d 779, 782 (Ct. App. 2009). "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel there the party against whom estoppel is asserted had a full

and fair opportunity to previously litigate the issues." *Snively v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665, S.E.2d 222, 228 (Ct. App. 2008).

Applicant seeks to preclude the state from re-litigating whether Epps' made a deal with the State in order to testify. This is the same issue that was previously raised and ruled upon by the Court in Graham's case. In Graham's case the State had a full and fair opportunity to litigate this issue. The State was on notice of this issue more than a year before Graham's PCR hearing<sup>1</sup>. Graham called Hank Anderson to testify at the hearing and the State had a full opportunity to cross-examine him. The State had an opportunity to call witnesses but elected not to do so. Additionally, the State also had an opportunity to appeal Judge Russo's decision but elected not to do so. Moreover, Since Judge Russo granted Graham's PCR solely based on the prosecutorial misconduct, his finding that Epps had a deal was necessary to the prior judgment.

Therefore, this Court should preclude the State from arguing that Epps did not have a plea deal prior to testifying.

RESPECTFULLY SUBMITTED,



Tristan Michael Shaffer  
Attorney for Defendant

FILED  
CLERK OF COURT  
JULY 1, 2013

2013 MAR -1 AM 8:41

FILED

February 27, 2013

<sup>1</sup> Graham initially sought to suspend his direct appeal and remand for a hearing pursuant to Rule 29(b), SCRCrimP. Assistant Attorney General David Spencer filed a response to Graham's motion with the Court of Appeals on August 19, 2011.

Q Ex. A

**STATE OF SOUTH CAROLINA**

IN THE COURT OF COMMON PLEAS  
FOR THE TWELFTH JUDICIAL CIRCUIT

**COUNTY OF FLORENCE**

2012 NOV -6 AM 11:30

Case No.: 2012-CP-21-273

## CONNECTIONS: MEALING

752 405

**MON'TARRIO GRAHAM #295551**

FLORIDA COUNTY, SC

### Y. SC ORDER GRANTING

## POST-CONVICTION RELIEF

**YS.**

**THE STATE OF SOUTH CAROLINA**

**Defendant.**

This matter comes before the Court by way of Montarrio Graham's application for post-conviction relief (PCR).

This Court has reviewed the PCR hearing testimony. The Court also reviewed relevant portions of the trial transcript. Additionally, the Court has reviewed the following portions of the appellate record: Motion to Hold Appeal in Abeyance and Remand for a Hearing on a Motion for a New Trial Based on After-Discovered Evidence; Respondent's Return to Motion to Hold Appeal in Abeyance and Remand for a Hearing on a Motion for New Trial Based on After-Discovered Evidence; and Reply to State's Return to Motion to Hold Appeal in Abeyance and Remand for a Hearing on a Motion for New Trial Based on After-Discovered Evidence. Moreover, the Court had access to all records concerning the case that were available at the Florence County Clerk of Court.

After a thorough review of all evidence in this case this Court grants post-conviction relief in this case base upon the reasons set forth in this order.

## PROCEDURAL HISTORY

In April 2009, Applicant was indicted for armed robbery and possession of a weapon during the commission of a violent crime by the Florence County Grand Jury. On December 15,

2010, Applicant was called to trial before the Honorable Michael G. Nettles and a jury. Applicant was represented by Scott Floyd and the State was represented by Patricia Parr and David Richardson.

On December 16, 2010, Applicant was convicted. Applicant was sentenced to twenty-two years. Applicant appealed his conviction. However, Applicant's appeal was dismissed after he moved to withdraw his appeal.

### FINDINGS OF FACTS

This Court has reviewed the testimony presented at the evidentiary hearing, observed witnesses, passed on their credibility, and weighed the testimony accordingly. Further this Court reviewed relevant portions of the Clerk of Court's records regarding Applicant's convictions. Moreover, this Court has reviewed Applicant's trial transcript and has heard argument from counsel. Pursuant to S.C. Code § 17-27-80, this Court makes the following findings of fact and conclusions of law:

For several years, Applicant has known Quentin Epps. In 2003, Applicant and Epps were charged as co-defendants in a Burglary. For that charge Applicant, gave a statement to law enforcement implicating Epps. Epps was convicted of the burglary charge.

Several years later, Epps was involved in an armed robbery. William Hayes was attacked and robbed by three masked men as he was leaving his home. Tr. 68, ll. 2-18. Two of the men were armed with real firearms, and the other was armed with a toy pistol. The robbers ordered Hayes on to the ground, and one of the masked men hit him with a toy pistol. The handle of the toy pistol broke and was left at the scene. The robbers stole five hundred dollars in cash and several credit cards from Hayes. Tr. 76, ll. 3-7. While leaving, one of the robbers fired a real pistol into the air. Around the same time that the shots were fired, neighbors saw a group of men jumping into a dark colored Toyota Camry.

After the robbery, Quentin Epps was seen using one of the stolen credit cards at Wal-Mart. Police questioned Epps who gave a statement. Epps was the owner of a dark purple Toyota Camry. Epps admitted knowing about the robbery, but he tried to deny any involvement in the robbery claiming he was merely present. Epps even denied driving the car from the scene. Epps gave the names of several co-defendants that he claimed were also involved in the robbery. Epps claimed that Applicant was the man carrying a toy pistol during the robbery. No physical evidence was ever collected linking Applicant to the crime. Epps, Applicant, and three other co-defendants were charged with armed robbery.

Prior to Applicant's trial the State offered Epps a plea deal in exchange for his testimony against the others. The State promised Epps that they would reduce his armed robbery charge to some other charge if Epps testified against Applicant. The State did not inform Epps of what his armed robbery would be reduced to. Nevertheless, Epps agreed to testify in order to avoid a mandatory minimum ten year sentence. The State did not disclose this deal to Trial Counsel. If Trial Counsel had known about Epps' deal he would have used it to impeach Epps.

Because of the lack of physical evidence, the State's case at trial was primarily based on Epps' testimony. As Assistant Solicitor Parr stated in her closing argument, "this case a lot of it depends on credibility of the witnesses." Tr. 164, ll. 22-23. The following exchange takes place at the beginning of Epps' direct examination:

Richardson: Mr. Epps, you are a codefendant in this case to Montarrio Graham and three other people; is that right?

Epps: Right.

Richardson: Okay. And you are charged with armed robbery and possession of a weapon during a violent crime.

Epps: Right.

Richardson: Same as Mr. Graham?

Epps: Yes, sir.

Richardson: Have you been offered any sort of special deal or promise ---

Epps: No, sir.

Richardson: ---In order to get you to testify here today?

Epps: No, sir.

Tr. 99, ll. 4-16. The State never informed the Court or Trial Counsel that Epps had testified untruthfully.

During cross-examination Epps testified to the following:

Floyd: Okay. And then, of course, you're charged here for this event, right?

Epps: Yes, sir.

Floyd: Now you said earlier you had no offer for special treatment, is that right, ---

Epps: Right.

Floyd: ---from the prosecutor's office?

Epps: Right.

Floyd: But you haven't been tried yet, have you?

Epps: No, sir.

Floyd: Now what kind of time are you facing for this charge that you're charged with?

Epps: Ten years.

Floyd: To what?

Epps: The lowest is ten, max is 30.

Floyd: Thirty years; is that right?

Epps: Yes, sir.

Floyd: And that's no parole time: is that right?

Epps: Right.

Ms. Parr: Your Honor, I would object.

The Witness: Right.

Ms. Parr: Sentencing is not any privy of the jury.

The Court: I'm gonna allow him some latitude. Of course, sentencing is, Mr. Foreman, ladies and gentlemen of the jury, sentencing is something for this Court to handle. But the extent it goes to interest of bias I'm going to allow the Defense to get into that. That's not your concern other than in your evaluation of interest and bias.

Mr. Floyd.

Floyd: So as of today you haven't been tried for this, have you?

Epps: No, sir.

Floyd: You haven't pled guilty to it?

Epps: No, sir.

Floyd: Okay. So there's certainly nothing to prevent you from receiving a better deal after this is over, is there?

Epps: Repeat that one more time.

Floyd: Nothing to prevent you from receiving a deal after this over, is there?

Epps: No, sir.

Floyd: A specific deal?

Epps: No, sir.

Floyd: There's nothing to prevent that.

Epps: No.

Tr. 116, l. 9 - Tr. 118, l. 5. Once again the State never informed the Trial Court or the jury of Epps' plea deal.



Several weeks after Applicant's trial, the State reduced Epps' armed robbery charge to accessory after the fact. On January 24, 2010, Epps pled guilty to accessory after the fact and received an eighteen month sentence. Applicant first learned of Epps deal while his appeal was pending.

### CONCLUSIONS OF LAW

Applicant was denied his right to due process when the State failed to disclose a deal with Epps and failed to correct Epps false testimony.

#### **A. Post-Conviction Relief is the proper forum to address the constitutional issues raised by Applicant.**

"A petitioner may allege constitutional violations in PCR proceeding, unless the issue could have been raised by direct appeal." *Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998); *see also, Riddle v. Ozmint*, 369 S.C. 39, 44, 631 S.E.2d 70, 73 (2006) ("We are concerned here not with the routine PCR issue of whether trial counsel was ineffective, but instead with the question whether prosecutorial misconduct denied petitioner's due process right to a fair trial."); S.C. Code §17-27-20(a)(1).

Applicant is alleging that he was denied his right to due process when the State failed to disclose a deal with Epps and failed to correct his false testimony concerning the deal. Applicant did not learn about Epps's deal until his appeal was already pending. Upon learning of the deal, it appears Applicant moved to hold his suspend his appeal and remand for a hearing on after discovered evidence pursuant to Rule 29(b), SCRCrimP. Applicant's motion merely asked the Court of Appeals to hold his direct appeal in abeyance while he filed a motion for a new trial, the Court of Appeals was not asked to decide the merits of a motion for a new trial. The Court of Appeals declined to suspend Applicant's appeal pursuant to *Hayden v. State*, 278 S.C. 610, 299 S.E.2d 854 (1983).

Applicant may properly seek relief on this issue because he was unable to argue this issue on direct appeal. *See Gibson, supra*. At trial, Applicant was unaware that Epps had testified falsely; therefore, Applicant would have been procedurally barred from raising this issue on direct appeal. *See State v. Passmore*, 363 S.C. 568, 583, 611 S.E.2d 273, 281 (Ct. App. 2005) ("The General rule of issue preservation states that if an issue was not raised and ruled upon below it will not be considered for the first time on appeal."). Moreover, the rules of criminal procedure specifically forbid moving for a new trial based upon after discovered evidence while an appeal is pending. Rule 29(b), SCRCrimP ("A motion for a new trial based on after-discovered evidence may not be made while the case is on appeal unless the appellate court, upon motion, has suspended the appeal and granted leave to make the motion."). Therefore, Applicant may now, on PCR, argue the merits of his due process claim because he was procedurally barred from doing so during his direct appeal. *See Gibson*, 329 S.C. at 41, 495 S.E.2d at 428 ("A petitioner may allege constitutional violations in PCR proceeding, unless the issue could have been raised by direct appeal.").

**B. Applicant's is entitled to a new trial because the State failed to disclose and failed to correct false testimony.**

It is well established that convictions resulting from known perjured testimony cannot stand because the fraud prevented the defendant "from fully exhibiting and trying his case and there has never been a real contest before the court on the subject matter of the action." *Cf. Chewning v. Ford Motor Co.*, 354 S.C. 72, 83-84, 579 S.E.2d 605, 611 (2003); *Giglio v. United States*, 405 U.S. 150, 153, 92 S.Ct. 763, 766 (1972) ("[A] prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice."). When the State knowingly uses perjured testimony it violates a defendant's right to due process. *Riddle*, 369 S.C. at 47, 631 S.E.2d at 75 ("The PCR judge erred

in concluding that the State was not obligated to correct Jason's false testimony, and in failing to hold that this violations of petitioner's due process rights required that he be granted a new trial.").

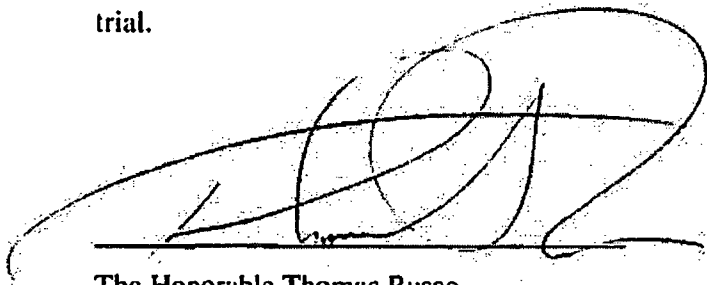
Applicant's right to due process was clearly violated by the State's failure to correct known false testimony from Epps. Mr. Anderson credibly testified that the State had offered to reduce Epps's armed robbery charge in exchange for his testimony. There is no evidence in the record which contradicts Mr. Anderson's assertion. Moreover, this assertion was corroborated by the fact that several weeks after Applicant's trial, Epps pled to and received an eighteen month sentence. Mr. Anderson credibly testified that he advised his client of this deal. The State certainly was aware that Epps was giving false testimony because the State had offered Epps the deal he denied. Additionally, Mr. Floyd credibly testified that he was unaware of Epps's deal until after the trial.

Applicant has clearly established prejudice in this case. The only evidence linking Applicant to the crime was the testimony of Epps. At trial, the Solicitor even stated, "this case a lot of it depends on credibility of the witnesses." Tr. 164, ll. 22-23. In reality, the State's case depended solely on the credibility of Epps. This Court finds that the State's failure to disclose that Epps gave false testimony was not harmless.

During the hearing, the State argued that even if a deal was offered to Epps, Applicant is not entitled to a new trial because the evidence was merely impeaching. The State argued that the factors announced in *Hayden* limit when a person is entitled to a new trial based on after discovered evidence. This Court recognizes that *Hayden* would control when a person seeks a new trial based on state grounds. However, *Hayden* in no way limits a persons' right to due process under the Fourteenth Amendment.

Applicant is not seeking a new trial merely because he discovered some impeachment evidence after trial. Instead Applicant is claiming that his right to due process were violated because the State failed to disclose its deal with Epps and failed to correct his known false testimony concerning the deal. *See Riddle supra, see also, Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963); *see also, Kyles v. Whitley*, 514 U.S. 419, 115 S.Ct. 1555 (1995). This is an issue controlled by clearly established Federal law, as determined by the Supreme Court of the United States. Therefore, Applicant is entitled to a new trial despite the fact the false testimony concerned the witnesses bias. *See Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177 (1959) ("The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty does not cease to apply merely because the false testimony goes to the credibility of the witness.")

**IT IS THEREFORE ORDERED** that this Application for Post-Conviction Relief is granted; Applicant's conviction and sentence shall be vacated; and Applicant is hereby granted a new trial.



The Honorable Thomas Russo  
Circuit Court Judge

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NOV 12 2012 5 AM 11:30

This 2<sup>nd</sup> day of November, 2012

STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

COURT OF COMMON PLEAS

IATISHA L. COCHRAN )  
343301 )  
PETITIONER, )

v. )

TRANSCRIPT OF RECORD  
12-CP-21-01713

STATE OF SOUTH CAROLINA, )  
RESPONDENT.)

March 1, 2013  
Florence, South Carolina

**BEFORE :**

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE

**APPEARANCES:**

TRISTAN M. SHAFFER, ESQ.  
Attorney for the Petitioner

T. ANDREW JOHNSON, ESQ.  
Attorney for Respondent

FRANCES BAKIS-RAY, RPR  
Circuit Court Reporter

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| No. | Description        | I.D./EVD. |
|-----|--------------------|-----------|
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| 2   | CD audio statement | 118/118   |

1 MR. JOHNSON: Latisha Cochran,  
2 2012-CP-1713. Ms. Cochran was indicted at the  
3 April 2009 term of the Florence County grand jury  
4 for armed robbery, possession of a weapon during a  
5 violent crime. Mr. Jesse Cartrette, who is seated  
6 here behind counsel table represented her.  
7 October 19th, 2010, she was tried and convicted,  
8 sentenced by Judge Nettles to 13 years imprisonment.  
9 She filed a notice of intent to appeal. Court of  
10 Appeals affirmed the conviction, and in her  
11 post-conviction relief matter she has claimed that  
12 she was coerced into making a false confession. And  
13 question 11 state concisely the facts that support  
14 the grounds. She states that investigator promised  
15 me that if I would testify against my co-defendants  
16 that I could go home with my children because it was  
17 Christmas, and so the State's filed a return denying  
18 that she was coerced into making a false confession  
19 and asking for a hearing. So at this time I would  
20 turn it over to Mr. Tristan Shaffer who represents  
21 her.

22 THE COURT: All right, Mr. Shaffer.

23 MR. SHAFFER: Your Honor, approximately —  
24 well, just for a little bit of background, I took  
25 over this case about three weeks ago from Phoebe

1 Clarke who was originally appointed to the case. I  
2 had written, I had previously represented a  
3 co-defendant in a PCR. I have a signed waiver from  
4 both of them for the conflict. I believe it's in  
5 conformity with the rules. That he got granted  
6 relief in front of Judge Russo in a order dated, I  
7 think November 1st or 8th of something like that. I  
8 got notified on the 8th of November. When I took  
9 over the case I'd spoke with Mr. Johnson who said  
10 that, or who I told I would be orally trying to  
11 amend the application to include several other  
12 causes, or several other allegations. First, is a  
13 due process violation under McHood (ph) v. Illinois.  
14 It's a 1959 U.S. Supreme Court Case. The second one  
15 is a due process violation under Brady. Third, is  
16 ineffective assistance of counsel. That would — I  
17 probably let Mr. Johnson know via email about that I  
18 was gonna make these changes probably two or three  
19 weeks ago, something like that. I mean, it was  
20 right around the time I got appointed and read  
21 through the transcript.

22           The first thing that I'd like to do, and I  
23 apologize to Mr. Johnson because he hasn't had a  
24 whole lot of time to prepare for this. I didn't  
25 mention that I was going to do it, but I didn't



1 actually file the motion or email y'all the motion  
2 until Wednesday of this week so a few days ago. And  
3 I filed it this morning with the clerk of court and  
4 I've handed up a copy and handed a copy to  
5 Mr. Johnson. To his defense he didn't get his email  
6 until this morning so I hate to put him in that  
7 position, but I've been preparing for another case,  
8 and I haven't had the time to actually do it before  
9 now. The motion is I'm moving to stop, to stay, or  
10 preclude the State from arguing that — well, to  
11 give you some background, first of all, the — Judge  
12 Russo granted PCR for the co-defendant based off of  
13 the McHood violation which is basically where the  
14 State failed to correct and, failed to correct  
15 testimony that they knew was incorrect. It involves  
16 a deal with the co-defendant. The testifying  
17 co-defendant was a man named Quentin Eppes. Prior  
18 to trial he was offered a deal. It was not a  
19 specific deal, but they did tell him that he would  
20 drop his armed robbery charge. I have Hank Anderson  
21 who represented Mr. Eppes who will testify to that  
22 here today. When Judge Russo heard this case back  
23 in October he ended up making a ruling based off of  
24 that granting PCR. The State chose not to appeal  
25 that and let the time period lapse. The

1 co-defendant's now in the county looking, facing  
2 re-trial.

3 My position is that under the doctrine of  
4 collateral estoppel the State should be precluded  
5 from re-litigating the issue of whether or not the  
6 deal was made. I believe that if you read the order  
7 from Judge Russo it was directly -- well, first of  
8 all, it was the State had full and fair chance to  
9 present their case in front of Judge Russo. They  
10 did cross-examine him thoroughly. And then whenever  
11 the order came out, the order directly found that  
12 the deal was present and that's necessary to the  
13 holding of the order as well so I believe that it  
14 fits all three prongs.

15 THE COURT: What kind of deal was it  
16 again?

17 MR. SHAFFER: It was a deal where the  
18 prosecution said that they would drop the armed  
19 robbery to some other charge, okay. They didn't  
20 tell him what it was going to be; but the fact that  
21 you're dropping an armed robbery, some other charge.  
22 obviously you're dropping a mandatory ten year  
23 minimum so that's a pretty substantial deal. He  
24 testified in both trials that he was still, he was  
25 facing armed robbery and essentially that they had

1 offered him no deal, the co-defendant did.

2 THE COURT: And how does that apply to  
3 this defendant?

4 MR. SHAFFER: That applies to this  
5 defendant as well. He testified at her trial to  
6 that as well. Upon questioning of the State the  
7 State never moved to correct it. I spoke with the  
8 trial attorney who previously has told me that he  
9 had no idea that there was a deal.

10 THE COURT: All right. Let me hear from  
11 you, Mr. Johnson.

12 MR. JOHNSON: Your Honor, this is a case  
13 about whether or not she gave a coerced confession.  
14 That's what she has in her application. Mr. Shaffer  
15 has had up until today to give the State a written  
16 amendment stating what he wanted to argue. They  
17 can't walk in here the morning of court, five  
18 minutes before 9:30, and hand me a motion which I  
19 honestly have still have not had time to read. It  
20 says it's one of five. It's actually eight or nine  
21 pages long. Collateral estoppel doesn't apply so  
22 we're not taking a different position than we've  
23 ever taken. We're taking the same position in this  
24 case; but you know, Your Honor, it's a different  
25 case. This is a different case than the Montario

1 Graham case. So if they're trying to say that  
2 whatever deal was offered there applies here, it  
3 doesn't, it's different.

