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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. Supreme Court

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

TRAVAUGHN THOMAS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001870

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2009-GS-23-1867

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

TRA VAUGHN LAROL THOMAS,
DEFENDANT.

ORIGINAL

September 13, 14, and 15, 2010
Greenville, South Carolina

B E F O R E:

THE HONORABLE C. VICTOR PYLE, JR., JUDGE; and a jury.

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

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Assistant Solicitor

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Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

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(DW) - Denotes Defense Witness

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P R O C E E D I N G S

(WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 were marked for identification only.)

MS. ANDERS: Your Honor?

THE COURT: Yes.

MS. ANDERS: Good morning, sir.

The State is ready to proceed on State v. Tra Vaughn Thomas. He's number two on your docket today, I believe. Number three is Robert Thompson. He's a co-defendant. However, a Bruton issue precludes us from trying them together.

THE COURT: Okay.

MS. ANDERS: There is a possibility -- I did speak with Brian Smith this morning. There's a possibility that we would start Robert Thompson's trial right after this one, but I can't find Brian Smith now, so I'm unable to confirm that.

Because they are co-defendants, it raises another issue that the evidence in this case is the exact same evidence that I would use in the second case. So I would just ask the Clerk's Office to allow us access to it for Mr. Thompson's trial.

THE COURT: Sure.

MS. ANDERS: And my last point would be that we're

1 only going forward on the armed robbery, and not the
2 conspiracy.

3 THE COURT: Okay.

4 MS. ANDERS: And that's it from the State.

5 THE COURT: The strikes are 10 for the Defense, and
6 five for the State.

7 Anything before I bring the panel of jurors up?

8 MS. ANDERS: No, sir.

9 MS. MANIGAULT: Nothing from the Defense, Your
10 Honor.

11 THE COURT: All right. We've got 35, so we're going
12 to need to clear everybody out.

13 Where is the location of Stop A Minute?

14 MS. ANDERS: Your Honor, #1 South Piedmont Highway.

15 THE COURT: Do you have the first names of your first
16 five witnesses?

17 MS. ANDERS: Yes, Your Honor.

18 My first five witnesses --

19 THE COURT: What is "J. Cooper"?

20 MS. ANDERS: James.

21 THE COURT: James?

22 MS. ANDERS: Yes, sir.

23 Then William.

24 THE COURT: And William.

25 MS. ANDERS: #3 is Jeremy.

1 THE COURT: Is what? Jeremy?

2 MS. ANDERS: Yes, sir.

3 #4 is Matt.

4 THE COURT: Matt?

5 MS. ANDERS: Yes, sir.

6 #5 is Matthew.

7 THE COURT: Both of them Matthew?

8 MS. ANDERS: Yes, sir.

9 THE COURT: And Jeremy Days.

10 MS. ANDERS: Yes, sir.

11 (WHEREUPON, the jury panel entered the courtroom.)

12 THE COURT: Good morning, ladies and gentlemen.

13 At this time, we will select a jury in the case of
14 the State against Tra Vaughn Larol Thomas.

15 Mr. Thomas, would you stand up a moment, turn around,
16 and face the jury panel for me, please, sir?

17 Thank you.

18 You can be seated now.

19 He is indicted for armed robbery. The indictment
20 alleges that on or about October 20, 2008, while armed
21 with a deadly weapon or while alleging either by action or
22 words that he was armed, he took currency and a purse from
23 the person or presence of Sharon Anastos and/or Destiny
24 Taylor, who were employees of Stop A Minute, which is
25 located at #1 South Piedmont Highway in Piedmont.

JURY QUALIFICATION

1
2 THE COURT: Now, potential witnesses in the case will
3 be James Cooper, William Brewer, Jeremy Days, Matthew
4 Owens, Matthew May, Mike Jarvis, Mike Fortner, James
5 Armstrong, and Mike Patterson [sic]. Mr. Peterson, Mr.
6 Armstrong, and Mr. Days are employed by the Greenville
7 County Department of Public [sic] Service. The other
8 names I called out are with the Greenville County
9 Sheriff's Office. Also, Sharon Anastos, Destiny Taylor,
10 Kenneth Spearman, Jerry Tyrone Morehead, and the
11 Defendant.

12 Now, I would inquire, at this time, if any member of
13 the jury panel is related by blood or marriage, or
14 connected by employment to the Defendant, or to any
15 potential witness in the case? Are you sensible or aware
16 of any bias or any prejudice with respect to the
17 Defendant, to the State, or to the subject matter of the
18 case, that being an alleged armed robbery, or do you know
19 any reason why you could not give this Defendant and the
20 State a fair and impartial trial based on the law and
21 evidence to be presented? If so, would you, please, stand
22 and give me your name.

23 (There was no response.)

24 THE COURT: Do I have any member of the panel who has
25 any connection, family, business, social, or otherwise.

1 with Bob Ariail, the Solicitor, in this case or Julie
2 Anders, who is the Deputy Solicitor handling this case, or
3 with law enforcement, whether that be federal, state,
4 county, or municipal? If so, would you, please, stand and
5 give me your name.

6 Your name?

7 JUROR #5, MARY ANDERSON: Mary Anderson.

8 THE COURT: All right.

9 JUROR #5, MARY ANDERSON: My husband works for
10 Homeland Security under ICE.

11 THE COURT: Would that fact in any way interfere with
12 your ability to be a fair and impartial juror on this
13 case?

14 JUROR #5, MARY ANDERSON: No.

15 THE COURT: Thank you, ma'am.

16 Your name, please?

17 JUROR #145, SHARON PLANER: Sharon Planer.

18 I have two sons in law enforcement.

19 THE COURT: Where are they in law enforcement?

20 JUROR #145, SHARON PLANER: I have a deputy sheriff
21 son in Tennessee. And I have a son who's been recently
22 re-hired in Manning. He's a correctional officer.

23 THE COURT: Would that fact in any way interfere with
24 your ability to be a fair and impartial juror on this
25 case?

1 JUROR #145, SHARON PLANER: No.

2 THE COURT: Thank you, ma'am.

3 Dorothy Manigault represents the Defendant. Do I
4 have any clients now or formerly of Ms. Manigault? If so,
5 please, stand and give me your name.

6 (There was no response.)

7 THE COURT: Do I have any member of the panel who has
8 been the victim -- or any member of your family that has
9 been the victim of a violent crime? If so, would you,
10 please, stand and give me your name.

11 (There was no response.)

12 THE COURT: Any other questions, Counsel?

13 MS. ANDERS: None from the State.

14 MS. MANIGAULT: None from the Defense, Your Honor.

15 THE COURT: The strikes are 10 for the Defense, and
16 five for the State.

17 Ladies and gentlemen, when your name is called, I'll
18 ask that you, please, come forward to this podium up
19 front, turn around, face counsel, and await for further
20 instructions.

21 Thank you.

22 JURY SELECTION

23 THE CLERK: Juror 153, James Rigdon.

24 (James Rigdon, a white male, came forward.)

25 THE CLERK: What says the State?

1 MS. ANDERS: Please present Mr. Rigdon.

2 THE CLERK: What says the Defendant?

3 MS. MANIGAULT: Please excuse Mr. Rigdon from the
4 case.

5 THE CLERK: All right. Mr. Rigdon, you may be
6 seated. You have been excused from this case.

7 Juror 63, Michael Erb.

8 (Michael Erb, a white male, came forward.)

9 THE CLERK: What says the State?

10 MS. ANDERS: Please present Mr. Erb.

11 THE CLERK: What says the Defendant?

12 MS. MANIGAULT: Please seat Mr. Erb.

13 THE CLERK: Mr. Erb, please, be seated here in the
14 jury box.

15 Thank you.

16 Juror 61, Mark Elbrecht.

17 (Mark Elbrecht, a white male, came forward.)

18 THE CLERK: What says the State?

19 MS. ANDERS: Please present Mr. Elbrecht.

20 THE CLERK: What says the Defendant?

21 MS. MANIGAULT: Please excuse Mr. Elbrecht from this
22 case.

23 THE CLERK: All right. Please be seated. You have
24 been excused from this case.

25 Juror 104, Michael Koby.

1 (Michael Koby, a white male, came forward.)

2 THE CLERK: What says the State?

3 MS. ANDERS: Please present Mr. Koby.

4 THE CLERK: What says the Defendant?

5 MS. MANIGAULT: Please excuse Mr. Koby from this
6 case.

7 THE CLERK: All right. Mr. Koby, you may be seated.
8 You've been excused from this case.

9 Juror 48, Christopher Cox.

10 (Christopher Cox, a white male, came forward.)

11 THE CLERK: What says the State?

12 MS. ANDERS: Please excuse Mr. Cox.

13 THE CLERK: All right. Mr. Cox, you may be seated.
14 You have been excused from this case.

15 Juror 223, Hilda Hudson.

16 (Hilda Hudson, a white female, came forward.)

17 THE CLERK: What says the State?

18 MS. ANDERS: Please excuse Ms. Hudson.

19 THE CLERK: All right. Ms. Hudson, you may be
20 seated. You've been excused from this case.

21 Juror 44, Victoria Collins.

22 (Victoria Collins, a white female, came forward.)

23 THE CLERK: What says the State?

24 MS. ANDERS: Please present Ms. Collins.

25 THE CLERK: What says the Defendant?

1 MS. MANIGAULT: Please excuse Ms. Collins from this
2 case.

3 THE CLERK: All right. Ms. Collins, you may be
4 seated. You have been excused from this case.

5 Juror 127, Deborah Misenheimer.

6 (Deborah Misenheimer, a white female, came forward.)

7 THE CLERK: What says the State?

8 MS. ANDERS: Please present Ms. Misenheimer.

9 THE CLERK: What says the Defendant?

10 MS. MANIGAULT: Please excuse Ms. Misenheimer from
11 this case.

12 THE CLERK: All right. Ma'am, you may be seated.
13 You've been excused from this case.

14 Juror 131, Dennis Morgan.

15 (Dennis Morgan, a white male, came forward.)

16 THE CLERK: What says the State?

17 MS. ANDERS: Please present Mr. Morgan.

18 THE CLERK: What says the Defendant?

19 MS. MANIGAULT: Please excuse Mr. Morgan from this
20 case.

21 THE CLERK: All right. Mr. Morgan, you may be
22 seated. You've been excused from this case.

23 Juror 140, Deborah Pearson.

24 (Deborah Pearson, a white female, came forward.)

25 THE CLERK: What says the State?

1 MS. ANDERS: Please present Ms. Pearson.

2 THE CLERK: What says the Defendant?

3 MS. MANIGAULT: Please excuse Ms. Pearson from this
4 case.

5 THE CLERK: All right. Ma'am, you may be seated.
6 You've been excused from this case.

7 Juror 144, Charles Pinkel.

8 (Charles Pinkel, a white male, came forward.)

9 THE CLERK: What says the State?

10 MS. ANDERS: Please present Mr. Pinkel.

11 THE CLERK: What says the Defendant?

12 MS. MANIGAULT: Please excuse Mr. Pinkel.

13 THE CLERK: All right. You may be seated.

14 Juror 225, Shobha Murari.

15 (Shobha Murari, a white female, came forward.)

16 THE CLERK: What says the State?

17 MS. ANDERS: Please excuse Ms. Murari.

18 THE CLERK: All right. Ma'am, you may be seated.

19 Juror 53, Yashira Miller.

20 (Yashira Miller, a white female, came forward.)

21 THE CLERK: What says the State?

22 MS. ANDERS: Please present Ms. Miller.

23 THE CLERK: What says the Defendant?

24 MS. MANIGAULT: Please seat Ms. Miller.

25 THE CLERK: Ms. Miller, please, have a seat in the

1 jury box.

2 Juror 45, Larry Conn.

3 (Larry Conn, a white male, came forward.)

4 THE CLERK: What says the State?

5 MS. ANDERS: Please present Mr. Conn.

6 THE CLERK: What says the Defendant?

7 MS. MANIGAULT: Please seat Mr. Conn.

8 THE CLERK: Mr. Conn, please, have a seat in the jury
9 box.

10 Juror 200, Pamela Watson.

11 (Pamela Watson, a white female, came forward.)

12 THE CLERK: What says the State?

13 MS. ANDERS: Please present Ms. Watson.

14 THE CLERK: What says the Defendant?

15 MS. MANIGAULT: Please excuse Ms. Watson.

16 THE CLERK: Ms. Watson, you may be seated.

17 Juror 134, Jennifer Napier.

18 (Jennifer Napier, a white female, came forward.)

19 THE CLERK: What says the State?

20 MS. ANDERS: Please present Ms. Napier.

21 THE CLERK: What says the Defendant?

22 MS. MANIGAULT: Please excuse Ms. Napier.

23 THE CLERK: All right. Ma'am, you may be seated.

24 Juror 177, James Stewart.

25 (James Stewart, a white male, came forward.)

1 THE CLERK: What says the State?

2 MS. ANDERS: Please present Mr. Stewart.

3 THE CLERK: What says the Defendant?

4 MS. MANIGAULT: Please seat Mr. Stewart.

5 THE CLERK: Mr. Stewart, please, be seated in the
6 jury box.

7 Juror 99, Thomas Jenkins.

8 (Thomas Jenkins, a white male, came forward.)

9 THE CLERK: What says the State?

10 MS. ANDERS: Please present Mr. Jenkins.

11 THE CLERK: What says the Defendant?

12 MS. MANIGAULT: Please seat Mr. Jenkins.

13 THE CLERK: Sir, please, have a seat in the jury box.

14 Juror 11, Henry Baldwin.

15 (Henry Baldwin, a black male, came forward.)

16 THE CLERK: What says the State?

17 MS. ANDERS: Please present Mr. Baldwin.

18 THE CLERK: What says the Defendant?

19 MS. MANIGAULT: Please seat Mr. Baldwin.

20 THE CLERK: Mr. Baldwin, please, have a seat in the
21 jury box.

22 THE COURT: Mr. Baldwin, take that first seat and
23 serve as Foreman for me, please, sir.

24 THE CLERK: Juror 221, Angie Donovan.

25 (Angie Donovan, a white female, came forward.)

1 THE CLERK: What says the State?

2 MS. ANDERS: Please present Ms. Donovan.

3 THE CLERK: What says the Defendant?

4 MS. MANIGAULT: Please seat Ms. Donovan.

5 THE CLERK: Ms. Donovan, please, have a seat in the
6 jury box.

7 Juror 178, Jason Stewart.

8 (Jason Stewart, a white male, came forward.)

9 THE CLERK: What says the State?

10 MS. ANDERS: Please present Mr. Stewart.

11 THE CLERK: What says the Defendant?

12 MS. MANIGAULT: Please seat Mr. Stewart.

13 THE CLERK: Sir, please, have a seat in the jury box.

14 Juror 74, Joseph Gingras.

15 (Joseph Gingras, a white male, came forward.)

16 THE CLERK: What says the State?

17 MS. ANDERS: Please present Mr. Gingras.

18 THE CLERK: What says the Defendant?

19 MS. MANIGAULT: Please seat Mr. Gingras.

20 THE CLERK: Sir, please, have a seat in the jury box.

21 Juror 5, Mary Anderson.

22 (Mary Anderson, a white female, came forward.)

23 MS. MANIGAULT: Your Honor, may we approach?

24 THE COURT: Yes.

25 (WHEREUPON, a bench conference was held.)

1 THE CLERK: What says the State?

2 MS. ANDERS: Please present Ms. Anderson.

3 THE CLERK: What says the Defendant?

4 MS. MANIGAULT: Please seat Ms. Anderson.

5 THE CLERK: All right. Ms. Anderson, please have a
6 seat in the jury box.

7 Juror 145, Sharon Planer.

8 (Sharon Planer, a white female, came forward.)

9 THE CLERK: What says the State?

10 MS. ANDERS: Please present Ms. Planer.

11 THE CLERK: What says the Defendant?

12 MS. MANIGAULT: Please seat Ms. Planer, subject to my
13 objection that I'll put on the record.

14 THE COURT: Sure.

15 THE CLERK: Ms. Planer, have a seat in the jury box.

16 Juror 146, Michael Powell.

17 (Michael Powell, a white male, came forward.)

18 THE CLERK: What says the State?

19 MS. ANDERS: Please present Mr. Powell.

20 THE CLERK: What says the Defendant?

21 MS. MANIGAULT: Please seat Mr. Powell.

22 THE CLERK: Mr. Powell, please, have a seat in the
23 jury box.

24 THE COURT: And give me one alternate. One for the
25 State, and two for the Defense.

1 THE CLERK: Yes, sir.

2 Juror 130, Ralph Moose.

3 (Ralph Moose, a white male, came forward.)

4 THE CLERK: What says the State?

5 MS. ANDERS: Please present Mr. Moose.

6 THE CLERK: What says the Defendant?

7 MS. MANIGAULT: Please excuse Mr. Moose from this
8 case.

9 THE CLERK: All right. Mr. Moose, please, be seated.
10 You have been excused from this case.

11 Juror 4, Marika Althoff.

12 (Marika Althoff, a white female, came forward.)

13 THE CLERK: What says the State?

14 MS. ANDERS: Please present Ms. Althoff.

15 THE CLERK: What says the Defendant?

16 MS. MANIGAULT: Please excuse the juror from this
17 case.

18 THE CLERK: You may be seated.

19 Juror 86, Paul Herr.

20 (Paul Herr, a white male, came forward.)

21 THE CLERK: What says the State?

22 MS. ANDERS: Please present Mr. Herr.

23 THE CLERK: What says the Defendant?

24 MS. MANIGAULT: Please seat Mr. Herr.

25 THE COURT: Now, the balance of the jury panel can

1 return back downstairs to the jury assembly room.

2 (WHEREUPON, the remaining jury panel members exited
3 the courtroom.)

4 THE COURT: Would counsel approach, please?

5 (WHEREUPON, a bench conference was held.)

6 THE COURT: Swear the jury, please.

7 THE CLERK: Ladies and gentlemen, please, stand for
8 the oath in this case. Please raise your right hand and
9 the proper response is, "I will."

10 (WHEREUPON, the jury was sworn at approximately
11 11:48 a.m.)

12 THE CLERK: Thank you.

13 Please be seated.

14 THE COURT: Now, ladies and gentlemen, there are some
15 matters I need to take up before we start this case. So
16 what I'm going to do, insofar as you're concerned, is
17 we're going to suspend at this time for lunch. We'll pick
18 back up after lunch with the testimony. I'll ask that you
19 be back in the jury room at 1:15. They will show you
20 where to report after lunch at 1:15.

21 Before excusing you for lunch, I need to read to you
22 an order issued by our Chief Justice, Jean Toal,
23 concerning your service as a juror this week and, in
24 particular, on this case.

25 And it reads as follows, The use of personal

1 communication devices has continued to increase
2 dramatically. Accordingly, I find it necessary to
3 supplement my order of August 25, 2000, related to the use
4 of pagers, cell phones, and other personal communication
5 devices in courtrooms to include the following direction
6 to the Court: The Court shall instruct jurors selected to
7 serve on a jury that until their jury service is
8 concluded, they shall not (A), discuss the case with
9 others, including other jurors, except as otherwise
10 authorized by the Court; (B), read or listen to any news
11 reports about the case; (C), use a computer, cellular
12 phone, or other electronic device with communication
13 capabilities while in attendance at trial or during
14 deliberation. These devices may be used during lunch
15 breaks, but may not be used to obtain or disclose
16 information prohibited in Subsection D below.

17 And Subsection D reads, Use a computer, cellular
18 phone, or other electronic device with communication
19 capabilities, or any other method to obtain or disclose
20 information about the case when they're not in court.
21 Information about the case includes, but is not limited
22 to, the following: Information about a party, witness,
23 attorney, or court officer, news accounts of the case,
24 information collected through juror research, or any other
25 topics raised or testimony offered by any witness, and

1 information collected through juror research on any other
2 topic the juror might think would be helpful in deciding
3 the case. Notice of the contents of this order shall be
4 given to jurors.

5 During the lunch recess, ladies and gentlemen, I'll
6 ask that you keep your badges on. Have them on when you
7 come back. I ask that you do that so that everyone
8 involved with the case will know you're a juror on this
9 case, and they should not discuss this case in your
10 presence.

11 So, with that, I'll ask that you be back in the jury
12 room at 1:15.

13 Thank you.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 11:53 a.m.)

16 THE COURT: Okay. Now, for the record, Ms. Manigault
17 objected to jurors Mary Kay Anderson and Sharon L. Planer
18 because of their having law enforcement in their family
19 backgrounds. And she asked that the Court excuse them for
20 cause, which I declined to do on the ground that they
21 responded to my question that that relationship would in
22 no way interfere with their ability to be a fair and
23 impartial juror.

24 Also, Ms. Manigault, you exercised all 10 of your
25 strikes. You had the list before you and you could have,

1 otherwise, exercised your strikes so that you could have
2 deleted them when they were reached.

3 Anything else now before we recess for lunch?

4 MS. MANIGAULT: Nothing else, Your Honor.

5 MS. ANDERS: No, sir.

6 THE COURT: All right. Be back at 1:15 promptly.

7 (WHEREUPON, a lunch break was taken.)

8 THE COURT: All right. Do you want to make brief
9 opening statements to the jury?

10 MS. ANDERS: Yes, Your Honor.

11 THE COURT: Bring the jury in.

12 (WHEREUPON, Court's Exhibit No. 1 was marked for
13 identification and admitted into evidence.)

14 (WHEREUPON, the jury came into open court at
15 approximately 1:25 p.m.)

16 (WHEREUPON, the bailiff handed the Court a note.)

17 THE COURT: Okay. Just take the jury out in the
18 hallway just a minute, please.

19 (WHEREUPON, the jury was excused from open court at
20 approximately 1:26 p.m.)

21 THE COURT: Now, bring Mr. Gingras in by himself.

22 (WHEREUPON, Juror #74, Joseph Gingras, entered the
23 courtroom.)

24 THE COURT: You can stand right there.

25 You've sent me a note. And, if I understand, you say

1 that since this case is about an armed robbery at a shop
2 in Piedmont that -- at the same place, I was a vendor at
3 that store, but I never heard them or their employees talk
4 about a robbery. I sold them maps and was in there once
5 every two months.

6 JUROR #74 JOSEPH GINGRAS: Correct.

7 THE COURT: Is that correct?

8 JUROR #74, JOSEPH GINGRAS: Yep.

9 THE COURT: The fact that you did service that
10 particular store, did you know the employees who were in
11 there, the ones that I've called out?

12 JUROR #74, JOSEPH GINGRAS: I didn't know anyone by
13 name because I had so many accounts. By face, I'm sure I
14 would recognize someone if they were in the courtroom
15 today.

16 THE COURT: Okay. Would that fact in any way
17 interfere with your ability to be a fair and impartial
18 juror on this case?

19 JUROR #74, JOSEPH GINGRAS: No, it would not.

20 THE COURT: The fact that you might recognize them as
21 witnesses in this case, would you tend to give more weight
22 to their testimony than you would to any other witness in
23 the case?

24 JUROR #74, JOSEPH GINGRAS: Yes.

25 THE COURT: You would?

1 JUROR #74, JOSEPH GINGRAS: Yes, because I would
2 recognize them.

3 THE COURT: And you would sit and hear them testify,
4 and would you give more weight to their testimony because
5 they were employees that you recognized?

6 JUROR #74, JOSEPH GINGRAS: Yes.

7 THE COURT: All right. Thank you, sir.

8 I would excuse you from further service on this case.

9 JUROR #74, JOSEPH GINGRAS: Okay.

10 THE COURT: I need you to report back down to the
11 jury assembly room.

12 JUROR #74, JOSEPH GINGRAS: Thank you.

13 THE COURT: Thank you for telling me that, sir.

14 (WHEREUPON, Juror #74, Joseph Gingras, exited the
15 courtroom.)

16 THE COURT: Bring the jury in.

17 MS. ANDERS: Your Honor, one question, has he said
18 anything about that to any other member on the jury panel?

19 THE COURT: I'm sure he hasn't.

20 (WHEREUPON, the jury came into open court at
21 approximately 1:29 p.m.)

22 THE COURT: Ladies and gentlemen, Mr. Gingras
23 reported to me that he had had some former connection with
24 employees at this particular store location. And, because
25 of that connection, I didn't feel like he should serve on

1 this jury, so I discharged him.

2 Now, my question to you is: Did Mr. Gingras discuss
3 that matter with any of you? Did he say anything to any
4 of you about that fact?

5 (WHEREUPON, all the jurors indicated in the
6 negative.)

7 THE COURT: Brief opening statement, Solicitor.

8 OPENING STATEMENTS

9 MS. ANDERS: May it please the Court.

10 Ms. Manigault.

11 Ladies and gentlemen of the jury, thank you for your
12 service today. I know that probably you have somewhere
13 else to be. But you're doing a very, very important job,
14 something that the State of South Carolina could not
15 function without. But what you're here to do today is to
16 decide whether Tra Vaughn Thomas, this Defendant, whether
17 he robbed the Stop A Minute on October 20th, 2008.

18 Now, there are some other co-defendants in this case.
19 But today is only Tra Vaughn's day in court. The other
20 fellow is not for us to consider today. So during the
21 course of this trial, it's my job to prove to you beyond a
22 reasonable doubt that the Defendant entered the
23 convenience store with Robert Thompson.

24 Robert Thompson and Tra Vaughn Thomas -- Robert is
25 taller. Robert entered first with a silver handgun in his

1 left hand. They come in. Tra Vaughn comes around behind
2 him and goes around the counter and he gets money from
3 both cash registers. He takes one of the clerk's purses
4 and he takes a box of Swisher Sweet Cigarillos. And those
5 are going to be really key to this case. So listen for
6 Cigarillos throughout. Okay. Because they're going to
7 play an important part. He knew exactly where to go for
8 them. And they were in and out in about a minute. This
9 was not a lengthy, drawn out robbery.

10 And you're going to see the video of exactly what
11 happened. So keep in mind the appearance of the gentlemen
12 in the video. Keep in mind what all was taken. They had
13 on hoodies. They had on ski masks. And they had their
14 sleeves pulled down over their hands. They did just about
15 everything right. But they did leave some clues to help
16 us figure out who, actually, did the robbery that night.

17 Tra Vaughn, this Defendant, went to the Stop A Minute
18 a good bit. He went frequently, sometimes every day. And
19 he bought Cigarillos often, grape were his favorite. One
20 of the clerks is going to testify that she, also, went to
21 high school with him, and that she was familiar with his
22 voice from the store and from school, because Tra Vaughn
23 spoke out a lot in school. That's something to consider.
24 That's one of the clues.

25 You're, also, going to -- you're going to get to

1 consider Tra Vaughn's own words. When he left the store,
2 he took off running and -- on Old Bessie Road. You're
3 going to see a map of all this to put it into perspective.
4 He was running. And one of his friends from the
5 neighborhood, a gentleman older than him, was driving and
6 he saw Tra Vaughn running. And he stopped because he knew
7 him. Tra Vaughn gets in the car with Jerry Tyrone
8 Morehead. And Tra Vaughn says, Me and Robert just robbed
9 the Stop A Minute. Okay. And they travel a little bit.
10 He takes him home. And, by the way, Tra Vaughn, also,
11 offers him a Cigarillo.

12 There are going to be a few other pieces of evidence
13 for you to consider. We're going to move as fast as
14 possible. We're going to be concise. But it is my job to
15 be thorough today. You're going to hear testimony from
16 the clerks. You're going to hear testimony from law
17 enforcement. And you're going to hear from that witness,
18 the guy who was driving the car that Tra Vaughn got into.
19 You're going to see the video. You're going to see a map.
20 You're going to see some stuff that was recovered during
21 the search warrant. And you're going to see pictures from
22 the store. That's going to be the basis of my case today.

23 Now, it's probably a good time to tell you that we're
24 most likely going to run into tomorrow. Okay. We are.
25 And I should, also, mention -- I ought to tell you why

1 you've been chosen as jurors. First, I think you're going
2 to be fair. That is the number one thing. And, second, I
3 believe that each of you is both intelligent and you have
4 common sense. So you've got to have two -- well, really,
5 all three things to be a juror, because this man deserves
6 a fair trial.

7 So listen carefully because this is an important
8 case. It's important to the State. It's important to
9 that man. And it ought to be important to you. There's
10 only one real question in this trial, period. There's no
11 question that the Stop A Minute was robbed that night.
12 You're going to see the video right here. You're going to
13 see two men go in --

14 THE COURT: Now, Solicitor, you're arguing in your
15 opening statement --

16 MS. ANDERS: Yes, sir.

17 THE COURT: -- which is improper. Please wind it up.

18 MS. ANDERS: You're going to see the video. And, at
19 the end of all the presentation of the evidence, it's
20 going to be your job to speak the truth. And the truth in
21 this case is that this Defendant is guilty of armed
22 robbery.

23 THE COURT: Ms. Manigault.

24 MS. MANIGAULT: May it please the Court.

25 Ladies and gentlemen, my name is Dorothy Manigault.

1 And I represent Tra Vaughn Thomas, who is charged in this
2 case.

3 Your Honor has read to you when you -- before you
4 were selected what the charges are, what the indictment
5 is. And that's what it is, it's merely a charge, a piece
6 of paper that gets a person into court. There are three
7 premises that the State operates under for a trial. The
8 first is the Defendant is presumed innocent. The fact
9 that the State just stood up here and said my client went
10 into the store, that's not proven. That's why you're
11 here. It's for you to decide after you hear the evidence,
12 hear the testimony, and see the tape. That's for you to
13 decide.

14 The presumption of innocence. A person does not have
15 to present any evidence to prove themselves innocent. The
16 State has to prove evidence to the jury to prove the
17 person guilty beyond a reasonable doubt. That's the
18 second premises. There just cannot be presumptions, or
19 maybes, or coincidences, or, you know, he came in and
20 bought Cigarillos all the time. I'm sure other people
21 came in and bought Cigarillos all the time.

22 So presumption of innocence, proof beyond a
23 reasonable doubt, and the other is the burden of proof is
24 on the State. The burden of proof is on the State. There
25 are mainly allegations at this point. My client has

1 entered a plea of not guilty. That's why we're here for
2 trial.

3 So I ask you to hold the State accountable to their
4 duties and obligations to the citizens of this county,
5 including my client. And, as you listen to the testimony
6 and hear the evidence, I believe you will bring back a
7 verdict that is not guilty.

8 Thank you.

9 THE COURT: All right. Solicitor.

10 MS. ANDERS: Your Honor, the State calls Destiny
11 Taylor.

12 THE CLERK: Ms. Taylor, if you'll come forward. And,
13 please, pause at the end of the bench, and raise your
14 right hand.

15 WHEREUPON,

16 DESTINY TAYLOR,
17 after first having been duly sworn, testified as follows:

18 THE CLERK: Thank you.

19 Please be seated.

20 THE WITNESS: Right here?

21 THE CLERK: Yes, ma'am.

22 Please state your full name for the record.

23 THE WITNESS: Destiny Taylor.

24 THE CLERK: Move in just a little bit.

25 Thank you.

DIRECT EXAMINATION

BY MS. ANDERS:

Q Good afternoon, Ms. Taylor.

Let's go back to October 20th, 2008. Where did you work at that time?

A Stop A Minute.

Q Where is that at?

A In Greenville.

Q Can you tell us which area of the county it's in?

A Piedmont.

Q And what street is it on?

A It's on Bessie Road.

Q Okay.

A It's on South Piedmont Highway.

Q All right. I'm going to show you what's been marked as State's Exhibit No. 12. Can you tell me what this is a map of?

A (There was no response.)

Q Do you see the Stop A Minute?

A No. I can't see it -- oh, yes.

Q Okay. Can you show me where it is?

A Right up there.

Q Can you touch it?

A Right up here.

Q Why don't we come back to this. Let's rewind.

1 Where did you grow up at?

2 A In Piedmont.

3 Q Where did you go to high school --

4 THE COURT: Pull up a little closer to the microphone
5 and speak right into it.

6 BY MS. ANDERS:

7 Q Where did you go to high school at?

8 A Woodmont High School.

9 Q And were you working at the Stop A Minute on October
10 20th, 2008?

11 A Yes.

12 Q Who was working that day?

13 A Me and Sharon.

14 Q Sharon who?

15 A I can't remember her last name.

16 Q Is she in the courtroom today?

17 A Yes.

18 Q Would you point her out?

19 A She's sitting right over there.

20 Q Can you describe what she's wearing?

21 A She's wearing a V-neck-type shirt, blue.

22 Q Okay. How was your day on October 20th?

23 A It was a normal day.

24 Q What did you do around dinner time?

25 A A friend of ours had went and got us something to

1 eat, brought it back to us, and --

2 Q Who was that friend?

3 A Kenny.

4 Q Okay. Is Kenny in the courtroom today?

5 A Yes.

6 Q Where is Kenny?

7 A Sitting beside Sharon.

8 Q Can you tell me what he's wearing?

9 A A blue shirt.

10 Q So Kenny brought you dinner?

11 A Uh-huh.

12 Q What happened next?

13 A He brought us dinner. He dropped it off and he left.
14 And not even five minutes later, two men came in and
15 robbed us at gunpoint.

16 Q Okay. Let's stop right there. I'm showing you
17 what's been marked as State's Exhibit No. 1. Have you
18 seen this before?

19 A Yes.

20 Q What is it?

21 A It's a video of the robbery that night.

22 Q How do you know?

23 A Because I watched it, and initialed it, and put the
24 date on it.

25 Q And can you just point that out?

1 A (Witness complied.)

2 MS. ANDERS: Your Honor, permission to publish.

3 THE COURT: Any objection?

4 MS. MANIGAULT: Not as long as it's the same copy
5 that we have -- that we were given.

6 THE COURT: I'm sorry.

7 MS. MANIGAULT: We have no objection as long as it
8 conforms to the copy that we have.

9 THE COURT: And you're offering it into evidence
10 then?

11 MS. ANDERS: Yes, sir.

12 THE COURT: Without objection.

13 (WHEREUPON, State's Exhibit No. 1 was admitted into
14 evidence.)

15 BY MS. ANDERS:

16 Q Ms. Taylor, would you step down just to the side so
17 you can see it and not be in the jurors view?

18 A (Witness complied.)

19 Q And would you flip those lights?

20 A Which ones?

21 Q We'll pause it for just one second.

22 THE COURT: Turn the lights down, please.

23 (Pause.)

24 THE COURT: All right. Turn the lights back on.

25 MS. ANDERS: Your Honor, it zooms in --

1 THE COURT: All right.

2 MS. ANDERS: Here we go.

3 (WHEREUPON, State's Exhibit No. 1 was played in
4 open court.)

5 BY MS. ANDERS:

6 Q You can have a seat.

7 What time did the robbery occur?

8 A It was 7:00 that evening.

9 Q The time on the video, what time was that?

10 A It was in military time. It was like 14:00 hours, or
11 something like that.

12 Q Is that correct?

13 A Yes.

14 Q I'm sorry?

15 A The time on it was correct, but it wasn't the actual
16 time that it happened.

17 Q I don't think I follow what you mean. What time did
18 the robbery occur?

19 A It happened about 7:00 that evening.

20 Q So it was the time shown on the screen for the DVD?

21 A That was not the right time.

22 Q Okay. Ms. Taylor, I'm showing you what's been marked
23 as State's Exhibit Nos. 2 through 11. Will you take a
24 look at those?

25 A (Witness complied.)

1 Q What are they pictures of?

2 A They're pictures of how the robbery happened that
3 night.

4 Q Now, that would just apply to State's Exhibit Nos. 2
5 and 3; right?

6 A Right.

7 Q What are the rest pictures of?

8 A Of the store.

9 THE COURT: Speak into the microphone a little
10 louder, please.

11 THE WITNESS: They are pictures of the store.

12 BY MS. ANDERS:

13 Q Would they be useful with your testimony?

14 A Yes.

15 Q Are they a fair and accurate representation of what
16 happened and how the store appeared?

17 A Yes.

18 MS. ANDERS: Your Honor, we would move these into
19 evidence.

20 THE COURT: Any objection to the photographs?

21 MS. MANIGAULT: No objection, Your Honor.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibit Nos. 2, 3, 4, 5, 6, 7, 8,
24 9, 10, and 11 were admitted into evidence.)

25 MS. ANDERS: Permission to publish.

1 THE COURT: Yes.

2 BY MS. ANDERS:

3 Q Destiny, let's go through these pictures. What is
4 State's Exhibit No. 2 first? What is it a picture of?

5 A It's a picture of the gentlemen coming into the
6 store.

7 Q And is that the front door?

8 A Yes.

9 Q How about State's Exhibit No. 3?

10 A It's a picture of him holding us at gunpoint and
11 telling us to give him the money.

12 Q Okay. What is this, State's Exhibit No. 4?

13 A It's a picture of the outside of the convenience
14 store.

15 Q Can you point out just behind you which door the men
16 came in?

17 A The main door, right there.

18 Q Okay. What is that a picture of?

19 A It's a picture of where the cash registers were.

20 Q Where is the picture taken from?

21 A The front door.

22 Q Okay. Can you show where you were standing when the
23 robbers entered the front door?

24 A I was standing over there in the kitchen area, right
25 there.

1 Q When you say "the kitchen area," do you mean back
2 here?

3 A Yes.

4 Q Okay. What happened?

5 A We were standing over there. We were eating our
6 supper for that night. And then they come in where the
7 Red Bull thing is, stood right there, pointed the gun at
8 us, and told us to give them the money.

9 Q Can you describe what the people that entered the
10 store looked like?

11 A One of them was tall, and the other one was shorter.
12 They wore hoodies and masks.

13 Q Can you describe their clothes?

14 A One of them had on a gray shirt, and the other one
15 was -- gray shirt, black mask. The other one was in all
16 black.

17 Q Okay. Moving on to State's Exhibit No. 6, what is
18 that a picture of?

19 A The surveillance around the store. That's the
20 cameras that do the whole store.

21 Q Okay. State's Exhibit No. 7, what does that -- what
22 is that showing?

23 A It's showing where she was going over to the
24 surveillance to look at it.

25 Q Who was the lady in the picture?

1 A That was the manager.

2 Q Was she there during the robbery?

3 A No.

4 Q The big bookcase-looking thing on the right, what is
5 that?

6 A That's where we kept all the Cigarillos and cigars
7 and stuff like that.

8 Q Where were the Cigarillos kept in the store?

9 A They were on the second shelf from the last.

10 Q Are they down here?

11 A Yes.

12 Q Which register is that that is shown in the picture?

13 A That is the second register. That was the register I
14 was running that night.

15 Q How many registers were in the store?

16 A Two.

17 Q Where were they located at?

18 A One was at the main door, and that one was right
19 there.

20 Q Were they both beside the door?

21 A Yes.

22 Q I'm showing you State's Exhibit No. 8. What is this
23 a picture of?

24 A It's a picture of the grape Cigarillos that were took
25 that night.

1 Q All right. Well, let's go back to where you were in
2 the store.

3 A Yeah.

4 Q You said the men came in the store?

5 A Yes.

6 Q What happened -- and you were in the kitchen?

7 A Yes.

8 Q What did you say? What happened next?

9 A Well, we ran from the kitchen over to the first
10 register, and we was getting the money out. Tra Vaughn
11 came around --

12 Q You said "Tra Vaughn," did you know it was Tra Vaughn
13 at that point?

14 A At that point, I was -- he had said to me -- when I
15 heard his voice, yes.

16 Q How did you know that?

17 A Because we had went to school together. And I know
18 him from coming in the store constantly.

19 Q When you say you went to school together, where did
20 you go to school at?

21 A Woodmont.

22 Q How long did you go to school there?

23 A I went to school there for about a year.

24 Q How did you know him?

25 A Just from friends knowing friends and everything from

1 school.

2 Q Did you ever speak to him?

3 A Yes.

4 Q And so you knew him from school?

5 A Uh-huh.

6 Q Did you recognize his voice in any other way?

7 A It's just one of those familiar voices you can
8 remember.

9 Q Did Tra Vaughn come in the store?

10 A Yeah. He come in the store quite a lot.

11 Q When you say "quite a lot," what does that mean?

12 A He come in there just about every night, two, three
13 times a day, maybe even more.

14 Q What did he buy when he came in?

15 A Grape Cigarillos.

16 Q Can you show on this picture where the grape
17 Cigarillos were?

18 A They're right behind the regular Cigarillos. They're
19 in the back.

20 Q Now, I believe I stopped you when you said you
21 recognized Tra Vaughn's voice.

22 A Yes.

23 Q So you recognized his voice. And what happened next?

24 A Then he asked me to get the money out of my register,
25 and I did.

1 Q What else was going on?

2 A Sharon was giving the money out of her register to
3 the other gentleman. And I was getting the money out of
4 that register for him.

5 Q Who was the gun pointed at?

6 A Sharon.

7 Q Was it ever pointed at you?

8 A When we were in the kitchen, it was pointed at both
9 of us. But the main person it was pointed at was Sharon.

10 Q What happened after you got the money out of your
11 register?

12 A They went -- they left. And I went and locked the
13 door.

14 Q Did he get anything else?

15 A Just besides the money and grape Cigarillos.

16 Q Did he take any of anybody's personal belongings?

17 A He took Sharon's purse.

18 Q And, again, when were the grape Cigarillos at that
19 night?

20 A On the second shelf from the bottom in the back.

21 Q Right here?

22 A Yes.

23 MS. MANIGAULT: Your Honor, I'm going to object. If
24 the Solicitor wants to --

25 THE COURT: What's your objection?

1 MS. MANIGAULT: The objection is the Solicitor is
2 testifying. And she's having the witness point out where
3 the objects were allegedly in the store.

4 BY MS. ANDERS:

5 Q Ms. Taylor, if you could, please, stand up and point.

6 A The grape Cigarillos were right here.

7 Q Were they always there?

8 A Yes.

9 Q What is State's Exhibit No. 9? What is this a
10 picture of?

11 A It's a picture of where the first register is that's
12 closest to the door, and where we would normally keep our
13 belongings, our purses and stuff like that.

14 Q Was anything taken from the vicinity of this
15 register?

16 A Just the money out of it.

17 Q Can you physically point out on the screen where the
18 money was taken from?

19 A The register is like right here and -- it doesn't
20 show it good enough.

21 Q Okay. Let me slide this picture in. Does this help
22 you?

23 A That's the register the money was taken from.

24 Q Okay. Show us where, please.

25 A This is the register. This is the cash drawer.

1 Q Okay. And was anything else taken from there?

2 A Underneath the register, there was -- where we kept
3 the cigarettes, her purse was in the -- underneath the
4 counter in the second slot where we keep the cigarettes
5 stocked.

6 Q And let me show you State's Exhibit No. 10. Can you
7 show us now?

8 A The area where the Camel cigarettes are is where
9 Sharon's purse was at, and that was taken.

10 Q And when you say "Camel cigarettes", is that over
11 here?

12 A Yes.

13 Q Okay. Was anything else taken during the incident?

14 A Just besides the money, Cigarillos, and her purse.

15 Q Were you touched at any point?

16 A I was shoved a little bit.

17 Q Who shoved you?

18 A Tra Vaughn.

19 Q What happened?

20 A I was shoved by the shorter man, the shorter one
21 without a gun.

22 Q What happened after the shorter man collected
23 everything from behind the counter?

24 A He grabbed the cigarettes and then they took off out
25 the door.

1 Q What did you do after they left?

2 A I went and locked the door.

3 Q Did you call anybody?

4 A Yes, we called the cops. And then we called our
5 manager.

6 Q Who showed up?

7 A (There was no response.)

8 Q When you called, what happened next?

9 A The officer showed up. And then our manager had
10 showed up.

11 Q Okay. Did you talk to anybody?

12 A I talked to quite a few people that night.

13 Q Who did you talk to?

14 A I don't know names.

15 Q Okay. Do you know how much money was taken from the
16 store?

17 A Maybe about \$800.

18 Q Can you, please, describe the height of the two men
19 that entered the store?

20 A One looked like he was about six feet tall. The
21 other one was about my height.

22 Q And who had the gun?

23 A The taller gentleman.

24 Q And in which direction did the men from the store
25 run?

1 A They ran towards the car wash, towards like going
2 down Piedmont Highway.

3 MS. ANDERS: Please answer any questions
4 Ms. Manigault has for you.

5 THE COURT: Ms. Manigault.

6 CROSS-EXAMINATION

7 BY MS. MANIGAULT:

8 Q Ms. Taylor, how long had you worked at the store?

9 A Right at a year.

10 Q About one year -- at the time of this incident, you
11 had worked there about a year?

12 A Yes.

13 Q And what shift did you work?

14 A It varied, but I was working second shift that night.

15 Q What time is second shift?

16 A Second shift starts anywhere from 3:00 to 5:00.

17 Q 3:00 to 5:00?

18 A Uh-huh.

19 Q So how long does a shift last?

20 A Until closing. It depended on how our manager wrote
21 the schedule out for that week.

22 Q And what time is closing?

23 A Closing -- if it was a weekend, we would close at
24 12:00. And on a weekday, we would close at 11:00.

25 Q And the date that this incident happened, was it a

1 weekday or weekend?

2 A I'm not sure.

3 Q Not sure. All right. Do you recall -- and you said
4 Sharon was working with you that day?

5 A Yes, ma'am.

6 Q And you don't know Sharon's last name?

7 A No, ma'am.

8 Q How long had you worked with Sharon before?

9 A We had worked off and on the whole time I was there.

10 Q About a year?

11 A Uh-huh.

12 Q And do you recall giving a statement to the police?

13 A Yes.

14 Q Investigator Mike Jarvis?

15 A Yes.

16 Q I'm going to show you a copy of your statement and
17 ask you, if you would, just read over it briefly to
18 yourself. And then right here, particularly, read these
19 next four lines to yourself.

20 A (Witness complied.)

21 Q On that statement, did you give the investigator the
22 name of a guy that went to Woodmont High School with you
23 named Jay Smith?

24 A Yes.

25 Q And you thought it was Jay Smith, and you recognized

1 his voice?

2 A Yes.

3 Q Because you went to Woodmont High School with him?

4 A Yes.

5 Q And that turned out to not be true?

6 A Yes.

7 Q Now, the two males that came into the store, you said
8 one was taller, about six foot. And how tall are you?

9 A 5'4".

10 Q 5'4". So you're saying that the second male was
11 about your height?

12 A Yes.

13 Q So that would be 5'4"?

14 A Yes.

15 Q All right. Did you see any -- could you see either
16 of the faces?

17 A No, ma'am.

18 Q Could you see the face on the shorter gentleman?

19 A No.

20 Q And what kind of clothing did the shorter gentleman
21 have on?

22 A He had on a hoody-type sweater thing with a ski mask
23 over his face and a pair of blue jeans.

24 Q And a pair of blue jeans. Do you sell regular
25 Cigarillos?

- 1 A Yes, ma'am.
- 2 Q And how many customers come to your store to buy
- 3 Cigarillos?
- 4 A A few.
- 5 Q A few?
- 6 A Yeah.
- 7 Q So Cigarillo is a popular cigarette to sell?
- 8 A Yes.
- 9 Q Or cigar to sell?
- 10 A Yes.
- 11 Q And so you sell how many different kinds, grape,
- 12 regular?
- 13 A Out of the Cigarillo Swisher Sweets, we sell the
- 14 regular and the grape out of those two kinds.
- 15 Q And that was a very popular brand to sell?
- 16 A Yes.
- 17 Q Did other black males come in the store, besides Tra
- 18 Vaughn, to buy --
- 19 A Black males, white males, yes.
- 20 Q I didn't hear you.
- 21 A Black males, white males come in to buy them.
- 22 Q So other people came into the store?
- 23 A Yeah.
- 24 Q So did other short people come into the store to buy
- 25 Cigarillos?

1 A Yes.

2 Q Did you ever sell Tra Vaughn regular Cigarillos, to
3 your knowledge?

4 A Not that I can remember.

5 Q Did you work the day after this incident?

6 A No.

7 Q When did you return to work?

8 A I did not return to work.

9 Q You did not return to work?

10 A No.

11 Q Okay. And I believe you testified that you said you
12 went to Woodmont High School for about one year?

13 A Yes.

14 Q Well, this Jay Smith that you previously identified
15 by voice as one of the persons that came into the store,
16 how long did you go to school with him at Woodmont?

17 A We had went through elementary school and middle
18 school with him -- or I had.

19 Q You had?

20 A Yes.

21 Q And this is the Jay Smith that you recognized the
22 voice that night and you told the police that's who it
23 was?

24 A Yes. I thought it was the taller guy.

25 MS. MANIGAULT: All right. Thank you.

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 BY MS. ANDERS:

4 Q Who did you think Jay Smith's voice belonged to?

5 A The taller guy.

6 Q And did you recognize the voice belonging to the
7 shorter guy?

8 A Yes.

9 Q And who did you think that was?

10 A Tra Vaughn.

11 Q And just to clear up, why didn't you see their faces?

12 A Because they had ski masks on.

13 MS. ANDERS: That's all.

14 Thank you.

15 THE COURT: You can step down.

16 MS. ANDERS: We call Sharon Anastos to the stand.

17 THE CLERK: Ma'am, if you'll pause at the end of the
18 bench. And, please, place your left hand on the Bible and
19 raise your right hand.

20 WHEREUPON,

21 SHARON ANASTOS,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 Please be seated.

25 Please state your full name for the record.

1 THE WITNESS: Sharon Anastos.

2 DIRECT EXAMINATION

3 BY MS. ANDERS:

4 Q Good afternoon, Sharon.

5 Did you work at the Stop A Minute on October 20th,
6 2008?

7 A Yes.

8 Q How long had you worked there?

9 A Over a year.

10 Q Describe that day for us.

11 A It was a normal day. We was busy.

12 Q What happened around --

13 THE COURT: Wait a minute.

14 You're going to have to get into the microphone and
15 speak up, please.

16 THE WITNESS: It was a normal day.

17 BY MS. ANDERS:

18 Q What happened around dinner time?

19 A Two men came in with guns.

20 Q Let's back up. What did you do for dinner that day?

21 A A friend of ours went and got us something to eat.

22 Q Who?

23 A Kenny.

24 Q Kenny who?

25 A I don't know his last name.

1 Q Is Kenny in the courtroom today?

2 A Yes.

3 Q Point him out for us.

4 A He's right there in the blue shirt.

5 Q Who else was in the store with you? Who was working
6 with you that day?

7 A Destiny.

8 Q Who is Destiny?

9 A Walker [sic], Destiny Walker.

10 Q The lady who just testified?

11 A Yes.

12 Q Okay. What happened that night around 7:00 p.m.?

13 A We had just got done eating and two men came in, and
14 one had a gun. And they told us to give them the money.

15 Q Can you describe the men?

16 A One was tall, and one was short.

17 Q Do you know how tall or short they were?

18 A One was about six foot, I guess, I'm not sure. And
19 the other one was about 5'4".

20 Q What did they take from the store that night?

21 A They took money, a box of Cigarillos, and my
22 pocketbook.

23 Q Do you know how much money they took?

24 A I'm not sure.

25 Q Where was your purse at?

1 A Right at my feet below the first cash register.

2 Q All right. Let's rewind, please.

3 You said the men came in the store?

4 A Yes.

5 Q What happens next?

6 A Well, they -- one -- they told us to give them the
7 money. So I went over there and got to my register. And
8 I put my drawer on top of the counter and gave -- put the
9 money in the bag.

10 And then the shorter guy came around the corner and
11 he came around the back and told Destiny to get the money
12 out of the second register. And, after she did that, he
13 grabbed the Cigarillos. And he came over there at my feet
14 and got my pocketbook. And then they left.

15 Q Who had the gun?

16 A The taller guy.

17 Q Where was the gun pointed?

18 A At me.

19 Q Did you recognize anybody?

20 A No.

21 Q Why?

22 A Because they was covered with ski masks and had
23 hoodies on.

24 Q Did you talk to the police?

25 A Yes.

1 MS. ANDERS: Please answer Ms. Manigault's questions.

2 THE COURT: Ms. Manigault.

3 CROSS-EXAMINATION

4 BY MS. MANIGAULT:

5 Q Ms. Anastos, what was the volume of the voices?

6 A What was what?

7 Q You said the two men came into the store and one told
8 you to get the money?

9 A Yes.

10 Q So how loud were they talking?

11 A At first, I thought they was kidding. So, I mean,
12 they was just hollering, Give me the money.

13 Q So it wasn't loud, kind of a soft tone?

14 A Well, no, it wasn't soft. They was just hollering,
15 Give me your money.

16 Q Okay. And I think you said it was your purse that
17 was taken?

18 A Yes.

19 MS. MANIGAULT: Could I have State's Exhibit Nos. 2
20 through 11?

21 MS. ANDERS: Yes.

22 BY MS. MANIGAULT:

23 Q I'm going to show you State's Exhibit No. 5. What's
24 that a picture of?

25 A The first cash register at the counter.

1 Q All right. Now, is there an opening at the end of
2 that first cash register?

3 A No. It's at the end. To get around?

4 Q Correct. I'm going to show you State's Exhibit
5 No. 7. Is that a picture of the inside of the store?

6 A Yes, ma'am.

7 Q Is that the opening to come behind the cash register?

8 A Yes. That comes around the second cash register.

9 Q Right. And this tall cabinet that says "GRI," what
10 is that?

11 A That's where we keep our Cigarillos, and our dip, and
12 everything.

13 Q So if I were standing at the opening at the end of
14 the counter, I could see unblocked the large shelf where
15 the cigarettes are?

16 A Yes, ma'am.

17 Q And where the Cigarillo were?

18 A Yes.

19 Q On State's Exhibit No. 8, is that the bottom part of
20 this large cabinet where the Cigarillos were?

21 A Yes.

22 Q And on State's Exhibit No. 8, is there a readable
23 sign down there that says "Swisher Sweets"?

24 A Yes.

25 Q So if I was standing -- okay. Let's say that the

1 edge of this is the counter where the opening is.

2 A Uh-huh.

3 Q And this right here is the shelf where the cigarettes
4 are. And if I'm standing here in the opening, would I be
5 able to see the cigarette shelf?

6 A You would.

7 Q Because to my right is the kitchen area; is that
8 correct?

9 A Right.

10 Q And to the left is the cash register?

11 A Yes, ma'am.

12 Q And straight in front of me -- or a little to the
13 side to the left is the cigarette shelf?

14 A Yeah, on the side of them.

15 Q Correct. And this -- State's Exhibit No. 8 shows
16 that at the bottom, and it says "Swisher Sweets"; is that
17 correct?

18 A Yes.

19 Q Did you sell Cigarillos any time to anybody?

20 A Yes.

21 Q Did you sell them to white males and black males, too?

22 A Yes.

23 MS. MANIGAULT: I beg the Court's indulgence.

24 (Pause.)

25 MS. MANIGAULT: No further questions.

1 THE COURT: Any redirect?

2 MS. ANDERS: No, sir.

3 THE COURT: Thank you.

4 You can step down.

5 MS. MANIGAULT: Your Honor, may we approach?

6 THE COURT: Sure.

7 (WHEREUPON, a bench conference was held.)

8 THE COURT: We'll take a short recess.

9 Take the jury out.

10 (WHEREUPON, the jury was excused from open court at
11 approximately 2:12 p.m.)

12 THE COURT: We'll take a very short recess.

13 (WHEREUPON, a break was taken.)

14 (WHEREUPON, Court's Exhibit No. 2 was marked for
15 identification and admitted into evidence.)

16 THE COURT: Are we ready?

17 MS. MANIGAULT: Yes, sir.

18 MS. ANDERS: Yes, sir.

19 THE COURT: Bring the jury in.

20 (WHEREUPON, the jury came into open court at
21 approximately 2:25 p.m.)

22 MS. ANDERS: I call Deputy William Brewer.

23 THE CLERK: Sir, please, pause at the end of the
24 bench. Place your left hand on the Bible and raise your
25 right hand.

1 WHEREUPON,

2 WILLIAM BREWER,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 Please be seated.

6 Sir, please, state your full name for the record.

7 THE WITNESS: William Brewer.

8 DIRECT EXAMINATION

9 BY MS. ANDERS:

10 Q Deputy, where are you employed?

11 A Greenville County Sheriff's Office.

12 Q And what's your job title?

13 A Uniform patrol deputy.

14 Q What does that mean you do?

15 A I'm just an everyday road deputy answering calls.

16 Q On October 20th, 2008, did you respond to a call at
17 the Stop A Minute?

18 A Yes, ma'am, I did.

19 Q What did you find when you got there?

20 A When I arrived on scene, Deputy Lanford was already
21 on the scene, as well as -- I believe his last name is
22 Owens and Deputy Wheatley. Deputy Lanford was already
23 obtaining some of the information from the clerks. And
24 Deputy Wheatley and the K-9 unit were searching the area.

25 Q Did they recover anything?

1 A No, ma'am.

2 Q What did you physically do when you got there?

3 A Whenever I got there, I started taking some of the
4 information from the clerks, from Deputy Lanford. And I
5 started obtaining information on my own. I started taking
6 statements and asked for the video. And I saw it whenever
7 the manager arrived.

8 Q Did you get the video? Did you watch the video?

9 A Yes, ma'am, I did.

10 Q What's your --

11 A I watched the video.

12 Q And was there audio on that video when you were
13 watching it?

14 A Yes, ma'am.

15 Q Okay. Did you get a copy of the video?

16 A Yes, ma'am, I did.

17 Q Was there audio on the copy of the video?

18 A I'm not sure. I didn't watch the copy of the video
19 after we left the store. We just watched it at the store.

20 Q Who else came to the location?

21 A Deputy Wise. I was with my field training deputy,
22 Deputy Cooper.

23 Q Did you see forensics?

24 A Yes, ma'am. I believe it was -- I didn't know his
25 number at that time, but it was Forensics Officer Days.

1 Q What did you see Officer Days doing?

2 A Days was trying to obtain some latent prints from the
3 store, as well as taking photographs of the store.

4 Q Who obtained the video?

5 A If I recall correctly, I believe I placed it in
6 property and evidence that day.

7 Q So after -- did you watch the video after it was
8 dubbed?

9 A Not after it was dubbed from the store. After we
10 left -- we watched it in the store on the video cameras
11 there. After that, it was taken and placed in property
12 and evidence.