4 This is a case about whether or not she  
5 was coerced, and so we have the audio visual ability  
6 to play her confession for the Court. There's two  
7 tapes that we plan to play, and that's what this  
8 case is about. So their motion to amend at the  
9 eleventh hour, the morning of, should be denied;  
10 we're asking that that be denied. We're asking that  
11 the motion to preclude the State from asserting that  
12 the applicant's co-defendant Quentin Eppes did not  
13 have a deal with the prosecution should be denied.  
14 State's got the ability to defend itself; we can  
15 make those arguments. So we would ask you deny both  
16 those motions so that Ms. Cochran can appropriately  
17 go forward on the allegations that she made in her  
18 application.

19 MR. SHAFFER: Your Honor, if I may, on  
20 February 19th, 2013, I wrote Andrew. I put  
21 Andrew — this is via email — "As we previously  
22 discussed I will be arguing the same due process  
23 violation in Latisha's case as I did in Montario's  
24 case. Are you planning on arguing that the Brady  
25 violation did not occur? I might make some sort of,

1 some collateral estoppel motion if you are present,  
2 if you are present — I meant presenting. Present  
3 evidence that it did not happen. I will also be  
4 arguing that the trial counsel was ineffective by  
5 several failures, primarily for essentially  
6 conceding his client's case during closing argument.  
7 Basically he argued that she was an accessory before  
8 the fact which of course would make her guilty. In  
9 addition to Strickland prejudice I will probably  
10 also argue that it was prejudice per se under  
11 Kronick. I believe she told me that she advised —  
12 he advised her not to testify; if so, I will argue  
13 he is ineffective for that advice." And that was on  
14 the 19th, Your Honor. I spoke to Mr. Johnson about  
15 this case and told him via phone at least a week  
16 before that it was basically around the time that I  
17 had spoken to her, and she had signed the conflict  
18 waiver. At that point I talked to Phoebe. Phoebe  
19 sent in a motion on it or a order, a proposed order  
20 to a consent order to relieve her and appoint me.  
21 At that point I talked to him over the phone about  
22 it. It was at least on the 19th via written  
23 message, but I know I spoke to him early in February  
24 about it.

25 THE COURT: It seems to me that the

1 appropriate thing to do would be to continue the  
2 case and that would give you time to formerly and in  
3 writing amend your application and properly serve it  
4 upon the State so that they can have it and that  
5 they have time to prepare it. And then before it  
6 becomes in front of another trial judge at another  
7 date, I would send the motion to them in advance  
8 when they have time to look at it and think about it  
9 as well. That way the whole ball of wax is one, and  
10 it's set up and will be done properly and ended one  
11 way or the another. That's my feeling.

12 MR. SHAFFER: Yes, Your Honor.

13 THE COURT: How do you feel about that?

14 MR. SHAFFER: I don't — while we would  
15 love to get it over with today, Your Honor, I —

16 THE COURT: Because, you know, it's not  
17 fair to the State to walk in here and just say, you  
18 know, I'm gonna change my answer and add all this  
19 stuff to it and they don't have and notice of it and  
20 —

21 MR. SHAFFER: I understand.

22 THE COURT: And it sounds like it's a  
23 little bit more complex than your typical PCR.

24 MR. SHAFFER: Yes, Your Honor. And if I  
25 may confer with my client just a moment.

1 (Attorney Shaffer confers with Petitioner Cochran.)

2 MR. JOHNSON: Your Honor, in discussing  
3 this with Ms. Parr, Mr. Cartrette, we're not gonna  
4 ask for a continuance. I think we can address  
5 everything that they're gonna claim today. I just  
6 think that — you know, relying on emails, I'm not  
7 going to preach to counsel, but there's a proper way  
8 for amendments to be handled; emails are not it. In  
9 our phone discussion, our phone discussion was  
10 primarily on the Montario Graham case and that he  
11 was going to be taking over the Latisha Cochran case  
12 and I told him then that I thought they were very  
13 different cases, and that's what I remember about  
14 the telephone discussion.

15 THE COURT: So in other words, you're okay  
16 with going forward with these amendments that you  
17 have placed on the record to the application; is  
18 that right, Mr. Johnson?

19 MR. JOHNSON: Yes, Your Honor.

20 THE COURT: All right. Why don't we take  
21 about five minutes and let me at least review this  
22 motion and get familiar with it, and then we'll come  
23 back and try the case if that's what y'all want to  
24 do.

25 MR. SHAFFER: Thank you, Your Honor.

PW - H. ANDERSON - DIRECT

1 THE COURT: Let's take a short break.

2 (WHEREUPON, a recess was taken from the  
3 proceedings.)

4 MR. SHAFFER: Thank you, Your Honor. And  
5 just for the record, I understand your ruling in  
6 chambers to the collateral estoppel motion is that  
7 she can't assert that a deal was never offered,  
8 period. That's the only thing she can't assert; is  
9 that correct?

10 THE COURT: In reference to the  
11 co-defendant.

12 MR. SHAFFER: In reference to the  
13 co-defendant, yes, Your Honor.

14 THE COURT: Right.

15 MR. SHAFFER: Thank you.

16 THE COURT: All right. I'm ready whenever  
17 you are.

18 MR. SHAFFER: Thank you, Your Honor. The  
19 Applicant calls Henry Anderson.

20 THE CLERK: Please place your left hand on  
21 the Bible, raise your right hand.  
22 WHEREUPON,

23 **HENRY MORRIS ANDERSON, JR.,**  
24 having been duly sworn by the Clerk, testified as  
25 follows:



PW - H. ANDERSON - DIRECT

1 THE CLERK: Please be seated. State your  
2 name for the record.

3 THE WITNESS: My name is Henry Morris  
4 Anderson, Jr.

5 **DIRECT EXAMINATION**

6 BY MR. SHAFTER:

7 Q Good morning, Mr. Anderson.

8 A Good morning.

9 Q Would you please tell us in relation to this, did  
10 you represent Quentin Eppes?

11 A Yes, sir, I did.

12 Q And you — what did you represent him on?

13 A He and I think three other people were charged  
14 with an armed robbery that happened over in Lake  
15 City which is here in Florence County.

16 Q Okay.

17 A I represented him on that charge, and I think  
18 there may have been a conspiracy charge and also  
19 the, maybe a weapons charge in the same indictment.

20 Q Okay. Now were you appointed or retained?

21 A Yes, sir, I was appointed.

22 Q Okay. And Mr. Eppes — at some point you spoke  
23 to the prosecution about possible deals, correct?

24 A That's correct.

25 Q All right. And what were the results of that

PW - H. ANDERSON - DIRECT

1 conversation?

2 A Mr. Eppes testified, I think, against the  
3 applicant in this case, and he also testified I  
4 think against one other co-defendant that went to  
5 trial. As a result of that he was allowed to plead  
6 to a lesser charge, and I think he received an 18  
7 month sentence.

8 Q And prior to him testifying had you discussed his  
9 possible sentence or his possible exposure?

10 A Yes, sir.

11 Q And did you discuss it with the Solicitor?

12 A Yes, sir.

13 Q What was the result of that conversation?

14 A Before any, I guess, cooperation was talked  
15 about, I mean, he was just facing I think they said  
16 he could plead to the minimum which was ten years.

17 Q Okay. And whenever you offered to cooperate what  
18 changed about that?

19 A Based upon his agreeing to testify, the armed  
20 robbery would be reduced to a lesser charge and he  
21 would be allowed to plead to that.

22 Q Okay. Was that deal made before he testified  
23 against the applicant in this case?

24 A Yes, sir.

25 Q And it was made before he testified against Mr.

PW - H. ANDERSON - DIRECT

1 Graham, the other co-defendant, the other —

2 A Yes, sir. It was just — after he testified  
3 against the applicant in this case it was just, you  
4 know, as part of your agreement you got to continue  
5 to cooperate with us, continue to testify if anyone  
6 else goes to trial.

7 Q And he had — with that discussion that you had  
8 before the applicant's case, the Solicitor did offer  
9 to drop the charge if he testified?

10 A Yes, sir.

11 Q Okay. And —

12 A I mean, it was, he couldn't just get up there and  
13 say anything. I mean, it had to be what he had —  
14 we met and they went over what his testimony would  
15 be. It was Ms. Parr and Mr. David Richardson who is  
16 no longer a solicitor here, but he was at the time.  
17 And we probably met for an hour or more and they  
18 talked about what happened that night and where they  
19 went, what they did. You know, you have to continue  
20 to tell the truth. You have to — you can't get up  
21 there and mislead us; if you do, all bets are off.

22 Q And that conversation occurred before the — he  
23 testified in any trial?

24 A Yes, sir.

25 Q Regarding this matter?

PW - H. ANDERSON - DIRECT

1 A Yes, sir.

2 Q Okay. What did he end up pleading guilty to?

3 A I really can't remember. I think it was  
4 accessory, or it might have been conspiracy but I  
5 don't think it was — I know it wasn't armed  
6 robbery. I don't think it was strong armed robbery.  
7 I think it was accessory or conspiracy count.

8 Q What sentence did he get?

9 A 18 months.

10 Q Okay. And was that after he had testified in the  
11 co-defendant's cases or —

12 A Yes, sir.

13 Q Okay. And just one last time, well, was he aware  
14 before he had testified in the applicant's case, was  
15 he aware that his charge will be reduced in exchange  
16 for his testimony?

17 MR. JOHNSON: Your Honor, I think —  
18 objection. I think he can ask him if he tried to  
19 make him aware. We really wouldn't know what Mr.  
20 Eppes was aware of 'cause he's not here to say.

21 MR. SHAFFER: I apologize.

22 BY MR. SHAFFER:

23 Q You informed him that his armed robbery would be  
24 reduced prior to him testifying?

25 A I told him that the only way to get it reduced

PW - H. ANDERSON - DIRECT

1 was to cooperate with the State, and that's what I  
2 anticipate would happen.

3 Q Okay. And did you tell him about your discussion  
4 with the Solicitor's Office?

5 A Yes, sir, he was present when we had those  
6 discussions.

7 Q Okay. So the Solicitor actually, he was present  
8 when the Solicitor told him that the armed robbery  
9 would be dropped in exchange for his testimony?

10 A Yes, sir.

11 Q Okay.

12 A And when I say drop it, I think it was -- it  
13 would be reduced.

14 Q It would be reduced, I apologize. And that means  
15 reduced to a lesser charge, right?

16 A Yes, sir.

17 Q Okay. And this occurred before this conversation  
18 that we just, in my last question, occurred before  
19 the Applicant's trial?

20 A Yes, sir.

21 Q No further questions.

22 THE COURT: All right.

23 Mr. Johnson.

24 **CROSS-EXAMINATION**

25 BY MR. JOHNSON:

PW - H. ANDERSON - CROSS

1 Q Mr. Anderson, I wanted to get into a little bit  
2 more detail about your discussions with Ms. Parr, if  
3 you recall, when they occurred and what was said.  
4 In discussions in particular that I'm interested in  
5 asking you about, are those that dealt with what's  
6 been alleged to be a deal or, you know, the  
7 negotiations that would have been in exchange for  
8 his truthful testimony. Can you tell the Court  
9 about those discussions with Ms. Parr?

10 A We — my client, Mr. Eppes and I, met with in the  
11 conference room in the Solicitor's office.

12 Q Anybody else there with you?

13 A Yeah, David Richardson. It was myself, David,  
14 Pat, Mr. Eppes, and my, you know, just the four of  
15 us I guess were in there talking. They asked him,  
16 you know, what did you do that night, where did you  
17 go, who was with you, what guns were used. I mean,  
18 they went over what his testimony would be at trial.  
19 He told them everything that happened that night,  
20 where they went, what they did. You know, sometimes  
21 they would interrupt him and say, all right, let me  
22 clear this matter up. After that was done, then we  
23 talked about, you know, I said: "Quentin, you know,  
24 you just helped yourself. In exchange for this, I  
25 think the State's gonna allow this charge to be

## PW - H. ANDERSON - CROSS

1 reduced."

2 Q Now was Ms. Parr in the room when you said that?

3 A I think so, yes, sir. It was myself, her, and  
4 Mr. Richardson, and of course my client.

5 Q Did you say that for — I know you were talking  
6 to Mr. Eppes, but in your mind were you saying that  
7 really for the benefit of Ms. Parr so she could hear  
8 it and maybe —

9 A I didn't want there to be any confusion.

10 Q Right.

11 A I mean, we weren't, I didn't want to — I mean,  
12 if my client was going to testify I wanted him to  
13 get the benefit of a bargain.

14 Q All right. This was prior to the Latisha Cochran  
15 trial, right?

16 A Yes, sir.

17 Q Okay. What else?

18 A I think that's really about it.

19 Q Was that the only discussion where this came up?

20 A I mean, I don't know, but I'm sure it came up  
21 again when the next individual went to trial.

22 Q But with regard to Latisha Cochran?

23 A Yes, sir.

24 Q That was the only time. Now if you don't mind  
25 and I hate to ask this, let's backtrack just a

PW - H. ANDERSON - CROSS

1 little bit and I want to hone in on the specific  
2 language that you used with Mr. Eppes while you say  
3 Ms. Parr was in the room. Let's do that. I'm gonna  
4 ask you to repeat yourself, I'm sorry.

5 A If you want me to hone in I'm probably gonna say  
6 something different than I just did.

7 Q I understand. It's hard to say the same thing  
8 twice.

9 A Well, no, but also it happened 18 months ago,  
10 maybe longer.

11 Q Yes, sir, I do understand. We won't hold you to  
12 that, but just the best you can.

13 A They went over his testimony, what he would say,  
14 what he would testify to.

15 Q Right.

16 A I don't know if David was going to direct  
17 Mr. Eppes or if Ms. Parr was going to direct  
18 Mr. Eppes. Both of them were in there.

19 Q Just with regard to the part where you said  
20 there'll be an exchange of your testimony for a  
21 deal. What language was used by you?

22 A Quentin, and by doing this today you've helped  
23 yourself. It's my understanding that these charges  
24 are going to be reduced. It's my understanding  
25 you'll be allowed to plead to something else so



## PW - H. ANDERSON - CROSS

1 you're no longer facing 10 to 30.

2 Q Now at that moment do you know if Ms. Parr was  
3 part of that conversation listening, looking at you?

4 A I don't know. I mean, I think she was in the  
5 room, but I don't know if she was talking to David,  
6 I don't know if she was making notes..

7 Q I know it's been 18 months; but I mean, honestly,  
8 you can't say that you said that to her or that she  
9 confirmed it?

10 A No, sir.

11 Q You were talking —

12 A We were closer than you and I are, but I can't  
13 say that she was paying attention to me.

14 Q You were talking to Mr. Eppes, not to Ms. Parr?

15 A Yes, sir.

16 Q And Ms. Parr never said — basically she never  
17 echoed what you said to Mr. Eppes?

18 A No, sir.

19 Q She never repeated it?

20 A Not to my knowledge.

21 Q She never confirmed, yes, that's what we're  
22 gonna, that's what the State's gonna do?

23 A Well, I'd have to disagree with you there.

24 Q Well, tell me, if she confirmed it tell me. Did  
25 she —

## PW - H. ANDERSON - CROSS

1 A No, no, no, I mean, if there was — no, that's  
2 not the deal, then I would have expected that to be  
3 said at that time.

4 Q If she heard what you said?

5 A Well, let's just say that if my client had gone  
6 and testified in those two trials and nothing would  
7 have happened, we'd be having another hearing right  
8 now.

9 Q So there was some expectation that he would get a  
10 better deal?

11 A Yes, sir.

12 Q He would hope to get a better deal?

13 A It wasn't my — my understanding was not a  
14 expectation. It was my understanding that that's  
15 what was going to happen.

16 Q He was going to get a better deal?

17 A Yes, sir.

18 Q And he had every right to be hopeful that in  
19 exchange for his truthful testimony he would get a  
20 better deal. Wouldn't you agree?

21 A I would not use the word hopeful, I mean.

22 THE COURT: Tell it like it is, Mr.  
23 Anderson. You've been doing this for a long time.  
24 Stop beating around and just tell it like it is.

25 THE WITNESS: I expected it. That was my

## PW - H. ANDERSON - CROSS

1 understanding. He expected it; that was his  
2 understanding. It wasn't hopeful.

3 BY MR. JOHNSON:

4 Q Now were you with him in court during the trial  
5 of Ms. Latisha Cochran?

6 A Yes, sir, I was.

7 Q And so you were in the courtroom when he was  
8 asked on cross-examination whether, isn't it true  
9 you hope to get a better deal? Were you there?

10 A Yes, sir, I think so.

11 Q And do you remember his answer?

12 A No, sir, I don't.

13 Q Just referring to page 119 of the transcript.  
14 And you do not have the transcript, I know that, but  
15 what was your recollection — he said, yes, sir,  
16 that he hoped to get a better deal?

17 A Okay.

18 Q Would that comport with your recollection? If  
19 you don't remember, you don't remember.

20 A I don't remember what he said but —

21 Q Sir?

22 A I said I do not remember what he said.

23 Q Okay, I understand. Now if he had said, if he  
24 had said in this trial, oh, no, I'm not going to  
25 get a better deal, I'm just testifying because I

## PW - H. ANDERSON - REDIRECT

1 feel like it's the right thing to do, would you  
2 have, would you have made -- done something, stopped  
3 the proceedings and, well, you can't say that, that  
4 was a lie. What would you have done?

5 A I probably would have said something to either  
6 Mr. Richardson and Ms. Parr.

7 Q You would have taken action of some sort, I'm  
8 sure, right?

9 A Yes, sir.

10 Q I mean, that would be the ethical thing to do.  
11 But he never said that in this case, did he?

12 A I don't know. I guess not, no, sir.

13 Q Because if he did, you would have taken some  
14 action in response; wouldn't you?

15 A Yes, sir.

16 MR. JOHNSON: No further questions, Your  
17 Honor.

18 THE COURT: All right.

19 **REDIRECT EXAMINATION**

20 BY MR. SHAFFER:

21 Q Mr. Anderson, have you read the transcript of  
22 Latisha Cochran's case?

23 A No, sir.

24 Q Okay. And you stated you were present during his  
25 testimony in Latisha's case?

## PW - H. ANDERSON - REDIRECT

- 1 A Yes, sir.
- 2 Q Okay. Were you actively involved in the trial of
- 3 Latisha Cochran's case?
- 4 A No, sir.
- 5 Q Where were you sitting?
- 6 A I think we were — I think the trial was in this
- 7 courtroom, and I was sitting behind, about two rows
- 8 behind Mr. Cartrette.
- 9 Q Okay. Did you ever speak anything in this case?
- 10 A No, sir.
- 11 Q Did you — were you paying perfect attention to
- 12 what was going on?
- 13 A No, sir.
- 14 Q Okay. And you were the defense attorney, right?
- 15 A Yes, sir.
- 16 Q You're not the prosecutor, right?
- 17 A Right.
- 18 Q You're not bound to do exactly what a prosecutor
- 19 does, right?
- 20 A No, sir, that'd be an easy job.
- 21 Q Okay. Now getting back to this conversation that
- 22 occurred before Latisha Cochran's trial, did you
- 23 just make up this deal that they were gonna drop it
- 24 off the top of your head?
- 25 A No, sir.

## FW - H. ANDERSON - REDIRECT

1 Q How did you come to inform him of this deal? Did  
2 the State put it in your mind, or what happened?  
3 Did the State say it or —

4 A That was a conversation that I had with the two  
5 prosecutors in the case.

6 Q Okay. So you had a conversation with the two  
7 prosecutors prior to this?

8 A Yes, sir.

9 Q And they said that they were gonna drop the armed  
10 robbery?

11 A Reduce it.

12 Q Reduce the armed robbery, I'm sorry.

13 A Right.

14 Q And you know that you have the conversation with  
15 the prosecutors?

16 A Yes, sir.

17 Q Representatives of the State?

18 A Yes, sir.

19 Q Okay. And when you were in the room and they  
20 were going through his testimony there were two  
21 solicitors in the room?

22 A Yes, sir.

23 Q Okay. And both of them were in the room the  
24 entire time, right?

25 A Yes, sir.

## PW - H. ANDERSON - REDIRECT

1 Q And during that time you would expect that at  
2 least one of them was paying attention to what was  
3 going on, right?

4 A Yes, sir. The investigator may have been there  
5 also. I think one of the investigators, Roger  
6 Tilton, he may have been there; but I know the two  
7 solicitors were.