13 MS. ANDERS: Please answer Ms. Manigault's questions.

14 THE WITNESS: All right.

15 THE COURT: Ms. Manigault.

16 MS. MANIGAULT: I have no questions, Your Honor.

17 THE COURT: Thank you.

18 Step down.

19 MS. ANDERS: Your Honor, we call Investigator Mike
20 Jarvis.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right hand.

23 WHEREUPON,

24 MICHAEL STEVEN JARVIS,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please be seated.

3 Please state your full name for the record.

4 THE WITNESS: Michael Steven Jarvis.

5 DIRECT EXAMINATION

6 BY MS. ANDERS:

7 Q Where do you work, Investigator?

8 A The Greenville County Sheriff's Office.

9 Q What's your job title?

10 A I'm, currently, an investigator in the family
11 violence division.

12 Q What does an investigator do?

13 A We investigate, basically, violent crimes in the
14 cases that are assigned to us that uniform patrol does not
15 investigate.

16 Q What sort of education and training do you have?

17 A I went to the -- I graduated from Bob Jones
18 University. I got a Bachelor's Degree there. And then I
19 went to the Criminal Justice Academy, which is a nine-week
20 course. I graduated from there and have been working at
21 the sheriff's office for about 13 years -- almost 13
22 years.

23 Q How long have you been an investigator?

24 A About three years.

25 Q What was your job title back in October of 2008?

1 A During that time, I was assigned to the armed robbery
2 unit in the criminal investigations division as an armed
3 robbery investigator.

4 Q How did you get to be involved with this case?

5 A I was assigned this case. We, basically, are just
6 assigned cases. There were four of us in the office at
7 that time. And I was assigned this particular case as the
8 lead investigator to continue the investigation that the
9 uniform patrol deputies had initiated on the night that
10 this robbery occurred.

11 Q What did you do when you received the case?

12 A The first thing I did was read the report to see if
13 there was any type of leads, anything I could investigate.
14 And I, also, reviewed the video -- the surveillance video
15 from the night of the incident.

16 Q Was there sound when you watched the video?

17 A I don't recall there being any sound.

18 Q Where did you get the video from?

19 A Property and evidence.

20 Q Were there any leads in the case?

21 A Yes. The one thing that I noted was that the
22 deputies that night had spoken with some of the victims
23 there. And one of the victims had provided a possible
24 name of one of the suspects as Tra Vaughn. When -- in the
25 initial report, it's written as first name Tray, last name

1 Vaughn.

2 So I started to look into a person named Tray, last
3 name Vaughn to see if I could identify anybody that that
4 may closely match or -- where I could continue an
5 investigation.

6 Q Were you able to find Mr. Vaughn?

7 A I was not.

8 Q So what did you do next?

9 A The next thing I did was I made contact with one of
10 the victims, Destiny Taylor. And I had her come into the
11 office after the statement from Ms. Taylor about the
12 incident.

13 Q What did you learn from her?

14 A Basically, the same thing. She, again, brought up --
15 after speaking to her, she, again, brought up the name Tra
16 Vaughn, and that her and Sharon were both familiar with
17 Tra Vaughn.

18 Q What did you do after taking the statement?

19 A After taking the statement, we received a tip in the
20 robbery office.

21 Q And let me stop you before we go there.

22 A Sure.

23 Q Was any evidence recovered from the store?

24 A What type of evidence? Any type?

25 Q Any type.

1 A No, ma'am.

2 Q Did --

3 A Not that I'm aware of.

4 Q Did the video come from the store?

5 A Just the video, yeah.

6 Q Did forensics send any evidence your way?

7 A No.

8 Q Why?

9 A I don't think they found any latents or any other
10 type of forensic evidence that would help me identify
11 anybody in this case.

12 Q So you -- I believe I stopped you when you said you
13 got a tip.

14 A Yes.

15 Q What do you mean?

16 A I got a tip. Somebody called in and spoke with one
17 of our investigators in the office and said that they had
18 some information on a person possibly involved in this
19 robbery by the name of Tra Vaughn.

20 Q Did you follow-up?

21 A Yes. We made contact with him and had him come into
22 the office.

23 Q When you say "him," who is him?

24 A His name is Jerry Tyrone Morehead.

25 Q What did you learn from Mr. Morehead?

1 A After speaking with Mr. Morehead, he was, also,
2 familiar with a person named Tra Vaughn. But Tra Vaughn
3 was, actually, just a first name and not first and last
4 name. And he provided the last name of Thomas.

5 And based on the information that Mr. Morehead gave
6 us, we were able to obtain warrants for the Defendant and
7 for, also, two other people that were involved in this
8 case.

9 Q Okay. What did you do after you got arrest warrants?

10 A After I got arrest warrants -- I believe it was the
11 next day after I obtained an arrest warrant for Mr. Thomas
12 that I obtained a search warrant for Mr. Thomas'
13 residence, which is located at [REDACTED], which
14 is in the neighborhood just directly behind where the
15 convenience store is. It's probably maybe a block or so.

16 MS. ANDERS: Actually, may I have the easel, please?

17 BY MS. ANDERS:

18 Q I'm showing you what's been marked as State's Exhibit
19 No. 12, are you familiar with this?

20 A Yes. It looks like an aerial map of the area where
21 the convenience store is.

22 Q Would this aid your testimony?

23 A Sure.

24 Q Okay. Can you, please, indicate on the map where the
25 Stop A Minute is?

1 A The Stop A Minute is right here.

2 Q You can go ahead and draw on the map. It's okay.

3 A All right. It's right here.

4 Q Which way is the front door of the Stop A Minute?

5 A This is -- if you can see it, this area here is like
6 the covered area where the pumps are. And this is the
7 actual building. The front door is right here facing this
8 direction towards this intersection right here.

9 Q What is that big white thing that sticks out from the
10 building?

11 A That's the building itself. And then there's like a
12 car wash right next to it in this area.

13 Q Would you circle the car wash?

14 A Yes.

15 Q All right. Now, let's go back to those search
16 warrants.

17 A Okay.

18 Q Where did you get a search warrant for?

19 A I got the search warrant for the address that was
20 listed as Tra Vaughn Thomas' home address that was on his
21 current driver's license.

22 Q Did you go to that house?

23 A Yes. After obtaining the search warrant, yes, we
24 responded to that residence and conducted a search of the
25 residence.

1 Q Did you recover anything?

2 A No.

3 Q Did you recover anything linking the Defendant to the
4 crime?

5 A Nothing linking him to the crime. We did locate some
6 other things, but nothing related to this crime.

7 Q After that first search warrant, did you do anything
8 else?

9 A That particular day?

10 Q No, sir. What did you do next in relation to this
11 case after that search warrant?

12 A (There was no response.)

13 Q Did you speak with anyone else?

14 A I did learn of a witness. His name is Kenneth
15 Spearman. He had some -- also, possibly witnessed several
16 of the suspects standing on the side of the business just
17 prior to the robbery.

18 Q Did you meet with Mr. Spearman at any point?

19 A Yes, ma'am. I think it was on the 17th that I met
20 with him at his place of employment and spoke to him about
21 that.

22 Q What did you learn from Mr. Spearman?

23 A At that time, I already had identified three people
24 and had active warrants. And so I developed a photo
25 lineup of the three suspects that I had in this case. One

1 of the lineups was -- included Mr. Thomas.

2 Q Are you sure?

3 A Am I sure what?

4 Q The lineups related to which co-defendant?

5 A Yes. And I, also, showed him a lineup of the
6 co-defendant, Robert Thompson, and, also, I believe the
7 third co-defendant.

8 Q Who did you show Mr. Spearman a lineup of?

9 A I showed him a lineup of Robert Thompson, who is the
10 co-defendant in this case.

11 Q Did you show him a lineup of anyone else?

12 A Yes.

13 Q You did?

14 A Yes.

15 Q Who?

16 A Tra Vaughn Thomas and, also, Jamil Brown.

17 Q Are you sure?

18 A Yes.

19 Q And who did the witness identify from the lineup?

20 A He identified Robert Thompson.

21 Q Okay. After that, did you do anything else in this
22 case?

23 A On the 19th, I, also -- Robert Thompson, the
24 co-defendant in this case, was located at another
25 residence at [REDACTED]. And it was a trailer.

1 I think it was [REDACTED]

2 Q Can you show us on the map where that was, where that
3 location was? Is it on the map?

4 A It is not on that map, no.

5 Q Which direction would it be from the Stop A Minute?

6 A From the Stop A Minute, you see where Piedmont
7 Highway is right here, it would be going up Piedmont
8 Highway back towards Greenville.

9 Q Okay. And, also, just can you show where the first
10 search warrant was on the map?

11 A Sure. Let's see. The first search warrant that we
12 did was right there. That was Tra Vaughn Thomas' address.

13 Q Okay. And just, also, can you show which direction
14 the final search warrant was?

15 A Yeah. It's up in this area up here. I guess if you
16 kept going up that way, maybe, let's say, three-quarters
17 of a mile, something like that, or a mile down on the
18 right-hand side is where the trailer park was, maybe four
19 or five trailers.

20 Q Were you present when the search warrant was
21 executed?

22 A Yes.

23 Q What did you find there -- and, actually, let me back
24 up. Why did you acquire a search warrant for that
25 residence?

1 A Because that's where we located -- that day that I
2 obtained a search warrant, we located the co-defendant,
3 Robert Thompson, at that residence. That's where he was
4 laying his head. So we believed that there possibly may
5 be fruits of the crime, or any evidence that we may be
6 able to collect, that may be related to this case.

7 Q Did you, actually, execute the search warrant at that
8 house that day?

9 A Yes.

10 Q What, if anything, did you find?

11 A The two items of interest that we did find were a
12 black ski mask and Swisher Sweet Cigarillos.

13 Q Where were those found?

14 A They were found -- it was a single-wide trailer. And
15 it was in -- there was a counter, like a kitchen-type
16 counter that separated the living room and the kitchen.
17 And right on the counter near where Robert Thompson had
18 been laying on the couch, we found the ski mask and the
19 Swisher Sweet Cigarillos right next to each other.

20 MS. ANDERS: Your Honor, I think we have a matter to
21 take up.

22 THE COURT: All right. Take the jury out for a
23 minute, please.

24 (WHEREUPON, the jury was excused from open court at
25 approximately 2:37 p.m.)

1 THE COURT: All right.

2 MS. ANDERS: Your Honor, I was just about to
3 introduce the black ski mask that was found at Robert
4 Thompson's house and the Swisher Sweet Cigarillos that
5 were found.

6 THE COURT: All right.

7 MS. ANDERS: And I believe Ms. Manigault objects.

8 THE COURT: What's your objection?

9 MS. MANIGAULT: Your Honor, my objection is this is a
10 trial on Tra Vaughn Thomas. The Solicitor herself
11 selected to bifurcate the case and not try Robert
12 Thompson. This search warrant was executed at a residence
13 where Robert Thompson, according to the officer, was
14 found. My client was not there.

15 So we're objecting that this search warrant has
16 nothing to do with my client and the evidence that's
17 presented on him.

18 THE COURT: How about that, Solicitor?

19 MS. ANDERS: Your Honor, it's the State's position
20 that Robert and Tra Vaughn robbed the place together.
21 It's on video. And because they acted together, any
22 fruits of the crime found at the co-defendants house,
23 under the hand of one is the hand of all, belong to the
24 Defendant on trial as well.

25 THE COURT: If I remember correctly, now, Destiny

1 Taylor testified she identified both of the Defendants by
2 their voice?

3 MS. ANDERS: No, sir.

4 She only identified Tra Vaughn Thomas by his voice.
5 She thought she knew who the tall fellow was, but she had
6 the wrong guy.

7 THE COURT: Well, then what connection would that
8 have to this Defendant?

9 MS. ANDERS: The Defendant's own words that he said
10 to Jerry Tyrone Morehead, who's going to testify next.

11 THE COURT: Well, I think you're going to have to
12 present that first.

13 MS. ANDERS: Okay. Well, Your Honor, we would just
14 ask permission to recall Detective Jarvis to the stand.

15 THE COURT: Okay. Step down.

16 Now, who is the next witness?

17 MS. ANDERS: It would be Jerry Tyrone Morehead.

18 THE COURT: Is this the one you --

19 MS. ANDERS: Yes, Your Honor.

20 It's the matter we took up with you, actually, at the
21 bench.

22 THE COURT: All right. I was informed by the
23 Solicitor in the presence of Ms. Manigault that the
24 family -- the relatives of this Defendant have been saying
25 or making threats to Jerry Tyrone Morehead. Now, I don't

1 know whether that's true or not. But I need for you to
2 understand that if that is true, then that constitutes
3 threatening a witness in the case and is a very serious
4 felony and is punishable by a long prison term. And if
5 that is true, I will not condone it. And I hope you
6 understand that.

7 Now, for that reason, I'm going to take this witness'
8 testimony out of your presence. So, at this time, you can
9 excuse yourself and wait out in the hallway.

10 MS. MANIGAULT: Your Honor, may I enter my objection
11 to the Court's decision?

12 THE COURT: Certainly.

13 MS. MANIGAULT: Thank you.

14 And the basis of my objection is this, Your Honor,
15 that the Solicitor has informed the Court of that. We
16 don't have any sworn affidavits by the witness that's
17 coming up or any sworn affidavits by the State.

18 THE COURT: Wait a minute, tell me that again,
19 Ms. Manigault.

20 MS. MANIGAULT: The basis of my objecting to my
21 client's family being excluded from the testimony --

22 THE COURT: Okay.

23 MS. MANIGAULT: -- is the Solicitor has informed the
24 Court that her witness, Mr. Jerry Morehead, has said that
25 the family has threatened him. However, we do not have

1 any sworn affidavits to that fact or anything else.

2 THE COURT: All right. I understand.

3 MS. MANIGAULT: Thank you.

4 THE COURT: All right. Bring the jury --

5 MS. ANDERS: One more matter, Your Honor.

6 Mr. Morehead has a lengthy criminal record. And I
7 would like to clarify what is and is not admissible
8 against him.

9 THE COURT: Okay.

10 MS. ANDERS: Starting most recently in 2009, four
11 counts of fraud check and three counts of forgery; 2008,
12 shoplifting; 2003, shoplifting; 2002, forgery; 2000,
13 resisting arrest and third or subsequent property offense
14 times five. Those would be the crimes involving
15 dishonesty or carrying a year or greater.

16 THE COURT: Now, wait a minute. Now, the last two
17 you mentioned --

18 MS. ANDERS: Resisting arrest.

19 THE COURT: That's not impeachable.

20 MS. ANDERS: Okay. And a third or subsequent
21 property offense five counts, which carries up to 10
22 years, Your Honor.

23 THE COURT: What kind of property offense? I mean,
24 was it larceny?

25 MS. ANDERS: I'm sorry, sir?

1 THE COURT: Larceny?

2 MS. ANDERS: Most likely.

3 But this is his record, sir. I will go through --
4 it's listed as third or subsequent --

5 THE COURT: Do you know, Ms. Manigault, yourself?

6 MS. MANIGAULT: No, sir.

7 (Pause.)

8 MS. ANDERS: They are forgeries, Your Honor.

9 THE COURT: Okay. That's impeachable.

10 MS. ANDERS: So just for clarification, should we
11 refer to them as felonies, or by the title of their
12 offense name, like forgery and --

13 THE COURT: Pardon?

14 MS. ANDERS: Your Honor, should I refer to them as
15 felonies, or should I refer to them by name as forgery,
16 and shoplifting, and fraud check?

17 THE COURT: Does it make any difference to you,
18 Ms. Manigault?

19 MS. MANIGAULT: I would prefer to refer to them as
20 felonies.

21 MS. ANDERS: It's probably most accurate to refer to
22 them as they are, forgery, shoplifting.

23 THE COURT: Yes.

24 I think they should be referred to as charged.

25 MS. MANIGAULT: Well, Your Honor, dealing with a

1 witness with credibility, I think that I have a little
2 more leeway since it's the State's witness.

3 THE COURT: Well, no, I'm not going to allow -- you
4 can impeach based on the crimes themselves. Okay.

5 MS. ANDERS: So the admissible crimes, for the
6 record, for impeachment would be five counts of forgery in
7 2000; one count of forgery in 2002; a shoplifting from
8 2003; a shoplifting from 2008; four fraud checks in 2009
9 and --

10 THE COURT: Yes.

11 MS. ANDERS: Thank you, sir.

12 THE COURT: All right. Bring the jury in.

13 MS. MANIGAULT: Your Honor, before you bring the jury
14 in, I'm going to hand up this summary of the next witness'
15 crimes of conviction, and ask the State -- the Court if
16 you would allow me to go past the 10 years.

17 MS. ANDERS: Your Honor, obviously, we object.

18 And, additionally, I don't believe Ms. Manigault
19 provided us with any notice that she intended to go beyond
20 the 10-year point.

21 THE COURT: Well, I think she's entitled to go beyond
22 the 10-year period, based on these charges.

23 MS. ANDERS: Which charges would be admissible, Your
24 Honor? Just so its clear for the record.

25 THE COURT: What is this 1984 OGUPP?

1 MS. ANDERS: Obtaining goods under false pretenses.

2 THE COURT: Well, that's impeachable.

3 MS. ANDERS: And, Your Honor, we would just argue
4 that under Rule 403 that this is not necessarily -- it's
5 more prejudice -- it causes more prejudice than more
6 proof. And we would just request that everything to 1993
7 would not be admissible.

8 THE COURT: And I would overrule that objection. I
9 think all of these that are listed here have to do with
10 honesty. Moral turpitude is no longer the language used.

11 All right. Ms. Manigault, I'll allow it.

12 MS. MANIGAULT: Thank you, Your Honor.

13 THE COURT: All right. Bring the jury in.

14 MS. ANDERS: Your Honor, I need a moment, please. I
15 beg the Court's indulgence.

16 THE COURT: Okay. Hold up the jury.

17 MS. ANDERS: Your Honor, I would just respectfully
18 request that Mr. Thomas' neighbors, also, be excluded from
19 the courtroom.

20 THE COURT: Who?

21 MS. ANDERS: Mr. Thomas' neighbors, this nice couple
22 in the back, that they, please, be excluded from the
23 courtroom during Mr. Morehead's testimony.

24 THE COURT: And who are they?

25 MS. ANDERS: They are the Defendant's neighbors, sir.

1 THE COURT: All right.

2 MS. MANIGAULT: Your Honor, they all live in the same
3 community. It's a small community. There's no evidence
4 that there are threats made by them.

5 THE COURT: I'm going to ask them to step out in the
6 hallway.

7 MS. MANIGAULT: Okay.

8 THE COURT: All right. Bring the jury in.

9 (WHEREUPON, the jury came into open court at
10 approximately 2:53 p.m.)

11 THE COURT: Now, ladies and gentlemen, Investigator
12 Jarvis is going to stand aside for the time being while
13 the State presents another witness to you. And then he'll
14 be recalled after the conclusion of this other witness.

15 MS. ANDERS: Your Honor, the State calls Jerry Tyrone
16 Morehead.

17 THE CLERK: Mr. Morehead, if you'll pause at the end
18 of the bench, please. Place your left hand on the Bible
19 and raise your right hand.

20 WHEREUPON,

21 JERRY TYRONE MOREHEAD,
22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 Please be seated.

25 Please state your full name for the record.

1 THE WITNESS: Jerry Tyrone Morehead.

2 DIRECT EXAMINATION

3 BY MS. ANDERS:

4 Q Good afternoon, sir.

5 What do you do?

6 A For employment?

7 Q Yes, sir.

8 A I'm disabled.

9 THE COURT: Pull in a little closer to the
10 microphone, please.

11 THE WITNESS: I'm disabled.

12 BY MS. ANDERS:

13 Q What part of Greenville County do you live in?

14 A I live in Piedmont.

15 Q Do you know where the Stop A Minute is on Piedmont
16 Highway?

17 A Yes.

18 Q How long have you lived in that area?

19 A 47 years.

20 Q Do you live close to the Stop A Minute?

21 A Yes.

22 Q Do you know the Defendant?

23 A Yes.

24 Q How?

25 A He was practically raised up in the neighborhood.

1 Q Sir, I'm having a real hard time hearing you --

2 THE COURT: Pull up to the microphone.

3 THE WITNESS: He was practically raised up in the
4 neighborhood.

5 BY MS. ANDERS:

6 Q Okay. Let's go back to October 20th, 2008. What
7 were you doing around 7:00 that night?

8 A I was in my sister's car.

9 Q Were you sitting? Were you driving?

10 A Driving.

11 Q Where were you driving?

12 A Up to the store.

13 Q Which store?

14 A Stop A Minute.

15 Q Do you see the map to your right?

16 A Yes.

17 Q Can you step down and, please, point out where you
18 were driving?

19 A Just point it out? Do I have something to point with?

20 Q Let me, actually, give you a marker, sir.

21 THE COURT: Will you show him the store, please.

22 BY MS. ANDERS:

23 Q This is where the store --

24 A I know where the store is.

25 Q You know. Okay.

1 A I live here. So I was going down --

2 Q Will you, actually, draw on the map where you were
3 driving, please?

4 A This is where I live right here. And this is the way
5 I was going. I was going down Playground Road. This is
6 Bessie Road right here. The store --

7 Q Sir, we're having a hard time hearing you.

8 A Oh, all right.

9 Q If you could --

10 THE COURT: Mr. Morehead, would it be possible for
11 you to stand on the other side of the map and face me?

12 THE WITNESS: Okay. I live right here. This is
13 Playground Road. I was going down Playground Road into
14 Bessie Road right here. Okay. You make a left, like
15 that. This is the store here. Okay. And this right here
16 is -- it's supposed to be Old Bessie Road, but they've got
17 it as East Main Street now. It's two railroad tracks -- a
18 railroad, bridge -- a bridge, but a railroad tracking
19 running over. It sits right here, and another one sits
20 right here.

21 BY MS. ANDERS:

22 Q Did you drive under the bridge?

23 A Yep. I run up under the bridge right here.

24 Q Why did you go that way if you were going to the
25 store?

1 A Because -- I was going that way because up on the
2 railroad tracks and things, they had a box sitting here.

3 Q I'm sorry. A what?

4 A A box sitting there on the hill.

5 Q Uh-huh.

6 A They had a box sitting here and the lights was
7 blinking off and on. And I was trying to see if the train
8 was coming, but it wasn't nothing coming.

9 Q Okay.

10 A I was going up under the bridge. You go all the way
11 up here and there's a stop to go down, but you don't go to
12 Piedmont Highway right there. You got to go all the way
13 under a bridge before you get to Piedmont Highway.

14 Q So you were driving that night?

15 A Uh-huh.

16 Q Did you run into the Defendant?

17 A Yep, up under this bridge right here.

18 Q Can you, please, describe what happened?

19 A I stopped. Tra Vaughn got in the car. He acted like
20 he was out of breath and stuff. And I asked him, What's
21 up? He said him and Robert went in the store and robbed
22 the store, which is right here at the Stop A Minute. And
23 he had Cigarillos in his pocket. And I dropped him off.

24 Q What was Tra Vaughn wearing that night?

25 A Black jeans and a hoody.

1 Q Please have a seat, sir.

2 Did you see anyone else?

3 A No.

4 Q How did Tra Vaughn appear?

5 A Scared.

6 Q What did you do when he told you that he robbed the
7 store?

8 A Nothing. I let him out.

9 Q Where did you let him out?

10 A It's over here off of -- in front of my house. All
11 right. When he said that, I went up here. There used to
12 be an old Duke Power parking lot right here. I turned
13 around and came back down this road, stopped, hit Bessie
14 Road again, and came down.

15 And then I hit On the Line Drive right here, headed
16 across On the Line Drive, and got to the stop sign at
17 Palace Avenue. And if you go up, they have a house right
18 here, right in this curve. And I dropped him off there.

19 Q How did you feel when he told you that he robbed the
20 store?

21 A I couldn't believe it at first. But then it was just
22 the crew he was socializing with.

23 Q Did you know Robert?

24 A Yes.

25 Q How?

- 1 A From hanging around in the neighborhood.
- 2 Q What is Robert's name?
- 3 A What is his name?
- 4 Q Yeah. What's his full name?
- 5 A Oh, God. Thompson, Robert Thompson -- I don't know
- 6 what it is. I think it's Thompson.
- 7 Q How tall is Robert?
- 8 A He's about six foot. I know he taller than me.
- 9 Q How tall is Tra Vaughn?
- 10 A About 5'5", 5'4". I know he's shorter than me.
- 11 Q All right. Mr. Morehead, you're pretty familiar with
- 12 the courthouse; right?
- 13 A Uh-huh.
- 14 Q You have a prior record? You have a criminal
- 15 history, and it goes back to 1983; right?
- 16 A Right.
- 17 Q And, most recently, from 2009, you have forgery
- 18 convictions and fraud check convictions?
- 19 A Right.
- 20 Q And from 2008 and 2003, you have shoplifting
- 21 convictions; correct?
- 22 A Shoplifting got dropped.
- 23 Q You have forgery convictions going all the way back
- 24 to the '80's; correct?
- 25 A Right.

1 Q How many do you have?

2 A From 1980 up until now?

3 Q Roughly, sir, yes.

4 A I'm not going to calculate. But I will calculate
5 that I'm in white collar crime. I do white collar crime.
6 I do forgeries, checks, credit cards. I had a bad
7 experience in my life when I got out of jail and couldn't
8 maintain in the job field. You see what I'm saying? I
9 had to come up with money to do this and that. I was on
10 drugs.

11 So, yeah, I'm a white color crime specialist. If you
12 look at my record -- if you go back from 1980, I'm quite
13 sure the only things you're going to see is forgeries,
14 forgeries, forgeries, forgeries, credit card thefts. You
15 know what I'm saying?

16 Q Have you ever held a job?

17 A Have I? Believe it or not, I was going to school to
18 become a registered nurse. And I worked at St. Francis
19 and nursing homes.

20 Q When was that?

21 A The last job I held was in 1989. I had to have two
22 hip replacements, so that stopped me from working.

23 Q Have you had surgery recently?

24 A I had surgery on July the 26th.

25 Q What was the surgery for?

1 A It was for a revision of my hip, because my cup came
2 out.

3 Q Have you received anything or been promised anything
4 at all for testifying today?

5 A No.

6 Q Will you receive any benefit from testifying today?

7 A No.

8 MS. ANDERS: Please answer Ms. Manigault's questions.

9 THE COURT: Ms. Manigault.

10 MS. MANIGAULT: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. MANIGAULT:

13 Q Mr. Morehead, you testified -- where do you live?
14 Bessie Road? Playground? Old Bessie? Gin? Where do you
15 live?

16 A My address is [REDACTED]. That's where I receive
17 my mail. But I live on [REDACTED] coming up --
18 because I live -- as a matter of fact, I'm the only house
19 on the corner right there where the circle is at.

20 Q Okay. This is the store right here; correct?

21 A Right.

22 Q And going down this way, this is Sue Cleveland
23 School; is that right?

24 A Right.

25 Q And this first left turn coming from the store is

1 what, Oil Mill Road; is that right?

2 A Uh-huh.

3 Q And Oil Mill runs into Patterson; is that correct?

4 A Patterson runs into Oil Mill.

5 Q So they intersect?

6 A Uh-huh.

7 Q So you could go Oil Mill, turn left onto Patterson,
8 and go up Patterson?

9 A Uh-huh.

10 Q Now, if you came out of the front door of the store
11 and turned right, you would be going back up Piedmont
12 Highway?

13 A If you come back out to the end of the store at the
14 red light and make a right, you would be going up Piedmont
15 Highway.

16 Q And if you go on the road beside the store, that
17 would be Bessie Road; is that right?

18 A Right.

19 Q Now, when you came down the side of the store on
20 Bessie Road, that's where East Main Street is; is that
21 correct?

22 A Uh-huh.

23 Q And that's the area where you described to the Court
24 that there are two railroad --

25 A It's two bridges.

1 Q Two bridges?

2 A It's two bridges with railroad tracks running across
3 them.

4 Q And there is another bridge where the road runs
5 across. So there --

6 A Where Highway 20 runs across.

7 Q So there's really three overpasses down here?

8 A Uh-huh.

9 Q Now, you live on Gin Road, and you say you, actually,
10 live on Playground. Where on Playground, according to
11 this map, do you live?

12 A See where that circle is at? It's right there on the
13 corner.

14 Q On the end?

15 A Uh-huh.

16 Q So it's Playground and Gin --

17 A And Gin, uh-huh, right. It's really Playground and
18 Patterson.

19 Q Playground and Patterson?

20 A Uh-huh.

21 Q Because the sign is turned?

22 A Uh-huh.

23 Q So you live up here, and Tra Vaughn lives down here?

24 A Uh-huh.

25 Q Where you marked; is that right?

1 A Uh-huh.

2 Q All right. Now, in here, you testified that you were
3 headed to Stop A Minute --

4 A Uh-huh.

5 Q -- store?

6 A Uh-huh.

7 Q What was the reason you were going down East Mill,
8 instead of going straight up Bessie to the store?

9 A I already had answered that question. I told you
10 they had -- it's railroad tracks. And they go up Bessie
11 Road, too. And they've got flashing lights, and the
12 lights was flashing.