8 Q But he's a representative of the State as well?

9 A Yes, sir.

10 MR. SHAFFER: That's all the questions I  
11 have.

12 THE COURT: All right.

13 MR. JOHNSON: Nothing further, Your Honor.

14 THE COURT: Have a good day.

15 Call your next witness.

16 MR. SHAFFER: Your Honor, the Applicant  
17 calls Jesse Cartrette.

18 THE CLERK: Place your left hand on the  
19 Bible, raise your right hand.

20 WHEREUPON,

21 **JESSE STANLEY CARTRETTE,**  
22 having been duly sworn by the Clerk, testified as  
23 follows:

24 THE CLERK: Please be seated, state your  
25 name for the record.

PW - J. CARTRETTE - DIRECT

1 THE WITNESS: My name is Jesse Stanley  
2 Cartrette, Jr.

3 **DIRECT EXAMINATION**

4 BY MR. SHAFFER:

5 Q Mr. Cartrette, I apologize, I mispronounced your  
6 name

7 A That's quite all right; it happens a lot.

8 Q Regarding Quentin Eppes — well, first of all I  
9 guess I need to lay a little bit of foundation. Did  
10 you represent the applicant?

11 A I did.

12 Q Were you appointed or retained?

13 A I was appointed.

14 Q Okay. And you represented her for this charge?

15 A I did.

16 Q The armed robbery?

17 A Yes, sir.

18 Q You ended up going to trial for the armed  
19 robbery?

20 A We did.

21 Q Okay. Do you recall one of our co-defendants  
22 Quentin Eppes testifying?

23 A I do recall him testifying.

24 Q Okay. Were you aware of any plea negotiations or  
25 deals made with the State regarding his testimony?



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1 A I was not aware of any deal. I presumed it  
2 because he was represented by a fine defense  
3 attorney who I'm aware of and have at other times  
4 dealt with in other matters, was negotiating  
5 something like I was trying to negotiate for my  
6 client.

7 Q Okay. But that was based off of knowledge. The  
8 State never told you that, right?

9 A The State never told me that.

10 Q Okay. Beg the Court's indulgence. Do you  
11 remember Mr. — do you recall that Mr. Eppes  
12 testified that he had no deal with the State?

13 A Without the transcript in front of me I can't  
14 tell you exactly what I recall. It's been about  
15 two-and-a-half years to the best of my recollection,  
16 but I do recall — well, now that you mention it I  
17 do recall he said he did not have a deal with the  
18 State at the time.

19 Q Okay.

20 MR. SHAFFER: Your Honor, if I may  
21 approach.

22 BY MR. SHAFFER:

23 Q I'm handing you a copy or electronic copy of the  
24 transcript. Could you read that and see if it will  
25 refresh your recollection?

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1 MR. JOHNSON: Your Honor, I think — I  
2 don't even know what page he's on, but I think he  
3 would ask him if he does remember. And if he  
4 doesn't remember, then he can refresh his  
5 recollection and ask him a question. But the  
6 transcript is in the record, but at a minimum he  
7 should advise counsel exactly what section you're  
8 looking at.

9 MR. SHAFFER: Okay, I apologize. I didn't  
10 provide the State of the section. It is page number  
11 117 in the transcript, and I'm just asking him to  
12 read. I think he testified.

13 THE COURT: Go ahead.

14 MR. SHAFFER: Thank you.

15 (Pause while witness reads.)

16 THE WITNESS: Yes, sir.

17 BY MR. SHAFFER:

18 Q After reading that do you recall whether Mr.  
19 Eppes testified that he didn't have any sort of  
20 special plea deal to testify that day?

21 A I do.

22 Q Okay. Do you have anything directly to — do you  
23 have anything that would — did the State ever tell  
24 you anything that would allow you to impeach that?

25 A To my recollection, no, the State never told me

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1 of any deal. I was going on a hunch. I assumed  
2 that because Mr. Hank Anderson is his attorney and a  
3 very capable and experienced defense attorney that  
4 he was doing the same negotiations that I was, and  
5 common sense tells us in this type practice that we  
6 try to get the best deal we can and we get our  
7 clients if they're willing to testify to testify,  
8 that the gold nugget out there is that they're gonna  
9 get a better deal, we hope. I mean, it's never  
10 promised ethically speaking, but certainly we  
11 wouldn't make those type statements against in -- or  
12 get our clients against their own interest, but for  
13 the hope that there's a better deal for them.

14 Q But you weren't aware that a deal had actually  
15 been made, were you?

16 A I was not.

17 Q Were you aware that, or -- I apologize, Your  
18 Honor, Court's indulgence.

19 A If I may, I will say the testimony was pretty  
20 clear in the transcript. He told us there in his  
21 testimony that at one point he was there not knowing  
22 for sure if it was going to do him any good or not.  
23 And then when I crossed him about, you know, why  
24 else would he be here making a statement against his  
25 own interest, didn't he expect a deal, he said that

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1 he expected a deal and that's why he was here.

2 Q Did you ever get called up to, or did you ever  
3 discuss in chambers whether or not that testimony  
4 was truthful with the State?

5 A I honestly cannot recall what we discussed in  
6 chambers. I'm sure we had some moments in chambers  
7 at some point; but you know, that's been a long ago  
8 and there's been a lot of stuff come across my desk  
9 and through my office from that time.

10 Q And do you recall whether or not the State ever  
11 brought it to your attention as to whether or not  
12 that was correct or not?

13 MR. JOHNSON: Your Honor, if I can object.  
14 It's not clear whether the question goes to the  
15 first answer or the second. The first answer he  
16 gave was that he didn't think there was a deal, but  
17 then he came back and just said that he was — he  
18 said he did hope for a deal so I'm not sure which  
19 —

20 MR. SHAFFER: Oh, I can rephrase it.

21 BY MR. SHAFFER:

22 Q Related to Quentin Eppes testifying or responding  
23 to the question, you hadn't been offered any sort of  
24 special deal in order for you to testify here today;  
25 is that right? And Quentin Eppes responded, right.

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1 Do you recall ever having the prosecutor come up to  
2 you and tell you whether or not that was accurate or  
3 not?

4 A I do not recall the prosecutor telling me one way  
5 or the other the deal had been made.

6 Q Okay. Do you recall anywhere in the transcript  
7 where the prosecutor said that that was correct or  
8 not?

9 A I do not.

10 Q Okay. Now getting to some of the facts of the  
11 actual case, you said you were appointed.

12 A I was, yes, sir.

13 Q Can you briefly go through some of the  
14 allegations that were against her?

15 A Well, she was alleged to have been essentially  
16 the get-away driver and to have used a credit card  
17 gleamed from the armed robbery to purchase various  
18 things; I think fast food was one of them. I don't  
19 recall what the other purchases were at this point;  
20 but her involvement it seemed, if any, at that time  
21 was very minimal compared to her co-defendants.

22 Q And do you recall that there was a call made to  
23 the alleged victim prior to the robbery, unknown  
24 female?

25 A I do.

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1 Q Okay. And it's correct to say that the State  
2 alleged that she had made that call?

3 A I think it's pretty clear to believe that that's  
4 what they were going for.

5 Q So the allegation basically she made the call and  
6 then was the get-away driver, right, then used the  
7 credit card obviously.

8 A That's my understanding of what happened.

9 Q And your -- are you aware if she gave a statement  
10 or not?

11 A I am aware that she gave a statement.

12 Q Okay.

13 A She actually gave two.

14 Q Okay. And the first statement, do you recall  
15 what the first statement involved?

16 A Best I can recall from recollection the first  
17 statement involved how she came into getting the  
18 card and using the card. It was not hers. I don't  
19 recall exactly what she shared about how she got the  
20 card. I think perhaps that she found the card  
21 somewhere and then just used it just to see if it  
22 would work.

23 Q And on the second statement do you recall the  
24 content of that statement?

25 A The second statement had more to do with -- well,

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1 it had to do with the alleged armed robbery and  
2 involvement with the co-defendants, who were all  
3 charged with this crime as well, along with the  
4 possession of a weapon. As I understand it I think  
5 it occurred on Christmas eve day. When I was  
6 representing Ms. Cochran I firmly believe that she  
7 felt that the testimony that — or the statement  
8 that she gave them was basically, if you go ahead  
9 and give us a statement she could go home, and we'll  
10 leave you alone. She had children. She wanted to  
11 go home and be with her family; it's Christmas time.  
12 That's essentially what I recall with that.

13 Q The second statement was a lot more damaging,  
14 correct?

15 A It was.

16 Q When the decision was made to go to trial and not  
17 plead, I guess your initial strategy is keep out  
18 damaging evidence?

19 A We certainly will try to.

20 Q So you wanted to keep out the second statement,  
21 right?

22 A Yes, sir.

23 Q And that was part of your strategy is keep out  
24 the second statement and hopefully everything works  
25 out after that?

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1 A We hoped to keep both out. We were unsuccessful  
2 in both attempts.

3 Q And y'all filed a Jackson — you did a Jackson v.  
4 Denno hearing, right?

5 A We did, yes, sir.

6 Q And she actually denied the statement — she  
7 denied the statements, said basically that wasn't  
8 true?

9 A Basically the statements that were recorded that  
10 prosecution intended to use as their evidence to  
11 submit to the court would — was not properly  
12 mirandized and that her signature was on those  
13 documents was not her own, that had been forged.

14 Q Okay. So she argued that there was, there was  
15 a — I guess she argued that basically it was a  
16 coerced statement, right?

17 A Yes, sir.

18 Q Now, and she argued that her signature was  
19 forged?

20 A She argued that the signature given on the  
21 Miranda warning that was admitted into evidence that  
22 went along with the recordings was not her own  
23 signature, And she offered at that time as I  
24 recall, to display for the court or to demonstrate  
25 to the court what her actual signature looked like



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1 at that time.

2 Q Okay. Did she actually do that? Did she  
3 demonstrate it? It's unclear from the transcript; I  
4 honestly don't know.

5 A I don't recall that she was allowed to do that.  
6 I think they offered another item of evidence just  
7 based on recollection, perhaps exhibit number 5, 4  
8 or 5, that was a totally separate sheet that she had  
9 signed before in the presence of witnesses, and they  
10 tried to authenticate her signature that way.

11 Q Okay. Once the Jackson v. Denno motion was  
12 denied and once the judge found that it was, that  
13 the statement was coming in, did you want to further  
14 argue in front of the jury that it was incorrect or  
15 that it was, sorry, that it was coerced?

16 A Well, we certainly hoped to as the case  
17 developed. I think what you're getting at is  
18 whether or not we actually offered testimony. It  
19 appeared to us that it wasn't -- and I went over it  
20 with my client, and she made a conscious decision  
21 not to testify that day. She was under a lot of  
22 pressure. She had her brother here with her and --  
23 and she just was under a lot of pressure from  
24 external sources, not from within this chamber here  
25 that I'm aware of.

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1 Q Was — I'll get back to my original question, but  
2 since you brought up whether or not she had  
3 testified or not, you said that she was — that she  
4 made a choice not to testify. Did she have a bad  
5 record, you recall?

6 A Best of my recollection she didn't have a very  
7 bad one, no. I mean, not from what you normally  
8 see. We're talking, again, I say two-and-a-half  
9 years ago and I'd have to be — my memory would have  
10 to be refreshed on that.

11 Q Did you — do you recall any advice you gave her  
12 on whether or not she should testify?

13 A I do recall talking with her about the pluses and  
14 minuses of both, and I let her make the decision  
15 herself as to whether or not she would testify.

16 Personally, if you're asking did I tell her, oh  
17 Latisha, don't testify, you know, I did not do that.

18 Q Okay. Did you tell her to testify and —

19 A I didn't tell her to testify either. I gave her  
20 her options, and I told her what both could possibly  
21 do for her and I let her know that was mere  
22 speculation on my part based on what we've seen  
23 through experience and practice. And she made a  
24 conscious decision she did not want to testify.

25 Q Do you recall the drawbacks for her testifying?

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1 A Well, as I said, it was a while back; but  
2 essentially they had already poked holes in and the  
3 tape was coming in into evidence. The judge had  
4 already ruled and told us that it would come into  
5 evidence despite our best of objections, and so it  
6 was — it had already been played in the State's  
7 presentation of its case despite objection.

8 And we believed at that time the plan was,  
9 as I understood it, that her testimony was going to  
10 be in contravention to what was on the record, a  
11 recorded statement with her own voice and was kind  
12 of pitting herself against herself. We discussed  
13 that. She decided that she didn't need to testify.

14 Q Okay. Didn't you tell her anything about whether  
15 or not she should — whether or not she could — if  
16 she were to testify that she could argue that her  
17 original statement was incorrect and coerced?

18 A I don't recall. When we discussed the case in  
19 consultation in my office on several occasions, you  
20 know, as this case was going on we had several  
21 interactions in my office where she'd sit down with  
22 me and we would talk. And I did let her know there  
23 were two recordings that they planned to use. It  
24 was — she had pointed out to me that the first  
25 recording was not correct. And she testified to

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1 that fact as well later, that she did, in fact, give  
2 a false statement in the first statement.

3 Q All right. And that was in the second statement  
4 when she said that, right?

5 A Yes.

6 Q Okay. And did you tell her that, did you advise  
7 her that -- in regard to whether or not she was  
8 gonna testify, did you advise her that she could,  
9 that she could actually say to the jury that it was  
10 coerced and that that was not correct, the second  
11 statement?

12 A I told her that she would have every opportunity  
13 to tell the court her side of the story for the jury  
14 to hear her side and she chose against it.

15 Q Okay. Do you tell her that whether or not you  
16 believed that she would -- or do you recall whether  
17 or not you believed that at the time that they would  
18 believe her testimony or the second statement?

19 A I didn't tell her one way or the other what I  
20 thought the jury would do with the two statements  
21 that I recall. I did tell her that there being two  
22 statements I thought it might confuse the jury, and  
23 that it might create more questions for them that  
24 might not be helpful to her case overall, than not.

25 Q So basically it was, in your opinion it was

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1 probably better to just to go with one version of  
2 the facts versus having her contradict herself,  
3 right?

4 A Well, I didn't want the jury to think that my  
5 client was a liar, that my client was here in her  
6 own defense and going to tell the court yet another  
7 wrinkle to the story that wasn't previously heard by  
8 them that might make it worse for her in the long  
9 run. And so when we spoke I told her what had  
10 already gone — she was here for the whole thing and  
11 she had heard what they got to hear, and she made a  
12 conscious decision that she would not testify in her  
13 own defense after that because she didn't want  
14 prosecution to rebut her and to ask her questions  
15 like, were you lying then or are you lying now.

16 Q Okay.

17 A Which they're, you know, ask any prosecutor,  
18 they've tried that trick at one point or another so  
19 it was reasonable to expect.

20 Q Okay. So essentially your strategy at that point  
21 if she's not testifying was to argue the withdrawal  
22 theory?

23 A Are you —

24 Q Withdrawal basically?

25 A The withdrawal of any desire to participate in

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1 the defense, yes.

2 Q So essentially that was the trial strategy you  
3 used throughout the case, right?

4 A It was.

5 Q Okay.

6 A The big concern at that time was that they wanted  
7 to charge her, they did charge her, and prosecute  
8 her under the theory of the hand of one is the hand  
9 of all; and her, the primary crux of her case was  
10 she never touched that gun.

11 Q Okay.

12 A Or a gun, period, during the alleged commission  
13 of this crime.

14 Q Do you recall discussing in your closing argument  
15 aiding and abetting?

16 A I'll be perfectly honest with you, I don't recall  
17 the entire exact closing argument that I gave.

18 Q I'm gonna show you transcript page 185 to refresh  
19 your recollection. If you could, just briefly —  
20 and feel free to look over anything else, but at  
21 least look over the last real paragraph on that page  
22 and then the next couple of pages.

23 (Pause while witness reads.)

24 BY MR. SHAFFER:

25 Q Does that refresh your recollection as to at

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1 least part of your closing argument?

2 A It does, yes, sir.

3 Q And I apologize, I actually told you I was  
4 planning on asking you about that, but I'm gonna ask  
5 you about another section as well and I'll give you  
6 a chance to refresh your recollection on that as  
7 well. Okay. Well, actually I was incorrect. That  
8 is the section at 185. I was looking at the wrong  
9 page. Now in that section you mentioned aiding and  
10 abetting, right?

11 A I did.

12 Q And you're saying essentially you argued to the  
13 jury that they could have charged her with aiding  
14 and abetting?

15 A Yes, sir.

16 Q And that's a different crime, right?

17 A That is a different crime.

18 MR. JOHNSON: Your Honor, we're gonna  
19 object to relevance.

20 MR. SHAFFER: Your Honor, it goes to my  
21 ineffective assistance of counsel claim.

22 THE COURT: Overruled.

23 MR. SHAFFER: Thank you, Your Honor.

24 BY MR. SHAFFER:

25 Q And when you made that objection or — I

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1 apologize. When you made that argument to the jury  
2 about aiding and abetting being a separate crime and  
3 that you essentially were saying that at the worst  
4 she's guilty of aiding and abetting, correct?

5 A If guilty at all.

6 Q Okay.

7 A The reason for offering that was that there was  
8 something much less severe with regard to the facts  
9 they were alleging they could have charged her with;  
10 and instead, they charged her for the full monte. I  
11 mean, they basically stretched to put a gun in the  
12 hand of a woman who never touched it and to create  
13 for her this charge that she's culpable of having,  
14 you know, conspired and essentially hatched this  
15 plan from start to finish and cooperated with it to  
16 rob June Bug. I can't remember his real last name,  
17 but June Bug is what they called him.

18 Q Now since I didn't give you a chance to refresh  
19 your recollection on the entire section, there's  
20 page 178. I'm gonna hand you that. If you could  
21 refresh your recollection based off the second  
22 paragraph of that page.

23 (Pause while the witness reads.)

24 BY MR. SHAFFER:

25 Q Thank you. Now that you have refreshed your



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1 recollection do you recall arguing to the jury that  
2 she could have been charged with aiding and  
3 abetting?

4 A I do recall arguing to the jury that if they  
5 really wanted to convict her of something, given the  
6 evidence they were trying to present against her  
7 they should have charged something different than  
8 that, logically speaking, that would have followed.  
9 I felt it was a stretch what they were trying to  
10 accomplish with an armed robbery hearing with the  
11 exception of the only way they could do it was with  
12 the hand of one hand of all.

13 Q And you believed that was a stretch that armed  
14 robbery under hand of one hand of all?

15 A I did, and the reason that I made the argument I  
16 did was that what she was charged for and what they  
17 were going to issue a guilty or innocent verdict on  
18 was a charge of armed robbery, not something less or  
19 not something that there may actually have been some  
20 negative evidence to give them beyond a reasonable  
21 doubt conclusion for based on my opinion at the  
22 time. It wasn't in any way suggesting that she had  
23 done those things if that's what you're getting at.

24 Q Okay. But you're saying certainly making a plan  
25 called driving to a location, if it's aiding and

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1 abetting I would argue that's all it is here today?

2 A I said if.

3 Q Okay. But you would agree that you made that  
4 statement obviously?

5 A I did say it; it's on the record.

6 Q Okay. But armed robbery under hand of one hand  
7 of all is a stretch?

8 A I do believe it's a stretch. I said that there,  
9 yes.

10 Q The evidence showed that she -- or the evidence  
11 would tend to show that she might have called, made  
12 the call. That was the allegation at least, right?

13 A That was the allegation.

14 Q That was in her statement, right?

15 A That was.

16 Q And that's what Quentin Eppes testified to,  
17 right?

18 A Say that again.

19 Q And that's what Quentin Eppes testified to, that  
20 she had made the call to him prior to it?

21 A That is what he testified to.

22 Q Okay. And in her statement she testified that  
23 she drove him to the -- he drove the people to the  
24 cite where the armed robbery occurred, right?

25 A Yes.

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1 Q Okay. And that's what Quentin Eppes testified  
2 to, correct?

3 A That she gave them a ride.

4 Q Okay. And the — Quentin Eppes testified that  
5 she drove all the co-defendants away from the armed  
6 robbery, right?

7 A That's what he testified, yes, sir.

8 Q Okay. And that's what her statement said too,  
9 right?

10 A Yes.

11 Q That she was the driver of the car?

12 A Yes.

13 Q At what point did she withdraw?

14 A When she realized one of them had a gun as I  
15 understood it. She told them this — I don't know  
16 what you guys are planning to do here, but if you're  
17 gonna rob him I'm not gonna be any part of that,  
18 period.

19 Q Okay. She said she wasn't going to be any part  
20 of it?

21 A That's what she said.

22 Q Okay. But she stuck around afterwards, right?  
23 After she knew that they had guns, according to what  
24 the State's evidence was and uncontradicted in the  
25 record — well, first of all, is there anything in

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1 the record, any evidence in the record, that says  
2 that she didn't have a, she didn't have — that she  
3 wasn't the driver of the car? Can you present any  
4 evidence that said that?

5 A That said that she wasn't the driver of the car?

6 Q Yeah.

7 A I don't recall that, no.

8 Q Okay. Did you present any evidence, or did the  
9 State present any evidence that she didn't make that  
10 phone call?

11 A I don't recall that either.

12 Q Did you or the State present any evidence that  
13 she drove away from the scene with the co-defendants  
14 in back?

15 A Rephrase your question please.

16 Q I apologize, I get confusing sometimes. Do you  
17 recall anywhere or any evidence that was presented  
18 by either side that would say that she wasn't the  
19 driver both to and from the incident location?