13 Q Okay. And so --

14 A So I could go up under there and beat the train or
15 wait for the train to pass.

16 Q So you saw lights flashing, and you went down East
17 Main under the underpass?

18 A Yeah. I turned -- when I came out on Bessie Road,
19 the lights was flashing. I turned down East Main.

20 Q All right. And when you turned down East Main,
21 that's where you say you ran into Tra Vaughn; is that
22 correct?

23 A Right.

24 Q All right. You stopped and he jumped in the car,
25 according to your testimony?

1 A Yes.

2 Q He told you all this stuff that he had just done; is
3 that right?

4 A Right.

5 Q He named all these people?

6 A No. He ain't named all these people.

7 Q Who did he name?

8 A He named Robert.

9 Q Okay. That's the only person he named?

10 A (Witness nodded.)

11 Q Okay. Now -- and after he told you that, you said
12 you came up here to the old -- was it Duke Power?

13 A Yes.

14 Q Duke Power yard and turned around?

15 A Uh-huh.

16 Q Isn't there a fence and a locked gate?

17 A No, Ms. Manigault. You can go down and see it ain't
18 no locked gate. It's wide open. They've got a fixing
19 place there now.

20 Q So that's on East Main?

21 A Uh-huh.

22 Q All right. And if you had gone all the way out to
23 East Main, you would have gone to Greenville Street?

24 A Right. I don't know the name of that street, but I
25 guess it's Greenville Street.

1 Q And the First Baptist Church is over here; is that
2 right? There's a big church over here?

3 A I don't know. Yeah, I guess.

4 Q Okay. Now, do you recall giving a statement to an
5 investigator?

6 A The Solicitor?

7 Q No, sir. Do you recall signing a statement for
8 Officer Mike Fortner?

9 A Who?

10 Q Did you give a written statement and sign a statement
11 back on November 11, 2008?

12 A Yes. But I don't know the officer's name.

13 Q Okay. That's fine. I'm going to give you a copy of
14 the statement. And I'm going to ask you to briefly review
15 it to yourself quietly. Don't read anything to me. Just
16 look over it.

17 A (Witness complied.)

18 Q Is that your statement?

19 A Yes.

20 Q All right. Mr. Morehead, on the very first line, it
21 says you told the officer, I was on my way home from
22 Holidays, which was a little convenience store during the
23 time of this robbery. Is that what's on there?

24 A Yes, it is.

25 Q Today, you testified that you were leaving home going

1 to not Holidays, but Stop A Minute?

2 A Yes.

3 Q So which one is it?

4 A I was going to Stop A Minute.

5 Q Okay. So when you told the officer on November 11,
6 2008, that you were on your way home from Holidays, which
7 is a small convenience store, that was a lie?

8 A If I'm not mistaken, I believe I told that officer
9 that I was on the way to the store, to Stop A Minute.
10 Holidays is another store. It used to be a store. As a
11 matter of fact, I think that might have been the name of a
12 store.

13 Q So you're saying the officer put the wrong thing in
14 your statement?

15 A Yes, ma'am. I can tell you another --

16 Q And --

17 A I can tell you another lie he put in there that was
18 wrong.

19 Q All right. Sir, let me ask you this. You said that
20 you saw Tra Vaughn running up under the bridge. I don't
21 know the name of the road. Is that on your statement?

22 A Yes, it is.

23 Q I saw him and slowed down, and he jumped in?

24 A And I asked him why he was running.

25 Q Yes. But later on, you said, I dropped Tra Vaughn

1 off at Porter's house. And the street name is On the Line
2 Road?

3 A Uh-huh.

4 Q Today, you testified that you drove up to Patterson
5 Street and dropped Tra Vaughn off?

6 A Uh-huh.

7 Q So what you told the officer on November 11, 2008, is
8 a lie?

9 A I dropped Tra Vaughn off on Patterson Avenue.

10 Q So you didn't drop Tra Vaughn off at On the Line
11 Road?

12 A No.

13 Q So the officer put the wrong thing in your statement?

14 A Ma'am, I see you --

15 Q Okay. Did the officer put the wrong thing in your
16 statement?

17 A I guess he did. Because I know I dropped him off at
18 Patterson Avenue.

19 Q Okay. Here, again, is a store; right?

20 A Uh-huh.

21 Q This is the intersection where the red light is?

22 A Uh-huh.

23 Q That's Piedmont Highway in front of the store?

24 A Uh-huh.

25 Q On the side of the store is Bessie Road?

1 A Uh-huh.

2 Q On the Line is the first right turn after you pass
3 the store and go over the railroad tracks; is that right?

4 A Yes, it is.

5 Q So you would have to drive over two sets of railroad
6 tracks before you get to On the Line to turn right, coming
7 from the store?

8 A Coming from the other store on Bessie Road.

9 Q Okay. And so where does -- where is Porter's house
10 on On The Line? Isn't his house right here on this
11 corner?

12 A He used to live down there on the corner. I don't
13 know if it was on On the Line, or I don't know if it was
14 Playground Road. I don't know the address.

15 Q So when you -- your statement is, I dropped him off
16 at Porter's house on On the Line Road?

17 A Uh-huh.

18 Q All right. So if he used to live here on On the Line
19 Road at the corner, that would have been where you dropped
20 him off; is that right?

21 A Right.

22 Q All right. And where did the officer get the
23 statement after you said you dropped him off at Porter's
24 house on On the Line Road? And Porter is Tra Vaughn's
25 mother's boyfriend. You didn't tell him that?

1 A No. He asked me did I know John Porter and Mercedes
2 Bivens. And I said, Mercedes is Tra Vaughn's mother, and
3 Porter is her boyfriend.

4 Q All right. So this statement that you gave on
5 November 11th is -- there are some serious major points in
6 there that's wrong?

7 A Right.

8 Q Okay. You said you've lived in this community for 47
9 years?

10 A Yes.

11 Q And did you go to the Stop A Minute store a lot?

12 A Just about every day.

13 Q Every day. What did you buy when you go -- when you
14 went?

15 A Cigarettes, scratch off's, money orders.

16 Q All right. And you said this is a neighborhood that
17 you know just about everybody in the neighborhood?

18 A Yes, ma'am, that grew up in the neighborhood.

19 Q That grew up in the neighborhood --

20 MS. MANIGAULT: I beg the Court's indulgence.

21 (Pause.)

22 BY MS. MANIGAULT:

23 Q Now, you said that when you went down East Main
24 Street and crossed under the railroad bridge that you
25 didn't see anybody else?

1 A Huh-uh.

2 Q All you saw was Tra Vaughn; is that right?

3 A Yes.

4 Q Okay. Why would you offer to the Court that Tra
5 Vaughn would just jump in your car and start talking about
6 a robbery and naming names?

7 A Say what now?

8 Q Why would you offer -- what would your testimony be
9 that Tra Vaughn would just jump in your car and start
10 naming names?

11 A What would my testimony be for that?

12 Q Yes.

13 A I can't give a testimony on that. You need to ask
14 your -- the man you're representing that. Why did he get
15 in my car and start calling out names?

16 Q So you want the Court to believe that that, actually,
17 happened?

18 A I want the Court to believe what my testimony is,
19 what my statement is.

20 Q But you just -- I'm sorry?

21 A I know that's what happened. You know what I'm
22 saying?

23 Q But you just -- go ahead. I'm sorry. Go ahead.

24 A No. That's what I want them to believe.

25 Q You just said that the testimony -- the statement you

1 gave the officers on November 11th is not true, some of
2 the stuff is not true.

3 A The officers was asking me questions. And they was
4 asking me more questions about Robert than Tra Vaughn.

5 Q And is that your signature?

6 A Yes, it is.

7 Q Okay. And did you read the statement before you
8 signed it?

9 A Yes. And you can, also, look at the statement where
10 you can see my signature is over lots of things that I
11 said. If you look real good -- I don't know if the
12 Solicitor seen it. You can see where the officer sitting
13 over here about where he was talking about Porter and did
14 I drop him off at Porter's house.

15 Q But you signed that statement as your statement you
16 gave on November 11th?

17 A Yes.

18 THE COURT: Any redirect?

19 MS. MANIGAULT: I'm not finished, Your Honor.

20 THE COURT: I'm sorry.

21 BY MS. MANIGAULT:

22 Q In 1984, you were convicted of obtaining goods under
23 false pretenses; is that right?

24 A Yes.

25 Q In 1985, you had a forgery charge; is that right?

1 A Right.

2 Q In 1988, you had two forgery charges; is that right?

3 A Right.

4 Q In 1989, you had six forgery charges?

5 A Right.

6 Q In 1995, you had three more forgery charges?

7 A Right.

8 Q In 1996, you had five more forgery charges; is that
9 right?

10 A Right.

11 Q In 1996, you had an additional 17 forgery charges?

12 A Right.

13 Q In 1998, you had three forgery charges?

14 A Right.

15 Q In 1999, you had 14 forgery charges; is that right?

16 A Right.

17 Q In 2000, you had five forgery charges?

18 A Right.

19 Q In 2002, you had a forgery charge, one?

20 A Right.

21 Q In 2003, you had a shoplifting; is that right?

22 A It got dropped.

23 Q In 2008, you had another shoplifting?

24 A It got dropped.

25 Q Okay. In 2009, you had three forgeries; is that

1 right?

2 A Right.

3 Q In 1991, you had another forgery; is that right?

4 A Right.

5 Q And you're asking us to believe what you're saying
6 today?

7 A I'm asking the jury and the Court to believe what I
8 said, Ms. Manigault.

9 MS. MANIGAULT: All right. Thank you.

10 No further questions.

11 REDIRECT EXAMINATION

12 BY MS. ANDERS:

13 Q This occurred two years ago; right, about two years?

14 A Right.

15 Q Why are you testifying today?

16 A Why?

17 Q Yes, sir.

18 A Because it was a robbery.

19 Q What does that mean to you?

20 A Violence.

21 Q Why are you testifying today?

22 A Because I'm trying to do the right thing. I'm trying
23 to straighten up, you know.

24 MS. ANDERS: Nothing further.

25 THE COURT: Mr. Morehead, tell me again what it is

1 that you say that Mr. Thomas told you when he got in the
2 car? What did he say?

3 THE WITNESS: No. He just told me about him and
4 Robert had did the robbery.

5 THE COURT: And who is Robert?

6 THE WITNESS: I guess --

7 THE COURT: Do you know him?

8 THE WITNESS: I know him just coming through the
9 neighborhood and growing up. I really just don't know him
10 like that. I couldn't tell you nothing about him, you
11 know. The only person I do know is Tra Vaughn.

12 THE COURT: Well, did he just say "Robert"?

13 THE WITNESS: Yeah.

14 They all hung together. They ran around together all
15 the time.

16 THE COURT: I mean, how did you know it was Robert
17 whatever his last name is?

18 THE WITNESS: Sir?

19 THE COURT: How did you know it was Robert Thompson?

20 THE WITNESS: Because I went to -- I live in that
21 neighborhood. And then I got a little niece around their
22 age. And all of them be trying to talk to her --

23 THE COURT: No. I'm trying to find out from you,
24 sir --

25 THE WITNESS: No. That's what I'm telling you now.

1 I asked her who he was one time, and she gave me his name.
2 So I remember from that.

3 THE COURT: What I'm trying to understand is, when
4 you said that Tra Vaughn Thomas got in your car, he told
5 you that he had just robbed this store.

6 THE WITNESS: He said that they had just hit the Stop
7 A Minute.

8 THE COURT: All right. Who was "they"?

9 THE WITNESS: Him and Robert.

10 THE COURT: Robert who?

11 THE WITNESS: That's what I'm saying, he just said
12 Robert.

13 THE COURT: Well, how did you know it was --

14 THE WITNESS: Because my niece had told me his name.
15 Because I had went home and said, Sierra [phonetic], I
16 said, What's that dude's name, Robert's last name that be
17 around with them. And then she said it.

18 THE COURT: All right. Anything else?

19 MS. ANDERS: Not from the State.

20 THE COURT: Step down, please.

21 All right. Take the jury out, please.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 3:21 p.m.)

24 THE COURT: Mr. Jarvis, come back around, please.

25 All right, sir. Tell me what it is that Jerry Tyrone

1 Morehead told you when you interviewed him.

2 MR. MICHAEL JARVIS: The statement was, actually,
3 taken by Investigator Fortner. He's the one who,
4 actually, interviewed --

5 THE COURT: Where is Mr. Fortner?

6 MS. ANDERS: Your Honor, we didn't intend to call
7 him. Because it would have been hearsay if Investigator
8 Fortner testified as to what Mr. Morehead told him. But
9 we can have him here immediately.

10 THE COURT: Solicitor, I'm trying to understand how
11 you are tying in this Defendant with the information that
12 Ms. Manigault objected to before I allowed -- or had this
13 other witness testify.

14 MS. ANDERS: Your Honor, that would be that this
15 Defendant and Robert Thompson are charged as co-defendants
16 in this case.

17 THE COURT: I understand that.

18 MS. ANDERS: Okay.

19 THE COURT: But the other one is not on trial.

20 MS. ANDERS: Yes, sir.

21 THE COURT: All right. Go ahead.

22 MS. ANDERS: And our argument would be that they are
23 co-defendants, based on Mr. Morehead's statement. And
24 also, additionally, although I don't believe it's
25 admissible in this trial, we have an eyewitness who can

1 put Robert Thompson at the scene. I don't believe that's
2 admissible here. But that's how the State knows that
3 they're co-defendants, based on Mr. Morehead's
4 statement --

5 THE COURT: Well, how can you use evidence found in
6 Robert Thompson's house against this Defendant?

7 MS. ANDERS: Because the hand of one is the hand of
8 all, Your Honor. And even though Mr. Thompson is the one
9 who had the gun, the items that were found beside him
10 would still be admissible in the trial of Mr. Thomas.

11 THE COURT: I don't understand that, Solicitor. Why?

12 MS. ANDERS: Because they're co-defendants, sir. And
13 the hand of one is the hand of all. So evidence -- there
14 was one crime with two people. So evidence of that crime
15 would be admissible in the trial of both co-defendants,
16 whether that trial is together or separate.

17 Perhaps, I don't understand what you're asking me.
18 I'm sorry.

19 THE COURT: Ms. Manigault.

20 MS. MANIGAULT: Your Honor, my objection remains the
21 same, that they executed two search warrants. One search
22 warrant was at [REDACTED], which is the
23 residence of my client.

24 THE COURT: And they found nothing?

25 MS. MANIGAULT: They found nothing.

1 MS. ANDERS: Your Honor, they found ammunition, which
2 we're not seeking to introduce.

3 THE COURT: I understand.

4 MS. MANIGAULT: Nothing related to this crime.

5 MS. ANDERS: Yes, sir -- or ma'am.

6 MS. MANIGAULT: And the second search warrant was
7 executed at a different address where the officer
8 testified that he learned that's where Robert was laying
9 his head.

10 So my client -- that's not my client's residence. At
11 that second search warrant, the proof found was a black
12 mask and something else.

13 MS. ANDERS: Cigarillo.

14 MS. MANIGAULT: Oh, Cigarillo, Cigarillo cigarette,
15 purple. But that's not my client's residence. And I
16 don't believe that evidence should be allowed to come in
17 from that second search warrant, because it has nothing to
18 do with my client.

19 THE COURT: I don't know -- the fact that they're
20 co-defendants, though, that would make it admissible under
21 the theory of the hand of one is the hand of all.

22 MS. ANDERS: Well, Your Honor, I think it's perfectly
23 clear in the video that there were masks. Both men had on
24 masks. So we don't really know if this was Robert's mask
25 or Tra Vaughn's mask. And it's, also, clear through the

1 video and through testimony that Tra Vaughn is the one who
2 took Cigarillos from the store. So while circumstantial,
3 I think the Cigarillo does go toward Tra Vaughn.

4 Additionally, because they committed the act together
5 and there is a lapse of time in between the act and the
6 search warrant, this evidence, even if it only goes toward
7 Robert's guilt as having -- Your Honor, I would just renew
8 my argument that the hand of one is the hand of all. And
9 the fact that these men are charged together, although
10 tried separately, the fact that this evidence was found at
11 the co-defendant's house when there is direct evidence
12 through testimony that this Defendant is the one who took
13 the Cigarillos and that he was wearing a mask, I believe
14 that makes it relevant and appropriate to be admitted.

15 THE COURT: All right. I'm going to allow that
16 testimony. And this might not be the end of it.

17 All right. Bring the jury in.

18 (WHEREUPON, State's Exhibit Nos. 13 and 14 were
19 marked for identification only.)

20 THE COURT: Ms. Manigault, the family can come back
21 in.

22 MS. ANDERS: Your Honor, we still have the witness in
23 here with us. Perhaps, when the family comes in, we could
24 have the witness escorted out safely.

25 THE COURT: Does he want to leave now?

1 MS. ANDERS: Mr. Morehead, are you ready to go?
2 And if we could excuse Deputy Brewer to escort him
3 out.

4 THE COURT: All right. That's fine.
5 Is the jury coming?

6 THE BAILIFF: Yes, sir.

7 (WHEREUPON, the jury came into open court at
8 approximately 3:28 p.m.)

9 THE COURT: All right. Solicitor.

10 CONTINUED DIRECT EXAMINATION

11 BY MS. ANDERS:

12 Q Investigator Jarvis, I believe we were talking about
13 the search warrant at [REDACTED] [REDACTED] [REDACTED]

14 A Correct.

15 Q Do you recall where we were in the testimony?

16 A I think we were talking about what we had recovered
17 from the search warrant.

18 Q That's correct.

19 All right. I'm going to show you what's been marked
20 as State's Exhibit Nos. 13 and 14. Now, without pulling
21 these out, can you tell me what they are?

22 A These are two of the items that we recovered as a
23 result of the search warrant where Robert Thompson was
24 located. And, after they were collected, I placed them in
25 property and evidence.

1 Q Where exactly were they found?

2 A Again, they were in the -- on the counter that
3 divides the living room and the kitchen right near where
4 Robert Thompson was sleeping.

5 Q What are they?

6 A One is a black ski mask. And the other is -- it's
7 just one Swisher Sweet Cigarillo.

8 Q Okay. Before we get them out, how do you know that
9 those are what was found at Robert's house?

10 A I'm the one that found them.

11 Q Okay. But how do you know that that specific item
12 is -- what did you do with them once you got them?

13 A I placed them into property and evidence. I
14 documented on the property and evidence sheet, and placed
15 them into evidence. And that's where they stayed until I
16 collected them today to bring them to court.

17 Q Okay. And are those the same items you recovered
18 from Robert's house?

19 A Yes. I, actually -- on each envelope, I -- they're
20 initialed on the top. It has the item number on there.

21 MS. ANDERS: Your Honor, at this point, we would move
22 those items into evidence.

23 THE COURT: Subject to Ms. Manigault's objection.

24 MS. MANIGAULT: Thank you, Your Honor.

25 THE COURT: They're in.

1 (WHEREUPON, State's Exhibit Nos. 13 and 14 were
2 admitted into evidence.)

3 BY MS. ANDERS:

4 Q Investigator Jarvis, would you, please, get those
5 out and produce them to the jury, and explain what they
6 are?

7 A This is the Swisher Sweet Cigarillo that we found.
8 It just has the purple label, and it says "Swisher
9 Sweets." And the second one is the black ski mask with
10 just an opening for the eyes.

11 Q Okay. And, just to clarify, what county did all this
12 happen in?

13 A All of it happened in Greenville County, both search
14 warrants and the incident.

15 Q Do you know how tall this Defendant is?

16 A If I remember correctly, about 5'7", 5'8", somewhere
17 around there.

18 Q And the co-defendant, Robert Thompson, how tall is
19 he?

20 A He's pretty tall. He's my height, probably maybe
21 6'2", somewhere around in there.

22 MS. ANDERS: And, Your Honor, at this point, we would
23 move the map into evidence, because I don't believe I've
24 done that already.

25 THE COURT: All right.

1 (WHEREUPON, State's Exhibit No. 12 was admitted into
2 evidence.)

3 MS. ANDERS: Please answer Ms. Manigault's questions.

4 THE COURT: All right. Ms. Manigault.

5 MS. MANIGAULT: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. MANIGAULT:

8 Q Investigator Jarvis, you testified that you executed
9 a search warrant at [REDACTED]?

10 A Yes, ma'am.

11 Q And that is the residence of Tra Vaughn Thomas?

12 A Correct.

13 Q And you testified earlier you found nothing in
14 relationship to this charge?

15 A Correct.

16 Q All right. You executed a second search warrant at
17 [REDACTED] -- you said [REDACTED] -- I'm sorry.

18 A [REDACTED], yes, ma'am.

19 Q [REDACTED] and that residence
20 belonged to Robert Thompson or Thomas?

21 A He was staying there.

22 Q Staying there?

23 A I don't think he was the person who was renting the
24 place.

25 Q All right. And that's where you found this Cigarillo

1 or cigar, and the black mask; is that right?

2 A Yes, ma'am.

3 Q And it's your testimony that Robert is about 6'2"?

4 A Yes.

5 Q All right. And I believe you testified regarding the
6 video from the store that you did not hear -- you could
7 not hear any sound?

8 A I don't recall hearing any sound.

9 Q Were you the officer that the Defendant turned
10 himself in to?

11 A I think he turned himself in to the front desk.

12 Q The front desk?

13 A Yes, I think so.

14 MS. MANIGAULT: All right. Thank you.

15 THE COURT: Anything else?

16 MS. ANDERS: No, sir.

17 THE COURT: All right. You may step down.

18 MS. ANDERS: Your Honor, we would call Kenneth
19 Spearman to the stand.

20 THE CLERK: Mr. Spearman, please, pause at the end of
21 the bench. Place your left hand on the Bible and raise
22 your right hand.

23 WHEREUPON,

24 KENNETH LEWIS SPEARMAN,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please be seated.

3 Please state your full name for the record.

4 THE WITNESS: Kenneth Lewis Spearman.

5 DIRECT EXAMINATION

6 BY MS. ANDERS:

7 Q Good afternoon, Mr. Spearman.

8 Where do you work?

9 A I work at Cryovac in Simpsonville.

10 Q What area do you live in?

11 A I live in Anderson County.

12 Q Do you live close to the Stop A Minute?

13 A Yes, ma'am. Anderson County is partly in Piedmont.

14 Q Sir, I'm having a hard time hearing you. I'm sorry.

15 A Anderson County is part of Piedmont, Greenville
16 County and Anderson County. I live on the Anderson side.

17 Q About how far from the Stop A Minute do you live?

18 A Probably about six miles.

19 Q Do you go often?

20 A Yes, ma'am.

21 Q Going back to October 20th, 2008, did you go to the
22 Stop A Minute that day?

23 A Yes, ma'am.

24 Q About what time did you go?

25 A It was around 7:00.

1 Q And what did you do? Why did you go?

2 A They called me into work. And I was going by to get
3 a cup of coffee, and Sharon and Destiny needed something
4 to eat.

5 Q What did you do in response to they needed something
6 to eat?

7 A I stopped by and picked them up something and stopped
8 by and gave it to them. And I got me a cup of coffee at
9 the same time.

10 Q All right. Did you go to work after that?

11 A Yes.

12 Q Did you notice anything as you were leaving?

13 A Yes, ma'am. I was in a hurry that night. And, like
14 I said, they had called me in. And, as I was going out
15 the door, I was talking to them and walking out. And I
16 turned to the left and I seen two guys standing out there.

17 Q When you say you turned to the left -- looking at
18 State's Exhibit No. 4, when you say -- actually, I'm going
19 to put it back up here.

20 Okay. Can you see that, sir?

21 A Yes, ma'am.

22 Q Which door did you go into the Stop A Minute at?

23 A The black door right there. It's right here.

24 Q Right there?

25 A Yes, ma'am.

1 Q Okay. Is that the same door you came out of?

2 A Yes, ma'am.

3 Q What did you see when you came out the door?

4 A Well, I parked over here. And then on the right side
5 of me coming out, on the left side, I seen two guys
6 standing out there.

7 Q Can you describe the two men you saw -- and,
8 actually, before you describe them, where were they
9 standing? Can you point it out, please?

10 A Yes, ma'am. There's a clock --

11 Q And stand up and walk over, if you need to.

12 A Okay. There's a clock right here. They was just
13 beyond that clock, almost at the end of the building.

14 Q Can you describe their appearance?

15 A They were two guys. One of them had on a
16 light-colored shirt. He was a tall guy. He was the one
17 on the ground. Stop A Minute has got a walkway, it's
18 about that tall. And the other guy was standing up on it.

19 Q Did you get a good look at either of these men?

20 A I got a good look at the tall guy. The short guy, I
21 did not see real good.

22 Q And what was the height difference between the two
23 men again?

24 A A good bit.

25 Q Did you tell the police this information -- or,

1 actually, what did you do after you saw them?

2 A I went on to work. I had left and went on to work.
3 And then after I got what I had to do done at work, I left
4 and carried my cousin out to eat. And on my way back, I
5 had stopped to see Sharon. And they said Stop A Minute
6 had been robbed.

7 Q Did you ever talk to the police about what you saw?

8 A Not that day, no, ma'am.

9 Q When did you talk to the police?

10 A I think it was the next day or the day after. I'm
11 not sure on the time.

12 Q Did you talk to the police -- what did you tell them?

13 A I told them I seen two guys out there. I really
14 didn't know if they had anything to do with it or not.

15 Q Did you ever meet with Investigator Jarvis?

16 A Yes, ma'am.

17 Q What did you do when you talked to him?

18 A I told him what I saw.

19 Q Did he show you anything?

20 A Yes, ma'am. He showed me some mug shots.

21 Q And what did you do with the mug shots?

22 A I looked at them. And he asked me to pick out -- if
23 I knew anybody in them to pick them out. And I picked one
24 guy out.

25 Q Who did you pick?

1 A The tall guy. I think his name is Robert.

2 Q Do you know his last name?

3 A No, ma'am.

4 Q How do you know his name is Robert?

5 A I just heard talking.

6 Q Can you describe what the short guy was wearing that
7 night?

8 A The short guy was wearing -- it looked like a
9 sweater, and he had a white shirt on and dark-colored
10 britches. I couldn't tell if they were dark blue jeans or
11 what. But he did have a white shirt on.

12 Q Do you remember his skin tone?

13 A He was a black male.

14 Q Okay. How about his age? Was he young? Old?

15 A I don't know.

16 MS. ANDERS: Please answer Ms. Manigault's questions.

17 CROSS-EXAMINATION

18 BY MS. MANIGAULT:

19 Q Mr. Spearman, what's next to the store? If you look
20 at State's Exhibit No. 4, when you come out of the front
21 door and go to the left, what's next to the store?

22 A It's got a propane tank and a trash can.

23 Q Propane tank and a trash bin?

24 A Yes, ma'am.

25 Q A big bin?

- 1 A Yes, ma'am.
- 2 Q And what's next to the bin?
- 3 A Are you talking about on the far end of the store?
- 4 Q Yes, sir.
- 5 A Telephone, car wash.
- 6 Q Car wash?
- 7 A And another parking area right there.
- 8 Q There's a parking area in front of the car wash?
- 9 A Right beside Stop A Minute, there's a parking area.
- 10 Q Okay. Right beside the Stop A Minute?
- 11 A Yes, ma'am.
- 12 Q How many cars can park, one or two?
- 13 A Probably two.
- 14 Q Two cars?
- 15 A Uh-huh.
- 16 Q Now, the car wash, how big is the car wash? How many
- 17 portals does it have for cars? Do you know?
- 18 A I'd say six. I could be wrong.
- 19 Q Okay. Now, I'm going to show you a handwritten
- 20 statement.
- 21 A Yes, ma'am.
- 22 Q I just ask you to look at it, and then I want to ask
- 23 you questions about it.
- 24 A Okay.
- 25 Q Do you recognize that?

- 1 A Yes, ma'am.
- 2 Q Is that your handwriting?
- 3 A Yes, ma'am.
- 4 Q All right. And with that handwriting, you had
5 selected someone from a lineup; is that right?
- 6 A Yes, ma'am.
- 7 Q And you told them -- and you circled the picture from
8 the lineup?
- 9 A Yes, ma'am. I signed my initials to it.
- 10 Q And you signed your initials to the lineup?
- 11 A Yes, ma'am.
- 12 Q And you said you later learned that person's name was
13 Robert?
- 14 A Yes, ma'am.
- 15 Q And you didn't pick anybody else out of the lineup;
16 is that right?
- 17 A Yes, ma'am.
- 18 Q The person you picked out of the lineup was, you
19 said, the tall person?
- 20 A Yes, ma'am.
- 21 Q Do you have any idea what time it was when you first
22 went by the store to drop the food off?
- 23 A It was right around 7:00.
- 24 Q Around 7:00?
- 25 A Yes, ma'am.

1 MS. MANIGAULT: Thank you.

2 THE COURT: Any redirect?

3 MS. ANDERS: No, sir.

4 THE COURT: Thank you.

5 You can step down.

6 THE WITNESS: Thank you.

7 THE COURT: Okay.

8 MS. ANDERS: Your Honor, to be completely candid, I
9 could use a break.

10 THE COURT: All right. Take the jury out.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 3:48 p.m.)

13 THE COURT: All right.

14 MS. ANDERS: Your Honor, I believe that's my case.
15 I'd just like to double-check and make sure.

16 THE COURT: Sure. That's fine.

17 We'll take a very short recess.

18 (WHEREUPON, a break was taken.)

19 THE COURT: I've got a note here from Juror Henry
20 Baldwin. And he says, One of the County's witnesses is
21 employed by the same company as myself. He is Mr. Henry
22 Spearman.

23 So, apparently, both were at Cryovac. I'm going to
24 call him in and see if that gives him any concern.

25 Any other suggestion?

1 MS. MANIGAULT: No, sir.

2 THE COURT: All right. Bring Mr. Baldwin in.

3 (WHEREUPON, Juror #11, Henry Baldwin, entered the
4 courtroom.)

5 THE COURT: Mr. Baldwin, you've sent in a note
6 saying that you are employed by the same company as
7 Mr. Spearman.

8 JUROR #11, HENRY BALDWIN: Yes, sir.

9 THE COURT: I assume that's Cryovac?

10 JUROR #11, HENRY BALDWIN: Yes.

11 THE COURT: And is it in the same area, same town,
12 same company, or is it --

13 JUROR #11, HENRY BALDWIN: Same plant.

14 THE COURT: Same plant?

15 JUROR #11, HENRY BALDWIN: Yes.

16 THE COURT: Would that fact in any way interfere with
17 your ability to continue to be a fair and impartial juror
18 on this case?

19 JUROR #11, HENRY BALDWIN: No, sir.

20 THE COURT: The fact that you are employed by the
21 same company, would you give Mr. Spearman's testimony any
22 greater weight than you would give to any other witness on
23 the case because you are co-employees?

24 JUROR #11, HENRY BALDWIN: No, sir.

25 THE COURT: Okay. Thank you very much.

1 (WHEREUPON, Juror #11, Henry Baldwin, exited the
2 courtroom.)

3 THE COURT: Solicitor, are you concluding your case?

4 MS. ANDERS: Yes, Your Honor.

5 I can rest in front of the jury. I'm prepared to
6 rest in front of the jury.

7 THE COURT: Ms. Manigault, is your client going to
8 testify?

9 MS. MANIGAULT: Can I talk with him just briefly?

10 THE COURT: Sure.

11 (Pause.)

12 MS. MANIGAULT: Your Honor, he's not testifying.

13 THE COURT: Ma'am?

14 MS. MANIGAULT: He's not testifying.

15 THE COURT: He is not going to testify?

16 MS. MANIGAULT: No, sir.

17 THE COURT: All right. Would you put him under oath
18 for me, please.

19 THE CLERK: Mr. Thomas, please, stand and raise your
20 right hand.

21 WHEREUPON,

22 TRA VAUGHN LAROL THOMAS,
23 after first having been duly sworn, testified as follows:

24 THE CLERK: Thank you.

25 THE COURT: Thank you.

1 You can be seated.

2 Now, Mr. Thomas, we have reached the point in your
3 trial where you will make a determination as to whether
4 you will or will not take the stand and testify.

5 Do you understand that?

6 DEFENDANT THOMAS: Yes, sir.

7 THE COURT: I tell you that you do not have to take
8 the stand and testify or present evidence, because that's
9 your Constitutional right. The burden is on the State to
10 prove you guilty beyond a reasonable doubt. You have
11 absolutely nothing to prove in this case. The State has
12 got to prove you guilty.

13 Do you understand that?

14 DEFENDANT THOMAS: Yes, sir.

15 THE COURT: Now, with that understanding, I tell you
16 that you have a perfect right to take the stand and
17 testify. If you do that, then you become like any other
18 witness, that is that you are subject to cross-examination
19 by the Solicitor. I don't know whether you have any prior
20 criminal record for which you could be impeached. But if
21 you do, then the State could impeach you on that testimony
22 the same way Ms. Manigault did with the State's witnesses.

23 Do you understand that?

24 DEFENDANT THOMAS: (Defendant Thomas nodded.)

25 THE COURT: Sir?

1 DEFENDANT THOMAS: Yes, sir.

2 THE COURT: Now, with that understanding, I have just
3 been told by Ms. Manigault that you will not take the
4 stand and testify, or otherwise present evidence; is that
5 correct?

6 DEFENDANT THOMAS: Yes, sir.

7 THE COURT: Now, you first indicated that you were
8 going to take the stand. So my question to you now, sir,
9 is, your decision not to testify, is this your decision?

10 DEFENDANT THOMAS: Yes, sir.

11 THE COURT: Ms. Manigault has not put any pressure on
12 you to stay off the stand and not testify; is that
13 correct?

14 DEFENDANT THOMAS: No, sir.

15 THE COURT: This is your decision made by you
16 yourself?

17 DEFENDANT THOMAS: Yes, sir.

18 THE COURT: Are you under the influence of any
19 alcohol, drug, or any other substance right at this
20 moment?

21 DEFENDANT THOMAS: No, sir.

22 THE COURT: You're sober, you know what you're doing?

23 DEFENDANT THOMAS: Yes, sir.

24 THE COURT: And you yourself have made the decision
25 not to testify or present evidence; is that correct?

1 DEFENDANT THOMAS: Yes, sir.

2 THE COURT: Okay. Then, Ms. Manigault, you'll get
3 the concluding argument in the case.

4 Now, would counsel approach just a minute?

5 (WHEREUPON, a bench conference was held.)

6 THE COURT: Okay. Bring the jury in.

7 (WHEREUPON, the jury came into open court at
8 approximately 4:01 p.m.)

9 THE COURT: Now, ladies and gentlemen, the testimony
10 in this case is complete. In the trial of a case, a
11 Defendant has absolutely no burden whatsoever. A
12 Defendant doesn't have to take the stand and testify or
13 present evidence, because that's his or her Constitutional
14 right. And I'll explain that right to you more fully
15 during the course of my charge.

16 So the testimony in this case is complete. And what
17 we have remaining is the final arguments by the attorneys
18 and my charge on the law. It's too late today to do that.
19 And I'll not be able to start back tomorrow until 1:00.
20 So you will be off until 1:00 tomorrow. Okay.

21 Now, when you leave, please, remember the admonitions
22 I read to you from the order of the Chief Justice. I'll
23 ask that you keep your badges on. Have them on when you
24 come back in the morning so that everyone involved with
25 this case will know that you're a juror on the case, and

1 it would be highly improper for them to talk about this
2 case in your presence. So, please, keep your badges on.
3 Have them on when you come back tomorrow.

4 So, with that, I'll ask that you be back in your jury
5 room at 1:00, 1:00 tomorrow.

6 Thank you.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 4:04 p.m..)

9 THE COURT: Now, Ms. Manigault, do you have any
10 motions?

11 MOTIONS

12 MS. MANIGAULT: Your Honor, the Defense would move
13 that the charge be dismissed, that the State has failed to
14 prove the elements of the crime as regarding my client,
15 Tra Vaughn Thomas. The evidence presented by the State in
16 the best light for the State may have proven the case
17 against Robert Thompson.

18 THE COURT: And I would deny your motion.

19 MS. MANIGAULT: Thank you, Your Honor.

20 THE COURT: Okay. See you back tomorrow at 1:00.

21 (WHEREUPON, the proceedings were concluded at
22 approximately 4:06 p.m., to be reconvened on
23 Tuesday, September 14, 2010.)
24
25

1 TUESDAY, SEPTEMBER 14, 2010

2 THE COURT: Solicitor, are you ready to talk to the
3 jury?

4 MS. ANDERS: Yes, sir.

5 I didn't rest in front of the jury yesterday. If you
6 think that's important, I can, certainly, do so.

7 THE COURT: Certainly.

8 And you can rest, also, Ms. Manigault.

9 MS. MANIGAULT: Yes, sir.

10 THE COURT: Okay. Bring the jury in.

11 (WHEREUPON, the jury came into open court at
12 approximately 1:04 p.m.)

13 THE COURT: Good afternoon.

14 MS. ANDERS: Your Honor, the State rests.

15 THE COURT: All right. You may begin your argument.

16 MS. MANIGAULT: Your Honor, the Defense rests, and
17 renews our motions.

18 THE COURT: All right.

19 CLOSING ARGUMENTS

20 MS. ANDERS: May it please the Court.

21 Ms. Manigault.

22 Ladies and gentlemen of the jury, one of the most
23 important parts of the trial is done. Okay. All the
24 evidence has been put out there for you. Okay. And the
25 second most important part is when you take the evidence

1 and you go into the deliberation room and you decide
2 whether that man is guilty of armed robbery. That's about
3 to start. Okay. But we're not there quite yet. And,
4 before that, we have to talk about a few things. Okay.

5 Today is Tra Vaughn Thomas's day in court. It's
6 nobody else's day. It's not the co-defendant's. It's not
7 Robert Thompson's day in court. The only case for you to
8 consider today is Tra Vaughn Thomas. Okay. That's it.

9 We need to talk about the law. That's the foundation
10 that you stack all of these facts up on. Okay. And,
11 after we're done with that, after I'm done talking, after
12 Ms. Manigault is done talking, Judge Pyle is going to talk
13 to you about the law. And he is the judge of the law,
14 just as you are the judges of the facts. So anything that
15 I say or Ms. Manigault says, if it contradicts with Judge
16 Pyle, you go with Judge Pyle, because he is the judge of
17 the law in this case.

18 So let's go back to the beginning. Okay. This
19 Defendant is charged with armed robbery. What does that
20 mean? We all understand what armed robbery is. But you
21 need to have the proper foundation to build your case.

22 The legislature of the State of South Carolina
23 defines armed robbery with five elements. Okay. It's the
24 taking and carrying away of another person's personal
25 property with the intent to deprive him of possessions --

1 that's stealing -- by use of force, threats, intimidation,
2 and a weapon. Okay. And it's while armed with a deadly
3 weapon or while having possession of an object which the
4 victim believes is a deadly weapon. We have the gun and
5 we have the picture. This is taken right from this video.
6 You saw it. You saw what happened. Okay.

7 There is no question that there was an armed robbery
8 of the Stop A Minute on Piedmont Highway on October 20th,
9 2008. No question. You saw what happened. Okay. Each
10 element was met. And there's really no need to discuss
11 them. You saw it. Okay.

12 The one point of law that we should discuss is that
13 the hand of one is the hand of all as it applies to Tra
14 Vaughn Thomas. That's a legal principle in the State of
15 South Carolina. And what that means is that when two or
16 more people act together, they are both responsible for
17 the actions. The hand of one is the hand of all.

18 So even though the allegation is that Robert had the
19 gun, remember the picture, the tall guy in the white shirt
20 had the gun. Robert had the gun. The hand of one is the
21 hand of all, and Tra Vaughn Thomas is guilty of armed
22 robbery. Judge Pyle is going to charge you on that, so
23 listen carefully.

24 And that's -- you know, going back to what I said
25 yesterday, on Monday, you have to have intelligence and

1 you have to have common sense. The intelligence is what
2 kicks in with these legal principles like the hand of one
3 is the hand of all. Okay. But you have to have your
4 common sense to figure out did we get the right guy? Is
5 that man guilty of armed robbery? And the State's
6 position is yes.

7 So let's go over everything that we talked about.
8 Okay. Investigator Jarvis did a thorough job with his
9 investigation. But the issue in this case is guilt of the
10 right man.

11 Another very important application before I get
12 there. I don't want to get ahead of myself. Another
13 important application of common sense is witness
14 credibility. Should you believe what was said on that
15 stand? Because the only evidence in this case is what was
16 testified to from that chair, and the items on this table.
17 That's the only evidence. Okay. That's it.

18 Judge Pyle is going to tell you that it is completely
19 up to you who you believe is credible, who you believe is
20 not. It's completely up to you. And to borrow my boss'
21 favorite phrase, you ought to consider, does the witness
22 have a dog in the fight? Do they have bias? Okay. If
23 the witness can't gain anything from testifying, is there
24 a motivation to lie? That's what you ought to consider.
25 Okay. It's completely up to you. Think about it.

1 It was obvious that some of the witnesses were not
2 happy about being here yesterday. Let's not hide the
3 ball. This incident happened two years ago. They've
4 moved on. They're not being paid to be here. They're not
5 happy. But that doesn't mean that we don't continue to
6 seek justice in this courtroom today.

7 Some details were mixed up by the witnesses. But,
8 again, this case is two years old. I don't know that I
9 can remember what I had for lunch a week ago on Tuesday,
10 let alone a year ago. But we do remember the important
11 things in life. We remember the important things, and the
12 things that shock us.

13 So you probably remember the facts surrounding your
14 child's birth. That was, certainly, happy. But how about
15 9-11? Do you remember where you were on September 11,
16 2001? I hope so. But maybe you don't remember what you
17 had for breakfast that day, or where you were going, or
18 what you were doing before or after. You remember the
19 things that stand out. And 9-11 was nine years ago, not
20 two. The truth is the truth, and it never changes. So
21 ask yourself, what is consistent? What is consistent in
22 this case? Let's talk about it.

23 Tra Vaughn is shorter than average. He's 5'4" to
24 5'6". That was consistently testified to. Robert, the
25 co-defendant, is six feet or taller. It's a pretty big

1 height difference. Look at these pictures. It's a pretty
2 big height difference. Tra Vaughn is friends with Robert.
3 That was testified to. Tra Vaughn likes Cigarillos, not
4 uncommon, not a secret. Tra Vaughn was wearing a dark
5 jacket and pants when he got in the car with Jerry Tyrone
6 Morehead, who we're going to talk about in just a minute.
7 Look at the picture again, dark shirt, dark pants, white
8 shirttail. That's exactly what the shorter robber was
9 wearing. The clothes matched with a short amount of time
10 in between.

11 So exactly how did we prove to you that Tra Vaughn is
12 the short guy who robbed the Stop A Minute that night?
13 Let's go over what happened chronologically. Let's go
14 back in order of time. Around 7:00 that night, Kenny
15 Spearman, who was the guy with the blue shirt, he
16 testified up there. I believe he was my last witness. He
17 was outside the Stop A Minute around 7:00 that night. He
18 had just taken dinner to Destiny and Sharon, because
19 they're buddies. And he saw two men standing over here.
20 Okay. You can see that it's well lit. He saw two men, a
21 tall guy and a short guy. And he was able to identify the
22 tall man, because he got a good look at him. He said he
23 was standing in front. Kenny picked him out of a
24 six-person photo lineup, and that was Robert Thompson.

25 Now, the short guy was standing behind the tall guy.

1 And he didn't get a good look at his face, so he can't
2 identify him. But he did see the clothes, dark shirt,
3 dark pants, white shirttail, just like the short man in
4 the picture, just like what Mr. Morehead testified to.
5 The robbery happened right after Kenny saw the men outside
6 the store. It's on the video. You saw it. Two men in
7 masks. They go into the store. They've got their sleeves
8 over their hands. There's no fingerprints. There's no
9 forensic evidence. Investigator Jarvis testified about
10 that.

11 The tall man comes in with the gun. The short man,
12 Tra Vaughn, goes around behind the counter. He takes cash
13 from the registers. He takes Sharon's purse. And he
14 takes Cigarillos. And he talked to Destiny. Remember,
15 the man with the gun was up against Sharon. He was across
16 from the first register. Here we go, the register by the
17 door. Okay. Sharon was here by the door. Remember,
18 there were two registers, one close to the door, one
19 farther away by the pizza. You're going to have all these
20 pictures to look at back in the jury room. Okay.

21 Tra Vaughn walks around the back, and he is with
22 Destiny. And they're getting the money out. They're
23 getting the purse. They're getting the Cigarillos while
24 Tra Vaughn is there in Destiny's ear. He even shoved Tra
25 Vaughn -- I'm sorry, Tra Vaughn even shoved Destiny.

1 So consider who she's paying the most attention to.
2 Yes, there is a man with a gun, but he's over here
3 pointing it at Sharon. She has a man -- she has Tra
4 Vaughn right here in her ear. Whose voice is she
5 listening to? Consider it. And that's really important
6 because Destiny knew Tra Vaughn Thomas. She knew him not
7 just recently, but in the past as well. She told you she
8 went to high school with him. And they were in the same
9 class for a year, and that he spoke out in class and she
10 knew his voice.

11 And then she knew him more recently, because he was a
12 customer of the store. She said -- and I want to get this
13 right, she said that he came in quite a lot. And then I
14 said, What does that mean? And she said, Almost every
15 night, sometimes two to three times. And she worked there
16 for a year.

17 So that's a lot of visits. That's a lot of
18 interaction with that Defendant. She was familiar with
19 his voice recently. She was familiar with his voice in
20 the past. She was familiar with his voice on October
21 20th, 2008. She, also, mentioned that Tra Vaughn always
22 bought Cigarillos. Grape was his favorite. Again, not
23 uncommon. But you've got to look at everything in the
24 totality of the circumstances.

25 Now, Destiny was not as familiar with the tall guy's

1 voice. I think when she was testifying, she said his name
2 was Jay, but that was her impression. But, again, think
3 about who was in her ear. Tra Vaughn was in her ear. She
4 was paying attention to him, and she did not hesitate to
5 identify him. She didn't know the other guy. She didn't
6 go to high school, or she didn't see him on a regular
7 basis. But she did identify Tra Vaughn by his voice. So
8 that's another point to make.

9 Now, let's jump down to the last big point that I
10 want to make. Jerry Tyrone Morehead. You saw him testify
11 and he told you that he is, in his words, a white-collar
12 specialist. He was honest. He was up-front. And his
13 record reflects that. I mean, he has forgery convictions
14 going back 20 years, even one last year. That's what he
15 does. That is what he does. He is a white-color
16 specialist criminal, and he told you that. He, also, told
17 you that he's not getting any benefit for telling the
18 truth on that stand. But he did remember exactly the most
19 important part that happened.

20 He said that it was a robbery, and that it was
21 violence, and that he was going to do the right thing. He
22 forges checks. But he was going to do the right thing
23 today -- or yesterday in this courtroom. He did get
24 confused about where he was coming from and going to.
25 But, again, think about the 9-11 comparison. Okay. The

1 truth is the truth, and it never changes. And
2 Mr. Morehead was very consistent about the fact that that
3 man, that Tra Vaughn got in his car and said, Me and
4 Robert just robbed the Stop A Minute. He didn't waiver on
5 that point.

6 And Mr. Morehead's testimony is kind of the lynch pin
7 of this case. It pulls everything together. Tra Vaughn
8 said that he and Robert just robbed the Stop A Minute, and
9 that he had a bunch of Cigarillos. He was wearing dark
10 pants and a jacket, same as the video, same as what Kenny
11 saw. Tra Vaughn was scared. He was out of breath. He
12 had been running. Remember the map, it wasn't that far
13 from the convenience store.

14 Destiny recognized Tra Vaughn's voice while he was
15 robbing the store and taking the Cigarillos that Tra
16 Vaughn saw. Also, consider that when Robert, the
17 co-defendant, was arrested a little bit later, he had this
18 ski mask. It looks like the one in the picture. And he
19 had this Cigarillo, this Swisher Sweets Cigarillo with a
20 purple wrapper.

21 It all lines up. And it points to the truth in this
22 case, that tall Robert and shorter Tra Vaughn, they robbed
23 the Stop A Minute together on October 20th, 2008. You've
24 just got to put everything together. And you have to
25 think about it all together, not in a vacuum, not separate

1 and apart, but everything on this table, and everything
2 that came from that stand.

3 Briefly, very briefly, I want to talk about
4 reasonable doubt. What is it? It's my job to prove to
5 you beyond a reasonable doubt that that man is guilty of
6 armed robbery. Reasonable doubt does not mean beyond all
7 doubt. It's a simple truth that there are very few things
8 in life that we know for certain. Think about it.
9 There's not much. Beyond a reasonable doubt means that
10 you are firmly convinced.

11 Now, you've seen the video. And it's time for you to
12 put all the testimony, all the evidence together. And
13 it's your job to speak the truth. And the truth is that
14 Tra Vaughn Thomas, that Defendant, is guilty of armed
15 robbery.

16 THE COURT: Ms. Manigault.

17 MS. MANIGAULT: Thank you, Your Honor.

18 May it please the Court.

19 Ladies and gentlemen, we'd like to thank you for your
20 patience and attention yesterday and today. When we did
21 our opening statement, I told you about three premises of
22 the law that we'd be operating, presumption of innocence,
23 burden of proof, and reasonable doubt.

24 The State has told you that you are the trier of the
25 facts. Whatever you recollect or recall that the

1 testimony was from yesterday, that is what you go by. In
2 our restatement of the facts, if we say something that was
3 not said, it is not intentional. And that's why you are
4 the triers of the facts together to determine what was
5 said. Judge Pyle is the judge of the law. And he will
6 give you the law at the close of my argument.

7 But the burden of proof is on the State of South
8 Carolina through the Greenville County Solicitor's Office,
9 Ms. Julie Anders, to present to you evidence that firmly
10 convinces you, and that's what she said, that my client is
11 guilty as charged. I explained to you about the
12 indictment. It is merely a charge to get the matter to
13 court. The presumption of innocence. Every citizen is
14 presumed innocent of any accusation until the evidence is
15 presented beyond a reasonable doubt and is accepted by 12
16 jurors, and the determination is made.

17 Being firmly convinced. I understand there are some
18 doubts that we may have, whether the sun is going to shine
19 tomorrow, whether it's going to rain tomorrow. That's not
20 the kind of doubt we're talking about. If there is a
21 doubt in any of this information, evidence that's been
22 presented to you, then it has to be resolved in favor of
23 the Defendant. The State cannot and is not charged with
24 coming in and throwing some things -- evidence towards you
25 and asking you to compile it and accept it. The witnesses

1 that the State presents, they don't pick their witnesses.
2 The witnesses are according to what has occurred.

3 Now, I submit to you that there is reasonable doubt,
4 and a lot of it. When Ms. Anders from the Solicitor's
5 Office stood up yesterday in her opening argument, she
6 said that you're not to consider any other person, anybody
7 else. You're not concerned with them, that you come into
8 court -- and she said it again today in her closing, that
9 you're concerned with Tra Vaughn Thomas, Tra Vaughn
10 Thomas.

11 Now, Investigator Jarvis testified that he did
12 lineups. And the only person selected from a lineup by
13 Mr. Spearman was Robert, not Tra Vaughn. And, as the
14 State has said and State's Exhibit No. 4 will show you,
15 Mr. Spearman said that they were standing -- he had a
16 view, and they were standing on the far corner. If you're
17 facing the building, it would be to the right on the far
18 corner. And he saw two people. That's his testimony.
19 And he selected one person out of the lineup.

20 I go to Bi-Lo two, three, four times a week. I go to
21 Publix. I buy salads, fruit, and a nut salad from Publix
22 four, five, six at a time. Every four days, I go to
23 Bi-Lo. I buy Lean Cuisine's several times a week. Just
24 because I go in a store and they -- Bi-Lo doesn't stock
25 the Lean Cuisines just for me. They stock it for anybody

1 that wants to buy it. Publix does not stock the fruit and
2 nut salad just for me. It's for anybody that wants to buy
3 it.

4 So because I frequent a store does not mean that I
5 robbed the store. Because I frequent the store and I'm
6 5'6", 5'5" and another black female goes in and buys the
7 same thing I buy does not mean that we have robbed the
8 store, taken something from the store.

9 When the Investigator testified, he said in the
10 lineup, how tall was the Robert person? Investigator
11 Jarvis says about 6'2". He's a man with experience, 13
12 years on the force, three years in investigating, he said.
13 So he said the tall person was about 6'2". When I asked
14 him about the height of my client, he says between 5'7",
15 5'8", 5'6", 5'8". I wear a black skirt, a white blouse,
16 and a black jacket to a store. They make more than one
17 black jacket, more than one white blouse, and more than
18 one black skirt.

19 The aerial map. I want to talk briefly about the
20 testimony of Jerry Morehead, just briefly. Mr. Morehead
21 pointed this out as the store, Stop A Minute. He pointed
22 this out as East Main. On the side of the store is
23 Bessie. And in the front of the store is Piedmont
24 Highway. All right. He testified that if you go down
25 Piedmont Highway, the first left would be Oil Mill that

1 runs into, he says, Patterson. I asked him did Oil Mill
2 run into Patterson. He said, No, Patterson ran into Oil
3 Mill. Either way, they connect. The name of the street
4 over here is called On the Line Drive. He testified that
5 it is the first left turn -- excuse me, right turn as you
6 leave the store, On the Line.

7 Now, when you leave the store and come down Bessie,
8 the first left hand turn is East Main Street.

9 Mr. Morehead testified that he was leaving home, this
10 area, Playground. He marked this as his home. He was
11 leaving home, Playground. He went here, turned right on
12 East Main, ran into, he alleges, Tra Vaughn under the
13 bridge.

14 The witness testified that the two males that were in
15 the store came out of the front door and turned left.
16 They went left, which would mean that they came out of the
17 door, they didn't go that way, they went this way. The
18 witness said they went toward the car wash, which is this
19 black circle that she circled, or somebody circled. They
20 went out of the front of the store, turned left, and went
21 toward the car wash. Mr. Spearman testified that he
22 believed the car wash had about six portals for cars. So
23 that is the area right here.

24 Now, Jerry Morehead testified that he was leaving
25 home. This is what he testified to yesterday, leaving

1 home going to Shop [sic] a Minute. Here's Shop a Minute.
2 He's leaving over here, going down this road here, and
3 going here. And he's going to Shop A Minute. He tells us
4 he doesn't know the name of this road over here. But he
5 said he had lived in the area for 47 years, 47.

6 All right. Question: If the two black males ran out
7 of the store and went to the left to the car wash, how did
8 one of the black males get over here, according to
9 Mr. Morehead, shortly after the robbery?

10 Mr. Morehead read his statement, I gave it to him to
11 review, that he gave on November 11th, 2008. The day of
12 the incident, there is no question that Shop A Minute was
13 robbed. That's not the argument. The argument is, who
14 did it? Our argument is my client was not involved.
15 There is no question that the store was robbed on October
16 20th, 2008.

17 Mr. Morehead wants to offer to you for your belief
18 and consideration that he wants to do the right thing.
19 Well, if the incident happened on October 20th, 2008, why
20 did it take him until November 11th, 2008, to offer
21 information, give a statement, assist? I submit to you
22 that the account that Mr. Morehead testified to yesterday
23 didn't occur. And I submit to you that the statement that
24 he gave was not accurate and true.

25 He gave a statement to the police and said, I was

1 coming from up here somewhere, a store named Holidays, a
2 convenience store. I was coming down East Main, ran into
3 somebody, a male he claims to be Tra Vaughn. All right.
4 Yesterday, he testified, no, no, no, I'm leaving home.
5 Now, that is not rocket science. You either know you're
6 leaving home or you're coming back home. Okay.

7 So the account that he gave on November 11th, he
8 forgot. If it was true -- the Solicitor said the truth
9 doesn't change. So he was lying from the very beginning.
10 He says he got the name of Robert, if you recall the
11 testimony, from his niece in the community. Because they
12 all live in the community.

13 The information he gathered and gave came from who
14 knows where. The Solicitor wants you to think about his
15 credibility, honesty. That account, the rap sheet, the
16 convictions indicate dishonesty. And he's proud of his
17 white collar crime. He was proud. It represents deceit,
18 fraud, lies. All his past, from 1983 up to the present.

19 What does he have to gain? Some people just lie to
20 lie. However, because he is a "white color crime
21 specialist," does he have -- consider this, is there
22 something pending out there? Is there something out there
23 that he's trying to get help with? Is there something out
24 there that he's going to benefit from? Of course, he
25 would testify to you that, no, I'm not getting any

1 benefit. That's never offered to you for your
2 consideration. Well, I submit to you to think about, is
3 there something out there that he's going to benefit from?

4 My daddy used to say, if a man steals, he will lie.
5 If a man steals, he will lie. So Mr. Morehead is a
6 confessed proud thief. And I submit to you that his
7 account, both on November 11th and September 13th, are
8 absolute lies. He continues. That's more than 21 days
9 between the incident and his statement, more than 21 days.
10 Does he have a dog in the fight? Perhaps, he does. Is he
11 honest? I submit to you he's not. He changed his
12 statement, not just a minor detail, a minor point. The
13 truth doesn't change. He just doesn't remember what he
14 said because it was a lie. A lie goes up like a feather,
15 but it comes back down.

16 The Investigator testified to you that he did two
17 search warrants. One search warrant on 121 Patterson.
18 Jerry Morehead had marked this as 121 Patterson. Nothing
19 was found. 121 Patterson, the officer testified was Tra
20 Vaughn Thomas's residence. Nothing was found. Nothing.
21 Not a Cigarillo. Nothing. Not a mask. Nothing. Not an
22 empty box that had Cigarillos in it. Nothing.