20 A I honestly don't recall at this point, no, sir.

21 Q Okay. And you're —

22 A And perhaps I should have read the entirety of  
23 the script before I came back in here but...

24 Q Well, we're all busy so I don't blame you for  
25 that at all. I don't think I've ever done one where

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1 the attorney read the actual transcript before  
2 coming in so. Well tell me this, your theory that  
3 she had withdrawn was based off of her saying I  
4 don't want to rob you?

5 A Yes, her admitted statement that she did not want  
6 any part of it.

7 Q Okay.

8 A Apparently she had a friendship or bond with  
9 Mr. Hayes that she certainly didn't want to do him  
10 any harm. She apparently thought pretty highly of  
11 him as an elder gentleman in the community and that  
12 based on her rapport with him, she -- if anybody  
13 were going to be the victim of a crime she certainly  
14 wouldn't want it to be someone that she cared for or  
15 that she thought as highly of as she did.

16 Q Now regarding the -- regarding when she made that  
17 statement, that she doesn't want any part of it, was  
18 it before or after she dropped him off at the scene  
19 of the location?

20 A I don't recall honestly.

21 Q Okay. In your -- do you recall if it was before  
22 or after she drove them away from the location?

23 A Certainly before she drove them away from the  
24 location where the offense was alleged to have taken  
25 place.

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1 Q Okay.

2 A Upon learning that that's what had occurred.

3 Q What did you tell her regarding — or what did  
4 you advise your client regarding the withdrawal  
5 theory?

6 A That based on her withdrawal of any — not  
7 necessarily her withdrawal, but her statement to  
8 those who are her alleged co-conspirators and  
9 co-defendants that not want any part of it fit as  
10 closely with the withdrawal theory as I knew as far  
11 as what was being alleged against her and that in  
12 essentially it would knock a hole in or we hoped  
13 knock a hole in the hand of one hand is the hand of  
14 all 'cause clearly she's not acting in concert with  
15 her co-defendants at that point if she's told them I  
16 don't want any part of this.

17 Q And you told her that that was — I mean, clearly  
18 before you went to trial did y'all have discussions  
19 about that at trial?

20 A Of course.

21 Q And you told her that that was possibly a  
22 defense?

23 A I did.

24 Q Okay. And you also told her that you might be  
25 able to get the statement suppressed with a Jackson

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1 v. Denno, right?

2 A We hoped, yes.

3 Q And but if not, you might be able to argue even  
4 in conformity with the statement, that there was a  
5 withdrawal theory?

6 A Yes.

7 Q Okay.

8 A I don't know if you've ever defended anyone  
9 charged with a crime of that nature; but you try  
10 everything you can to help the matters, especially  
11 when you believe what they're telling you that they  
12 had nothing to do with.

13 Q Okay. Well, what were the plea negotiations  
14 prior to trial? What sort of offer did they have?

15 A There was no offer made with the exception of we  
16 were told that if she wanted to plead straight up we  
17 could get a minimum sentence of ten years.

18 Q Okay. And she declined that?

19 A She did.

20 Q Okay. And that was available all up until she  
21 went to trial?

22 A Up until she went to trial.

23 Q Okay. Court's indulgence. One other thing, you  
24 also argued at some point during your closing  
25 argument that there were four full grown men or

PW - J. CARTRETTE - DIRECT

1 three full grown men and she had no ability to  
2 control their actions, right?

3 A True, yes, sir.

4 Q And she wouldn't be able to stop, right?

5 A Yes, sir.

6 Q Did you discuss with her that possible defense  
7 prior to trial?

8 A We had spoken about it, that she -- the  
9 impression that I got in speaking with Latisha was  
10 that she felt defenseless against these guys and  
11 that they could harm her in some way.

12 Q Okay. So that's --

13 A Shared --

14 Q So basically she was under duress, right?

15 A Essentially, yes.

16 Q But did you discuss that as a possible defense  
17 with her prior to trial, the duress defense  
18 basically?

19 A We didn't, we didn't use that as our defense. It  
20 didn't really jive with a lot of what was said on  
21 the tapes.

22 Q With what was said, okay. And that's --

23 A I had to go with what evidence the State was  
24 going to present and --

25 Q Okay.



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1 A —Latisha's decisions during that time were made  
2 during the time of trial were made based on what we  
3 knew the State had presented to the jury, or were  
4 going to present to the jury, and what it would look  
5 like one way or the other or could look like with  
6 the jury if they were presented with something  
7 worlds different from what she'd already said. I  
8 did not want the State to have — and I told her  
9 that it's absolutely her call whether or not she  
10 testifies, but that it was possible when she gets on  
11 the stand that if her statement now versus both of  
12 the statements but essentially the second statement  
13 being the primary where they were hanging their hat  
14 on, that the State could try the trick they do  
15 frequently in most of these cases, which is were you  
16 lieing then, are you lieing now. And she didn't  
17 want to further muddy the water or create any other  
18 potential problems for herself and chose not to  
19 testify.

20 Q Okay. And based off of what the State was  
21 planning on presenting you went with the withdrawal  
22 defense, right?

23 A We did, yes, sir.

24 Q Okay. Did at some point the State had a  
25 co-defendant who didn't actually testify who was

## PW - J. CARTRETTE - CROSS

1 supposed to testify on the witness list, right? Do  
2 you recall that?

3 A If you can call out the name for me.

4 Q Jerry Bush?

5 A Yes.

6 Q Okay. Do you know why he didn't testify, why he  
7 decided not to testify?

8 A It's not — I don't recall.

9 Q Okay. No further questions.

10 THE COURT: All right, Mr. Johnson.

11 **CROSS-EXAMINATION**

12 BY MR. JOHNSON:

13 Q Mr. Cartrette, I want to ask you about three  
14 general areas. Two of the areas are the claims that  
15 have been made by the applicant in this case, and  
16 then the third is basically the difficulty of  
17 representing her in a case of overwhelming evidence  
18 of guilt. The first two deal with whether or not  
19 her confession was coerced; and then second, Quinton  
20 Epps' testimony in this case. So let's start with  
21 her confession, whether or not that was coerced.

22 What can you tell the court about the circumstances  
23 of her confession and how did it affect your case?

24 A The circumstances of her confession, and I'm just  
25 going to ask which confession you're talking about.

## PW - J. CARTRETTE - CROSS

1 Q Well, she gave more than one; didn't she?

2 A She did.

3 Q Let's talk about the first one.

4 A Okay. The first one, as I understand it, I think  
5 perhaps a probation officer or someone she was  
6 familiar with, picked her up, asked her some  
7 questions about how she got the card. As I  
8 understand it she admittedly told them several lies  
9 about how she came to get the card, and she admitted  
10 as much in her second statement that she wasn't  
11 entirely truthful about how she came to get the  
12 cards in the first place.

13 Q So in the first statement she lied about how she  
14 acquired the card, but she did admit to what?

15 A To spending money on the card.

16 Q Spending money at maybe a fast food place —

17 A I think it was a fast food restaurant.

18 Q And what else did she say in the first statement?  
19 How did she get rid of the card or the wallet?

20 A That she threw it out.

21 Q Did she say she threw it out, or somebody else  
22 threw it out?

23 A I, honestly I don't recall.

24 Q All right.

25 A I haven't listened to that tape since the trial.

PW - J. CARTRETTE - CROSS

1 Q So we're still talking about the first statement,  
2 right?

3 A Yes.

4 Q All right.

5 MR. JOHNSON: Is there any objection?

6 MR. SHAFFER: Oh, no. Actually I was  
7 going to say we consent to allow the tape to be  
8 played. I know he's planning on playing it anyway.  
9 If he wanted to play it sort of out of turn so that  
10 he can ask about it, I'm happy for him to do that.

11 BY MR. JOHNSON:

12 Q So let's talk about the second statement, the  
13 difficulty that that second statement made your  
14 representation. What were the aspects of the second  
15 statement that gave you trouble?

16 A Well, in the second statement essentially — and  
17 again, if you want to play it you can. My  
18 recollection was not one hundred percent on that,  
19 but the second statement was much more damning than  
20 the first. She had been brought in on Christmas eve  
21 day. She had children to get back home to and  
22 wanted to and was told that she could go back home  
23 if she would just talk to them. They locked her in  
24 a room with some investigators; and basically the  
25 way she felt, was that she was kind of brow beaten

## PW - J. CARTRETTE - CROSS

1 to give them a statement even though she testified  
2 and the judge ruled that she voluntarily signed it,  
3 that it was her signature on the Miranda warnings.

4 Q So in your discussions with her did you talk with  
5 her about how hard it's gonna be to win this thing  
6 when you got — not only do you have two  
7 confessions, am I right, here?

8 A Absolutely. I told her that —

9 Q But you have one —

10 A —doing things, cahoots with these two  
11 confessions.

12 Q But you have one confessions where she admits to  
13 lieing in the other?

14 A Yes.

15 Q Right?

16 A Yes.

17 Q So now you have on top of two confessions you  
18 have a credibility issue?

19 A Uh-huh.

20 Q Right?

21 A We did.

22 Q And so how do you deal with these things?

23 A Well, I advised my client what it looks like,  
24 what 12 members of the community in a jury pool are  
25 being exposed to and hearing and that they're

PW - J. CARTRETTE - CROSS

1 hearing all these things secondhand; they're hearing  
2 her own voice. I explained to her that the  
3 prosecution's job was to get her on the stand and to  
4 make sure and to poke holes in what she said in the  
5 statement or what she would say after the statement,  
6 and it didn't jive with the statement and the  
7 portions they wanted to be used to get a conviction.

8 Q Did you talk with her about the nature of what  
9 she was accused of doing, essentially that she was  
10 accused of making a call to Mr. Hayes who they call  
11 June Bug?

12 A Yes.

13 Q Enticing him out as a female that maybe he would  
14 have had some familiarity with, enticing him out —

15 A As an older man with a younger woman soliciting  
16 him to come hang out, yeah.

17 Q In furtherance of her plan to conjoin and act in  
18 concert with how many other adults?

19 A I think it was three or four other adults.

20 Q To do what?

21 A Essentially to commit an armed robbery.

22 Q And essentially she was the bait to get this  
23 older gentleman out into a vulnerable place?

24 A That was my understanding at that time, yes.

25 Q And what did you tell her with regard to what the

PW - J. CARTRETTE - CROSS

1 jury is going to think about that?

2 A That it wouldn't look very good.

3 Q Now did the State ever approach you about her  
4 cooperation?

5 A The State did. Well, actually the State didn't  
6 really approach me. When they handed over their  
7 Rule 5s they told me what their offer would be at  
8 that time if I — if my client would plead. And the  
9 plea never — the offer never changed. It was a  
10 straight up plea for armed robbery as charged with a  
11 minimum sentence of ten years.

12 Q So just before I move on to the next area  
13 regarding the confession being coerced, did you  
14 listen to the statement yourself?

15 A I did, yes.

16 Q Okay. Miranda warnings were given?

17 A They were.

18 Q They apparently had been given prior to that  
19 according to the person taking the statement?

20 A Yes, sir. As I recall that was Ski McAllister —  
21 on the street they call him Ski — who took those  
22 statements.

23 Q And you saw that the Miranda forms were signed  
24 apparently by her?

25 A They were signed. We argued that they were not

PW - J. CARTRETTE - CROSS

1 her signatures. My client told me it wasn't her  
2 signature and that she believed it had been forged.

3 Q Al right. So you took a position later at trial  
4 that that was not her signature, but they appeared  
5 to be the regular Miranda forms and then appeared to  
6 have a signature which you contended was not her  
7 signature?

8 A Yes, sir, it did.

9 Q Now I want to ask you about Quentin Eppes'  
10 testimony. You were asked by Mr. Shaffer about  
11 that, and I'm just gonna followup with that  
12 somewhat. During the cross-examination some  
13 questions were asked to Mr. Eppes about his  
14 cooperation. And I'm just referring the Court to  
15 page 119, line 1. The question — I think you may  
16 have asked this question: "Isn't it true that you  
17 hope to get a better deal because of your  
18 cooperation today." Answer: "Yes, sir." So how  
19 did you — when Mr. Eppes said that he helped to get  
20 a better deal because of the cooperation you moved  
21 on at that point; didn't you?

22 A Yes, sir.

23 Q You asked about who drove the car and some other  
24 things. But now, did he deny — I mean, let me  
25 rephrase the question. He didn't deny that there



## PW - J. CARTRETTE - CROSS

1 was any kind of a hope, didn't say, didn't have a  
2 hope to have a better deal because of his  
3 cooperation, did he?

4 A I don't recall him saying, no, I was not offered  
5 a deal.

6 Q Okay, well, I mean, it's right there in the  
7 transcript and it speaks for itself. But you don't  
8 have anything that you recall that's any different  
9 than what the Court has on page 119, do you?

10 A No, sir.

11 Q All right. Beg the Court's indulgence a moment.  
12 Now another question was asked regarding the  
13 decision whether or not she would testify.

14 A Yes.

15 Q And as I understand it, part of her rationale was  
16 that one of the co-defendants was the father of her  
17 child, her unborn child?

18 A I think that was speculation on the part of the  
19 prosecution at that time.

20 Q Okay. Do we know, do we know whether that was  
21 true or not?

22 A That was never confirmed for me one way or the  
23 other.

24 Q Did it play a role in her decision whether or not  
25 to testify?

PW - J. CARTRETTE - CROSS

1 A I can't say one way or the other on that. I  
2 don't know what she was thinking at the time in  
3 regard to her unborn child. I know she certainly  
4 didn't hope it would be born while she was  
5 incarcerated. And I guess what you're asking is,  
6 did I know for sure and did it factor in our defense  
7 plans that she was pregnant with the co-defendant's  
8 child; I did not know for sure. She had never  
9 confirmed that for me.

10 Q And really getting to the heart of whose decision  
11 was it for her to testify or not to testify?

12 A It was her decision.

13 Q I mean, you didn't tell her you're not going to  
14 let her testify?

15 A I absolutely unequivocally would know better than  
16 to tell a client I'm not going to let them testify.

17 Q And I know you wouldn't do that. I didn't mean to  
18 insinuate that you would; but you would never, the  
19 point is, you'd never do anything like that, to say  
20 to your client?

21 A No, I wouldn't.

22 Q But tell the Court what discussions you had with  
23 her that would allow her to make a full, informed  
24 decision as to whether or not to testify?

25 A Well, I told her — we went over all the facts

PW - J. CARTRETTE - CROSS

1 that we had that we knew that the prosecution had  
2 provided us and that the investigation had yielded.  
3 She knew what the jury was going to be exposed to,  
4 or not exposed to. Giving weight to everything we  
5 dissed, the conflicting statements, that it was  
6 possible that one or more of her co-defendants might  
7 testify against her, and that it was reasonable to  
8 believe that they might get a deal if they did. In  
9 criminal defense practice, you know that where there  
10 are multiple co-defendants one of the strategies  
11 usually of the prosecution is to see who is going to  
12 cave first; and whoever caves first, oftentimes does  
13 in the end after the trial is over with, for their  
14 participation get a better deal.

15 Q Well, do you remember what her rationale was in  
16 her decision not to testify? What'd she tell you?

17 A Her — when she decided not to testify she told  
18 me that she didn't want — she agreed with my  
19 assessment of what a jury could do if the  
20 prosecution via the phone calls and what she said  
21 then versus what she was going, or what she had said  
22 on the recording. And her story had changed and in  
23 our conferences together since that time in various  
24 shades over the course of my defense occurred in  
25 several different meetings in my office.

## PW - J. CARTRETTE - CROSS

1 Q Okay. There's just two more issues I think I  
2 need to address before wrapping it up, hand of one  
3 hand of all and then the withdrawal from conspiracy,  
4 the withdrawal issue. Let's do withdrawal first.

5 Did you think that, in your mind, aiding and  
6 abetting would have been a much better option than  
7 what she was charged with?

8 A If they were going to charge her with anything, I  
9 did because I thought that it more closely fit the  
10 facts they were alleging than anything else they  
11 were using, and that wasn't something that they  
12 chose to do. They wanted all or nothing.

13 Q So fair to say this was part of your trial  
14 strategy in the hopes that you could get a  
15 conviction, something other than what she was  
16 charged with, something in a lesser offense?

17 A Either a lesser offense or a not guilty all  
18 together based on the fact that that's not what they  
19 were trying. They were trying an armed robbery case  
20 and not something that fit more closely to the facts  
21 of what was alleged.

22 Q All right. And then on the hand of one hand of  
23 all issue I'm trying to understand exactly what the  
24 claim is there but, did the State not argue that?

25 A Can you rephrase your question.

PW - J. CARTRETTE - CROSS

1 Q The State argued hand of one hand of all; —

2 A They did.

3 Q —did they not? Okay. And you did your best to  
4 oppose that; didn't you?

5 A We tried to poke holes the best we could with the  
6 withdrawal theory. That was not in and of itself  
7 intended as an admission or a statement against my  
8 client if that's what's being alleged here today or  
9 insinuated. It's simply to show the jury that there  
10 were other potentially, if any of them were viable,  
11 other potentially viable options they could have  
12 done if the State really wanted a conviction that  
13 bad. They came in with facts that my client had, or  
14 alleging that my client had done more than she had  
15 admittedly done by way of her statement.

16 Q And so looking at your overall trial strategy,  
17 the withdrawal part played into proving that she  
18 attempted to withdraw, would have hopefully defeated  
19 the hand of one hand of all?

20 A That was our hope.

21 Q Now didn't she go and apologize at some —

22 A She did.

23 Q Did this make it difficult for you to —

24 A When the victim is your star witness in a case  
25 for the opposing side and when your client reaches

PW - J. CARTRETTE - CROSS

1 out to them well before you're appointed to  
2 represent them and that's known by the prosecution  
3 and they're going to present that to you, oh, hey,  
4 by the way she we went over near June Bug and talked  
5 to him and Mr. Hayes decided he was going to do X,  
6 Y, or Z, you know. But you know, he told us that  
7 she came to see him and that she apologized for what  
8 happened, that she was sorry for any part she may  
9 have had in it. You know, I don't know what any  
10 other attorney could have done better with those  
11 type facts than the way I handled it.

12 Q Was there anyone else that she apologized to  
13 besides Mr. Hayes?

14 A My recollection is not very clear on that.

15 Q How about the employee that worked with him?

16 A I don't recall if she apologized to the employee  
17 that worked with him or not. I know that there's  
18 some type of family relationship there and that that  
19 employee and her weren't seeing eye to eye on some  
20 things.

21 Q So but regardless, an apology to a victim,  
22 genuine though it may have been, has got to make a  
23 defense of this case before trial very difficult?

24 A Absolutely.

25 Q And you did the best you could with what you had?

## PW - J. CARTRETTE - REDIRECT

1 A Yes, sir.

2 Q Please answer any questions Mr. Shaffer may have  
3 for you.

4 **REDIRECT EXAMINATION**

5 BY MR. SHAFFER:

6 Q Mr. Cartreet?

7 A Cartrette. It's Cartrette.

8 Q I'm sorry, I did that earlier. The State just  
9 asked you if basically that regarding whether or not  
10 there was a deal, okay. They asked you if you had  
11 asked him about his hope of getting a deal, right?

12 A They did.

13 Q Okay. And you said that he admitted that he  
14 hoped he would get a deal, right?

15 A He did on the stand right here where I'm sitting.

16 Q If he had lied on direct examination and you had  
17 been told that, would that have been helpful in  
18 impeaching his credibility?

19 A It would have, yes.

20 Q Okay.

21 A If we could have proved it.

22 Q But you can't prove that, right?

23 A No, sir.

24 Q Okay. They never gave you any evidence that  
25 would allow you to prove that, right?

— PW - J. CARTRETTE - REDIRECT

1 A Can you ask me that again.

2 Q They never gave you any evidence that would allow  
3 you to prove that he was lieing, right, or that he  
4 would say he was lieing, right?

5 A To my knowledge, no. I mean, if there's  
6 something you have there that would refresh my  
7 memory better, then I welcome it; but based on my  
8 recollections, no.

9 Q Okay. And I'm not gonna have you read like the  
10 last half of the transcript. That's the reason I'm  
11 not going to do that.

12 A I understand.

13 Q But if they had told you that would you have  
14 brought it up to the jury that you lied?

15 MR. JOHNSON: Wait, Your Honor —

16 THE WITNESS: Yes, I did.

17 MR. JOHNSON: That calls for speculation  
18 and it's not been proven that he lied.

19 THE COURT: Sustained.

20 MR. SHAFFER: Your Honor, it's probably  
21 not that — well, Your Honor, actually it might go  
22 to prejudice of the second one and not the first.  
23 My second due process claim is a Brady claim which  
24 involves a different level of prejudice, and Your  
25 Honor, the reason I would like to ask that is simply



1 that if it was proven that he lied, or at least let  
2 me re-call him later if I can establish that — what  
3 I want to do is basically show if he would have had  
4 the information, if Brady had been complied with and  
5 he would have had the information that he had lied,  
6 he would have used it. That's all I want to show  
7 which is —

8 MR. JOHNSON: Your Honor. I'm sorry.

9 MR. SHAFFER: I'm sorry, I think it's  
10 pretty clear that he would have, but I just want to  
11 ask that.

12 MR. JOHNSON: Just in reply, it's not been  
13 proven that Brady had not been complied with for the  
14 fact that there wasn't a lie, and Mr. Shaffer was  
15 very well capable of bringing Mr. Eppes today and  
16 didn't do it so he's asking Mr. Cartrette to give an  
17 answer based on what he wishes he could prove but  
18 can't. 'Cause it's not fair to Mr. Cartrette; it's  
19 not fair to the process.