23 The officer then testified that he did a search
24 warrant at -- this is Piedmont Highway somewhere up here
25 off the map, 768 Piedmont Highway. And he received

1 information that that's where Robert was laying his head.
2 So he found, yes, the Cigarillos at Robert's house, and
3 the mask at Robert's house.

4 Now, because I'm associated with people in a
5 community or in my neighborhood, or talk to them, or are
6 friendly with them does not make me a part of anything
7 that they do wrong or illegal. My association with my
8 neighbor, if my neighbor gets arrested or two neighbors
9 down the street gets arrested or something happens, just
10 because I talk to them or know them or maybe have been
11 acquainted with them, does that mean that I did anything
12 they did? That's where the reasonable doubt comes in.
13 That's where the burden of proof has slipped in this case.
14 They put the stuff in that was found at Robert's house
15 because somebody says, yes, Tra Vaughn and Robert grew up
16 in the community together. That does not mean that Tra
17 Vaughn was involved.

18 You have the tape. You have the pictures. And you
19 will consider the evidence and the testimony that you
20 heard. Mr. Morehead testified that he dropped Tra Vaughn
21 off when he picked him up on East Main. He testified he
22 went to Patterson. Now, all this is after the --
23 allegedly after the crime; right? All right. His
24 statement says that, no, it was On the Line at a house
25 right here. That still doesn't make any sense. The store

1 is here. The people went left. According to the
2 testimony, according to the tape, the people went left.
3 This is across a busy highway over here. It doesn't make
4 sense.

5 Let's get to Destiny Taylor, the clerk in the store,
6 voice identification. As you will note from the video,
7 there is no sound, no voice. We can't hear. The
8 Solicitor asked the two officers, did you hear it when it
9 was dubbed? No. Voice identification. Is Destiny Taylor
10 an expert? No. Did Destiny Taylor, in her statement,
11 admit that she, also, gave somebody else that sounded like
12 Jay Smith, somebody she went to school with, from her own
13 testimony, middle school and high school. She said she
14 only had been at Woodmont High for about a year around Tra
15 Vaughn. But the person she went to middle school and high
16 school with, she gave a name from voice identification.
17 She says, no, that was wrong, but it was in the statement.
18 So she makes a mistake about identifying one person's
19 voice. She's made a mistake about identifying the other
20 person's voice.

21 The Solicitor would have you believe that he was in
22 her face, he was in her ear. Well, I asked Sharon how
23 loud were these people talking? What were they saying?
24 The only thing she said was, Give me the money. She
25 thought they were kidding.

1 I submit to you that the evidence and testimony
2 presented to you by -- through Mr. Spearman talks only
3 about Robert. I submit to you that the evidence presented
4 to you from the search warrant of Robert's house is
5 Robert's house. There is nothing here dealing with Tra
6 Vaughn that is credible, honest, or believable. Consider
7 the entire picture? Yes. Please consider the entire
8 picture, please. It is not enough.

9 And I submit to you that when you go back to your
10 jury room to deliberate, all 12 of you have to agree. And
11 the verdict that speaks the truth in this case is a
12 verdict of not guilty concerning Tra Vaughn Thomas. As
13 she said, somebody else will deal with Robert, the
14 Cigarillo like the one stolen, and deal with the mask.
15 But as far as Tra Vaughn Thomas is concerned, the State
16 has not met its burden of proof, and there is serious
17 doubt. And we ask you to return a verdict of not guilty.

18 CHARGE ON THE LAW

19 THE COURT: Now, Mr. Foreman, and, ladies and
20 gentlemen of the jury, as you know, the Defendant in this
21 case is charged with armed robbery. Now, in order for you
22 to understand robbery and armed robbery, I must, first,
23 define for you the term larceny. Larceny, ladies and
24 gentlemen, is the taking and carrying away by any person
25 of the property of another with the unlawful or felonious

1 intent to permanently deprive that owner of his or her
2 property. That, ladies and gentlemen, is what constitutes
3 larceny.

4 Now, robbery, ladies and gentlemen, is the felonious
5 or unlawful taking of money or personal property of any
6 value from the person of another, or in his or her
7 presence and by using violence, or by putting that person
8 in fear. Now, robbery includes all the elements of
9 larceny that I just defined for you. But the things that
10 constitute -- or the aggravating circumstances that
11 constitute robbery are, first of all, the taking must not
12 only be without consent, but it must, also, be
13 accomplished with violence or by putting that person in
14 fear.

15 Secondly, the property must be taken from the person
16 of another. But if it is taken in his or her presence,
17 then it is taken constructively from that person. In
18 other words, for the purpose of robbery, a thing is in the
19 presence of a person if it be within his reach,
20 inspection, observation, or control so that he can retain
21 possession of it if not overcome by violence or prevented
22 by fear.

23 Now, armed robbery, ladies and gentlemen, is robbery
24 as I have defined that for you while being armed with a
25 deadly weapon. And Section 16-11-330 of our Code of Laws

1 provides in part as follows, Any person convicted for the
2 crime of robbery while armed with a pistol, dirk,
3 slingshot, metal knuckles, razor, or other deadly weapon,
4 or while alleging either by action or words he was armed
5 while using a representation of a deadly weapon, or any
6 other object by a person present during the commission of
7 robbery reasonably believed that to be a deadly weapon.
8 So that, ladies and gentlemen, is armed robbery.

9 Now, ladies and gentlemen, a principle in a crime is
10 one who either in person perpetrates that crime or who
11 being present aids, abets, and assists in its commission.
12 When one does an act in the presence of and with the
13 assistance of another, the act is done by both. And where
14 two or more acting with a common design or intent are
15 present at the commission of a crime, it matters not by
16 whose immediate agency the crime is committed for all
17 would be guilty. Intent, however, is a necessary element,
18 for there must have been a common design or intent to
19 commit the crime, in this case, armed robbery, and the
20 crime must have been committed pursuant thereto with the
21 person aiding and abetting by some overt act. Now, the
22 presence at the commission of a crime means to be
23 sufficiently near so that to be able to aid, and abet, and
24 assist in its commission.

25 Now, ladies and gentlemen, our law does not compel

1 the Defendant in a criminal case to take the stand and
2 testify. And no presumption of guilt may be raised and no
3 inference of any kind may be drawn from this Defendant's
4 decision not to testify. Our law never imposes upon a
5 defendant in a criminal case the burden or duty of calling
6 any witnesses, of producing any evidence, or of
7 testifying. Therefore, the decision of this Defendant not
8 to take the stand and testify in his behalf cannot be
9 taken, held, discussed, or considered against him in any
10 manner whatsoever.

11 Ladies and gentlemen, in the trial of a criminal
12 case, the State can rely on direct evidence, on
13 circumstantial evidence, or on a combination of the two,
14 as here. Now, direct evidence proves the existence of a
15 disputed fact by using one or more of our five senses
16 without the aid of any inferences. For example, the
17 testimony of a person who asserts or claims to have actual
18 knowledge of a fact, that is an eyewitness, that is direct
19 evidence.

20 Circumstantial evidence, on the other hand, is where
21 certain facts known through using one or more of our five
22 senses produces a logical inference that other facts exist
23 without directly proving those facts. Circumstantial
24 evidence, ladies and gentlemen, is the proof of a chain of
25 facts and circumstances indicating the existence of a

1 fact.

2 Now, as I have told you, the State may rely on either
3 or both of this type of evidence, direct or
4 circumstantial, and neither is inferior to the other. One
5 is as good as the other if equally convincing to you, the
6 jury. They're each entitled to the same weight. Now, you
7 should weigh all of the evidence in this case. And after
8 doing so, if you're not convinced of this Defendant's
9 guilt beyond a reasonable doubt, then you must resolve
10 that doubt in his favor and find him not guilty.

11 Ladies and gentlemen, one of the issues in this case
12 is the identification of this Defendant as the
13 perpetrator -- or one of the perpetrators of the crime.
14 Now, the State has the burden of proving identity beyond a
15 reasonable doubt. Now, it is not essential that the
16 witness himself or herself be free from doubt as to the
17 correctness of his or her statement. However, you, the
18 jury, must be satisfied beyond a reasonable doubt of the
19 accuracy of the identification of this Defendant before
20 you can convict him. If you're not convinced beyond a
21 reasonable doubt that this Defendant was the person or one
22 of the persons who committed the crime, then you must find
23 him not guilty.

24 Ladies and gentlemen, identification testimony is an
25 expression of belief or impression by a witness. Its

1 value depends on the opportunity the witness had to
2 observe or hear the offender at the time of the offense,
3 and to make a reliable identification thereafter.

4 Now, in appraising the identification testimony of a
5 witness, you may consider the following, did the witness
6 have the capacity and adequate opportunity to observe the
7 offender? Now, whether the witness had an adequate
8 opportunity to observe the offender at the time of the
9 offense will be affected by such matters as how long or
10 short a time was available, how far or close the witness
11 was, and/or how good were the lighting conditions.

12 Now, ladies and gentlemen, in general, a witness
13 bases any identification he or she makes on his or her
14 perception through the use of one or more of our five
15 senses. And, usually, a witness identifies an offender by
16 the sense of sight. But that is not necessarily so and he
17 or she may use any of the other senses like smelling,
18 tasting, hearing, or feeling.

19 Now, as I said earlier, ladies and gentlemen, the
20 burden of proof is on the State, and this extends to every
21 element of the crime charged. And this includes the
22 identity of this Defendant as one of the perpetrators of
23 the crime with which he is charged. And if after
24 examining the testimony, you have a reasonable doubt as to
25 the accuracy of the identification, then you must find him

1 not guilty.

2 Ladies and gentlemen, as jurors in this case, you
3 have a function or a responsibility that is entirely
4 separate and distinct from my function as the trial judge.
5 The Constitution of our state does not allow me to charge
6 you on the facts of this case or to discuss the facts with
7 you or in any way or manner, or let you know what my
8 personal feelings, if any, are about this case. And
9 that's because you and you alone are the judges of the
10 facts. Therefore, if during the course of this trial or
11 if during the course of my charge, you have a feeling or
12 you have been left with the impression that I have a
13 personal feeling about this case one way or another, then
14 you disregard that feeling or that impression.

15 Now, ladies and gentlemen, it's your duty and your
16 duty alone to weigh the testimony and evidence presented
17 in this case. In this connection, you have the right to
18 believe all that a witness told you, or you can disbelieve
19 all a witness told you. You can believe a part of what a
20 witness told you, and disbelieve a part of what a witness
21 told you. You can believe one witness as against several,
22 or you can believe several as against one. You, also,
23 have the right to take into consideration any bias, or
24 prejudice, or interest you feel a witness in the case
25 might have.

1 I'm the judge of the law. And I am required to
2 charge you the law that applies to the facts. It's not a
3 question of what you feel the law might be or what it
4 should be. It is not necessarily what the lawyers may
5 have told you it is. Because, under your oath, you are
6 required to take the law as I give it to you, apply that
7 law to the facts as you determine those facts to be, and
8 to write your verdict accordingly.

9 Ladies and gentlemen, in this case, as in all
10 criminal cases, this Defendant comes into this courtroom
11 presumed to be innocent. And this presumption continues
12 and carries through the entire trial until and unless it
13 is removed by evidence that satisfies you of his guilt
14 beyond a reasonable doubt. The burden is on the State in
15 this case to prove this Defendant guilty, and to prove
16 each and every element of the offense with which he is
17 charged beyond a reasonable doubt.

18 Now, some of you may have in the past served as
19 jurors on civil cases. And, if so, you were most likely
20 told that it was only necessary to prove that a fact was
21 more likely true than not true. But, in criminal cases,
22 the State's proof must be more powerful. As I told you,
23 it must be beyond a reasonable doubt.

24 Now, proof beyond a reasonable doubt is proof that
25 leaves you firmly convinced of this Defendant's guilt.

1 There are very few things in this world that we know with
2 absolute certainty. And, in criminal cases, our law does
3 not require proof that overcomes every possible doubt.
4 If, based on your consideration of the testimony and
5 evidence in this case, you are firmly convinced that this
6 Defendant is guilty as charged, then you must find him
7 guilty. On the other hand, if you think there is a real
8 possibility that he is not guilty, then you must give him
9 the benefit of that doubt and find him not guilty.

10 Ladies and gentlemen, under the oath you took in this
11 case, you swore to try the case based only and solely on
12 the testimony and evidence presented in this courtroom. I
13 tell you that it is your duty to lay aside all outside
14 opinions, bias, prejudice, or sympathy you may have in
15 reaching your verdict. The word "verdict" is taken from
16 the Latin word veredicto that means to speak the truth.
17 You have no friends to reward in this case or enemies to
18 punish. I charge you to abide by your oath and return a
19 verdict that speaks the truth.

20 Now, you'll have in the jury room with you, ladies
21 and gentlemen, the indictment in this case. This
22 indictment does not constitute evidence. It simply sets
23 forth the allegations by the State. This indictment is
24 the legal document that brings this case into the
25 courtroom and presents it to you for your determination.

1 Ladies and gentlemen, there are one of two verdicts
2 in this case, guilty or not guilty. And whatever that
3 verdict is, it must be unanimous, that is, all 12 of you
4 must agree.

5 Mr. Foreman, whatever the verdict of the jury is,
6 guilty or not guilty, you'll find the place on the back of
7 the indictment where it says "Verdict." Please write out
8 the verdict in the space provided and sign your name on
9 the place where it says "Foreperson of the Petit Jury."

10 Now, at this time, I'm required to go over my charge
11 with the lawyers. I need you to go back into your jury
12 room, but don't begin deliberating until I send word in
13 for you to do so.

14 Thank you.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 1:58 p.m.)

17 THE COURT: Anything further from the State?

18 MS. ANDERS: No, Your Honor.

19 MS. MANIGAULT: Nothing, Your Honor.

20 THE COURT: Tell them to deliberate.

21 (WHEREUPON, the proceedings were recessed at
22 approximately 2:00 p.m.)

23 THE COURT: They want a copy of the statements,
24 which, of course, I can't give them.

25 All right. Bring the jury in.

1 (WHEREUPON, the jury came into open court at
2 approximately 2:20 p.m.)

3 THE COURT: Now, Mr. Foreman, you've asked for the
4 statements of Morehead, Destiny, and Spearman.

5 JUROR #11, HENRY BALDWIN: Yes, sir.

6 THE COURT: Now, those statements are not a part of
7 the record in this case. And, for that reason, I can't
8 send them in to you. But I tell you, as a general rule,
9 statements are not admitted into evidence. So there was
10 no reason for them to purposely not be introduced into
11 evidence. But since they're not a part of the evidence in
12 this case, I can't give them to you. Okay.

13 JUROR #11, HENRY BALDWIN: All right.

14 THE COURT: Thank you.

15 Please retire and continue with your deliberations.

16 (WHEREUPON, the jury was excused from open court at
17 approximately 2:22 p.m.)

18 (WHEREUPON, Court's Exhibit Nos. 3 and 4 were
19 marked for identification and admitted into
20 evidence.)

21 (WHEREUPON, the proceedings were recessed at
22 approximately 2:23 p.m.)

23 THE COURT: I'm going to send the jury home tonight,
24 and we'll pick back up tomorrow morning.

25 Okay. Bring the jury in.

1 (WHEREUPON, the jury came into open court at
2 approximately 4:56 p.m.)

3 THE COURT: Ladies and gentlemen, we're going to
4 suspend for today, and we'll pick back up tomorrow morning
5 at 9:00. Now, when you leave, please, remember the
6 admonitions I read to you from the Chief Justice's order.
7 Do not talk about this case with anyone else, including
8 members of your own family. Please keep your badges on,
9 and have them on when you come back in the morning.

10 Now, I'll ask that you be back promptly at 9:00 in
11 the morning.

12 Mr. Foreman, if by any chance all 12 of you are back
13 before then, you can start with your deliberations. But
14 don't start until all 12 of you are back together.

15 All right. See you back tomorrow morning at 9:00.

16 Thank you.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 4:58 p.m.)

19 THE COURT: See you back in the morning.

20 (WHEREUPON, the proceedings were concluded at
21 approximately 4:59 p.m., to be reconvened on
22 Wednesday, September 15, 2010.)

23

24

25

1 WEDNESDAY, SEPTEMBER 15, 2010

2 THE COURT: Ladies and gentlemen, I've just been told
3 we have a verdict in this case. Of course, at this point,
4 we don't know what that verdict is. But I need everyone
5 in the courtroom to understand that, regardless of the
6 verdict, I will not permit or condone any displays of
7 emotion, no crying, no laughing, no clapping, nothing of
8 that nature.

9 Now, should there be any, that will constitute
10 contempt of court, and I will punish accordingly.

11 Now, does anyone not understand what I just said? If
12 so, please, stand.

13 (There was no response.)

14 THE COURT: All right. Bring the jury in, please.

15 (WHEREUPON, the jury came into open court at
16 approximately 10:10 a.m.)

17 THE COURT: Mr. Foreman, if you've reached a verdict,
18 would you hand it to the bailiff, please, sir.

19 All right. Would you, please, publish the verdict?

20 VERDICT

21 THE CLERK: Your Honor, in the case of
22 2009-GS-23-1867, the State v. Tra Vaughn Larol Thomas,
23 he's indicted for armed robbery, the verdict is guilty.
24 This is signed by Henry Baldwin, our Foreperson.

25 Ladies and gentlemen of the jury, if you agree this

1 is the verdict you reached in your deliberation room,
2 would you, please, raise your right hand.

3 (WHEREUPON, all jurors raised their hand.)

4 THE CLERK: Thank you.

5 THE COURT: Anything further from the jury, counsel?

6 MS. MANIGAULT: Nothing from the Defense.

7 MS. ANDERS: Nothing from the State.

8 THE COURT: Thank you, ladies and gentlemen, for your
9 service on this case.

10 I'm not sure, at this time, what the balance of the
11 day holds for you. So what I need for you to do, at this
12 time, is return downstairs to the jury assembly room.

13 Thank you so much.

14 (WHEREUPON, the jury exited the courtroom at
15 approximately 10:13 a.m.)

16 THE COURT: Any motions, Ms. Manigault?

17 MOTIONS

18 MS. MANIGAULT: Your Honor, we'd make a motion that
19 the verdict be set aside. It does not conform with the
20 evidence that was presented by the State.

21 THE COURT: And I would have to deny your motion.

22 MS. MANIGAULT: Thank you, Your Honor.

23 And we make a motion for a new trial, also.

24 THE COURT: And I would have to deny that, likewise.

25 MS. MANIGAULT: Thank you, Your Honor.

1 THE COURT: Do you have the sentencing sheet?

2 MS. ANDERS: Yes.

3 Additionally, I have an order of restitution.

4 THE COURT: Now, Mr. Thomas, during the course of
5 your trial, you exercised your Constitutional right not to
6 take the stand and testify, or otherwise present evidence.
7 But you have a perfect right, at this time, to address the
8 Court concerning your sentence.

9 Is there anything you'd like to say now, sir, before
10 I sentence you?

11 DEFENDANT THOMAS: I didn't do it, sir, I really
12 didn't.

13 THE COURT: All right, sir.

14 Ms. Manigault.

15 MS. MANIGAULT: May it please the Court, Your Honor.

16 My client is 22 years old. He has a tenth grade
17 education at Woodmont High School. He was employed at
18 FedEx before the date of this incident. And, before that,
19 he was employed at Fibercal [phonetic]. He lived with his
20 mother in his mother's home at [REDACTED] in
21 Piedmont. He is single. He has no children, Your Honor.

22 He does not have a criminal record at all. We would
23 ask the Court if you would seriously consider giving him
24 the minimum sentence in this case.

25 THE COURT: Solicitor, anything you need to say?

1 MS. ANDERS: No, sir.

2 We agree that he has no criminal record prior to
3 today.

4 THE COURT: Now, with respect to the order of
5 restitution, if the co-defendant is tried and convicted,
6 then he would be ordered to make restitution.

7 Do you need to make any reference to that on this?

8 MS. ANDERS: No, Your Honor.

9 We would know that it would be joint and several. We
10 can make that amount in half, if that would be more
11 appropriate.

12 THE COURT: No.

13 You can just provide on here that it's joint and
14 several.

15 MS. ANDERS: Yes, sir, certainly.

16 SENTENCING

17 THE COURT: All right. Mr. Thomas, I am taking into
18 consideration the fact that you have no prior criminal
19 record. The sentence of the Court is you be committed to
20 the Department of Corrections for a period of 12 years.
21 As a condition of parole, you are to make restitution in
22 accordance with the order I have just signed. Further,
23 that you pay \$500 to the Public Defender Fund.

24 MS. MANIGAULT: Your Honor, I'm retained.

25 THE COURT: It is retained?

1 MS. MANIGAULT: Yes, sir.

2 THE COURT: I'll remove that condition. Okay.

3 MS. MANIGAULT: Your Honor, may I ask what the amount
4 of restitution is?

5 THE COURT: Yes.

6 What is it?

7 MS. ANDERS: \$398.

8 THE COURT: \$398.

9 MS. MANIGAULT: All right. Thank you, Your Honor.

10 THE COURT: Is he entitled to any time?

11 MS. MANIGAULT: Yes, sir, he is.

12 He's been in for two -- he's been in since 11 --

13 MS. ANDERS: Your Honor, I don't have that
14 information with me, but I can give you a specific number.

15 MS. MANIGAULT: He's been in since 11-14-08.

16 MS. ANDERS: That's correct.

17 THE COURT: Thank you.

18 *****END OF TRANSCRIPT OF RECORD*****

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CERTIFICATE OF REPORTER

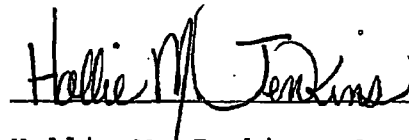
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 13th, 14th, and 15th days of September, 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 18, 2011



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRA VAUGHN THOMAS,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court judge err and violate Thomas's right under the Sixth Amendment of the Constitution to a public trial, when he summarily excluded Thomas's family members and neighbors from the courtroom during a state's witness's testimony, and when the judge did not articulate either an overriding interest in closing the courtroom nor did he consider all reasonable alternatives to the closure?

STATEMENT OF THE CASE

Tra Vaughn Larol Thomas was indicted by the Greenville County grand jury for armed robbery during its December 2009 term. He was tried before the Honorable C. Victor Pyle, Jr. and a jury between September 13th- 15th, 2010. He was represented by Dorothy A. Manigault, Esquire. Julie J. Anders prosecuted for the state. He was convicted, and sentenced to 12 years in prison.

This appeal timely follows.

ARGUMENT

The trial court judge erred, and violated Thomas's right under the Sixth Amendment of the Constitution to a public trial, when he summarily excluded Thomas's family members and neighbors from the courtroom during a state's witness's testimony, and when the judge did not articulate either an overriding interest in closing the courtroom nor did he consider all reasonable alternatives to the closure.

Thomas was tried for armed robbery. The state offered the testimony of Jerry Tyrone Morehead, a convict with an extensive criminal record, who testified that Thomas entered his car shortly after the crime occurred and admitted his involvement to him. R. 56 l. 25- 79, l. 20. Before this witness was called, the following exchange occurred:

THE COURT: All right. I was informed by the Solicitor in the presence of Ms. Manigault that the family-- the relatives of this Defendant had been saying or making threats to Jerry Tyrone Morehead. Now, I don't know whether that's true or not. But I need for you to understand that if that is true, then that constitutes threatening a witness in the case and is a very serious felony and is punishable by a long prison term. And if that is true, I will not condone it. And I hope you understand that.

Now, for that reason, I'm going to take his witness' testimony out of your presence. So, at this time, you can excuse yourself and wait out in the hallway.

MS. MANIGAULT: Your Honor, may I enter my objection to the court's decision?

THE COURT: Certainly.

MS. MANIGAULT: Thank you. And the basis of my objection is this, Your Honor, that the solicitor has informed the Court of that. We don't have any sworn affidavits by the witness that's coming up or any sworn affidavits by the State . . . [T]he Solicitor has informed the court that her witness, Mr. Jerry Morehead, has said that the family has threatened him. However, we do not have any sworn affidavits to that fact or anything else.

THE COURT: All right. I understand.

MS. MANIGAULT: Thank you.

THE COURT: All right. Bring the jury—

R. 50, l. 22- 52, l. 4.

The Solicitor then asked the trial court to remove Thomas's neighbors:

MS. ANDERS: Your Honor we just respectfully request that Mr. Thomas' neighbors, also, be excluded from the courtroom.

THE COURT: Who?

MS. ANDERS: Mr. Thomas' neighbors, this nice couple in the back, that they, please, be excluded from the courtroom during Mr. Morehead's testimony.

THE COURT: And who are they?

MS. ANDERS: They are the Defendant's neighbors, sir.

THE COURT: All right.

MS. MANIGAULT: Your Honor, they all lived in the same community. It's a small community. There is no evidence that there are threats made by them.

THE COURT: I'm going to ask them to step out in the hallway.

R. 55, l. 17- 56, l. 6.

The witness then testified. R. 56, l. 21- 79, l. 19.

The trial court judge committed reversible error when he excluded family members and neighbors from Thomas's trial. The exclusion of one sole spectator can be grounds for reversing the conviction. Presley v. Georgia, 130 S.Ct. 721 (2010).

Criminal defendants have a Sixth Amendment right to a public jury trial. Waller v. Georgia, 467 U.S. 39 (1984). "Our cases have uniformly recognized the public-trial

guarantee as one created for the benefit of the defendant.” Gannett Co. v. DePasquale, 443 U.S. 368, 280 (1979). There are, of course, some limitations.

“While the accused does have a right to insist that the *voir dire* of the jurors be public, there are exceptions to this general rule. “[T]he right to an open trial may give weight in certain cases to other rights or interests, such as the defendant’s right to a fair trial or the Government’s interest in inhibiting disclosure of sensitive information.” *Waller*, 467 U.S., at 45, 104 S.Ct. 2210. “Such circumstances will be rare, however, and the balance of interests must be struck with special care.” *Ibid.* *Waller* provided standards for courts to apply before excluding the public from any stage of the criminal trial: “[T]he party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure.” *Id.*, at 48, 104 S.Ct. 2210.”

Presley v. Georgia, 130 S.Ct. 721, 724 (2010).

The trial court judge committed reversible error because he did not ensure that the closure was not broader than necessary to protect the state interest, nor did the trial court judge consider reasonable alternatives to closing the proceeding. Indeed, the State failed to substantiate the purported claims of threats from the family members-- and made by a convicted felon with an extensive record of dishonesty crimes-- such that the State did not even advance an overriding interest that would likely be prejudiced by keeping the courtroom open. The judge admitted he did not know if the threats were “true or not.” R. 51, l. 1. Instead, the trial court judge summarily expelled members of Thomas’s family and neighbors, and violated his right to a public trial as guaranteed by the 6th amendment of the Constitution. The trial court judge was obligated to articulate his findings specific enough that a reviewing court could properly determine whether the closure order was properly entered. Press-Enterprise Co. v. Superior Court of Cal.,

Riverside Cty., 464 U.S. 501 (1984). He did not do so in this case. Respectfully,
Thomas asks this Court to reverse his convictions and remand his case for trial.

CONCLUSION

For the preceding reason, Thomas respectfully asks this Court to reverse his conviction and remand his case for trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DAF-BT', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of December, 2011.

CERTIFICATE OF COUNSEL

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



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

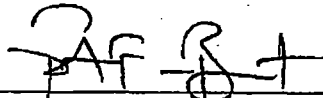
v.

TRA VAUGHN THOMAS,

APPELLANT

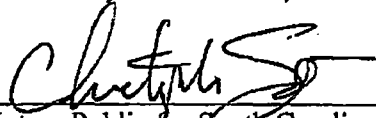
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 5th day of December, 2011.


Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of December, 2011.


Notary Public for South Carolina (L.S.)

My Commission Expires: May 16, 2021.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable C. Victor Pyle, Jr., Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

TRA VAUGHN THOMAS,

APPELLANT:

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- Timothy C. Doughtie v. Nelsen Steel, 284 S.C. 27, 324 S.E.2d 329 (Ct. App. 1984) 9
- U.S. ex rel. Bruno v. Herold, 408 F.2d 125 (2d Cir. 1969) 9
- U.S. v. Deluca, 137 F.3d 24 (1st Cir. 1998) 7
- U.S. v. Farmer, 32 F.3d 369 (8th Cir. 1994) 7, 9
- U.S. v. Galloway, 937 F.2d 542 (10th Cir. 1991) 10
- U.S. v. Gupta, 650 F.3d 863 (2d Cir. 2011) 10, 11
- U.S. ex rel. Laws v. Yeager, 448 F.2d 74 (3d Cir. 1971) 9
- U.S. v. Osborne, 68 F.3d 94 (5th Cir. 1995) 7
- U.S. v. Perry, 479 F.3d 885 (D.C. Cir. 2007) 10
- U.S. v. Sherlock, 865 F.2d 1069 (9th Cir. 1989) 7, 8
- U.S. v. Villagomez, 708 F.Supp.2d 1105 (D.N. Mariana Islands 2010) 6
- Waller v. Georgia, 467 U.S. 39 (1984) 6, 9, 11
- Woods v. Kuhlmann, 977 F.2d 74 (2d Cir. 1992) 7, 9
- Yung v. Walker, 341 F.3d 104 (2d Cir. 2003) 10

STATEMENT OF ISSUE ON APPEAL

The issue raised on appeal is not preserved for review; but, in any event, Appellant's Sixth Amendment right to a public trial was not violated.

STATEMENT OF THE CASE

Appellant was indicted in December 2009 in Greenville County for armed robbery (R. p. 140-41). He was tried on September 13-15, 2010, before the Honorable C. Victor Pyle, Jr., and the jury found him guilty. Judge Pyle sentenced Appellant to 12 years. A notice of appeal was timely served and filed.

ARGUMENT

The issue raised on appeal is not preserved for review; but, in any event, Appellant's Sixth Amendment right to a public trial was not violated.

Error Preservation

First, Respondent submits that the argument now raised on appeal was not preserved for review. After the court indicated its intention to excuse Appellant's relatives from the courtroom during Mr. Morehead's testimony, Appellant's counsel stated that she was objecting because "we don't have any sworn affidavits by the witness that's coming up or any sworn affidavits by the State" to confirm that any threats were made by Appellant's relatives to Mr. Morehead. (R. p. 51, line 10 – p. 52, line 3). Subsequently, when the judge indicated his intention to also excuse Appellant's neighbors during Mr. Morehead's testimony, Appellant's counsel did not object but stated, "Your Honor, they all live in the same community. It's a small community. There's no evidence that there are threats made by them." (R. p. 55, line 17 – p. 56, line 7).

Because there was no objection made pursuant to the Sixth Amendment, and no mention at all of a violation of Appellant's right to a public trial, the issue raised on appeal is not preserved for appellate review. See In re Care and Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled on by the trial court to be preserved for appeal."); State v. McWee, 322 S.C. 387, 391, 472 S.E.2d 235, 238 (1996) (where defendant failed to cite to a constitutional basis for his objection at trial, the constitutional issue raised on appeal was not preserved for review); State v. Carlson, 363 S.C. 586, 598, 611 S.E.2d 283, 289 (Ct. App. 2005) (constitutional arguments are not exempt from the error

preservation rules); State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) (citation omitted) (in order to preserve an alleged error for review, a specific objection must be made to alert the court regarding the precise nature of the error); State v. Dickman, 341 S.C. 293, 295, 534 S.E.2d 268, 269 (2000) (citations omitted) (a party may not argue one ground at trial and an alternate ground on appeal). Therefore, this Court must dismiss the appeal on error preservation grounds.

The Sixth Amendment was not Violated

Even if the issue had been preserved, Respondent submits that there was no violation of Appellant's Sixth Amendment right to a public trial where there was no "closure" of the courtroom to the public as contemplated by Presley v. Georgia, 130 S.Ct. 721 (2010); see also Waller v. Georgia, 467 U.S. 39 (1984); In re Oliver, 333 U.S. 257 (1948). In Presley, the judge closed the courtroom to all members of the public during the jury voir dire. See Presley, *supra*, at 722. At that time, the "public" included only one person, the defendant's uncle; however, the trial judge indicated that no one besides prospective jurors would be allowed in the courtroom. See *id.*; see also U.S. v. Villagomez, 708 F.Supp.2d 1105, 1125 (D.N. Mariana Islands 2010) ("Although the defendants apparently read Presley to hold that a 'closure' occurs if even one member of the public is excluded from the courtroom, such a reading is not 'fairly debatable.' The only reasonable reading of Presley is that an improper 'closure' violates a defendant's Sixth Amendment right to a public trial, even if the 'closure' actually excludes only one member of the public who wishes to attend the proceedings."). In this case, only Appellant's relatives, and two of his neighbors, were excused from the courtroom for a

limited period of time.¹ (See R. p. 50-56). Any other member of the public who wished to be present during that time was welcome. See State v. Lormor, 172 Wash.2d 85, 93, 257 P.3d 624, 629 (2011) (holding that “a ‘closure’ of a courtroom occurs when the courtroom is completely and purposefully closed to spectators so that no one may enter and no one may leave”). Appellant’s trial was not a “secret trial” as proscribed by our Constitution. See In re Oliver, *supra*, at 266-73 (discussing the long-standing fear of secret trials as the foundation for the Sixth Amendment right to public trials); see also Caudill v. Peyton, 368 F.2d 563, 565 (4th Cir. 1966) (disapproving an *in camera* trial in the judge’s chambers). Accordingly, since there was not a “closure” of the courtroom to the public, Appellant’s Sixth Amendment rights were not violated.

Even if this Court finds that there was a closure in this case triggering the Sixth Amendment’s protection, the test set forth in Presley v. Georgia may not be the appropriate test since any closure in this case was only partial and temporary. Inasmuch as partial closures do not implicate the same Sixth Amendment concerns as do total closures, and since there are no U.S. Supreme Court cases indicating how a court should address a partial closure, the U.S. Circuit Courts have developed a test specifically tailored to partial and temporary closures. See United States v. Deluca, 137 F.3d 24, 33-34 (1st Cir. 1998); Nieto v. Sullivan, 879 F.2d 743, 753 (10th Cir. 1989); United States v. Sherlock, 865 F.2d 1069, 1077 (9th Cir. 1989); Judd v. Haley, 250 F.3d 1308 (11th Cir. 2001); Woods v. Kuhlmann, 977 F.2d 74 (2d Cir. 1992); United States v. Osborne, 68 F.3d 94, 98-99 (5th Cir. 1995); United States v. Farmer, 32 F.3d 369, 371 (8th Cir. 1994); see also Bell v. Jarvis, 236 F.3d 149, 168 (4th Cir. 2000). This test varies only slightly

¹ Notably, these persons could have been sequestered had they been potential witnesses. See Rule 615, SCRE (“Exclusion of Witnesses”).

from the test set forth in Presley v. Georgia. Under the Presley test, (1) there must be an "overriding interest" that is likely to be prejudiced; (2) the closure must be no broader than necessary to protect that interest; (3) the trial judge must consider reasonable alternatives to closing the proceeding; and (4) the trial judge must make adequate findings to support the closure. Presley v. Georgia, supra, at 724 (citing Waller, supra). The partial closure test created in the U.S. Circuit Courts is the same as the Presley test except that a "substantial reason" for the closure is required rather than an "overriding interest." See, e.g., United States v. Sherlock, supra.

In Appellant's case, it is clear from the record that the trial judge agreed to partially close the proceeding to Appellant's relatives and two of his neighbors during Mr. Morehead's testimony because he was concerned that their presence in the courtroom would inhibit Mr. Morehead's truthful testimony. (See R. p. 50-51). A trial judge is accorded broad discretion in conducting a criminal trial, and the trial judge has a duty to help to ensure that the truth is ascertained. See State v. Vickers, 226 S.C. 301, 306, 84 S.E.2d 873, 876 (1954) ("The purpose of a trial in a criminal case is to ascertain the truth of the matters charged against the defendant, and it is a part of the business of the trial judge to see that this end is attained.") (quoting State v. Furtick et al., 147 S.C. 82, 144 S.E. 839, 840 (1928)); State v. Bryant, 372 S.C. 305, 642 S.E.2d 582 (2007). ("[A] trial court is given enormous discretion in conducting a criminal trial."); State v. Hawkins, 300 S.C. 225, 226, 387 S.E.2d 251 (1989); ("The wide discretion accorded presiding judges, embedded in the law of South Carolina, is essential to the orderly administration of justice."); State v. Barton, 325 S.C. 522, 529, 481 S.E.2d 439, 443 (Ct. App. 1997) ("A trial judge has the inherent power to maintain order and decorum in his courtroom.") (citations omitted).

Here, the "overriding interest" or "substantial reason" justifying a partial closure was ensuring that the witness, Mr. Morehead, felt free to testify truthfully regarding the facts without being inhibited by the presence of persons who had previously threatened him. Similar concerns have been held to be sufficiently compelling reasons justifying closure of a proceeding. See, e.g., State v. Gce, 262, S.C. 373, 384-85, 204 S.E.2d 727, 731-32 (1974); State v. Sinclair, 275 S.C. 608, 614, 274 S.E.2d 411, 414 (1981); United States Ex Rel. Laws v. Yeager, 448 F.2d 74, 80-81 (3d Cir. 1971); Woods v. Kuhlmann, 977 F.2d 74 (2d Cir. 1992); Nieto v. Sullivan, 879 F.2d 743, 753-54 (10th Cir. 1989); United States v. Farmer, 32 F.3d 369, 371 (8th Cir. 1994); U. S. ex rel. Bruno v. Herold, 408 F.2d 125 (2d Cir. 1969); Lowe v. State, 141 Ga.App. 433, 436, 233 S.E.2d 807, 809-810 (Ga. App. 1977); State v. Rusin, 153 Vt. 36, 40-41, 568 A.2d 403, 406 (1989); Hackett v. State, 266 Ind. 103, 110-11, 360 N.E.2d 1000, 1004 (1977); People v Mack, 178 A.D.2d 661, 577 N.Y.S.2d 892 (2d Dep't 1991).

The partial closure was limited to Appellant's relatives and two neighbors, and only lasted for the duration of one witness's testimony. (See R. p. 50-56). Further, arguably, there were no reasonable alternatives except for exclusion of these persons from the courtroom during the witness's testimony. Finally, although the trial judge could have been more explicit in his ruling, his intent is apparent from the record. However, if this court determines that the judge's findings are insufficient, Respondent submits that a remand to the trial judge for further findings would be appropriate rather than reversal of the entire trial. See State v. Colf, 337 S.C. 622, 629, 525 S.E.2d 246, 249 (2000); Timothy C. Doughtie Advertising, Inc. v. Nelsen Steel and Wire Co., Inc., 284 S.C. 27, 324 S.E.2d 329 (Ct. App. 1984); Golden Strip Motors, Inc. v. Pennsylvania Nat. Mut. Cas. Ins. Co., 288 S.C. 548, 343 S.E.2d 659 (Ct. App. 1986) (all holding that

remand for further factual findings was appropriate where the trial court failed to rule on an issue); see also United States v. Galloway, 937 F.2d 542, 546-47 (10th Cir. 1991) (remanding Sixth Amendment issue to the district court with directions to supplement the record with the facts and reasoning upon which a partial closure of the courtroom was based, since granting a new trial without such findings being made would constitute a windfall and would not be in the public interest, especially where the defendant failed to object to the lack of findings by the district court); Yung v. Walker, 341 F.3d 104 (2d Cir. 2003) (remanding Sixth Amendment public trial issue to the district court for further findings); Kendrick v. State, 661 N.E.2d 1242 (Ind.App. 1996) (since the lower court failed to make adequate findings on the record regarding his partial closure of the courtroom, case was remanded for trial court to enter specific findings).

Finally, even if this Court finds that the trial court committed error in excluding Appellants relatives and neighbors during Mr. Morehead's testimony, this Court should conclude that this error was too trivial to violate the Sixth Amendment. Such a conclusion would not be without support. Some of the U.S. Circuit Courts, and some state courts, have adopted a "triviality exception" to the Sixth Amendment's public trial guarantee. See, e.g., United States v. Perry, 479 F.3d 885, 889-91 (D.C. Cir. 2007); United States v. Gupta, 650 F.3d 863, 867-72 (2d Cir. 2011); Com. v. Alebord, 80 Mass.App.Ct. 432, 439-40, 953 N.E.2d 744 (Mass.App.Ct. 2011); Barrows v. U.S., 15 A.3d 673, 676-81 (D.C. 2011); Kelly v. State, 195 Md.App. 403, 420-29, 6 A.3d 396, 406-11 (Md.App. 2010). Further, in U.S. v. Gupta, *supra*, the Second Circuit Court of Appeals determined that the triviality exception is consistent with the United States Supreme Court's opinion in Presley v. Georgia. Under the triviality exception, a court looks to whether the actions of the court, and the effect such actions had on the conduct

of the trial, deprived the defendant – whether innocent or guilty – of the protections of the Sixth Amendment. See U.S. v. Gupta, *supra*, at 867. Thus, a determination that the exclusion was trivial means that the error was not significant enough to rise to the level of a constitutional violation. See *id.* The core values protected by the Sixth Amendment are examined, and whether a particular closure implicates the Sixth Amendment depends upon whether the closure undermines these values. *Id.* These core values are as follows: (1) to ensure a fair trial; (2) to remind the prosecutor and the judge of their responsibility to the accused and the importance of their functions; (3) to encourage witnesses to come forward; and (4) to discourage perjury. Peterson v. Williams, 85 F.3d 39, 41-43 (2d Cir. 1996) (citing Waller v. Georgia, *supra*, at 46-47).

As discussed previously, the temporary exclusion of a few persons does not does not implicate the same Sixth Amendment concerns as does a total closure of the courtroom for the duration of a trial. In Appellant's case, the exclusion of his relatives and two neighbors during the testimony of one witness was too trivial to constitute a violation of Appellant's Sixth Amendment rights. Since only these few persons were excluded, the trial remained open to the public and the core values of the Sixth Amendment were not subverted. In fact, the partial exclusion arguably furthered these core values because it allowed the witness, Mr. Morehead, to testify freely and fully without being inhibited by the presence of persons who had previously threatened him. (See R. p. 50-51). Accordingly, this Court should conclude that any error in exclusion of Appellant's relatives and neighbors was trivial and did not violate Appellant's Sixth Amendment right to a public trial.

CONCLUSION

Based upon the foregoing, Respondent submits that this Court should dismiss the appeal on error preservation grounds. If not, this Court should find no Sixth Amendment violation, or, if the Court finds the trial judge's findings to be inadequate, remand the matter to the trial judge for further findings.

Respectfully submitted,

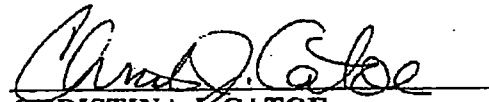
ALAN WILSON
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CHRISTINA J. CATOE
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ATTORNEYS FOR RESPONDENT

November 30, 2011

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable C. Victor Pyle, Jr., Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

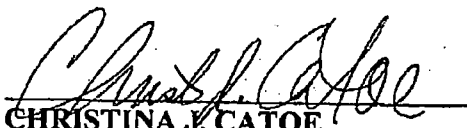
v.

TRA VAUGHN THOMAS,

APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's August 13, 2007 **Order on Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings**.


CHRISTINA J. CATOE

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
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ATTORNEYS FOR RESPONDENT

November 30, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
The Honorable C. Victor Pyle, Jr., Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

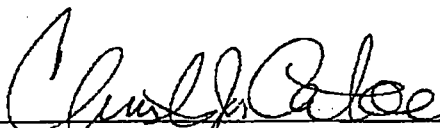
v.

TRA VAUGHN THOMAS,

APPELLANT.

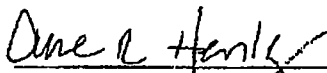
AFFIDAVIT OF SERVICE

The undersigned attorney hereby certifies that the **Final Brief of Respondent** in the above-referenced case has been served upon **ELIZABETH A. FRANKLIN-BEST**, Division of Appellate Defense, South Carolina Commission on Indigent Defense, Post Office Box 11589, Columbia, South Carolina 29211-1589, this **30th day of November, 2011**.


CHRISTINA J. CATOE
Assistant Attorney General

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

SWORN to before me this 30th day of November, 2011.


Notary Public for South Carolina.
My Commission Expires: 7/18/2017

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.

Tra Vaughn Larol Thomas,

Appellant.

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-361
Submitted June 1, 2012 – Filed June 13, 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 Christina J. Catoe, all

of Columbia; and Solicitor W. Walter Wilkins, III, of Greenville, for Respondent.

PER CURIAM: Tra Vaughn Larol Thomas appeals his conviction of armed robbery, arguing the trial court erred and violated his Sixth Amendment right to a public trial by summarily excluding Thomas's family members and neighbors from the courtroom during the State's witness's testimony. Thomas maintains his Sixth Amendment rights were violated when the trial court neither articulated an overriding interest in closing the courtroom nor considered all reasonable alternatives to the closure. Because Thomas did not raise this specific issue when he objected to the trial court's decision, we affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: In re Care & Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) ("Constitutional issues, like most others, must be raised to and ruled on by the trial court to be preserved for appeal."); State v. Baker, 390 S.C. 56, 65, 700 S.E.2d 440, 444 (Ct. App. 2010) (holding constitutional claims must be raised at trial to be preserved for review); id. (holding a party may not raise one ground to the trial court and a different ground on appeal).

AFFIRMED.

WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.

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

FORM 5

STATE OF SOUTH CAROLINA

County of GreenvilleTrowlough Laro'i Thomas #342780
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013-CP-23-03233

APPLICATION FOR

POST-CONVICTION RELIEF

JUN 10 P 1:35

PAUL B. WILKINSON
CLERKINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lylesay-B Correction Inst
504 Broad Cast drive Spartanburg S.C. 29303
2. Name and location of Court which imposed sentence Greenville County
General Sessions
3. Name(s) of co-defendant(s) (if any) Robert Thompson, Jameal Brown
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009GS2301867
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) September 15th 2010 (12 years)
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty Jury Trial
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. South Carolina Court of Appeals
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. Appeal Dismissed
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. Appeal Dismissed, June 20, 2012
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. Unpublished Opinion No: 2012-LP-136
 ii. Submitted June 6, 2012 - Filed June 13, 2012
 iii. _____
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) Ineffective Assistance of Counsel
- (b) _____
- (c) Violation of Constitutional Right 6th and 14th Amend
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Ineffective for her failure to investigate and
- (b) object to the Constitutional claims so it could
- (c) be presented for review on appeal.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. None
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. None
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. NONE
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NONE
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NONE
- 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. violation of constitutional right 6th Amendment
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. Direct 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) Ineffective Assistance of Counsel / The Applicate
 (b) was not aware of the errors of his Attorney
 (c) at the time of his trial and sentence

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? No
 (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?

No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Ms Dorothy A. Manigault Attorney at Law
P.O. Box 392 Greenville, S.C. 29602
 ii. _____
Ms Elizabeth A. Franklin-Best Appellate Defence
1330 Lady St Suite 407 Columbia S.C. 29201
 (b) the proceedings at which each such attorney represented you:
 i. Ms Manigault at trial and sentencing
Ms Franklin-Best on direct appeal
 ii. _____
 iii. _____

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, Travis Vaughn Thomas, 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 30th
day of May, 2013

Katherine Scott (L.S.)
Notary Public

My Commission Expires: 9/25/2022

19. State concisely the relief you seek in filing this application.
The applicant seeks to have his conviction and sentence set aside and vacated and to be set at liberty, or in the alternative have his conviction and sentence annulled and remanded for a new trial.

20. Are you now under sentence from any other court that you have not challenged?

NO

**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.

Lawrence Thomas

Applicant

SWORN or affirmed to and subscribed before me this
30th day of May, 2013.

Katherine Scott

Notary Public

My Commission Expires: 9/25/2022

ra Vaughn Thomas #342180
 ive say BB-3A
 o. Box 580
 na SC. 29378



2013-CP-23- 03233

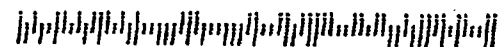
Paul B. Wickensimer
 Greenville County Clerk of Court
 305 East North Street
 Greenville, South Carolina 29601

SCDC

JUN 30 2013

MAIL ROOM

29601219099



STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2013-CP-23-03233

Tra'Vaughn La'Roi Thomas,
S.C.D.C. No. 342780,
Applicant,

v.

RETURN

State of South Carolina,
Respondent.

The Respondent, making its Return to the Application for Post-Conviction Relief filed June 10, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Greenville County. The Applicant was indicted at the December 2009 term of the Greenville County Grand Jury for armed robbery (2009-GS-23-1867). Dorothy A. Manigault, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On September 15, 2010, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to confinement for twelve years.

A Notice of Appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed Applicant's conviction and sentence. State v. Thomas, Op. No. 2012-UP-361 (S.C. Ct. App. filed June 13, 2012). The remittitur was

sent June 29, 2012.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections, the trial transcript, and the appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. "[F]ailure to investigate and object to the constitutional claims so it could be presented for review on appeal."
2. "Violation of Constitutional Right 6th and 14th amend."

III.

The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in his application. Id. 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, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. at 690. The

Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688). 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.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further claims infringement of his rights under certain amendments to the United States Constitution. Respondent interprets this as an allegation that he was denied due process of law. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least

a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: Karen Ratigan
ATTORNEYS FOR RESPONDENT

Dec. 3, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2013-CP-23-3233

TRA'VAUGHN LA'ROI THOMAS, 342780)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

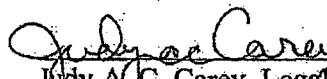
STATE OF SOUTH CAROLINA,)

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:

**Tra'Vaughn La'Roi Thomas, 342780
 Livesay Correctional Institution
 Post Office Box 580
 Una SC 29378-0580**

DATED this 3rd day of December, 2013.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2013-CP-23-03233

TRAVAUGHN THOMAS,
PLAINTIFF,)

vs.)

STATE OF SOUTH CAROLINA
DEFENDANT.)

TRANSCRIPT OF RECORD

June 17, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, JUDGE.

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

CAROLINE M. HORLBECK, ESQ.
Attorney for the Plaintiff

KAREN C. RATIGAN, ESQ.
Attorney for the Defendant

PENNY M. JOHNSON
Official Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

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E X H I B I T S

(There was no exhibits submitted.)

P R O C E E D I N G S

1
2 MS. RATIGAN: This is the case of Travaughn Thomas vs.
3 State of South Carolina. Docket number is 2013-CP-23-3233.
4 Mr. Thomas was indicted for armed robbery back in 2009. He
5 was represented on that charge by Ms. Manigault. The case
6 was brought to trial in September of 2010. He was found
7 guilty. On September 15, 2010, Judge Pyle sentenced him to
8 12 years imprisonment. Mr. Thomas filed an appeal. His
9 conviction and sentence were affirmed June 13th of 2012 by
10 the Court of Appeals and the application was timely filed.
11 The State is ready to proceed.

12 THE COURT: Ms. Horlbeck.

13 MS. HORLBECK: Judge, we will call Mr. Travaughn Thomas
14 to the stand.

15 THE COURT: Mr. Thomas, if you would come on up,
16 please, sir. Come on up and place your left hand on the
17 Bible and raise your right hand.
18 Thereupon;

TRAVAUGHN THOMAS,

19
20 After having been duly sworn, testified as follows:

21 THE CLERK: Thank you. Please state your full name for
22 the record.

23 THE WITNESS: Travaughn Leroy Thomas.

24 THE CLERK: Thank you. You may be seated.

DIRECT EXAMINATION
25

1 BY MS. HORLBECK:

2 Q Mr. Thomas, who represented at the trial of this
3 case?

4 A Dorothy Manigault.

5 Q What happened at your trial? And by that, I mean,
6 what was the verdict at your trial?

7 A I was found guilty and sentenced to 12 years, 85.

8 Q And as a result of that conviction, did you file this
9 PCR action today?

10 A I tried to go through the appeal process first and my
11 appeal was turned down and I came through the PCR process.

12 Q Was Ms. Manigault retained or appointed to represent
13 you?

14 A She was retained.

15 Q How long did she represent you?

16 A Like five or six months.

17 Q Okay. Now, let's talk about the trial. At your
18 trial, do you recall a Mr. Morehead testifying for the
19 State?

20 A Yes, I do.

21 Q All right. And did your attorney -- do you recall
22 whether or not your attorney objected to Mr. Morehead
23 testifying in your trial?

24 A She said that the charges he had was going back to
25 like 1980 for forgery and check fraud and stuff like that

1 to say he could have been impeachable.

2 Q Well, here's my question, did she object or not to
3 Mr. Morehead being competent to testify as a witness in
4 your case?

5 A I don't think she did.

6 Q Okay. And what is the reason you believe Mr.
7 Morehead was not competent to testify?

8 A I mean, the whole time he was on the stand, he lied.

9 Q Okay. Did Ms. Manigault impeach him with his lies
10 and his prior record?

11 A Yes, she did.

12 Q Okay. All right. But your position is today -- let
13 me just rephrase that. Is it your position today that Ms.
14 Manigault should have objected to Mr. Morehead testifying
15 at all?

16 A Yes, I do.

17 Q And other than his prior -- Mr. Morehead's prior
18 record and the fact that he lied on the stand, are there
19 any other grounds that you believe Ms. Manigault should
20 have used to object to Mr. Morehead's testimony?

21 A The statement that he gave the police, he had named
22 another name as the driver of the car. That person
23 disappeared out of the equation all together. I don't
24 know if he's done been to court for it or not, but it
25 disappeared.

1 Q Okay. What name did Mr. Morehead give?

2 A He gave Robert Thompson.

3 Q And what did Mr. Morehead say was Mr. Thompson's role
4 in the case?

5 A He say he was the dude that came in with the gun in
6 the store robbery.

7 Q Okay.

8 A The third man was Jamil Brown, supposedly, Jamil
9 Brown. He was the driver of the car.

10 Q Okay. Mr. Brown was the driver of the car?

11 A That's the one that disappeared from the case.

12 Q Okay. And tell me how -- what is your allegation
13 against Ms. Manigault regarding the disappearance of Mr.
14 Brown from the case?

15 A When she gave Mr. Morehead his statement to read, she
16 should have said something about Jamil Brown. He was
17 never brought up at all in the trial, period.

18 Q All right.

19 A That would have told them that he was lying in his
20 statement then.

21 Q If Ms. Manigault had brought up Mr. Brown to Mr.
22 Morehead during Mr. Morehead's testimony, do you think
23 that would have changed the outcome of your trial?

24 A Yes, I do.

25 Q Okay. How so?

1 A Because he was saying before she gave him the
2 statement to read that I only had named one person when I
3 jumped in the car with him. The statement said I named
4 two. The first name put on that statement was Jamil
5 Brown.

6 Q All right. At some point during the trial, did Judge
7 Pyle close the courtroom and ask your family and some of
8 your neighbors to step out of the courtroom?

9 A Yes, he did.

10 Q Do you recall the basis -- did the State request that
11 the Court close the courtroom?

12 A He said that the informant --

13 Q Who said?

14 A Mr. Pyle, the judge.

15 Q The judge, okay.

16 A The witness said my family had been threatening him,
17 but they didn't have anything saying my family had been
18 threatening him through the police department or whatever,
19 nothing was said.

20 Q What witness said that your family had made threats
21 against them?

22 A Morehead.

23 Q Okay. And did Ms. Manigault object? She did object,
24 didn't she?

25 A Yes, she did.

1 Q But did she make specific objections that the State
2 didn't present an overriding interest?

3 A No, she --

4 Q Or an overriding reason for closing the court, did
5 she make that specific objection?

6 A No, they didn't close the court, they just made them
7 get rid of -- my family had to leave out and two of my
8 neighbors had to leave. My ex-girlfriend had to leave.
9 Everybody else stayed in, it was just my family.

10 Q Do you recall whether or not the State showed the
11 Court any prejudice that would result from not closing the
12 court?

13 A No.

14 Q Did Ms. Manigault object to that?

15 A No.

16 Q And do you recall whether or not the Court considered
17 reasonable alternatives to closing the courtroom?

18 A I don't think so.

19 Q Did Ms. Manigault object to that?

20 A Not that I know of.

21 Q And to your recollection, did the Court make any
22 adequate findings to support closing the courtroom at that
23 time?

24 A No, it didn't.

25 Q And did Ms. Manigault object to that?

1 A No.

2 Q Was that one of the -- was Ms. Manigault's failure to
3 make these specific objections, was that one of the issues
4 presented on appeal?

5 A Yeah.

6 Q All right.

7 A That's what the appeal the lawyer put. I don't think
8 it would have been a very strong point to go off of, but
9 that's what she put it in, that's why they turn my appeal
10 down for.

11 Q Okay. And do you recall the reason that the court of
12 appeals turned your appeal down? Was the objection to
13 closing the courtroom, was it properly preserved by Ms.
14 Manigault to your recollection?

15 A I don't think it was.

16 Q Okay.

17 A I don't think it was.

18 Q And if Ms. Manigault had made those specific
19 objections to closing the courtroom, do you think the
20 outcome of your case would have been different or the
21 outcome of your appeal would have been different?

22 A Yes, I do, because he acted like he didn't want to
23 talk in front of my family at all. He just sat there.
24 When they called him up to the stand, he just sat there.

25 Q Okay. To your knowledge, was your family members or

1 any of your neighbors arrested for tampering with
2 witnesses?

3 A No, ma'am.

4 Q To your knowledge, were any criminal charges -- did
5 any criminal charges result against your family or
6 neighbors?