20 MR. SHAFFER: Your Honor, I did bring Mr.  
21 Eppes' attorney up here who said that basically part  
22 of the transcript is not correct or that part of his  
23 client's testimony at trial was not correct. Part  
24 of his testimony at trial which is in the record —  
25 I didn't directly ask him this question — but part

1 of his testimony at trial was that he didn't have a  
2 deal. My allegation is obviously that he did have a  
3 deal; that's exactly what Mr. Eppes' attorney  
4 testified to, that he did have a deal. I think that  
5 there's a substantial factual basis for me to at  
6 least ask the question.

7 THE COURT: Well, on page 119 it says:  
8 "Isn't it true you hope to get a better deal because  
9 of your cooperation today?" And he said yes, sir.

10 MR. SHAFFER: Yes, Your Honor, hoped to  
11 get a better deal I would argue is a different, is a  
12 different, it's different than actually saying he  
13 did deal. Essentially he had previously said during  
14 direct examination my — this is, I guess, part of  
15 my argument the State's prejudiced, but I'll go  
16 ahead and bring it up. He said during direct  
17 examination I had no deal. If that was incorrect it  
18 would have been very, very good impeachment evidence  
19 to say didn't you just lie to the jury. Regardless  
20 of whether he admitted that he hoped to do it is  
21 sort of a separate question, and I can get to that  
22 more on my argument. But regarding the Brady claim  
23 I think it goes to my actual prejudice, at least of  
24 the Brady claim, not for the McHood claim but I  
25 think it goes to the Brady claim.

## PW - J. CARTRETTE - REDIRECT

1 THE COURT: All right, I'll let you ask  
2 it. Let's move on.

3 MR. SHAFFER: Thank you, Your Honor.

4 BY MR. SHAFFER:

5 Q If you would have known he lied or -- say he did  
6 lie, assuming that he had lied, if you had known  
7 that would you have brought it up in front of the  
8 jury?

9 A If I had known he lied, we could have proven that  
10 he lied, yes, I would have done my best to do it in  
11 front of the jury.

12 Q Okay, thank you. Now you mention the apology at  
13 one point, correct?

14 A I did.

15 Q She didn't actually admit or -- based of your  
16 recollection of the apology, did she actually admit  
17 that she was part of the planning of the armed  
18 robbery?

19 A I don't recall that conversation. I wasn't there  
20 for the so-called apology. This was what Mr. Hayes  
21 told the Court.

22 Q I apologize. Regarding the testimony do you  
23 recall if he said that she apologized for making the  
24 call that night?

25 A You'd have to go back to the transcript on that

## PW - J. CARTRETTE - REDIRECT

1 one, but I really don't recall what he said.

2 Q I got you. Do you recall asking him, it could  
3 have been anyone on the phone, and him saying yes?

4 A Yes, I do recall asking. Certainly we're not  
5 going to admit that my client is the one who made  
6 that phone call. If that hadn't gotten out there  
7 and if it hadn't been admitted to, then certainly  
8 we're if not going to add that to the jury, give  
9 that to the jury to hear.

10 Q Okay. And regarding the apology, did he ever say  
11 that she apologized for robbing him? Do you recall  
12 that?

13 A For robbing, not specifically, no, but for what  
14 had happened to him, yes.

15 Q She apologized for what happened to him?

16 A Yes.

17 Q Okay. Now at trial you took the position that  
18 her first statement was correct, right?

19 A Her first statement about?

20 Q The finding the credit card?

21 A No.

22 Q Okay. So you did not take that position at trial  
23 that her first statement regarding finding the  
24 credit card —

25 A How she got the card, no, but for the fact that

## PW - J. CARTRETTE - REDIRECT

1 she used the card. She at the Jackson v. Denno  
2 hearing explained to the Court that the first  
3 statement concerned with the second and that second  
4 statement she was telling the truth.

5 Q Okay. She admitted that in the Jackson v. Denno  
6 that she was telling the truth in the second  
7 statement?

8 A In the second statement about the card itself,  
9 not about the other things.

10 Q Okay. So she admitted that she in the second  
11 statement, in the Jackson v. Denno, that her first  
12 statement was incorrect?

13 A Based on my recollection in the Jackson v. Denno  
14 hearing she told the Court that her first statement  
15 with regard to how she came into getting the card  
16 was different than in the second statement with  
17 regard to how she got the card. In the first  
18 statement she, I think, found the card if I'm not  
19 mistaken. In the second statement she was given the  
20 card by one of her co-defendants.

21 Q Okay. But you never argued at trial that she  
22 found the card, right?

23 A We did not.

24 Q Okay.

25 A Based on her admission that that was an

## PW - J. CARTRETTE - REDIRECT

1 incorrect.

2 Q Did you ever argue that she did make the second  
3 statement?

4 A It was clear that she made the second statement.

5 Q Okay.

6 A Admitted, she admitted it was her on the  
7 recording.

8 Q Did you ever argue that the second statement was  
9 wrong?

10 A We did not.

11 Q Okay.

12 A To my recollection we did not.

13 Q But basically you -- instead of arguing the  
14 second statement was wrong, you made a tactical  
15 decision to go with a, or a strategic decision I  
16 guess, to go with a withdrawal theory?

17 A We did.

18 Q Okay.

19 A And again, not -- I think I see where you're  
20 going with this. Not as an admission to any  
21 capability but that it was the closest thing we had  
22 to poking holes in the hand of one is the hand of  
23 all. That's what she was being prosecuted on the  
24 basis of was that theory of its a conspiracy  
25 theory, that no matter how great or small your

## PW - J. CARTRETTE - REDIRECT

1 involvement is in a case, the fact that you are  
2 argued to be involved with at all means that you're  
3 guilty of the worst part of it too.

4 Q I'm not -- I actually wasn't going to go there.  
5 I was asking if you, if you made a decision to go  
6 with --

7 A The withdrawal theory.

8 Q --the withdrawal theory over arguing that, you  
9 know, --

10 A That the statements were incorrect.

11 Q Or that the State presented a wrong -- basically  
12 that their case was wrong or their evidence is  
13 wrong.

14 A When we -- when I cross-examined Mr. Eppes here  
15 on the stand I asked him about whether or not he was  
16 given a deal with regard to the facts that he  
17 alleged, and he told us then that he hoped to get a  
18 deal. Any defense attorney whose got someone else's  
19 interest at heart through their defending is going  
20 to ask a co-defendant who is essentially, I guess,  
21 on the street, they say rat him out and others on  
22 the stand, whether or not he was offered a deal. It  
23 goes to his credibility.

24 Q I was just, I'm asking about your general trial  
25 strategy was, was what? To go with withdrawal,

## PW - J. CARTRETTE - REDIRECT

1 right?

2 A With withdrawal, yes, sir.

3 Q Your trial strategy was not, hey, we're going to  
4 claim that they're just lieing, right?

5 A Well, I don't know so much that we call that a  
6 strategy, period. I mean, we went with what we had.  
7 We had facts. We had a statement that was coming in  
8 no matter what.

9 Q So y'all went with basically everything that the  
10 State had you're saying, we're just gonna put the  
11 withdrawal theory up because it's our best option.  
12 That's what I'm wondering.

13 A Your trial strategy, based on what happens during  
14 trial your defense angle will change somewhat. You  
15 may come in with one whole idea of what you intend  
16 to do; and then for whatever reason, what develops  
17 on the stand doesn't lend itself to what you plan to  
18 do and you've taken other avenue that's more  
19 beneficial your client. I gave the best defense  
20 given what we were given at that time that I could  
21 give.

22 Q Okay.

23 A You work with the best that you're given, not  
24 with the best you hoped or expected you would be  
25 given.



## PW - J. CARTRETTE - REDIRECT

1 Q I understand. I'm not trying to say that you  
2 made the facts or anything like that. I'm just  
3 saying —

4 A I understand.

5 Q I'm just, I think you've answered my question  
6 which is your trial strategy was withdrawal  
7 basically?

8 A It was evolving as —

9 Q Okay. That's ultimately what you went to?

10 A —the case went forward here on the stand  
11 through the development of testimony and the  
12 presentation of evidence our — we adapted to what  
13 was unfolding before us. That's what we had to deal  
14 with.

15 Q But you told her about withdrawal beforehand.  
16 You just testified to that, right?

17 A Yes, we spoke about all that.

18 Q Okay. And that was prior to even going to trial,  
19 right?

20 A There were numerous, numerous meetings before  
21 trial in my office with Latisha. I think certainly  
22 she knows I gave my very best of efforts in her  
23 defense, and I think until now she would have agreed  
24 with that. Certainly she knew that with what we  
25 were working with I was giving her my all.

## PW - J. CARTRETTE - RECROSS

1 Q And you advised her that she could either plead  
2 or go to trial, right?

3 A I did.

4 Q Okay. And you advised her that she could take  
5 the stand or not take the stand, right?

6 A I did.

7 MR. JOHNSON: Your Honor, I object.

8 THE COURT: I think we talked about all  
9 that in great, great detail. If you got something  
10 new go with it. If you don't, let's move on.

11 MR. SHAFFER: I think I'm done, Your  
12 Honor. Thank you.

13 THE COURT: All right.

14 MR. JOHNSON: Your Honor, I just have one  
15 area that I'd like to cover briefly.

16 THE COURT: One area.

17 **RECROSS-EXAMINATION**

18 BY MR. JOHNSON:

19 Q I asked you about the store clerk that the  
20 apology was given to. Mr. Shaffer asked you  
21 questions which tended to, tended to maybe portray  
22 that those, the apology as a general, nonspecific  
23 apology, but I want to ask you about  
24 Ms. Montgomery's direct testimony. I refer the  
25 Court's attention to page 101 of the transcript,

## PW - J. CARTRETTE - RECROSS

1 line 1, where Ms. Montgomery testified that  
2 Ms. Cochran wanted to apologize to me because they  
3 started to rob the store during the time I was  
4 there, but decided to wait until the store closed  
5 and then do it. Do you remember that?

6 A Might I see the transcript?

7 Q Yes, sir.

8 MR. JOHNSON: May I approach the witness,  
9 Your Honor.

10 THE COURT: Sure.

11 BY MR. JOHNSON:

12 Q It's got a clip at the top which will fall apart  
13 so I'm gonna hand it to you kind of like that. And  
14 we're looking here. Your opportunity to  
15 cross-examine is here; but the direct by Ms. Parr,  
16 which I ask you if you recall, is here dealing with  
17 Ms. Montgomery's testimony. And a very specific  
18 apology by Latisha here. "Because they started to  
19 rob the store." Back up at line 1, "During the time  
20 I was there but decided to wait till the store  
21 closed and then do it." And then the question was,  
22 "Did she say, did she specifically say regards to  
23 that." The answer at line 6: "That was about as  
24 specific as I could remember, recall, 'cause it was  
25 a good while back, like in 2009. I do know she

## FW - J. CARTRETTE - RECROSS

1 just -- she told me that they had planned to rob the  
2 store while I was there, and they decided not to do  
3 it because of the fact that I was in there and they  
4 was -- they would do it later after the store  
5 closed." How much trouble did that give you when  
6 you heard that?

7 A Well, certainly a lot of trouble. This is a  
8 relative of hers giving a statement against her as I  
9 recall. There's, I believe there's some kinship  
10 between Ms. Montgomery and Ms. Cochran if I'm not  
11 mistaken.

12 Q Thank you. Please answer any questions  
13 Mr. Shaffer or the Court may have.

14 MR. SHAFFER: I have none, Your Honor.

15 THE COURT: You can step down.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Call your next witness.

18 MR. SHAFFER: The Applicant calls Latisha  
19 Cochran.

20 THE CLERK: Please place your left hand on  
21 the Bible, raise your right hand.

22 WHEREUPON,

23 **LATISHA COCHRAN,**  
24 having been duly sworn by the Clerk of Court,  
25 testified as follows:

PW - L. COCHRAN - DIRECT

1 THE CLERK: Please be seated and state  
2 your name for the record.

3 THE WITNESS: Latisha Cochran.

4 **DIRECT EXAMINATION**

5 BY MR. SHAFTER:

6 Q Ms. Cochran, you're currently serving how many  
7 years?

8 A Thirteen.

9 Q And that sentence was imposed by what judge?

10 A I think it was Michael Nettles.

11 Q Okay. Was that after trial? You went through  
12 trial, you didn't plead guilty, right?

13 A No, it was after trial.

14 Q And I've informed you that if you are successful  
15 here today that you possibly could get more time?

16 A Yes, sir.

17 Q Okay. Do you still want to proceed?

18 A Yes, sir.

19 Q Okay. Now you were represented by Mr. Cartrette?

20 A Yes, sir.

21 Q When did you first meet Mr. Cartrette?

22 A I think it was like 2, 3 months before I went to  
23 trial.

24 Q Okay, two or three months before you went to  
25 trial? Approximately how many times do you recall

## PW - L. COCHRAN - DIRECT

- 1 meeting with him?
- 2 A Like twice.
- 3 Q Okay. Did he tell you about — well, did he
- 4 advise you of how much time you were looking at?
- 5 A He said the charge carried 10 the minimum, 30 the
- 6 max.
- 7 Q And he told you that, or did he tell you what the
- 8 charge was?
- 9 A Yes.
- 10 Q Did he tell you the elements of the charge?
- 11 A Or did he tell you what the State had to prove in
- 12 order to convict you? I can't remember.
- 13 Q Okay. Did he tell you that there was a possible
- 14 plea offer?
- 15 A Yes.
- 16 Q Okay. And what was that offer to?
- 17 A 10.
- 18 Q Okay. And do you know if they wanted your
- 19 cooperation against the co-defendants for that?
- 20 A Yes.
- 21 Q Okay. And did he tell you about some possible
- 22 defenses if you went to trial?
- 23 A Yes.
- 24 Q Okay. And did he tell you about the defense of
- 25 duress?

## PW - L. COCHRAN - DIRECT

- 1 A Yes.
- 2 Q Basically they forced you into it?
- 3 A What you mean?
- 4 Q Well, did they — did he tell you that you could
- 5 possibly claim that they forced you into it?
- 6 A Yes.
- 7 Q Okay. And did he tell you that you could also
- 8 claim that you sort of withdrew from the entire
- 9 thing, right?
- 10 A Yes.
- 11 Q And he told you he'd argue that if you went to
- 12 trial, right?
- 13 A Yes.
- 14 Q Did you decide to take a plea or did you decide
- 15 to go to trial?
- 16 A Go to trial.
- 17 Q Okay. And when you went to trial did you decide
- 18 to plead guilty or did you decide to — I mean, no,
- 19 I'm sorry, did you decide to testify or not testify?
- 20 A Before it wouldn't — you asked me before —
- 21 Q I'm saying when you were at trial, did you decide
- 22 to testify or not?
- 23 A It wasn't a decision during trial.
- 24 Q Okay.
- 25 A It was made right before I think I was supposed

PW - L. COCHRAN - DIRECT

1 to be called.

2 Q Okay. So you made it right before you were  
3 supposed to be called?

4 A Yes, I, me and my public defender.

5 Q Okay. What did they — what did he tell you  
6 about testifying?

7 A He was, he was basically saying that, I guess,  
8 the statement that was made with the investigator,  
9 they would cross, try to cross-examine me on that or  
10 whatever that mean. I don't know what all that  
11 mean. He was like, his best idea of it is I  
12 wouldn't testify so I went on that and I didn't.

13 Q Okay. So he said in his opinion he thought that  
14 you probably shouldn't testify?

15 A Yes.

16 Q And you didn't testify?

17 A No.

18 Q Okay. Now do you recall the second statement you  
19 made —

20 A Yes.

21 Q —to police?

22 A Yes.

23 Q Tell us about that statement. When he was that  
24 statement made?

25 A It was on Christmas eve.



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1 Q Okay. Tell us about that Christmas eve, what  
2 happened?

3 A I was picked up by officer, Officer McAllister,  
4 and I was placed in the front car with him. And he  
5 was basically badgering me about where have I been,  
6 I mean, he had a warrant for my arrest and he got me  
7 now and whatever, whatever. So he took me in to the  
8 police department Lake City and walked me to the  
9 back and set me in front of him, and he was telling  
10 me that he know everything from Quentin Eppes and he  
11 got everything he need and I need to cooperate and  
12 if I go with what he had that I can go home, be home  
13 with my kids for Christmas.

14 Q Okay. So he told you you could go home if you  
15 went with what he had, is that what you just said?

16 A Yeah.

17 Q Okay. What did you end up doing?

18 A I end up listening to what he had and made a  
19 statement.

20 Q Okay. And the statement you gave, was that what  
21 happened or not?

22 A I don't know 'cause I didn't see it.

23 Q Okay. But —

24 A But —

25 Q Why did you give that statement?

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1 A He — I was afraid. And then I really wanted to  
2 go home with my kids. I don't know.

3 Q So you gave the statement so you could go home to  
4 your kids?

5 A Yeah.

6 Q Now when you went to — when your trial started  
7 y'all had a hearing where you testified, right?

8 A Yes.

9 Q And you told them that you didn't voluntarily  
10 give the statement, right?

11 A Yes.

12 Q Okay. And you told them — well, why did you  
13 tell them that you didn't voluntarily give the  
14 statement?

15 A Because I was — it was just an act of being  
16 Christian, and it's just, I just felt like that I  
17 needed to go ahead and tell the truth in order to  
18 move on from this.

19 Q Okay. Now if you would — you decide — I'm  
20 going back to where you decided not to testify,  
21 right?

22 A (Nods head.)

23 Q Now when you decided not to testify did you — if  
24 you would have testified, would you have testified  
25 that your statement was correct?

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1 A I was so scared I don't know. I don't know.

2 Q Okay. You don't know what you would have  
3 testified to?

4 A No.

5 Q Okay. Do you ever hear that Quentin Eppes had a  
6 deal? When was the first time you -- well, tell me  
7 this, when was the first time that anyone told you  
8 that Quentin Eppes had a deal in exchange for his  
9 testimony?

10 A I had just found out everything about him, his  
11 time, about a couple of months ago when I got some  
12 mail. I think it was like a Rule 5 or something.

13 Q Okay. So but regarding his time who let you know  
14 that?

15 A Providing his time my --

16 Q I'm sorry, regarding that there -- that he had a  
17 deal. Well, I tell you what, when was the first  
18 time you learned of anything about Quentin Eppes  
19 having a possible deal to testify? Was it -- who  
20 told you? Who informed you of that? I did?

21 A You sent me some paperwork.

22 Q Okay. And I sent you a letter, right?

23 A Yes.

24 Q And basically that letter said what?

25 A It was saying that my co-defendant Montario

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1 Graham was going for a PCR, and he won, and I think  
2 the status of that was saying that he won because of  
3 something that occurred or a witness was found to  
4 lie about him having a plea deal before our trial.

5 Q And that letter told you to contact your — if  
6 you had an attorney contact your attorney with that  
7 information, right?

8 A Yes.

9 Q Okay. Before that you didn't know that he  
10 possibly had a plea deal, right?

11 A No.

12 Q Okay. And you had read your Rule 5 prior to  
13 that, right?

14 A No.

15 MR. JOHNSON: We've not objected to any  
16 leading questions in the preliminary stages. Now  
17 that we're getting into the heart of the matter I'm  
18 going to object to all leading questions.

19 MR. SHAFFER: Okay.

20 THE COURT: Sustained.

21 BY MR. SHAFFER:

22 Q Did your Rule 5 say that he had a deal?

23 A It was like before the trial, afterwards, what  
24 you mean?

25 Q No, I'm not talking about afterwards. The stuff

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1 that you had relating to your discovery, did that  
2 say anywhere in it that he had a deal with the  
3 prosecution?

4 MR. JOHNSON: Your Honor, I think he's  
5 still leading the witness.

6 THE COURT: Sustained.

7 BY MR. SHAFFER:

8 Q What did your Rule 5 say regarding a deal?

9 A It said that he was found during somebody trial  
10 that he lied about not having a plea deal.

11 Q Okay. Was that in your Rule 5 or was that in the  
12 letter that I sent you?

13 A That was in the letter that you sent me.

14 Q Do you know — do you know the actual definition  
15 of a Rule 5?

16 A No.

17 Q Okay. Do you know anything prior to trial about  
18 a deal?

19 A No.

20 Q Okay. You're saying you didn't know anything  
21 until —

22 MR. JOHNSON: Leading, Your Honor.

23 THE COURT: Sustained.

24 BY MR. SHAFFER:

25 Q To recap, when was the first — when was the last

## FW - L. COCHRAN - CROSS

1 time or -- when was the first time you learned about  
2 a deal with Quentin Eppes?

3 A When I received letter from you.

4 Q Okay. Did the prosecution ever tell you about a  
5 deal with Quentin Eppes?

6 A No.

7 Q Did your attorney ever tell you about a deal?

8 A No.

9 MR. SHAFFER: Court's indulgence. No  
10 further questions.

11 THE COURT: All right.

12 **CROSS-EXAMINATION**

13 BY MR. JOHNSON:

14 Q Ms. Cochran, in your criminal case did there come  
15 a time where you gave a statement?

16 A Yes.

17 Q All right. In fact, you gave two statements;  
18 didn't you?

19 A Yes.

20 Q And these were recorded?

21 A Not the first one.

22 Q All right.

23 MR. JOHNSON: Your Honor, I'd like to move  
24 two statements into evidence. I think it'd be  
25 helpful for the Court and for Ms. Cochran to be able

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1 to refer to these statements, and we're able to play  
2 them at this time.

3 THE COURT: Any objections?

4 MR. SHAFFER: No objection, Your Honor.

5 THE COURT: All right. Go ahead.

6 MR. JOHNSON: We can play them in just  
7 chronological order.

8 (Two statements were played for the Court.)

9 BY MR. JOHNSON:

10 Q So Ms. Cochran, this second statement was a true,  
11 accurate statement of the facts; wasn't it?

12 (There was no response.)

13 MR. SHAFFER: Your Honor, objection,  
14 relevance. It goes to sort of the underlying crime.  
15 I apologize, it goes to the crime, not necessarily  
16 the allegations here today.

17 MR. JOHNSON: It's a fair question, Your  
18 Honor. She's alleging errors of counsel, that her  
19 statement was coerced. Her statement was obviously  
20 not coerced, and the prejudice prong depends upon  
21 proving that the outcome would have been different.  
22 But in cases of overwhelming evidence of guilt our  
23 case law is clear, prejudice can't be proven. So  
24 the question goes in overwhelming evidence of guilt.  
25 And asking, Your Honor, if these facts occurred as

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1 she gave in her second statement is a fair question.

2 THE COURT: I'm gonna sustain the  
3 objection.

4 MR. SHAFFER: Thank you.

5 BY MR. JOHNSON:

6 Q Did you participate in the robbery of Mr. Hayes?

7 A No.

8 Q You didn't? So the statement that you gave, the  
9 second statement that we just listened to, is  
10 incorrect?

11 MR. SHAFFER: Objection, same basis.

12 THE COURT: Sustained.

13 BY MR. JOHNSON:

14 Q You did not participate in the robbery of  
15 Mr. Hayes?

16 MR. SHAFFER: Objection, same basis.

17 MR. JOHNSON: No, no, I'm not asking about  
18 the statement. I'm asking about the facts, the  
19 truth.

20 MR. SHAFFER: Your Honor, it goes to the  
21 same thing, Your Honor.

22 MR. JOHNSON: No, Your Honor, very  
23 different. I'm not asking about — you've sustained  
24 his objection regarding to the statement. Now I'm  
25 asking about the actual participation of



1 Ms. Cochran, did she participate in the robbery,  
2 Your Honor.

3 THE WITNESS: What do you mean by  
4 participate?

5 MR. SHAFFER: Your Honor, I think that  
6 that's sort of the heart of why the objection was  
7 sustained is whether or not it's true because really  
8 what we're doing is looking at — he's saying it  
9 goes to overwhelming evidence of guilt. Well, she  
10 never testified at trial so we can't say that.

11 THE COURT: I think it goes toward  
12 ineffective assistance of counsel. That's what I'm  
13 concerned about.

14 MR. JOHNSON: We have a case State v.  
15 Stroka that is 230 Southeast Second 816, and this is  
16 a case that established where there's evidence of,  
17 overwhelming evidence of guilt. Further review is  
18 not necessary because the applicant can't prove the  
19 prejudice prong.

20 MR. SHAFFER: Your Honor, evidence implies  
21 and it was presented at trial and wasn't presented  
22 at trial, therefore —

23 THE COURT: I'm gonna sustain the  
24 objection.

25 MR. JOHNSON: So Your Honor, just to be

1 clear, I cannot ask Ms. Cochran any questions about  
2 her participation in this robbery?

3 THE COURT: How does that go toward  
4 ineffective assistance of counsel?

5 MR. JOHNSON: It's the overwhelming  
6 evidence of guilt, Your Honor, and it also goes to  
7 the conditions that counsel found himself in when he  
8 had to defend her because this is a statement that  
9 was part of the case.

10 THE COURT: We've already talked to him.  
11 We've got all that covered in great detail so we  
12 don't need to rehash it with her necessarily. But  
13 if you want to get into how many times they met, did  
14 they discuss it, go over trial strategy, did he talk  
15 about whether or not she'd testify, you were going  
16 to testify at trial or not, you know, whether or not  
17 you're guilty or not so we're passed that stage.  
18 I'll give you a little leeway, go ahead. And of  
19 course, anything pertaining to whether or not the  
20 statements were coerced, that seems to be the issue.

21 MR. JOHNSON: Well, Your Honor, I'd have  
22 to get into the -- I'd have to get into the  
23 substance of the tape 'cause on the tape she said  
24 the statement was not coerced.

25 THE COURT: You can get into the substance

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1 as long as it's pertaining to whether or not it's  
2 coerced or not.

3 BY MR. JOHNSON:

4 Q All right. So one of your allegations is that  
5 your statement was coerced or involuntarily given.  
6 How is it that you allege it was involuntary?

7 A Like I said, he picked me up. We was in the room  
8 by ourself and he just was basically telling me that  
9 I got what I need, just go with this and you can go  
10 home. He picked me up on Christmas eve.

11 Q This is the first statement or second statement?

12 A This is the statement you just heard.

13 Q The second statement?

14 A The statement you just heard.

15 Q Well, there were two, right? I'm trying to be  
16 clear for the record. There were two statements,  
17 correct?

18 A (There was no response.)

19 Q Were there two statements?

20 A The statement we just heard? This is what he did  
21 to me.

22 Q All right, ma'am. Well, it's also important that  
23 if there were two statements that they were made on  
24 different days. There were two opportunities for  
25 you to say, no, I'm not gonna talk to you. But on

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1 both occasions you agreed to make a statement so,  
2 therefore, it's important that there were, in fact  
3 two statements; isn't that true?

4 A Seem like it don't matter what I say it's not  
5 going to be right regardless of what he did. It was  
6 in the statement.

7 MR. JOHNSON: Well, Your Honor, I'm trying  
8 to —

9 THE COURT: I've heard the two statements.  
10 I think I can figure that out whether she answers it  
11 or not.

12 MR. JOHNSON: Yes, Your Honor. No further  
13 questions for this witness, Your Honor.

14 THE COURT: Anything further, Mr. Shaffer?

15 **REDIRECT EXAMINATION**

16 BY MR. SHAFFER:

17 Q The only question I have is, the statement that  
18 was made on Christmas eve is the one that you said  
19 you were essentially driving, right, and that you —  
20 is that the statement you made on Christmas eve?

21 A Yes.

22 Q Okay, thank you.

23 THE COURT: You may step down. Call your  
24 next witness.

25 MR. SHAFFER: Your Honor, the Applicant

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1 has no further witnesses.

2 THE COURT: All right, thank you.

3 Mr. Johnson, you wish to call any witnesses?

4 MR. JOHNSON: We'll call Patricia Parr,  
5 Your Honor.

6 THE CLERK: Please place your left hand on  
7 the Bible and raise your right hands.

8 WHEREUPON,

9 **Patricia S. Parr,**

10 having been duly sworn by the Clerk of Court,  
11 testified as follows:

12 THE CLERK: Please be seated and state  
13 your name for the record.

14 THE WITNESS: My name is Patricia  
15 Singleton Parr.

16 **DIRECT EXAMINATION**

17 BY MR. JOHNSON:

18 Q Ma'am, would you tell the Court how you came to  
19 be involved in the Latisha Cochran case?

20 A I was assigned that case as an assistant  
21 solicitor for the Twelfth Judicial Circuit.

22 Q And in any time frame since you can remember or  
23 refer to your notes from would be helpful, although  
24 not necessary. If you get reference to dates that  
25 would help. And so what was your first contact with

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1 either an investigator or counsel in this case?

2 A May it please the Court, Your Honor, I would have  
3 to refer to my file.

4 THE COURT: All right.

5 THE WITNESS: May I?

6 MR. JOHNSON: I can bring it to you if you  
7 like.

8 THE WITNESS: It's the green file.

9 (File tendered to the witness.)

10 BY MR. JOHNSON:

11 Q So the question was your first contact with  
12 either investigator or defense counsel on the case?

13 A Okay. This incident occurred on November 15th,  
14 2008. We had an initial appearance on  
15 February 17th, 2009. Our office actually received  
16 the arrest warrant January 13th, 2009, so I would  
17 have, I would have reviewed this file between  
18 January 13th, 2009, and February 17th, 2009.

19 Q All right. And at some point this case was  
20 prepared for trial?

21 A It was.

22 Q All right. I want to ask you some general  
23 questions about the evidence that you dealt with.  
24 What evidence of guilt did you have that was in the  
25 State's favor?

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1 A What we — what I did, you know, I reviewed the  
2 file. There was another prosecutor in our office,  
3 David Richardson, who indicated that he was  
4 interested in trying this case with me. And in  
5 terms of the reviewing of the case, I reviewed the  
6 case as well as Mr. Richardson. I actually kind of  
7 jot out in terms of a chart as to what evidence we  
8 had in the case. I also went down and spoke with  
9 witnesses in the case. I went to Lake City to view  
10 the scene of the crime. I met with Mr. William  
11 Hayes. I also met with Mr. Rodriguez Russell whose  
12 house is immediately, is right behind Mr. Hayes  
13 where Mr. Hayes' store, house which are connected.  
14 I also met with Ms. Mildred Montgomery. I received  
15 statements from all of these persons. I also  
16 reviewed all of the photographs and that were taken  
17 at the crime. I reviewed the broken gun that was  
18 used to hit Mr. Hayes in the head with. I also  
19 listened to both statements that this defendant  
20 gave; and also, I believe it may have been a  
21 statement given by Mr. Eppes as well. I also  
22 reviewed the video of at Wal-Mart showing I believe  
23 it was Mr. Eppes' vehicle, the sound that was the  
24 same vehicle that had been driven to Mr. Hayes'  
25 house.

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1 Q What was your analysis of, in your opinion, of  
2 how difficult a case this would be to prove at  
3 trial?

4 A Of course, as a prosecutor there are no slam dunk  
5 cases at least I believe although, you know, there  
6 are cases that have more evidence than others. I  
7 thought this was one that had sufficient amount of  
8 evidence in which to prove the defendant guilty of  
9 the charge of armed robbery.

10 Q What evidence in particular was, did you find  
11 particularly compelling that would have helped the  
12 State's case?

13 A Mainly the defendant's own admission, the fact  
14 that the first time she lied as to how she got  
15 Mr. Hayes' wallet. Then the second statement, which  
16 detailed the events of the night. It was also  
17 consistent with what Mr. Quentin Eppes had stated as  
18 well.

19 Q What value did you place on the statements being  
20 in opposition to each other?

21 A In terms of?

22 Q Being different?

23 A The defendant's statements?

24 Q Yes, ma'am.

25 A There was a big difference in the two statements.



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1 One, she just admitted having the cards and using  
2 the cards and she indicated that she just found it.  
3 And so that was a crime of only financial  
4 transaction card theft, financial transaction card  
5 fraud as opposed to armed robbery where she actually  
6 called Mr. Hayes up and lured him out of his house  
7 in order for them to commit the armed robbery. Also  
8 the fact that she went to Ms. Mildred Montgomery who  
9 is an employee of Mr. Hayes and in which I believe  
10 she may be related to her as well, and told her,  
11 apologized to her and told her that initially the  
12 plan was to commit the robbery while she was working  
13 but it was changed to wait for Mr. Hayes and I found  
14 that to be strong evidence. She also apologized to  
15 Mr. Hayes.

16 Q Based on your experience as a prosecutor for how  
17 many years?

18 A You mean I have to tell my age?

19 Q No, ma'am. I withdraw the question. Based on  
20 your experience as a prosecutor did you find this  
21 was a case of overwhelming evidence of guilt?

22 MR. SHAFFER: Objection, Your Honor,  
23 that's a legal determination. She hasn't been  
24 qualified as an expert. I don't think she even  
25 could be qualified as an expert in this. This is a

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1 determination for the Court to make as finder of the  
2 law.

3 THE COURT: I'm gonna overrule it. Go  
4 ahead.

5 THE WITNESS: I have been prosecuting,  
6 combination of city court as well as general  
7 sessions in excess of 20— I think it's like 22  
8 years, and 18-and-a-half of them have been up here  
9 in general sessions. Okay, Judge, I'm retired.

10 BY MR. JOHNSON:

11 Q And then the question was about comparing this  
12 case to all the other cases, whether you felt it was  
13 an overwhelming evidence of guilt case?

14 A I thought it was an extremely strong case.

15 Q All right. So the other allegation dealt with  
16 Quentin Eppes, one of the witnesses, and I'm just —  
17 I want to refer to part of the transcript in a  
18 minute; but I want to ask you about your discussions  
19 with Mr. Eppes' lawyer, Hank, Henry Anderson. If  
20 you will, tell the Court what those discussions  
21 were.

22 MR. SHAFFER: Objection, Your Honor. I  
23 think he's asking to go into something that could go  
24 into your previous ruling. I mean, if he wants to  
25 ask regarding this specific case, yeah.

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1 THE COURT: I think that's what he's  
2 doing, this specific case.

3 MR. JOHNSON: Right, this specific case,  
4 yes.

5 THE WITNESS: In regards to this  
6 particular case — and first let me say, you know,  
7 in cases where there are multiple defendants charged  
8 for crime and their statements, you know, usually  
9 defendants try to sort of beat each other out and  
10 will say they're going to cooperate and for them to  
11 get help and on their charge. In this particular  
12 case Ms. Cochran as well as Mr. Eppes both gave  
13 statements, and we asked if they, both of them  
14 wanted warned to cooperate. I discussed that with  
15 both attorneys, Mr. Richardson and then I did. And  
16 Mr. — you know, Ms. Cochran indicated my  
17 understanding was that she didn't want to testify or  
18 she didn't want to cooperate with the State because,  
19 you know, Mr. Chazmonte Brown, she didn't want to  
20 testify against him. In any event, I believe it  
21 was, it was told to me that he was the father of her  
22 unborn child at the time. Mr. Eppes indicated that  
23 he, through Mr. Anderson, that he wanted to  
24 cooperate and so Mr. Anderson and I did not have any  
25 specific agreement as to what the defendant would

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1 plead guilty to. He did want to get him under  
2 the — not under the armed robbery charge.

3 Q Okay. So you're saying that he did not have any  
4 specific agreement as to what he would plead to?

5 A Right, but that he would get some help or some  
6 consideration for his cooperation.

7 Q He would get some help and consideration for his  
8 cooperation?

9 A That is correct.

10 Q Was this discussion in the room that Mr. Anderson  
11 was talking about where it was you, Richardson,  
12 Anderson, and his client, or was this some other  
13 discussion?

14 A I don't recall where it was.

15 Q Do you — you were in the courtroom when Mr.  
16 Anderson testified?

17 A Yes.

18 Q Assuming you heard what he said, he referenced a  
19 discussion where it was himself, his client, you and  
20 Mr. Richardson; and he was indicating to Mr. Eppes  
21 that there may have been, it may be good for him —  
22 I won't try to quote him 'cause I can't. Did you  
23 hear that discussion?

24 A I do recall, but I don't remember whether at what  
25 point he said that. I don't know whether it was in

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1 reference to Ms. Cochran's case or the other case,  
2 but I do remember him telling him that it would be  
3 to your benefit to testify truthfully.

4 Q I was thinking you don't remember hearing a  
5 reference to any of the cases in particular where  
6 Mr. Eppes would have testified about this robbery?

7 A Please repeat the question, I'm sorry.

8 Q Well, let me just withdraw the question 'cause I  
9 need to make sure I am asking only about the Cochran  
10 case.

11 A Okay.

12 Q All right? Now I want to ask you specific  
13 questions about Mr. Eppes' testimony. And  
14 referencing the Court to page 118, this is a section  
15 where Mr. Cartrette was asking Mr. Eppes questions  
16 about the shotgun. And then on line 16 he asked  
17 him: "Isn't it true though that you anticipate the  
18 possibility of a better deal or you wouldn't be here  
19 today?" Answer, no, sir. Question: "So you're  
20 willing to make a statement against interest knowing  
21 it can be used against you in a court of law later?"  
22 Answer, right. Question: "You've been offered no  
23 deal?" Answer, no, sir. Question on, continuing on  
24 119, line 1: "Isn't it true that you hope to get a  
25 better deal because of your cooperation today?" And

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1 then he says: "Yes, sir." I want to ask you about  
2 that. When — and you were in the courtroom during  
3 that exchange?

4 A Yes, I believe I was in the courtroom.  
5 Mr. Richardson actually did the direct examination.

6 Q Do you remember this particular section of  
7 question and answer?

8 A Just I read it in the transcript.

9 Q All right.

10 A I have had many cases since then but I'm —

11 Q Well, here's my question. Having heard my  
12 recitation reading from the record, what Mr. Eppes  
13 said, was that true at that time, isn't it true that  
14 you hope to get a better deal because of your  
15 cooperation today? Answer, yes, sir.

16 A Yes.

17 Q Was that true?

18 A That was true.

19 Q All right. So if you had been in a courtroom  
20 having heard that, would you have had a reason to  
21 correct it if it was a true statement?

22 A That was a true statement.

23 Q It would have been no reason to —

24 A Yeah, because that was true. He hoped to get a  
25 better deal.

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1 Q Please answer any questions that Mr. Shaffer may  
2 have for you.

3 **CROSS-EXAMINATION**

4 BY MR. SHAFFER:

5 Q Ms. Parr, tell us a little bit about your note  
6 taking procedure. Do you generally note every time  
7 that you've met with a witness in your file? I'm  
8 not gonna ask to see your file by the way. I'm not  
9 gonna do that, I'm just asking.

10 A Normally I do. It depends on the case. If it's  
11 a case that, you know, is likely to go to trial I do  
12 try to make notes. I usually have handwritten notes  
13 in the file.

14 Q Okay. And do you -- is this -- was this  
15 Mr. Richardson's case? Was he primary attorney or  
16 were you?

17 A No, this was my case.

18 Q But he did help you out on a case?

19 A That is correct.

20 Q Okay. Would you -- would he have met with you --  
21 I mean, the general office procedure at your office,  
22 would the second chair generally have the first  
23 chair present whenever they met with witnesses or  
24 defendants, or would he meet with them by  
25 themselves? That's what I'm wondering.

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1 A You know, I mean, I guess there -- in some cases,  
2 you know, he would meet with them without the other  
3 present. I cannot, I do not recall in this  
4 particular case.

5 Q Okay. But you don't recall if he met with them  
6 privately or not?

7 A I do not know.

8 Q Okay. Now at some point prior to the trial of  
9 this case -- well first of all, do your notes say  
10 anything -- well, when was Montario Graham's trial  
11 tried, do you recall the day?

12 THE COURT: I'll let you lead her in that  
13 regard.

14 THE WITNESS: I have no --

15 BY MR. SHAFFER:

16 Q Would it be back in December?

17 A Yeah, I think December.

18 Q And this trial was tried --

19 A In October.

20 Q October? Yeah, I was going to say September but.

21 A The same year.

22 Q All right. If you could, look through your file  
23 and let us know if there's any place in your file  
24 that indicates that you met with Hank Anderson to  
25 discuss Quentin Eppes' testimony between October and



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1 December?

2 A It's not in this particular file, but I think it  
3 may be in Montario Graham's file 'cause the file was  
4 split up after.

5 Q Do you recall it? Do you recall meeting with him  
6 before Montario Graham's trial?

7 A I do recall.

8 Q Okay. So you basically met with him two times,  
9 Quentin Eppes personally?

10 A I remember, I remember before the Montario Graham  
11 case. I can't, I don't have an independent  
12 recollection of before Ms. Cochran's case, but I'm  
13 assuming I did; or if I didn't, Mr. Anderson did.  
14 But I'm, I mean, I'm assuming I did because I would  
15 usually, I don't try any case without meeting with  
16 potential witnesses, or at least talking to the  
17 attorney. But I don't remember. But I do remember  
18 meeting with him prior to Montario Graham case.

19 Q You mentioned that Hank Anderson wanted, wanted  
20 the armed robbery dropped. I think you testified to  
21 that in your —

22 A I didn't say not dropped, but he didn't want that  
23 charge or —

24 Q He wanted something less?

25 A Something less.

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1 Q He didn't want a ten year minimum, right?

2 A He wanted less, yes.

3 Q Now prior to this trial is it your testimony that  
4 prior to this trial that you never indicated that it  
5 would go less; is that your testimony?

6 A No, my testimony is not that I didn't indicate  
7 that it wouldn't go less. I told — I know I would  
8 have told them that I couldn't promise him what  
9 would happen. I'm sure he would get some help.

10 Q Okay. So you promised him some help?

11 A I didn't promise him some help, but I did say  
12 that I —

13 Q You told him that he would get some help?

14 A Yes, he would get some help if he cooperated or  
15 he would get him some consideration with  
16 cooperation.

17 Q So you did tell him he would get consideration  
18 for his cooperation?

19 A Yes.

20 Q And your testimony is that — well, I guess I'll  
21 just outright ask it. Did you ever tell him that  
22 the — or did you ever indicate in any way prior to  
23 this trial that the armed robbery would be dropped  
24 if he testified?

25 A I don't know that I told him that.

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1 Q Could Richardson have told him that?

2 A David could have told him that.

3 Q David could have told him that. Could he have  
4 told him that at a meeting where y'all were going  
5 over the testimony?

6 MR. JOHNSON: Your Honor, this is —

7 THE WITNESS: I don't recall.

8 MR. JOHNSON: He's asking Ms. Parr about  
9 what Mr. Richardson could have potentially told Hank  
10 Anderson. That's not fair to Ms. Parr. We don't  
11 know what he told him.

12 THE COURT: Sure. Sustained.

13 BY MR. SHAFFER:

14 Q Were you present whenever any, whenever any  
15 discussion like that was made?

16 A I'm sorry, I do not remember.

17 Q You don't remember, okay. I imagine you've dealt  
18 with Hank Anderson for quite a while; haven't you?

19 A Yes.

20 Q Okay. Has he ever, outside of this case has he  
21 ever represented codefendants in testifying?

22 A I can't remember if I've had one with him.

23 Q Okay.

24 A One case that I remember that he and I ended up  
25 trying a codefendant testified against his person.

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1 Q Okay.

2 A His defendant.

3 Q Now generally in some degree there —  
4 the testifying witness you testified was basically  
5 doing it to help themselves out?

6 A That is correct.

7 Q In your opinion would it make a whole lot of  
8 sense for him to guarantee one of his, guarantee one  
9 of his, a deal for one of his testimony against one  
10 codefendant but not against the other? Would it  
11 have made sense to guarantee a deal against Quentin  
12 Eppes but not guarantee the first deal against the  
13 applicant here today? I mean, it just doesn't seem  
14 like it makes a whole lot of sense to me that he  
15 would want to guarantee a second deal but not  
16 guarantee the first deal. But I mean, first  
17 testimony in a deal and —

18 A I can't answer that.

19 Q Okay, that's fair enough. That's fair enough.  
20 Did you ever ask Hank why he threw you under the bus  
21 with this regarding this situation?

22 MR. JOHNSON: Your Honor, that's not a  
23 proper question.

24 THE COURT: Sustained.

25 MR. SHAFFER: Okay. No further questions.

1 THE COURT: All right, you can step down.  
2 Call your next witness if you have one.

3 MR. JOHNSON: We'll rest, Your Honor.

4 THE COURT: Thank you very much. I'll  
5 take the matter under advisement. I'll study it.  
6 You did a good job. I'll let the two of you know as  
7 soon as.

8 MR. SHAFFER: Your Honor, may I briefly  
9 clarify some stuff because —

10 THE COURT: Briefly.

11 MR. SHAFFER: The way I work, I generally  
12 am not very clear whenever I'm asking questions.  
13 There's two issues here, but there are several  
14 issues but two primary ones I want to talk about.  
15 The first of course is the McNood violation. I'll  
16 essentially let the Court make a determination. I  
17 think there will be — I mean, Mr. Anderson  
18 testified that he had the deal prior to this trial.  
19 I think that it would be highly, highly unlikely  
20 that he would get the deal later and not on this  
21 one. It just doesn't make a whole lot of sense to  
22 me that he would say, well, I'm gonna make sure I  
23 guarantee one for Montario but I'm not gonna  
24 guarantee it whenever he first goes up there to  
25 testify. I believe he's credible. He's a very

1 credible witness.

2 And ultimately, I know that the State has  
3 presented Ms. Parr to testify in the case; but  
4 ultimately, it essentially doesn't matter whether  
5 Ms. Parr — and I'm not saying that Ms. Parr didn't  
6 do it, didn't make that statement. I'm just saying  
7 ultimately it doesn't matter which one of them made  
8 it. If they were both present whenever it occurred  
9 like Hank Anderson testified to, that they were both  
10 present. They both had a duty to get up there and  
11 do something. The State hasn't called  
12 Mr. Richardson here to testify whether or not he  
13 did. The record is clear that there was no  
14 indication that there was any effort to correct.  
15 And I know the State keeps resting its hat on  
16 overwhelming evidence of guilt; that's not the  
17 actual standard for this type of violation.

18 I guess my first contention that under  
19 Riddle v. Ozment 2006 Supreme Court case that I had  
20 emailed you on — I'm not sure if y'all got it. But  
21 under that case essentially there was no prejudice  
22 and now it's applied. I think that at very least  
23 outside of that case so I think the current  
24 controlling law is that there's no prejudice, at  
25 least in South Carolina no prejudice prong should be

1 applied to this sort of prosecutorial misconduct.  
2 But I think that the, at least on the federal level  
3 at the very least, the federal level says prejudice  
4 beyond a reasonable doubt essentially, which is a  
5 different standard than overwhelming evidence of  
6 guilt or anything else that they said. Basically  
7 the court would have to find that there's absolutely  
8 no reasonable way that that could have been impacted  
9 the outcome of this case. So I want to point that  
10 out first of all.

11 The second thing I want to point out is  
12 that while I am arguing and I want to maintain that,  
13 I argue that there was prejudice to the ineffective  
14 assistance of counsel claim, my primary argument on  
15 that is that this was a Kronick violation. I mean,  
16 under Kronick v. U.S., it's a 1984 U.S. supreme  
17 court case. Essentially in three situations you  
18 don't even have to prove prejudice whenever,  
19 whenever trial counsel act, whenever it's so bad  
20 essentially. And I think this fits into it because  
21 essentially Mr. Cartrette has decided that he would  
22 go forward with and set whenever — at least when at  
23 the point when the Jackson v. Denno hearing failed  
24 he went forward with a defense which was withdrawal.  
25 He basically failed to challenge that under the

1 wrong assumption that the evidence actually fit with  
2 withdrawal. I mean, the evidence as presented by  
3 the State does not fit withdrawal in any way, shape,  
4 or form. I mean, he's saying that it matches  
5 withdrawal because she didn't want to do it; but she  
6 was according to the State's evidence basically, he  
7 acted just as a, I mean, she was basically the  
8 driver to and from under the State's evidence.

9 So my belief is that at this point, you  
10 know, that sort of goes out the window and more or  
11 less he's just basically accepted the State's case  
12 and argue that hand of one hand of all is wrong,  
13 which my argument is that that's not a defense and  
14 it's a breakdown of the system where you don't even  
15 have to prove prejudice under Kronick, Your Honor.

16 THE COURT: All right, I'll hear you.  
17 Would you like to reply briefly?

18 MR. JOHNSON: Just briefly, Your Honor. I  
19 hadn't planned on a kind of closing; but you know,  
20 if they're gonna try to argue that they don't have  
21 to prove prejudice under some exception because it  
22 was with Mr. Schaeffer's language prosecutorial  
23 misconduct which is the first I've heard that in  
24 this case, then they have to prove misconduct. They  
25 haven't done that. They haven't done that. They



1 haven't met that burden of proof. There's a  
2 presumption that there was effective assistance of  
3 counsel in this case and every case, and they're  
4 gonna overcome that presumption by a certain degree  
5 of proof. They have failed to do it. And he  
6 referenced Kronick which is a case, as you know Your  
7 Honor, where defense counsel was just so horribly  
8 bad, it was an obvious case that they were gonna  
9 win. You can see for yourself defense counsel in  
10 this case had a very difficult matter to contend  
11 with. He had the statements that Your Honor heard,  
12 the admissions, the candid and open admissions of  
13 guilt, and I cannot imagine being in his shoes and  
14 having to defend. I don't have any cases  
15 Mr. Shaffer has defended. I've handled quite a few  
16 and I cannot imagine myself being in Mr. Cartrette's  
17 shoes. And I thought that the defense he came up  
18 with was pretty smart, pretty crafty, and it might  
19 have worked. The jury didn't agree. He had a trial  
20 strategy and he followed it. That doesn't mean it's  
21 ineffective assistance of counsel. They failed to  
22 prove prosecutorial misconduct so we would ask the  
23 matter be dismissed.

24 THE COURT: All right, thank you very  
25 much. I'll take a look at it and let you both know.

1 MR. SHAFFER: May I add one thing though.

2 THE COURT: It will be the last word of  
3 the day. I'm gonna give you 60 seconds starting  
4 now.

5 MR. SHAFFER: Your Honor, the whole point  
6 of Kronick is that you're not actually having look  
7 at —

8 THE COURT: I'm familiar with it.

9 MR. SHAFFER: —whether or not there's a  
10 chance of winning. Thank you.

11 THE COURT: Thank you both.

12 (WHEREUPON, Petitioner Exhibits Nos. 1 and  
13 2 were marked for identification and  
14 received into evidence.)

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16 \* \* \* END OF REQUESTED TRANSCRIPT OF RECORD \* \* \*

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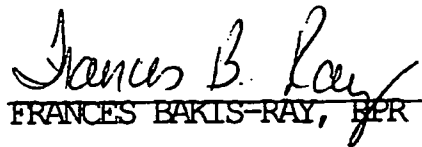
**C E R T I F I C A T E   O F   R E P O R T E R**

STATE OF SOUTH CAROLINA)  
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 20th day of November, 2013.

  
FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA  
COUNTY OF FLORENCE

Latisha L. Cochran, 343301,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-21-1713

**ORDER OF DISMISSAL**

FILED  
2013 MAR 25 PM 4:23  
CLERK OF COURT C.P. & C.S.  
FLORENCE COUNTY SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 2, 2012. Respondent made a timely Return. The Court convened an evidentiary hearing into the matter on February 29, 2013, at the Florence County Courthouse. The Applicant was present at the hearing and was represented by Tristan Shaffer, Esquire. Tyson Andrew Johnson, Sr., Esquire of the South Carolina Attorney General's Office represented Respondent.

At the hearing, the Applicant testified on her own behalf. Also testifying was Jesse S. Cartrette, Esquire, who represented Applicant at trial. Henry Anderson, Esquire, testified, and Patricia Parr, Esquire, also testified at the hearing of this matter. This Court had before it the PCR Application, the State's Return, the records of the County Clerk of Court, including two recorded statements of Applicant, the transcript, and the Applicant's records from the South Carolina Department of Corrections.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the April

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C. Anne Red-Spear  
CLERK OF COURT C.P. & C.S.  
FLORENCE COUNTY, S.C.

2009 term of the Florence County Grand Jury for armed robbery and possession of a weapon during a violent crime (2009-GS-21-422). Jesse S. Cartrette, Esquire, represented Applicant.

On October 19, 2010, Applicant was tried and convicted, and was sentenced by the Honorable Michael Nettles to thirteen years imprisonment. Applicant filed a timely notice of intent to appeal. The South Carolina Court of Appeals affirmed the conviction and the Remittitur was also filed on June 8, 2012.

### **ALLEGATIONS**

In her current Application, Applicant alleges that she is being held in custody unlawfully for the following reasons:

1. "Investigator promised me that if I would testify against my co-defendants, that I could go home to my children because it was christmas."

At the start of the hearing, Applicant's counsel, Tristan Shaffer, amended Applicant's case to include allegations of ineffective assistance of counsel, prosecutorial misconduct, and an allegation that her confession was coerced.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. 17-27-80.

### Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, supra). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Pre trial preparation and Applicant's confessions

Applicant testified that she met with her attorney two to three months before trial and that she met with him twice. Applicant indicated counsel told her what she was charged with, but when asked if counsel told her what the state had to prove to meet it's burden of proof Applicant could not recall. Applicant indicated that her counsel went over possible defenses, including that she could claim her two separate recorded confessions were coerced or forced, and also that she withdrew from any conspiracy before becoming culpable for the acts of co-conspirators. At some point the State made a ten-year plea offer which counsel conveyed to Applicant, but Applicant rejected the offer, and Applicant made the decision to go to trial. Applicant made the decision to not testify based on advice from counsel.

Before trial, Applicant gave two recorded confessions (States trial Exhibits 3 and 4) that included oral and written warnings pursuant to Miranda v. Arizona, (State's trial Exhibits 1 and 2) and that referenced prior warnings given to Applicant pursuant to Miranda. Investigator McAllister, a sergeant with the city of Lake City, interviewed Applicant on November 19, 2008 after he discovered Applicant recently used credit cards that were stolen in the robbery. R. 124. Applicant told McAllister she found them. Mcallister interviewed Applicant again on December 24, 2008. R. 131. At the second interview she candidly admitted to her role in the robbery of Mr. Hayes, and provided information about her co-defendants roles as well.

At the PCR hearing, counsel testified Applicant's confessions made the defense of this case very difficult. Applicant averred that the confessions were coerced, and Applicant took the position at trial that the signature appearing on the consent form was not her signature, and that the recording by the State's investigator was inappropriately "spliced" and was "worth looking in to." Tr. 137,

Lines 21-22. Applicant did not argue either in her Application or at the hearing that counsel was ineffective in his opposition to the admission of the written waiver forms or in the recorded statements, and has therefore waived any such arguments, but instead persisted in her argument that the confessions were coerced by the State. Applicant claimed generally that her confessions were coerced, and specifically averred her confession of December 24<sup>th</sup> 2008 was inappropriately obtained in exchange with the ability for Applicant to leave and spend Christmas Eve with her family.

This Court is not persuaded by Applicant's claim. Both recorded statements were played and moved into evidence at the trials of this matter. The Court also notes that the South Carolina Court of Appeals also decided the very issue Applicant complains of in the instant PCR in the appeal of Latisha Lee Cochran, Unpublished Opinion 2012-UP-310, filed May 16, 2012. Applicant's appeal was based on her argument that the trial court erred in admitting a purported confession given under inherently coercive circumstances, but the Court declined to agree with Applicant and instead affirmed Applicant's conviction. Applicant has given no competent legal or factual grounds for prevailing in PCR or in establishing ineffectiveness of counsel as a cause for redress with regard to this claim, therefore this claim must be denied.

Applicant's decision not to testify.

At the PCR, Applicant denied involvement in the robbery. Both of her confessions were played in Court and moved into evidence, as they were at trial. In the first statement, Applicant admits to using the victim's stolen credit cards to buy fast food, and also that afterward her mother discarded the wallet in a field. (The wallet was later recovered.) In the second statement, Applicant candidly acknowledges her full involvement in the robbery of Mr. Hayes. Applicant indicated at the PCR hearing that it was her decision to not testify at her trial, made in part upon advice of counsel.



Counsel confirmed it was Applicant's decision to not testify at her trial. Applicant testified at her PCR that her counsel indicated because of the statements given to investigators that she probably should not testify. Regarding Applicant's claim that her decision to not testify was involuntary, this claim is denied.

Hand of one hand of all

Applicant next argues her counsel was ineffective in allowing the "hand of one hand of all" argument. This is not supported by the trial record, in that the transcript is clear that Applicant's counsel argued against the application of hand of one hand of all, particularly as it relates to the possession of a weapon charge. Counsel argued in part, "Your honor, under the hand of one hand of all they have to be acting in concert under a common scheme. She withdrew." Tr. 149, Lines 10-12. Tr. 165, Lines 23-24. As a result of counsel's position prevailing upon the trial court, the State conceded the weapon charge should not have applicability to hand of one hand of all, and that the State would just proceed against Applicant on the armed robbery charge. Tr. 150, 1-6. Contrary to Applicant's position, this was effective assistance of counsel, and therefore this claim is denied.

Epps' testimony

Applicant alleged Quentin Epps, who was witness against Applicant at trial, failed to reveal a deal with the State in exchange for testimony, and that his failure to reveal his deal prejudiced Applicant. Applicant filed a pre-trial motion to preclude the State from asserting Epps did not have a deal, which this Court denied. In her motion, Applicant's counsel cited part of the testimony of Epps from the record, but failed to make reference to the section of Epps testimony at page 119 of the transcript, Lines 1-3, where Epps acknowledges he hoped for a "better deal." Upon examination of the whole record, it is clear that Applicant's claims in this regard are without merit, as Epps

acknowledged upon cross examination he hoped for a better deal. Tr. 119, Line 1-3.

Applicant called Jesse Cartrette (counsel) in her case in chief. Applicant asked if counsel was "aware of any deals" made between the State and Quintin Epps. Counsel indicated he was not aware a deal had been made, and had no knowledge of any specific plea deal, but said based on his knowledge of Hank Anderson Esquire, who was counsel for Quintin Epps, he expected some sort of deal had been made in exchange for Epps' testimony. Contrary to what Applicant argues, this was not a situation where counsel was oblivious to any possibility of favorable consideration in exchange for truthful testimony, and counsel's cross examination of Epps confirmed that Epps did hope for a better deal.

Applicant called Hank Anderson, Esquire who testified that he was appointed to represent Quintin Epps on armed robbery charges. Anderson testified he spoke with the State about possible deals before any trials began, and after Epps testified Epps was allowed to plead to a lesser charge.

The State called Patricia Parr, Esquire who assisted in prosecuting Applicant and asked specifically as to the prosecution of Latisha Cochran, what she recalled regarding negotiations with Quintin Epps. Mrs. Parr testified that as between the State and Quintin Epps, they "did not have any agreement as to what.... But that he would get some help in consideration for his testimony."

Epps actual testimony upon cross-examination by attorney Cartrette is reflected on pages 118 and 119 of the trial transcript as follows:

Q. You said you weren't offered anything special to testify today?

A. No, sir.

Q. Isn't it true, though, that you anticipate the possibility of a better deal or you wouldn't be here today?

A. No, sir.

Q. So you're willing to make a statement against interest knowing that it can be used against you in a court of law later?

A. Right.

Q. You been offered no deal?

A. No, sir.

Q. Isn't it true that you hope to get a better deal because of your cooperation today?

R. A. Yes, sir.

Tr. 119, Lines 1-3.

The record shows Epps testified he hoped to get a better deal because of his cooperation, and Parr testified that as between the State and Quintin Epps, they "did not have any agreement as to what.... [B]ut that he would get some help in consideration for his testimony."

Applicant elected not to call Quintin Epps as a witness at her PCR hearing so it is uncertain what he would have testified to. While the evidence shows Epps hoped for favorable treatment in exchange for his testimony, he fully admitted this at Applicant's trial while cross examined by Applicant's counsel. Applicant offered no evidence of how the outcome would have been different with different testimony, in addition to failing to call Epps to proffer his understanding of favorable treatment, therefore it is uncertain and speculative whether or how different testimony would have made a difference in the outcome of Applicant's trial. Accordingly, Applicant's allegations of prosecutorial misconduct are without merit, and this claim is denied.

#### Aiding and Abetting

Applicant argued counsel was ineffective for arguing that if Applicant was guilty at all, it

would only be of aiding and abetting. Counsel indicated this argument was part of his overall trial strategy in a very difficult case, where Applicant had given two separate confessions, one of which detailed her traveling to a location to pick up a shotgun, and then making a telephone call to the victim to draw him out for the purpose of robbing him at gunpoint, and where Applicant had then sought to apologize to the victim. The trial record reflects Applicant's apology to the victim, as well as to a store clerk who was in the store before the victim was robbed. This Court finds this decision was in fact a reasonable trial strategy in a matter with overwhelming evidence of guilt and was a reasonable decision by counsel to offer the jury an alternative which may have benefited Applicant had the jury agreed with her.

This Court finds that counsel's performance was not deficient under these circumstances. In reaching this conclusion, this Court finds counsel's testimony credible and gives it great weight. This Court does not find Applicant's testimony credible or persuasive. Applicant candidly admitted her guilt and freely sought to apologize to her victims. This Court finds that counsel was not ineffective with regard to his investigation, trial preparation, or trial performance. This Court finds that counsel was not deficient in this respect, nor was applicant prejudiced by any alleged deficiency. This Court finds counsel's trial strategy was reasonable and further finds counsel's performance was not deficient. Further, I find counsel's trial preparation and actions were reasonable under prevailing professional norms, and therefore this claim is denied.

#### **Other Allegations**

No other allegations were raised or testified to at the PCR hearing. Therefore, any additional allegations raised in the PCR Application or amendment are deemed waived because no evidence was presented.

### CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant the application. Therefore, this application for post conviction relief is denied and dismissed with prejudice.

### IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 22 day of March, 2013.

  
 WILLIAM H. SEALS  
 Presiding Judge  
 12<sup>th</sup> Judicial Circuit

Maurice, South Carolina.

2013 MAR 25 PM 4:23  
 COMPTON & SHERMAN  
 CCJP & BS  
 FLORENCE COUNTY, SC

FILED

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*Mina Kel-Span*  
 CLERK OF COURT C.P. & C.S.  
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS  
) FOR THE TWELFTH JUDICIAL CIRCUIT

COUNTY OF FLORENCE

)

) Case No.: 2012-CP-21-1713

LATISHA COCHRAN #343301

)

MOTION TO RECONSIDER

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)

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vs.

)

THE STATE OF SOUTH CAROLINA

)

Defendant.

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)

2013 APR -8 PM 3:52  
CORRIE REEL-SHEPARD  
CCCP & GS  
FLORENCE COUNTY, SC

FILED

Pursuant to Rule 59(e), SCRCP, Applicant respectfully requests that this Court Reconsider its Order of Dismissal filed March 25, 2013<sup>1</sup>. To support this motion, in addition to arguments raised during the hearing by Applicant, Applicant further shows the following:

I. Epps' Deal – Napue<sup>2</sup> Violation

In the Order of Dismissal, this Court found "Applicant's allegations of prosecutorial misconduct are without merit." Order of Dismissal 8. Applicant respectfully contends that record supports a finding of prosecutorial misconduct. Applicant further argues that this Court applied an incorrect test prejudice to this issue.

During the hearing Applicant asserted that her right to due process was violated by the prosecutor's failure to disclose a deal with Codefendant Epps. Prior to the PCR hearing, Applicant moved to preclude the State from arguing that a deal did not exist based upon

<sup>1</sup> PCR Counsel received this order on March 28, 2013.

<sup>2</sup> *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173 (1959).

collateral estoppel. The Court granted Applicant's motion as it relates to the trial of Codefendant Graham that took place several months after Applicant's trial. During the hearing Epps' counsel, Henry Anderson<sup>3</sup>, testified that prior to Applicant's trial, the prosecution had agreed to reduce the armed robbery to secure his testimony. During the hearing, Solicitor Parr testified that Epps would "get some help in consideration for his testimony." Applicant contends that consideration in exchange for testimony is a deal. However, according to Trial Counsel's testimony no deal was ever disclosed to him. Although Trial Counsel suspected a deal, he was unable to impeach Epps when he testified that no deal existed.

Applicant also asserts that Order of Dismissal applies the wrong prejudice standard, and that the findings of fact concerning prejudice are not supported by the record. Under *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006), the Supreme Court did consider prejudice in finding, "The PCR judge erred in concluding that the State was not obligated to correct [a witness's] false testimony, and failing to hold that this violation of petitioner's due process rights required that he be granted a new trial." *Riddle*, 369 S.C. at 48, 631 S.E.2d at 75. Therefore, under the law of this State, Applicant submits that prejudice is presumed when a prosecutor fails to correct knowinglt false testimony<sup>4</sup>.

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<sup>3</sup> The Order of Dismissal does not make a finding as to whether Mr. Anderson's testimony was credible or whether a deal existed. The order notes parts of the testimony, but the order does not make a finding whether the testimony was credible. Applicant respectfully contends that Mr. Anderson's testimony was credible and asks that this Court make a finding that a deal existed.

<sup>4</sup> However, even if prejudice is not presumed, Applicant alternatively asserts that the proper prejudice review would require a new trial unless the failure disclosure of perjured testimony was harmless beyond a reasonable doubt. See *United States v. Bagley*, 473 U.S. 667, 678, 105 S.Ct. 3375, 3381-82 (1985).

The Order of Dismissal states, "Applicant offered no evidence of how the outcome would have been different without different testimony, in addition to the failing<sup>5</sup> to call Epps to proffer his understanding of favorable treatment, therefore it is uncertain and speculative whether or how different testimony would have made a difference in the outcome of Applicant's trial." Applicant respectfully contends that this finding conflates the *Napue* and the *Brady*. However, even if prejudice is required for the *Napue* issue, Applicant submits that if the jury had been aware of Epps' perjury it would have affected the outcome of the trial. This prejudice would be even more pervasive in viewing this misconduct under the cumulative error doctrine.

Based on the foregoing argument and the arguments made at trial, Applicant respectfully request that this Court make a finding that Applicant's right to Due Process under *Napue* were violated.

## II. Epps' Deal -- *Brady*<sup>6</sup> Violation

In addition to Applicant's *Napue* issue, Applicant contends that the failure to disclose the deal with Epps was a *Brady* violation. The Order of Dismissal does not specifically address Applicant's *Brady* claim. Applicant believes that the State failed to reveal a deal with Epps. Applicant believes that the deal was material, and that Applicant was prejudiced because she was unable to effectively impeach Epps based on the deal. Applicant respectfully requests that the Court make a finding that Applicant's due process rights under *Brady* were violated.

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<sup>5</sup> PCR Counsel did not believe it was necessary for Epps to testify about his subjective interpretation of what type of consideration he was receiving. Applicant had Mr. Anderson testify that a deal existed. Additionally, PCR Counsel did not believe Epps would be a credible witness on the issue of whether or not he had previously given perjured testimony.

<sup>6</sup> *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963).



### III. Ineffective Assistance of Counsel- Withdraw Defense and Hand-Of-One-Hand-Of-All

#### Relevant Facts

During Applicant's confession<sup>7</sup>, "Applicant candidly acknowledges her *full* involvement in the robbery."<sup>8</sup> In this confession, Applicant admits to driving her codefendants to the incident location; calling the defendant to "draw him out for the purpose of robbing him at gunpoint"<sup>9</sup>; expressing that she did not want to rob him; however, waiting in the car during the robbery; and then driving her codefendants away from the scene; and using the victim's stolen credit cards.

Trial Counsel's primary strategy was to try and get Applicant's statement's suppressed pretrial. However, after Applicant's pre-trial motion to suppress the confession failed, Trial Counsel abandoned<sup>10</sup> his primary trial strategy. At trial, Trial Counsel decided not to challenge the Applicant's confession. Instead, Trial Counsel modified his defense strategy.

In front of the jury, Trial Counsel decided to concede Applicant's confession was the truth. Trial Counsel's new strategy was to argue that because Applicant said she did not want to rob the victim, that she is not guilty under a withdrawal defense. Tr. 177, ll. 23-25. In his closing argument, Trial Counsel tells the jury the following:

"We believe that a not guilty verdict is necessary because the State has failed to prove beyond a reasonable doubt that [Applicant] did not withdraw, did not step away from this crime; *in fact, she did*. She vocally and twice on the tape you'll hear her say, I did not want anything to do with an armed robbery I told them that when I found that night(sic) that's what they were going to I didn't want anything to do with an armed robbery. She

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<sup>7</sup> Applicant's second statement to police that Applicant maintains was coerced.

<sup>8</sup> See Order of Dismissal 5 (emphasis added).

<sup>9</sup> See Order of Dismissal 9.

<sup>10</sup> Trial Counsel could have argued the statement was involuntary to the jury.

even tried to leave when she heard the commotion<sup>11</sup> because she knew she was in the wrong place at the wrong time."

Tr. 177, l. 23 – Tr. 178, l. 9. Additionally, Trial Counsel conceded, "[c]ertainly making the phone call, driving to the location, if it's aiding and abetting. I would argue here today that it doesn't want fit anything more than that. And certainly, she withdrew before it rose to the level of a full scale armed robbery." Tr. 178, l. 22 – Tr. 179, l. 2. Trial Counsel further argued. Applicant was merely present in the car during the robbery. Tr. 186, ll. 3-9. Applicant alleges that Trial Counsel rendered ineffective assistance of counsel by making this argument.

At the PCR hearing, Trial Counsel testified that he believed that the best option he had was to argue that the applicant's confession established a factual basis for a withdrawal defense. Trial Counsel further stated that he advised Applicant not to testify because he wanted to preserve her credibility.

#### **Argument**

"[T]he adversarial process protected by the Sixth Amendment requires that the accused have counsel acting in the role of an advocate." *United States v. Cronin*, 466 U.S. 648, 657, 104 S.Ct. 2039, 2045 (1984). Per-se prejudice occurs "when a lawyer 'entirely fails to subject the prosecution's case to meaningful adversarial testing,' this making 'the adversarial process presumptively unreliable.'" *See Nance v. Ozmint*, 367 S.C. 547, 552, 626 S.E.2d 878, 880 (2006).

In this case, Trial Counsel's strategy not to challenge the veracity of Applicant's confession caused a break down in adversarial process. Trial Counsel did not challenge the evidence that Applicant set up the robbery by calling the victim. Trial Counsel did not challenge the evidence establishing that Applicant drove the codefendant to and from the scene. Nor did

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<sup>11</sup> After the robbers had stolen the victim's wallet, they ran back toward the car. Applicant was allegedly in the driver seat of the parked car. As the robbers fled, one fired a shot into the air. During the second statement, Applicant claims that when she heard the shot she tried to leave.

Trial Counsel challenge the evidence stating that Applicant was present in the car during the robbery.

Instead, Trial Counsel chose to argue withdrawal based solely on the evidence that Applicant told the codefendants that she did not want to rob the victim. However, even if Applicant told her codefendant's this, according to the confession Applicant continued to be a part of the robbery until completion. *See State v. Vang*, 353 S.C. 78, 87, 577 S.E.2d 225, 229 (Ct. App. 2003) (Approving the following jury instruction "A person who continues in the common design cannot claim withdrawal.")

This strategy of concession was a break down in the adversarial system. *See Cronin*, 367 S.C. at 657, 104 S.Ct. at 2046 (While a criminal trial is not a game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators."). Moreover, Trial Counsel believed that hand-of-one-hand-of-all did not apply because Applicant subjectively did not want to rob the victim. This strategy is objectively unreasonable because it based upon an incorrect interpretation of the law of withdrawal. *See Loundes v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008) ("The validity of counsel's strategy is reviewed under 'an objective standard of reasonableness'").

*Cronin* was not applied to this issue in the Order of Dismissal. The Court did make a finding that *Strickland* did not support a finding of ineffective assistance of counsel on a claim that "counsel was ineffective in allowing the 'hand of one hand of all' argument."<sup>12</sup> Although,

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<sup>12</sup> With great respect for this Court, PCR Counsel must humbly admit that he is uncertain what the State's proposed order means by "allowing the hand of one hand of all argument." PCR Counsel assumes the State was intending this section to address Applicant's allegation that Counsel was ineffective for arguing withdrawal. However if this is incorrect, PCR Counsel respectfully request clarification on the allegation the Court is ruling on in this section. *See* Order of Dismissal 6.

Applicant also asserts *Strickland* prejudice resulted from Trial Counsel's choice of strategy; Applicant's primary argument concerning this issue is that there is per se prejudice under *Cronic*. Therefore, Applicant respectfully asks this Court to reconsider its Order of Dismissal and make a finding of ineffective assistance of counsel under *Cronic* and alternatively under *Strickland*.

IV. Ineffective Assistance of Counsel- Advising Applicant Not to Testified

In the Order of Dismissal, the Court denies that "Applicant's claim that her decision to not testify was involuntary." Order of Dismissal 6. However, Applicant respectfully contends that this was not exactly the issue argued at the hearing. Instead Applicant asserted that Trial Counsel was ineffective in advising her not to testify.

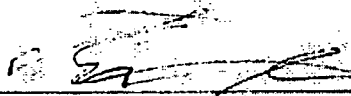
At the hearing, Trial Counsel testified that he advised Applicant not to testify because she had already given two statements and he did not want to diminish her "credibility" in front of the jury. If the jury believed that Applicant credibly gave a confession in which she "candidly acknowledges her full involvement in the robbery", it would not be beneficial to her. Applicant asserts that this is not a reasonable trial strategy and Trial Counsel was deficient in this advice.

Additionally, Applicant was prejudiced by this deficiency. Applicant's PCR testimony "denied involvement in the robbery." Order of Dismissal 5. Any testimony at trial which "denied involvement" would have been beneficial over a statement that "candidly admit[s] her role in the robbery." Order of Dismissal 4, 5. Therefore, Applicant respectfully requests that this Court make a finding that Trial Counsel was ineffective for advising Applicant not to testify.

**Conclusion**

In sum, Applicant respectfully asks that this Court reconsider its Order of Dismissal.

RESPECTFULLY SUBMITTED,

  
\_\_\_\_\_  
Tristan Michael Shaffer  
Attorney for Applicant

April 4, 2013

**STATE OF SOUTH CAROLINA**  
**COUNTY OF FLORENCE**

**) IN THE COURT OF COMMON PLEAS**  
**) FOR THE TWELFTH JUDICIAL CIRCUIT**

**) Case No.: 2012-CP-21-1713**

**LATISHA COCHRAN #343301**

## CERTIFICATE OF SERVICE

**vs.**

**THE STATE OF SOUTH CAROLINA**

**Defendant.**

263 APR - 8 PH 3:52  
JONNIE REEL-SILENT  
CCCP & GS  
FLORENCE COUNTY, SC

77

I certify that I have served the Motion to Reconsider on The State of South Carolina by mailing a copy to the Attorney General's Office at 1000 Assembly Street Columbia Room 519, South Carolina 29201, on April 4, 2013.

RESPECTFULLY SUBMITTED,

**Tristan Michael Shaffer**  
Attorney for Applicant  
P.O. Box 176  
Chapin, SC 29036

**April 4, 2013**

FILED

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF FLORENCE ) 2014 JUN -6 PM 1:32  
FOR THE TWELFTH JUDICIAL CIRCUITLatisha Cochran, #343301, )  
CONNIE REEL-SHEPARD )  
CCCP & GS ) Case No. 2012-CP-21-1713  
FLORENCE COUNTY, S.C. )

Applicant, )

v. )

**ORDER DENYING APPLICANT'S  
MOTION TO RECONSIDER**

State of South Carolina, )

Respondent. )

This matter comes before the Court on Applicant's timely "Motion to reconsider" filed April 8, 2013. Applicant's motion asks the Court to reconsider, pursuant to Rule 59(e), SCRCP, its order of dismissal filed March 25, 2013, arguing the Court's order erred in four (4) respects. The Court finds as follows:

**I. Napue Violation**

First, Applicant alleges the Court misapplies the standard set forth in Napue v. Illinois, 360 U.S. 264 (1959), relating to the co-defendant's alleged plea deal. However, the facts of Napue are distinguishable from the instant case. In Napue, the co-defendant unequivocally testified he had not been promised a reduced sentence in exchange for his testimony, even though the state's attorney had made such a promise. Id. at 270-71. In Applicant's trial, the co-defendant clearly testified he expected a better deal in exchange for his cooperation. (Trial Tr. 119:1-3). The assistant solicitor testified at the PCR hearing that she had no specific agreement with the co-defendant as to his plea offer if he cooperated, merely that he would "get some help" for his cooperation. The co-defendant's attorney testified he expected the co-defendant's charges to be reduced in exchange for his

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*Connie Reel-Shepherd*  
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FLORENCE COUNTY, S.C.

cooperation. Thus, the co-defendant's testimony in Applicant's trial that he expected a better deal is in line with the understanding of the agreement as testified to by the solicitor and the co-defendant's attorney. Viewing the record as a whole, the Court finds Applicant has not demonstrated his conviction was obtained with the use of false testimony such as to run afoul of the standard set forth in Napue.

## **II. Brady Violation**

Second, Applicant argues the Court's order failed to address Applicant's allegation of a Brady<sup>1</sup> violation. To the extent this argument is distinct from Applicant's Napue allegation, the Court finds no Brady violation in this case. Even if the State had an agreement with the co-defendant, Applicant has not shown how the non-disclosure of this deal prejudiced her case. Trial counsel testified he presumed the co-defendant was receiving some consideration for his testimony. In that regard, he was able to get the co-defendant to admit on the stand he expected a better deal for testifying. Any further information about the State's negotiations with the co-defendant would be cumulative impeachment evidence. See State v. Von Dohlen, 322 S.C. 234, 241, 471 S.E.2d 689, 693-94 (1996) (no Brady violation where impeachment evidence was merely cumulative). Furthermore, the other evidence, including Applicant's own statements, indicates further exploration of the co-defendant's expectations regarding his cooperation would not have led to a different result in this trial. See State v. Taylor, 333 S.C. 159, 177, 508 S.E.2d 870, 879 (1998) (court must consider alleged Brady violations in the context of the entire record (citing United States v. Agurs, 427 U.S.

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<sup>1</sup> Brady v. Maryland, 373 U.S. 83 (1963).



97 (1976))). Therefore, the Court finds Applicant has not shown she was prejudiced by any alleged Brady violation.

### **III. Counsel's Trial Strategy**

Third, Applicant argues the Court should make a finding of ineffective assistance of counsel under United States v. Cronic, 466 U.S. 648 (1984), based on trial counsel's pursuit of a withdrawal defense and his arguments regarding the hand-of-all theory. The Court declines to do so. Trial counsel made timely and articulate objections, thoroughly cross-examined the State's witnesses, and made well-reasoned arguments to the jury. Therefore, the Court finds trial counsel did not fail to subject the State's case to "meaningful adversarial testing" Cronic, 466 U.S. at 659. The Court further finds counsel articulated a valid strategy for pursuing these theories based on Applicant's statement she did not want to participate in the robbery. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))).

### **IV. Advice Regarding the Right to Testify**

Fourth, and finally, Applicant argues the Court's order incorrectly found Applicant's decision not to testify was voluntary, when Applicant actually argued trial counsel was ineffective for advising Applicant not to testify. However, trial counsel testified he neither advised Applicant to testify or not to testify. He merely explained to her the risks and benefits of either option. Trial counsel stated the ultimate decision to not testify was made by Applicant. Therefore, the Court finds trial counsel properly informed Applicant of her right to testify and her right to remain silent, and the

Court declines to find trial counsel ineffective in this regard. Furthermore, the trial judge explained Applicant's rights to her at trial. (Trial Tr. 151:14-153:19). Accordingly, the Court finds Applicant's decision to waive her right to testify and exercise her right to remain silent was knowingly and voluntarily made.

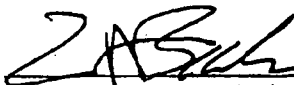
#### V. Conclusion

Based on the foregoing, the Court finds and concludes its prior order does not contain any errors or omissions that would require reconsideration of the Court's ruling.

**IT IS THEREFORE ORDERED** that Applicant's motion for reconsideration is hereby **denied** and her application for post-conviction relief is **dismissed with prejudice**.

The Court notes Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. See Rule 203, SCACR, and Rule 71.1(g), SCRCP. Applicant's attention is also directed to Rule 243, SCACR, for appropriate procedures after notice has been timely filed.

IT IS SO ORDERED this 2 day of June

  
THE HONORABLE WILLIAM H. SEALS, JR.  
Presiding Judge

Martin, South Carolina

2014 JUN 24 PM 1:32  
CONNIE REEL-SHEARIN  
CCCP & GS  
FLORENCE COUNTY, SC

FILED

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FLORENCE COUNTY, S.C.

WITNESSES  
**CHIEF BILLY BROWN**      **LCPD**  
 Mcallister

**PROS:**      **PSP**  
**D/O:**      **11-15-2008**

**ARREST WARRANT NO.**  
 1332184 (1), 1332187 (1), 1332189 (1);  
 1332184 (2), 1332187 (2), 1332189 (2).

**ACTION OF GRAND JURY**  
**TRUE BILL**

*Lee Mcallister*  
 Foreman of Grand Jury

**VERDICT**

Foreman of Petit Jury      Date:

**DOCKET NO. 2009 - GS - 21 - 00422**  
**The State of South Carolina,**  
 County of      **FLORENCE**  
**PSP**

**COURT OF GENERAL SESSIONS**

**APRIL      TERM      2009**

**THE STATE**  
 vs.

**LATISHA LEE COCHRAN**  
**QUENTIN DEJON EPPS**  
**MONTARIO LEVERNE GRAHAM**

**Indictment for**  
**ARMED ROBBERY**  
**AND**  
**POSSESSION OF WEAPON DURING**  
**COMMISSION OF VIOLENT CRIME**

2009 APR -2 PM 12:33  
 CONNIE REEL-SHEARIN  
 CCLP & GS  
 FLORENCE COUNTY, SC

**FILED**

## INDICTMENT FOR

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF FLORENCE )

ARMED ROBBERY AND POSSESSION OF WEAPON  
 DURING COMMISSION OF VIOLENT CRIME

At a Court of General Sessions, convened on APRIL 02, 2009, the Grand Jurors of FLORENCE

County present upon their oath:

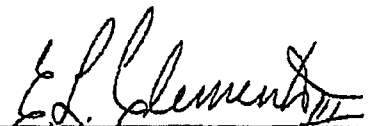
**COUNT ONE - ARMED ROBBERY**

That LATISHA LEE COCHRAN, QUENTIN DEJON EPPS AND MONTARRIO LEVERNE GRAHAM did in FLORENCE County on or about November 15, 2008, violate Sections 16-11-0330(A) and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that while armed with a deadly weapon, or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun did feloniously rob William Hayes by means of force or intimidation, goods or monies of the said William Hayes to-wit: U.S. currency.

**COUNT TWO - POSSESSION OF WEAPON DURING  
 THE COMMISSION OF A VIOLENT CRIME**

That LATISHA LEE COCHRAN, QUENTIN DEJON EPPS AND MONTARRIO LEVERNE GRAHAM did in FLORENCE County on or about November 15, 2008, violate Section 16-23-0490 of the Code of Laws of South Carolina (1976), as amended, in that they was in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: a handgun during the commission of a violent crime, to wit: armed robbery.

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

  
 SOLICITOR