7 A No. I found out --

8 Q Hang on. That's all I want to know.

9 A Okay.

10 Q Now, is it correct the police executed a search
11 warrant at your residence?

12 A Yes.

13 Q To your recollection, did the police find any
14 evidence associated with this trial in your residence?

15 A No, ma'am.

16 Q Okay. To your knowledge, did the police also execute
17 a search warrant at your codefendant's residence?

18 A Yes, they did.

19 Q Was anything found at your codefendant's residence to
20 your recollection?

21 A It was a gun that didn't fit the description of the
22 one in the crime, a cigar and a ski mask.

23 Q Okay. The mask and cigar, were those introduced
24 against you at your trial to your recollection?

25 A Yes, they were.

1 Q All right. Did Ms. Manigault object?

2 A Yes, she did.

3 Q Okay. And what's your position on the grounds for
4 her objection?

5 A They shouldn't have been used at all because they
6 weren't found in my residence. My codefendant's home
7 right now. The same evidence that they had on me, they
8 found at his house. He's at home now. I guess they used
9 it on him. I don't know if they did or not. I can't even
10 have contact with him at all, period. But they used it on
11 me with the hands of one hands of all, connect us together
12 with it. He won the trial. I lost and got 12 years.

13 Q Okay.

14 A Jamil Brown, don't know where he at. He didn't get
15 no time for it. I'm the only one doing time and there was
16 three of us.

17 Q All right. Did you want Ms. Manigault to argue -- to
18 object to the introduction of this evidence on the basis
19 that these things were not in your possession?

20 A Of course.

21 Q Did she not make that objection at trial?

22 A Yes, she did.

23 Q Okay. All right. In the middle of your trial, did
24 the Court address -- do you recall whether or not the
25 Court addressed an issue regarding one of the jurors --

1 A Yes.

2 Q -- who knew or worked with one of your witnesses?

3 A Uh-huh.

4 Q To your recollection, did Ms. Manigault object to
5 that juror continuing on serving as a juror in your trial?

6 A No, I don't.

7 Q Okay. All right. Do you recall whether or not that
8 juror told the Court that his knowledge or acquaintance
9 with this witness would or would not affect his service?

10 A I think his name was Bowen, Harry Bowen.

11 Q Do you recall the Court questioning this juror about
12 --

13 A Yeah, he came in and they said would him working with
14 one of the witnesses have any affect on the case, his
15 serving on the case.

16 Q As a juror?

17 A Yeah. He said no. They sent him back in and he was
18 made the foreman over the case.

19 Q Okay. Do you think if Ms. Manigault had objected
20 that that would have changed the outcome -- maybe changed
21 the Court's decision and the outcome?

22 A Yes, I do. I don't think he should have been on the
23 jury at all.

24 Q Okay. Do you recall when this juror brought this
25 information to the Court's attention, was it before the

1 trial began or in the middle?

2 A I think it was around the time when Kenneth Spearman
3 asked the guy on the stand, that's the person he worked
4 with.

5 Q So the trial had already started?

6 A Yes, it had.

7 Q All right. You also had an issue with the video that
8 was introduced against you in the case, correct?

9 A Yes, ma'am.

10 Q What was the video supposed to be of, was it the
11 video of the actual crime?

12 A Yes, it was supposed to be the video of the robbery.

13 Q All right. And to your knowledge, did the State
14 introduce the original video?

15 A No, they didn't.

16 Q What did they introduce then?

17 A They introduced a dubbed tape. The tape came up, it
18 didn't have the audio on it. The original tape had the
19 audio on it. They made a copy. The copy didn't pick up
20 the audio.

21 Q Okay.

22 A It shouldn't have been used at all, period.

23 Q Okay. And did Ms. Manigault object to the video on
24 that ground?

25 A No, she didn't.

1 Q Do you think if she had objected to the video on that
2 ground that that would have affected the admission of the
3 video into evidence?

4 A Yes.

5 Q And do you think the outcome of your trial would have
6 been different?

7 A Yes, I do. If you standing there the whole time
8 saying this is Mr. Thomas right here, you can't hear my
9 voice, you can't hear anybody's voice. It could be
10 anybody under the damn mask.

11 Q Right. What are you saying, was there a witness that
12 recognized your voice in the trial?

13 A Somebody said they recognized my voice, but the whole
14 thing with that was the manager, she wasn't on the stand
15 at all, period. She was the one that said she recognized
16 my voice watching the actual video at the store. That's
17 how Destiny Taylor said it sounded like Travaughn. They
18 thought Travaughn was a first and last name. That's where
19 Morehead come into play.

20 Q Okay. Did you testify in this case?

21 A No, I did not.

22 Q Why?

23 A My lawyer told me it would not be a good idea for me
24 to get on the stand because they might say they recognized
25 my voice then.

1 Q Did the judge question you about your decision --

2 A Yes, he did.

3 Q -- whether to testify or not?

4 A Yes, he did.

5 Q Whose decision was it that you not testify?

6 A I have to say that it was mine listening to the
7 person that I was paying to defend me. So I have to say
8 it was my decision.

9 Q Did she overpower your decision? Did you want to
10 testify?

11 A Yes, ma'am, I did.

12 Q Okay. And what about her advice changed your
13 decision?

14 A I mean, I have to say her saying that and my big
15 brother behind me saying the same thing that she saying
16 listening to her, being that we paid her this money to get
17 me out of this situation. My brother, somebody I look up
18 to, he telling me yeah, just listen to her. So I didn't
19 get on the stand.

20 Q Okay. So it was Ms. Manigault and your brother that
21 advised you not to testify?

22 A Yes. I feel like that made me look guilty for the
23 simple fact I didn't get on the stand and defend myself.

24 Q What other issues do you have or what other
25 allegations do you want to present against Ms. Manigault?

1 today?

2 A I mean, it's so much that was done that could have
3 been done different. If she would have investigated that
4 tape, she would have knew that the original tape had audio
5 on it.

6 Q How did you find out the original tape had audio on
7 it?

8 A Reading over my transcript.

9 Q Okay.

10 A Reading over my transcript. The officer that got a
11 copy of the tape said that there was audio on the original
12 tape. He said he made a copy of the tape, didn't look at
13 the tape after he made his copy, just put it in property
14 and evidence not knowing that the audio wasn't on it at
15 all, period. So I got a tape that just sound like a bunch
16 of chipmunks was on it.

17 Q And tell the Court why you -- voice identification
18 was an issue in this case, correct?

19 A Yes, it was.

20 Q You have to explain to the Court why you don't think
21 that would be helpful to your case, the lack of audio.
22 How would that not have helped your case?

23 A I mean, if there was no audio on the tape, I don't
24 think the tape should have been shown in open court,
25 period.

1 Q Okay.

2 A If you sitting there saying -- I could say all day if
3 somebody got a mask on that that's you. I can't hear your
4 voice, can't nobody hear your voice. So I keep saying
5 okay, it's this person right here. That's him, he doing
6 this the whole time. That's what Julie Anders was doing.
7 That's him getting cigars. That's Mr. Thomas right there.
8 You don't know who it is. A man got a mask on who's my
9 height, dark-skinned.

10 Q What other allegations do you want to present against
11 Ms. Manigault that we haven't already reviewed?

12 A It seems like she didn't investigate anything at all.

13 Q What did you want her to investigate that she didn't
14 investigate?

15 A Jay Smith, for one, that's my little cousin. My
16 little cousin is six-three, six-four. He is Caucasian and
17 black. So he would be light-skinned, right?

18 Q Uh-huh.

19 A And his little brother, Isaiah, is the same thing,
20 Caucasian and black. My codefendant, Caucasian and black.
21 All these dudes are over six-two, six-four. We live in
22 the same little neighborhood together. We go to the store
23 everyday. So if I come in that store with one of these
24 tall, light-skinned dudes everyday and somebody rob that
25 store, that tall light-skinned dude and short dark-skinned

1 dude, what are you going to think? Automatically, it got
2 to be Tra and one of them, automatically. It's like the
3 whole thing wasn't investigated.

4 Q Did you give Ms. Manigault the contact information
5 for these three guys?

6 A I couldn't get in contact with anybody.

7 Q All right.

8 A In fact, Jay Smith was one of the people they thought
9 was a suspect in the case.

10 Q Did you --

11 A It turned out not to be him.

12 Q Did you ask Ms. Manigault to try to find these three?

13 A No, ma'am.

14 Q Okay. All right.

15 A Another thing I have to say, when they exited the
16 store -- this go back to Morehead. When they came out the
17 store, they ran to the left. How did a person that's
18 supposedly me get picked up under a bridge?

19 Q Didn't Ms. Manigault make that argument in her
20 closing?

21 A Yes, she did. Yes, she did.

22 Q And do you recall drawing her a map of the location?

23 A Yeah.

24 Q Do you recall her going out to the incident location
25 to look around?

1 A I guess she did.

2 Q Were you incarcerated the whole time?

3 A Yes, I was.

4 Q Did she tell you that she went out to the location
5 and looked around?

6 A Yes, ma'am.

7 Q What else did you want her to investigate that she
8 did not investigate?

9 A Just the box, he said there was a box in the road.
10 What box would be in the road, middle of the road to make
11 you take this alternate route to get to this store? You
12 say a train and lights flashing. There was no crosses on
13 this little railroad tracks. You go right over. You
14 don't see a train, you going to go right over. I know I
15 would. I'm not going to go all the way out my way to get
16 to this store right here when I could just go across these
17 railroad tracks. He's screaming it's a box right there.
18 Then when Ms. Manigault talked to him about it, the box
19 disappeared out of his story and it was just flashing
20 lights. Everything that Mr. Morehead was saying was
21 inconsistent. She could have went -- just pushed a little
22 harder and she could have showed he was lying the whole
23 time.

24 Q Okay. Anything else?

25 A (Witness shook head.)

1 Q You've got to answer out loud.

2 A No, ma'am.

3 MS. HORLBECK: Answer any questions that Ms. Ratigan
4 may have for you.

5 MS. RATIGAN: I don't have any questions for this
6 witness, Your Honor.

7 THE COURT: You may step down.

8 Ms. Horlbeck, any additional witnesses, ma'am?

9 MS. HORLBECK: No, sir.

10 THE COURT: Any witnesses from the State?

11 MS. RATIGAN: Yes, Your Honor, we'd call Ms.

12 Manigault.

13 Thereupon;

14 DOROTHY MANIGAULT,

15 after having been duly sworn, testified as follows:

16 THE CLERK: Thank you. You may be seated. State your
17 full name for the record, please.

18 THE WITNESS: Dorothy A. Manigault.

19 DIRECT EXAMINATION

20 BY MS. RATIGAN:

21 Q Ms. Manigault, do you recall representing Mr. Thomas
22 on this charge?

23 A Yes.

24 Q And were you appointed or retained?

25 A Retained.

1 Q And about how long did you represent him before the
2 case went to trial?

3 A Probably about six to seven months.

4 Q And did you file the usual Brady and Rule 5 motions?

5 A Yes.

6 Q Did you receive those materials from the State?

7 A Yes.

8 Q Did you receive them yourself?

9 A Yes.

10 Q Did you receive them with Mr. Thomas?

11 A Yes.

12 Q Did you receive a DVD or a video from the convenience
13 store?

14 A Yes.

15 Q And you would have reviewed that by yourself and with
16 Mr. Thomas?

17 A Correct.

18 Q Mr. Thomas has stated his concern that the video did
19 not have any sound, is that your recollection as well?

20 A Yes.

21 Q And do you know if the original tape from the store
22 or video from the store did have video?

23 A According to the officer, yes, however, the tape that
24 we were provided and the State was provided had no audio.

25 Q What steps did you take -- once you found out the

1 original did have audio, did you take any steps to try to
2 figure out what had happened?

3 A Yes, I got with Julie Anders and we tried to see
4 whether we could get a tape with audio, but that was not
5 possible, or the State said it wasn't possible.

6 Q And did you explain to Mr. Thomas that you had gone
7 to the State and tried to get a resolution?

8 A Yes.

9 Q At one point, the transcript reflects that the judge
10 closed the courtroom, is that correct?

11 A Yes.

12 Q Do you recall the basis upon which Judge Pyle did
13 that?

14 A The State presented to the Court that the witness,
15 Mr. Morehead, said that the family of my client, Travaughn
16 Thomas, had -- was threatening him, had threatened him.

17 Q Did the State present to you any kind of evidence or
18 corroboration or was it just that they had informed the
19 Court of these threats?

20 A No, the information presented to the Court was Jerry
21 Morehead said that the family had threatened him,
22 Travaughn's family had threatened him and that was
23 sufficient for the Court.

24 Q Were you aware of this allegation of threats prior to
25 the trial or was it something that kind of came up?

1 A I think it just came up. I think it's something that
2 just came up.

3 Q Did you see any basis upon which to object to the
4 partial closure of the courtroom?

5 A No, I did not.

6 Q And how long was the courtroom closed, do you recall?

7 A Just for the testimony of Jerry Morehead, the
8 confidential informant.

9 Q And I believe Mr. Thomas testified it was just a few
10 members of his family that were asked to leave, is that
11 correct?

12 A That's correct.

13 Q So was it a full closure of the courtroom or partial
14 closure?

15 A Partial.

16 Q Okay.

17 A The Judge asked individuals in Mr. Thomas's family to
18 leave the courtroom.

19 Q Do you recall whether during the course of the trial
20 a juror brought to the attention of the Court an issue
21 about having the same employer as one of the witnesses?

22 A Yes.

23 Q Is that, basically, what it was, a juror found out
24 that he --

25 A Yes.

1 Q Did you see any reason to that juror remaining on the
2 case after he was questioned by the judge?

3 A No, the judge questioned thoroughly and he assured
4 the judge that he could be fair and impartial, so I did
5 not object.

6 Q Now, Mr. Thomas has testified that in Mr. Morehead's
7 statement, he named a driver as being Jamil Brown, do you
8 recall that?

9 A Vaguely.

10 Q Do you recall whether in the course of the officer's
11 investigation you received any other kind of discovery
12 materials listing Mr. Brown?

13 A No, anything that I received, Travaughn got a
14 complete copy of in the discovery, so it would have been
15 in there. Travaughn was developed as a suspect by the
16 clerk in the store by voice identification.

17 Q Did Mr. Thomas ever ask you to investigate this Jamil
18 Brown person?

19 A No.

20 Q And your testimony was that Mr. Brown was never
21 developed as a suspect, is that correct?

22 A Not to my knowledge. There was information there may
23 have been three people, but only two individuals went into
24 the store, a tall, light-skinned male and a shorter,
25 five-foot-four, maybe, darker male. So that's what the

1 investigation focused on mainly.

2 Q And in a similar vein, did Mr. Thomas ever ask you to
3 investigate people such as Jay Smith, his cousin, other
4 people who could have fit the description of the tall,
5 light-skinned male?

6 A No, because in our discussions, I asked him did he
7 have any idea who the tall person may have been. Dancing
8 around the information he gave me didn't provide me any
9 names.

10 Q Did you discuss with Mr. Thomas prior to the trial
11 his right to testify?

12 A Yes.

13 Q And did you have a similar discussion during the
14 trial?

15 A Yes.

16 Q And did you give Mr. Thomas any advice about whether
17 or not he should testify?

18 A I gave Mr. Thomas, as I give all of my clients, the
19 pros and cons of testifying and the decision is theirs.
20 And he is correct that his brother was sitting behind us
21 during the discussion before the judge questioned him.

22 Q Would you have told Mr. Thomas one of the cons was
23 that his voice could be identified if he testified at
24 trial?

25 A Yes, we discussed that all through. Like I said, the

1 clerk in the store testified that Travaughn would come in
2 the store two or three times per day. He would buy
3 Cigarillos and other items and she could recognize his
4 voice, although he had a mask, so we discussed that.

5 Q Regardless of any disadvantages to his testimony, if
6 he had wanted to testify, would you have put him up on the
7 stand?

8 A Oh, yes.

9 MS. RATIGAN: That's all I have, Your Honor.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION

12 BY MS. HORLBECK:

13 Q Ms. Manigault, do you have a copy of your transcript
14 with you?

15 A Yes.

16 Q Okay. Would you flip to page 75 of the transcript?

17 A (Witness complies.) Okay.

18 Q And if you would just read to yourself -- well, I'm
19 looking at page 75, line 10, through page 76, line 2.

20 A (Witness complies.) Uh-huh.

21 Q Okay. You did object to the removal of the family
22 and the Court's partial closure of the courtroom, is that
23 correct?

24 A Yes.

25 Q Okay. The grounds for your objection was the fact

1 that the State had not presented any sworn affidavits from
2 the family -- from the witness saying he had been
3 threatened?

4 A Correct.

5 Q Okay.

6 A It came up as the witness was being called, so it
7 came up during the trial.

8 Q Okay. Did you make a specific objection that the
9 State didn't present an overriding reason or interest or
10 need for partially closing the courtroom?

11 A No, I did not.

12 Q Okay. Did you object on the grounds that the State
13 didn't show prejudice -- how he may be prejudiced if the
14 courtroom wasn't partially closed?

15 A No, I did not.

16 Q Did you object to the Court's failure to consider
17 reasonable alternatives to closing the courtroom?

18 A No, I did not.

19 Q Did the Court -- did Judge Pyle make any findings on
20 the record to your recollection?

21 A If it's not in the transcript, he didn't make it.

22 Q Did you have an occasion to review the appellate
23 opinion in this case?

24 A Yes.

25 Q Do you know if that issue was preserved for appeal?

1 A It was not.

2 Q All right. And when you cross-examined Mr. Morehead,
3 do you recall whether or not you cross-examined Mr.
4 Morehead about a Jamil Brown?

5 A I'm not sure.

6 Q All right. Did you argue in your closing that the
7 police failed to develop Mr. Jamil Brown as a suspect?

8 A I may have if it's in the transcript.

9 Q Did the State's case focus on Mr. Jamil Brown at all
10 to your recollection?

11 A The State's case focused, to my recollection, on two
12 people and it was Robert Thompson, I think, and my client.
13 The other person, like I said, there was no testimony
14 there were three people in the store itself. And the
15 State had another witness, Mr. Spearman, I think, that
16 testified about what he saw before the robbery. So they
17 only focused mainly on my client and Robert.

18 Q Was a third person ever arrested to your knowledge?

19 A Not to my knowledge.

20 Q Okay. Did you ever try to do any investigation on a
21 Jamil Brown?

22 A I may have asked about him or asked Ms. Anders about
23 him, but that's it.

24 Q Did you talk with Mr. Thomas about Mr. Brown?

25 A Specifically, I can't say yes or no. If he says we

1 did, we did. I don't know.

2 Q Did he ask you to investigate Mr. Brown?

3 A He asked me to investigate the case, okay, anything
4 in discovery -- just like he passed notes today, he would
5 have notes every time I went to the jail. He drew me a
6 map that told me where to go and what the points were that
7 were in conflict in statements. So I would drive out to
8 these areas, to the scene, to his house, to the store, to
9 the area of the railroad track, get a view of that, come
10 back with the map on next visit. We discussed it again
11 and he would point out on the map again, could you go back
12 and look for this, look for that, so I would do that. So
13 he directed the investigation as it went along.

14 Q Okay. Did you try to find Jamil Brown or look him up
15 on the public index as part of your investigation?

16 A I can't say, I don't know. I may have, I don't know.

17 Q Okay.

18 A But he was very pointed about what he wanted me to do
19 and accomplish.

20 Q And your defense didn't really revolve around a Jamil
21 Brown, did it?

22 A No.

23 Q Okay.

24 A His offering is there's no way that anybody could
25 identify him, that was my client, that he could not be

1 identified. There was a mask on the person's face and he
2 disputed the voice identification from day one.

3 Q Okay.

4 MS. HORLBECK: Beg the Court's indulgence.

5 THE COURT: Yes, ma'am.

6 MS. HORLBECK: That's all I have. Thank you.

7 MR. RATIGAN: I have no redirect, Your Honor, and the
8 State would rest.

9 THE COURT: Okay.

10 Ms. Manigault, you may step down.

11 Anything further from the applicant?

12 MS. HORLBECK: No, sir.

13 THE COURT: Okay. Good enough.

14 Well, I have in front of me the transcript of record
15 and I have all of the submissions from the parties. I'll
16 take it under advisement and take a closer look at the
17 transcript and consider it in context with the testimony
18 that has been presented in this case.

19 Good luck to you, Mr. Thomas.

20 (End of proceedings.)

21

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1
2 CERTIFICATE OF REPORTER
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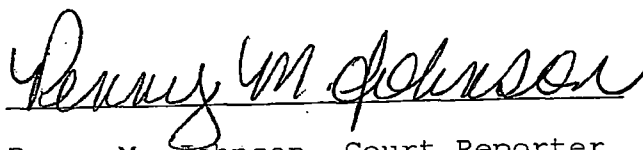
5 STATE OF SOUTH CAROLINA)

6 COUNTY OF AIKEN)
7

8 I, PENNY M. JOHNSON, Official Court Reporter for the
9 Second Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate, and
11 complete Transcript of Record of the proceedings had and the
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in Commons Pleas Court for Greenville
14 County, South Carolina, on the 17th day of June, 2014.

15 I do further certify that I am neither of kin, counsel,
16 nor interest to any party hereto.
17

18 December 10, 2014
19

20 
21

22 Penny M. Johnson Court Reporter

My Commission Expires: 06/16/2018

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Tra'Vaughn La'Roi Thomas,
S.C.D.C. No. 342780,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2013-CP-23-03233**ORDER OF DISMISSAL**FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 JUL 31 PM 4 49

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 10, 2013. The Respondent made its return on December 3, 2013. An evidentiary hearing into the matter was convened on June 17, 2014, at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Dorothy A. Manigault, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the December 2009 term of the Greenville County Grand Jury for Armed Robbery (2009-GS-23-1867). He was represented by Dorothy A. Manigault, Esquire.

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After the State called the case to trial, the Applicant was found guilty. On September 15, 2010, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to confinement for twelve years.

A Notice of Appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed Applicant's conviction and sentence. State v. Thomas, Op. No. 2012-UP-361 (S.C. Ct. App. filed June 13, 2012). The remittitur was sent June 29, 2012.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. "[F]ailure to investigate [sic] and object to the constitutional claims [sic] so it could be presented for review on appeal."
2. "Violation of Constitutional Right 6th and 14th amend."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received 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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “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 v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated trial counsel should have objected to Jerry Morehead’s testimony and investigated his statement. The Applicant stated trial counsel should have made a specific objection when the trial judge asked his family and friends to leave the courtroom during Morehead’s testimony. The Applicant stated trial counsel did not object when Juror #11 was not removed. The Applicant stated trial counsel did not object when the State introduced a dubbed copy of the video that did not have audio (though there was audio in the original video). The Applicant stated he wanted to testify at trial, but that both his brother and trial counsel advised him not to do so. The Applicant stated trial counsel did not investigate either that his cousin (Jay Smith) was similar in appearance to him or Morehead’s story about having taken a detour that night.

Trial counsel testified she was retained six or seven months before the trial. Trial counsel testified she filed discovery motions, received those materials, and reviewed them both

independently and with the Applicant. Trial counsel testified the Applicant did not ask her to investigate Morehead's original statement that Jamil Brown was the driver. Trial counsel testified the trial judge asked some of the Applicant's friends and family to leave the courtroom during Morehead's testimony because Morehead stated he had received threats. Trial counsel testified this issue came up during the trial, but there was no basis to object. Trial counsel testified a juror revealed he had the same employer as one of the State's witnesses. Trial counsel testified, however, that the trial judge thoroughly questioned this juror and there was no basis for her to object. Trial counsel testified she reviewed the video evidence but that there was no audio on her copy. Trial counsel testified she contacted the assistant solicitor about obtaining a copy of the video with audio. Trial counsel testified she and the Applicant discussed his right to testify both before and during the trial. Trial counsel testified she told the Applicant the advantages and disadvantages of testifying and that it was his decision. Trial counsel testified the Applicant directed the investigation as they went along and never asked her to investigate Jay Smith or Morehead's detour.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to Morehead's testimony and asked him why he mentioned Jamil Brown was the driver in his original statement. Trial counsel testified she vaguely recalled this name and that there were no other mentions of it in the discovery materials. Trial counsel testified Jamil Brown was never developed as a suspect and the Applicant did not ask her to investigate. This Court

notes the record is clear – and the Applicant agrees – that trial counsel impeached Morehead's testimony with inconsistencies and his prior criminal record. This Court finds it doubtful that asking Morehead about the name Jamil Brown would have had an additional impact upon his credibility or testimony.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected when the trial judge asked the Applicant's family and neighbors to vacate the courtroom. Prior to Morehead's testimony, the assistant solicitor asked for the judge to take this action because Morehead said he had been threatened by these individuals. Trial counsel objected, arguing the State had not provided any evidence of threats (such as affidavits). The trial judge asked these individuals to leave the courtroom during Morehead's testimony. (Trial transcript, pp.74-76; p.79). This Court finds trial counsel did not err in not making a specific objection and arguing whether there was an overriding interest in asking these individuals to leave the courtroom. Contrary to the Applicant's argument, the courtroom was not closed in this case. See, e.g., State v. Lormor, 172 Wash.2d 85, 93, 257 P.3d 624, 629 (2011) (holding "a 'closure' of a courtroom occurs when the courtroom is completely and purposefully closed to spectators so that no one may enter and no one may leave"). Rather, a group of individuals was asked to leave the courtroom during the testimony of one witness.¹ For a partial closure of a courtroom, there must only be a "substantial reason" to do so – which was articulated by the State. See, e.g., United States v. Sherlock, 865 F.2d 1069, 1077 (9th Cir. 1989). As such, there was no error in trial counsel not making an objection that the State failed to show an "overriding interest."

¹ The trial judge allowed the Applicant's family and neighbors to return to the courtroom after Morehead's testimony. (Trial transcript, p.107).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to Juror #11 remaining on the jury. After State's witness Kenneth Spearman testified, Juror #11 sent a note to the trial judge that he and Spearman were employed by the same company. The trial judge questioned Juror #11, who stated this would not interfere with his ability to be fair and impartial. (Trial transcript, pp.120-21). This Court finds the Applicant has failed to articulate a legitimate reason for trial counsel to have objected to Juror #11 continuing to serve on the jury.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to introduction of the video without audio because the original video had audio. The Applicant, however, failed to produce a copy of the video that included audio. Trial counsel testified she asked the assistant solicitor about obtaining a copy with audio. Investigator Michael Jarvis, however, testified he did not recall there being audio when he viewed the video. (Trial transcript, p.64). Without this evidence, this Court cannot speculate as to whether it would have had an impact upon the defense case. See, e.g., Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not allow him to testify at trial. Trial counsel testified she advised the Applicant of the advantages and disadvantages of testifying. Trial counsel testified this included telling the Applicant that the victim may be able to recognize his voice if he did testify. Trial counsel testified she told the Applicant it was his decision. This Court finds trial counsel's testimony is credible. This Court notes the trial judge advised the Applicant of his right to testify at trial and that the Applicant

stated it was his decision not to testify. (Trial transcript, pp.122-25). The Applicant's decision not to testify was both informed and voluntary and the Applicant has failed to demonstrate trial counsel was deficient. See Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) (holding a defendant's decision to testify or not must be made with knowledge of the consequences of either choice).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly investigate his case. While the Applicant argued trial counsel should have investigated the similarities between himself and his cousin, Jay Smith, trial counsel testified the Applicant did not give her this information. In fact, trial counsel testified she asked the Applicant if he knew who committed this crime and he did not provide her with any names. This Court finds trial counsel's testimony is credible. Regardless, as the Applicant failed to present any evidence to support his argument that such an investigation would have been helpful to his case, this argument is speculative. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (finding the failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial). Similarly, as the Applicant failed to present evidence that Morehead's testimony about the detour he took that night was false, this Court cannot speculate as to whether investigation into such would have been helpful to his defense. See id.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence

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that trial counsel committed either errors or omissions in her representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

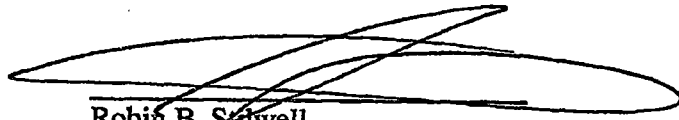
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25 day of JULY, 2014.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Gville, South Carolina.

WITNESSES

Michael Jarvis

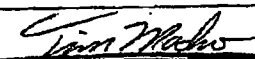
Greenville County Sheriffs Office

11/14/2008

ARREST WARRANT NUMBER

1476734

ACTION OF GRAND JURY

TRUE BILL

 FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

 Henry C. Baldwin 9-15-10
 Foreperson of Petit Jury Date:

DOCKET NO. 2009-GS-23-1867

JJA

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

December

TERM 2009

9-15-10

THE STATE

vs.

GUILTY

TRA VAUGHN LA ROI THOMAS

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-0330

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on
County present upon their oath:

DEC 15 2009

the Grand Jurors of Greenville

That TRA VAUGHN LA ROI THOMAS did in Greenville County, on or about the 20th day of October, 2008, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U. S. Currency and a purse from the persons or presence of SHARON ANASTOS AND/OR DESTINY TAYLOR, EMPLOYEES OF STOP-A-MINUTE. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR