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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Letitia H. Verdin, Circuit Court Judge

WILLIE JAMES POOLE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000087

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
3) 2010-GS-23-3428
4)
4 State of South Carolina) TRANSCRIPT OF RECORD
5 vs)
6 Willie Poole)
7)

8 Day 1 - April 26, 2011
Greenville, South Carolina

9 B E F O R E:

10 THE HONORABLE EDWARD MILLER, Judge

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

12 Judy Munson, Esquire
Assistant Solicitor
13 Attorney for the State

14 Tim Sullivan, Esquire
Attorney for the Defendant

15

16

17 Caroline Hiskell
Circuit Court Reporter

18

19

20

21

22

23

24

25

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P R O C E E D I N G S

THE BAILIFF: All rise, the Honorable Edward Miller presiding.

THE COURT: Thank you. Please be seated.
Bring up the jury.

(Whereupon, jury panel enters the courtroom.

All right, ladies and gentleman, welcome up to Courtroom No. 4. We are going through the process of qualifying you all to serve on this particular case and we're going to pick a jury.

Let me introduce the case to you. This is Indictment 2010-3428a, the State versus Willie James Poole. This is an indictment for armed robbery. This indictment alleges that Willie James Poole did in Greenville County on or about January 9, 2009 while armed with a deadly weapon or while alleging either by an action and or words or while using a representation of a deadly weapon or any object which a person present during the commission of a robbery would reasonably believe to be a deadly weapon take by means or force or intimidation goods or monies described as US Currency from the person or presence of Krystal Wells, an employee of Dixie Estates Mobile Home Park, a violation of Statutes and Laws in the State of South Carolina.

To this indictment, Mr. Poole has pled not

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1 guilty and that plea puts the burden on the State to prove
2 a defendant guilty beyond any reasonable doubt of each and
3 ever element for which they are charged.

4 Please keep these concepts in mind throughout
5 the course of this process that any person charged with a
6 crime is presumed to be innocent unless and until the
7 charging body, that is the State, proves them to be guilty
8 beyond any reasonable doubt of each and every element of
9 the offense that they are charged with.

10 I would also tell you that this indictment is
11 just exactly what it looks like. It's a piece of paper
12 and nothing more. It contains the allegations made in
13 this case and it just provides the formal documentation in
14 which this case can wind its way through the justice
15 system up here to court for resolution. So please keep
16 that in mind as well.

17 Now, ladies and gentleman, before we begin
18 this process of qualification, I will ask the attorneys to
19 stand and introduce themselves and their respective
20 offices and client.

21 MS. MUNSON: My name is Judy Munson. I'm the
22 assistant solicitor here in Greenville County. And
23 sitting with me is my investigator, Diane Reeves.

24 THE COURT: Thank you, ma'am.

25 MR. SULLIVAN: My name is Tim Sullivan. I'm

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1 a defense attorney here in Greenville. Sitting with me is
2 Mr. Willie Poole. Thank you.

3 THE COURT: Thank you very much.

4 Ladies and gentleman of the jury, is there
5 any member of the jury panel who is related by blood or
6 marriage or has a business, personal, or social
7 relationship with either of the attorneys involved in this
8 case or with any member of the Thirteenth Circuit
9 Solicitor's Office? If so, please stand.

10 Yes, ma'am. Please stand and give us your
11 name.

12 (Juror No. 13 stands.)

13 JUROR NO. 13: Anna Barnett. We're
14 neighbors.

15 THE COURT: Would you happen to know your
16 number?

17 MR. SULLIVAN: She's No. 13. She's a
18 personal friend of mine. We're back door neighbors.

19 THE COURT: Okay. All right.

20 Ma'am, would the fact that you are back door
21 neighbors and friends with Mr. Sullivan impair your
22 ability to be fair and impartial in this case to both the
23 State and the defense?

24 JUROR NO. 13: I don't think it would.

25 THE COURT: Well, you would swear and oath to

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1 be fair and impartial to both sides of this case and we
2 just need to know if can do that.

3 JUROR NO. 13: Yes.

4 THE COURT: Thank you very much.

5 Ladies and gentlemen, is there any member of
6 the jury panel who is related by blood or marriage or have
7 a business personal or social relationship with Mr. Willie
8 James Poole. If so, please stand.

9 (No response.)

10 Okay, I'm going to read a list of potential
11 witnesses in this case and I'm going to need to know the
12 same things so please listen to the names: Krystal Wells,
13 Michael Kastner of the Greenville County Sheriff's Office,
14 Michael Fortner of the Greenville County Sheriff's Office,
15 Charles Timothy Brown, Donnell Stephen Hagood, Octavious
16 Denise Hutchinson, Tario Poole. Is there any member of
17 the jury panel related by blood or marriage or has a
18 business personal or social relationship with any of those
19 potential witnesses whose names I just read? If so,
20 please stand.

21 (No response).

22 Is there any member of the jury panel that
23 has any knowledge about the events that are alleged in the
24 indictment? If so, please stand.

25 (No response).

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1 Is there any member of the jury panel a
2 family member or a close friend who has ever been a victim
3 of or charged with this type of offense? If so, please
4 stand.

5 (No response).

6 Is there any member of the jury panel who is
7 aware of any bias or prejudice towards either the State or
8 the defendant? If so, please stand.

9 (No response).

10 Is there any member of the jury panel who is
11 a member of or a contributor to a group whose primary
12 concern is the promotion of law enforcement or victim's
13 rights? Some examples would be MAD, SAD, or CAVE, if so,
14 please stand.

15 (No response).

16 Is there any member of the jury panel knows
17 of any reason whatsoever why you should not serve in this
18 case with particular emphasis on your ability to be fair
19 and impartial to both the State and the Defendant? If you
20 can not do that, please stand.

21 (No response).

22 Anything else?

23 MS. MUNSON: Nothing from the State, Your
24 Honor.

25 MR. SULLIVAN: Did you ask the relationship

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1 to law enforcement?

2 THE COURT: All right, is there any member of
3 the jury panel who has a member of their family who is
4 currently employed or recently employed in law
5 enforcement?

6 Yes, sir, your name and number, please.

7 JUROR NO. 230: My name is Kris Blumer. My
8 son is a National Park Ranger in Cherokee, Arizona Law
9 Enforcement.

10 THE COURT: Thank you, sir.

11 Yes, ma'am.

12 JUROR NO. 31: No. 31, Katrenia Bryson, I
13 have one person that works in Spartanburg County and one
14 that's a judge.

15 THE COURT: Thank you, ma'am.

16 Yes, ma'am.

17 JUROR NO. 53: No. 53, Leslie Dale, my
18 father-in-law is (inaudible).

19 THE COURT: Well, let me ask the three of
20 you, having a relative who is involved with law
21 enforcement, would that impair your ability to be fair and
22 impartial in this case to either the State or the defense
23 and could you follow the law as I would give it to you
24 under your oath. If you can not do that, please stand.

25 (No response).

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1 THE CLERK: All right, when I call you name,
2 please stand and place and wait for further instructions.

3 Juror 103, Thomas Hyatt.

4 What says the State?

5 MS. MUNSON: Please present the juror.

6 THE CLERK: What says the defendant?

7 MR. SULLIVAN: Swear the juror.

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

10 (Whereupon, Juror 103, Thomas C. Hyatt, white
11 male was seated in the jury box).

12 Juror No. 208, Brandon Turner.

13 What says the State?

14 MS. MUNSON: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. SULLIVAN: Please swear the juror.

17 THE CLERK: Come have a seat in the jury box.

18 (Whereupon, Juror 208, Brandon Turner, white
19 male was seated in the jury box).

20 Juror 27, Troy Bright.

21 What says the State?

22 MS. MUNSON: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. SULLIVAN: Please excuse Mr. Bright from
25 this case.

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1 THE CLERK: Thank you, Mr. Bright, you have
2 been excused from this case.

3 Juror No. 109, Carolyn Johnson.

4 What says the State?

5 MS. MUNSON: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. SULLIVAN: Please excuse Ms. Johnson.

8 THE CLERK: Please be seated. You have been
9 excused from this case.

10 Juror No. 13, Anna Barnett.

11 What says the State?

12 MS. MUNSON: Please excuse Ms. Barnett from
13 this case.

14 THE CLERK: Please have a seat. You have
15 been excused from the trial of this case.

16 Juror 144, Donna Mounce.

17 What says the State?

18 MS. MUNSON: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. SULLIVAN: Please excuse the juror.

21 THE CLERK: You may be seated. You've been
22 excused from the trial of this case.

23 Juror 188, James Snipes.

24 What says the State?

25 MS. MUNSON: Please present the juror.

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1 THE CLERK: What says the defense?

2 MR. SULLIVAN: Please excuse the juror.

3 THE CLERK: You may be seated, sir, you've
4 been excused from this case.

5 Juror 194, Mark Stokes.

6 What says the State?

7 MS. MUNSON: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. SULLIVAN: Please excuse this juror.

10 THE CLERK: Thank you. Sir, you may be
11 seated. You're excused from the trial of this case.

12 Juror 31, Katrenia Bryson.

13 What says the State?

14 MS. MUNSON: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. SULLIVAN: Please excuse the juror.

17 THE CLERK: Thank you. You may be seated.
18 You've been excused from the trial of this case.

19 Juror 46, Robert Clayton.

20 What says the State?

21 MS. MUNSON: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. SULLIVAN: Please swear the juror.

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

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1 (Whereupon, Juror No. 46, Robert Clayton,
2 white male, was seated in the jury box.)

3 Juror 242, Adriana Velasquez.

4 What says the State?

5 MS. MUNSON: Please excuse the juror.

6 THE CLERK: Thank you. You may be seated.
7 You've been excused from the trial of this case.

8 Juror 77, Jeffrey Fuller.

9 What says the State?

10 MS. MUNSON: Please present this juror.

11 THE CLERK: What says the defendant?

12 MR. SULLIVAN: Please swear the juror.

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

15 (Whereupon, Juror No. 77, Jeffrey Fuller,
16 white male was seated in the jury box.)

17 Juror 50, Anna Couch.

18 What says the State?

19 MS. MUNSON: Please present the juror.

20 THE CLERK: What says the defendant?

21 MR. SULLIVAN: Please swear the juror.

22 THE CLERK: Ma'am, please have a seat in the
23 jury box.

24 (Whereupon, Juror 50, Anna Couch, white
25 female, was seated in the jury box.)

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1 Juror 193, Marianne Soddard.

2 What says the State?

3 MS. MUNSON: Please present the juror.

4 THE CLERK: What says the defendant?

5 MR. SULLIVAN: Please excuse this juror.

6 THE CLERK: Thank you. You may be seated.

7 You've been excused from the trial of this case.

8 Juror 140, Bill Moore.

9 What says the State?

10 MS. MUNSON: Please present this juror.

11 THE CLERK: What says the defendant?

12 MR. SULLIVAN: Please swear the juror.

13 THE CLERK: Sir, you may be seated in the

14 jury box.

15 (Whereupon, Juror No. 140, Bill Moore, white
16 male, was seated in the jury box.)

17 Juror 66, Latrice Elom.

18 What says the State?

19 MS. MUNSON: Please present the juror.

20 THE CLERK: What says the defendant?

21 MR. SULLIVAN: Please swear the juror.

22 THE CLERK: Thank you. Ma'am, please have a
23 seat in the jury box.

24 (Whereupon, Juror No. 66, Latrice Elom, black
25 female, was seated in the jury box.)

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1 Juror 231, Deborah Cabodol.

2 What says the State?

3 MS. MUNSON: Please present this juror.

4 THE CLERK: What says the defendant?

5 MR. SULLIVAN: Please excuse this juror.

6 THE CLERK: Thank you. You may be seated.

7 You've been excused from the trial of this case.

8 Juror No. 239, Deborah Rhome.

9 What says the State?

10 MS. MUNSON: Please present this juror.

11 THE CLERK: What says the defendant?

12 MR. SULLIVAN: Please swear the juror.

13 THE CLERK: Ma'am, please have a seat in our
14 jury box.

15 (Whereupon, Juror No. 239, Deborah Rhome,
16 black female, was seated in the jury box.)

17 Juror No. 149, Manal Namooz.

18 What says the State?

19 MS. MUNSON: Please present this juror.

20 THE CLERK: What says the defendant?

21 MR. SULLIVAN: Please swear the juror.

22 THE CLERK: Thank you. Please be seated in
23 the jury box.

24 (Whereupon, Juror No. 149, Manal Namooz, white
25 male, was seated in the jury box.)

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1 Juror 173, Kenneth Rodgers.

2 What says the State?

3 MS. MUNSON: Please excuse this juror.

4 THE CLERK: Thank you. Please be seated.

5 You've been excused from the trial of this case.

6 Juror 86, Dana Hallman.

7 What says the State?

8 MS. MUNSON: Please present the juror.

9 THE CLERK: What says the defendant?

10 MR. SULLIVAN: Please excuse this juror.

11 THE CLERK: Thank you. You may be seated.

12 You've been excused from the trial of this case.

13 Juror No. 96, Rebecca Hallman.

14 What says the State?

15 MS. MUNSON: Please present this juror.

16 THE CLERK: What says the defendant?

17 MR. SULLIVAN: Please swear the juror.

18 THE CLERK: Thank you. Please be seated in

19 the jury box.

20 (Whereupon, Juror No. 96, Rebecca Hallman,

21 white female, was seated in the jury box.)

22 Juror No. 53, Leslie Dale.

23 What says the State?

24 MS. MUNSON: Please present the juror.

25 THE CLERK: What says the defendant?

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1 MR. SULLIVAN: Please swear the juror.

2 THE CLERK: Thank you. Please be seated in
3 the jury box.

4 (Whereupon, Juror No. 53, Leslie Dale, white
5 female, was seated in the jury box.)

6 Juror No. 58, Walter Deal.

7 What says the State?

8 MS. MUNSON: Please present the juror.

9 THE CLERK: What says the defendant?

10 MR. SULLIVAN: Please swear the juror.

11 THE CLERK: Thank you. Please have a seat in
12 the jury box.

13 (Whereupon, Juror No. 58, Walter Deal, white
14 male, was seated in the jury box.)

15 THE COURT: The alternate.

16 THE CLERK: Juror No. 207, Eric Tuggle.

17 What says the State?

18 MS. MUNSON: Please present the juror.

19 THE CLERK: What says the defendant?

20 MR. SULLIVAN: Please excuse the juror.

21 THE CLERK: Please be seated. You have been
22 excused from this case.

23 Juror 235, Marilyn Kendrick.

24 What says the State?

25 MS. MUNSON: Please present the juror.

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1 THE CLERK: What says the defendant?

2 MR. SULLIVAN: Please excuse this juror.

3 THE CLERK: You may be seated. You have been
4 excused from this case.

5 Juror 29, Jesse Bruce.

6 What says the State?

7 MS. MUNSON: Please present the juror.

8 MR. SULLIVAN: Please swear the juror.

9 THE CLERK: Mr. Bruce, please have a seat in
10 the jury box.

11 (Whereupon, Juror No. 29, Jesse Bruce, white
12 male, was seated in the jury box.)

13 THE COURT: Any exception or objection to the
14 jury pursuant Jackson, Batson or Jebb?

15 MS. MUNSON: Nothing from the State, Your
16 Honor.

17 MR. SULLIVAN: Nothing from the defense, Your
18 Honor.

19 THE COURT: All right, you all, unfortunately
20 did not get selected. I hope you'll get a chance to do
21 that later in the week, but you are now free to go and we
22 ask you to call back after 6:00 tonight. Thank you very
23 much.

24 (Jury panel dismissed.)

25 Can I see the lawyers up here for one second.

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1 (Whereupon, there was a bench conference.)

2 All right, ladies and gentleman of the jury,
3 I hope you all feel as fortunate as I think you are to
4 have been selected. It is a rare event, indeed, for a
5 citizen to be selected on a jury and I don't know if any
6 of you all have ever done it before or will ever have an
7 opportunity to do it again, but it is very unusual to get
8 selected and so I think you should feel very fortunate
9 about that.

10 I will tell you that we are -- it's about
11 1:00. We're going to break here for lunch in just a
12 second. I'm going to make two opening comments to you.
13 First, we're going to place you under oath and you'll be
14 free. We will probably ask you to be back about 2:30.
15 We've got some other issues that we need to go over
16 outside ~~your~~ presence, but I want to tell you that you
17 all have been selected because there is a dispute about
18 the facts in the case. It's a dispute that couldn't be
19 resolved in any fashion other than the request or ask for
20 a jury to come up, an independent, impartial and fair jury
21 to come up and listen to the facts and the evidence in the
22 case as it is presented in the courtroom, and to resolve
23 that dispute. That's what your job is.

24 You might say, well, how do we do that? Hang
25 on. Get the phone, take the phone.

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1 Sorry, ladies and gentleman.

2 You might think, well, do we get a crash
3 course, training course on how to do this or how to be a
4 juror. You've already gotten all of the training you're
5 ever going to get and that amounts to the life experience
6 and all the things you've done and everything you've
7 learned up to this point qualifies you to be a juror, and
8 no one on any other jury ever receives any more training
9 then you all have already gotten.

10 But I will tell you that in this case, as
11 I've already told you, the standard of proof, the burden
12 of proof is always on the State or the charging body to
13 prove the allegations that are alleged in the indictment.
14 And they must prove that indictment and prove those facts
15 beyond a reasonable doubt each and every element of the
16 charged crime must be proven beyond a reasonable doubt.
17 Ladies and gentleman, we usually don't have this many
18 interruptions when I'm speaking to you, I promise you. So
19 please keep those things in mind throughout the course of
20 the trial. These are kind of basic building blocks of our
21 justice system.

22 Anyone accused of a crime is presumed
23 innocent unless and until the charging body can prove them
24 guilty beyond a reasonable doubt of each and every element
25 of the crime they are charged with.

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1 I will remind you that the indictment is not
2 evidence. It just contains allegations. Evidence will be
3 received in the courtroom. They will generally come in
4 one of three ways. The most common form is what we all
5 think of or what I think of and that's testimony, verbal
6 testimony from the witness stand, placed under oath. The
7 second most common type is the introduction of tangible
8 things like objects or documents, and then the third most
9 common way is through the stipulation of the attorneys
10 that some fact is so beyond dispute that you all should
11 accept it as true.

12 Now, I have no idea what combination of those
13 different types of evidence will be presented to you but
14 those are generally how it's brought into court for you
15 all.

16 I can tell you that you can break a trial
17 into as many parts as you like. I break it into five
18 parts for a procedural road map for you. The first part
19 will be the opening statements to you by the attorneys.
20 Those are brief, non-argumentative statements to open the
21 case. The second part of the trial would be the
22 presentation of the testimony and the evidence in the
23 case, generally the meat and potatoes of the case.

24 At the close of all of the evidence, when all
25 of the evidence is in, then we go to the third part and

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1 those are the closing arguments of the attorneys. That is
2 when the attorneys advocate for their position and urge
3 you to resolve the dispute in their favor. The fourth
4 part of the trial will be my charge to you on what the law
5 is. And the fifth part of the trial is when you all go to
6 the jury room to deliberate this case and to resolve this
7 dispute.

8 The parts are of not equal length and
9 generally the second part is always the longest part
10 that's the presentation and the evidence in the case.

11 I'll probably ask you to do a number of
12 things throughout the course of the trial. There are
13 three main things I ask you to do. First is to keep an
14 open mind. We go through the process of asking you all
15 these questions to qualify you to insure that we have a
16 fair and impartial jury that doesn't come in here with
17 their minds already made as to how a case should be
18 resolved. So, please, throughout the course of a trial,
19 keep an open mind, listen to all the evidence.

20 That's the second thing I will ask you to do
21 and that's pay attention. Keep your mind open, take in
22 and absorb all the evidence that's presented in the case.

23 The third thing I'll ask you not to do and
24 instruct you not to do and that is not to talk to anybody
25 about this case at all until you are in the fifth part of

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1 the trial, that is when you are free to deliberate. You
2 might think well that's kind of crazy, how am I going to
3 make my decision if I can't talk about it? When I say
4 don't talk about it that means that's with the bailiffs,
5 whoever you might see at lunch, that means with each
6 other. And you might think why is that because I rely on
7 my best friend for device and make decisions or I rely on
8 my spouse when I do this and I need to bounce these ideas
9 off of them.

10 Well, ladies and gentleman, you can't do
11 that. The law does not allow that and if you did that, it
12 would not be fair to the parties, it would not fair to
13 your fellow jurors and it would not be fair to yourself to
14 allow someone outside of this trial that is not making the
15 sacrifices that each of you is making to be here, not
16 hearing the evidence and watching it be presented here in
17 the courtroom and listening to the law, being part of this
18 trial, to have any impact on the outcome of this case.

19 That's why it is vitally important that you
20 not talk about the case with anybody else, and that's also
21 who you should not and can not do any independent
22 research. You can't go visit the scene or anything like
23 that. Wait until the close of the case to begin your
24 discussions.

25 I want to tell you that you all are the sole

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1 judges of the facts in the case and a trial judge is not
2 allowed to have an opinion about the facts of the case.
3 Don't think that anything I might say and do throughout
4 the course of the trial that I have an opinion. I don't.
5 The law doesn't allow it and you all are the sole judges
6 of the facts, that is you decide what to believe, who to
7 believe, who not to believe, and what not to believe.

8 That same law that makes you the sole judges
9 of the facts makes me the sole judge of the law so if you
10 think you have any idea as to what the law is or what the
11 law should be, you will swear an oath in just a second to
12 set aside your own opinion and apply the law as I state it
13 to you throughout the course of the trial.

14 I guess the only other thing I will tell you
15 is that from time to time throughout the course of a
16 trial, I may have the lawyers come up here and speak to me
17 up here or I may excuse you all to your jury room to
18 discuss something with the attorneys. We are not -- I'll
19 tell you we are trying to keep something from you but we
20 are not trying to deceive you. It may be that we are
21 going to talk about some fact that's in dispute and might
22 not be admissible or some other point of law that you all
23 should not hear.

24 So if we excuse you or if we have private
25 conversations, it is to talk about things which you should

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1 not hear and know about at the end of the case or during
2 your deliberations, but we're not trying to deceive you in
3 any way. We just want to make sure that everything you
4 hear to decide this case is subject to Constitutional
5 protections and is properly admissible.

6 One more thing, when you come back from lunch
7 at 2:30, I'm going to ask you all to see if you can decide
8 who you would like to be your fore person. The fore
9 person is the moderator of discussions at the end of the
10 trial and is the jury spokesperson in the courtroom should
11 that become necessary. So when y'all come back, see if
12 you can do that. If not, I can help you out with that.

13 At this time I will ask you to stand and take
14 the oath and then I'm going to excuse you to lunch.

15 THE CLERK: Please stand and raise your right
16 hand for the oath and the proper response is "I will."

17 You will well and truly try the case 2010-GS-
18 23-3428a, the State versus Willie James Poole indicted for
19 armed robbery and a true verdict rendered according to the
20 law and the evidence so help you God.

21 (Jury Sworn.)

22 I thank you.

23 THE COURT: Please go with the bailiff and
24 she will show you where to go and where to come back to
25 and have a nice lunch. 2:30, please.

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1 (Whereupon, there was a lunch break to return
2 at 2:30 p.m.)

3 Are we doing the Jackson v. Denno? What
4 y'all want to do?

5 MS. MUNSON: Jackson v. Denno hearing, sir.
6 I have redacted the defendant's statement. I have taken
7 two sentences out of it. I believe Mr. Sullivan has
8 agreed as to that's what should come in and I've marked
9 that as an exhibit.

10 THE COURT: So we're not doing the Jackson v.
11 Denno hearing? Let's proceed with the hearing.

12 JACKSON V. DENNO HEARING

13 MS. MUNSON: The State calls Michael Fortner.

14 THE CLERK: Sir, step up to the Bible, place
15 your left hand on the Bible and raise your right.

16 MICHAEL E. FORTNER, having been duly sworn,
17 testified as follows:

18 Thank you, sir. Please state your name for
19 the record.

20 THE WITNESS: Michael E. Fortner.

21 DIRECT EXAMINATION

22 BY MS. MUNSON:

23 Q. Detective Fortner, did you take a statement from
24 the defendant in this case?

25 A. Yes, I did.

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1 Q. And he was in custody at the time?

2 A. Yes, ma'am, he was.

3 Q. Not free to leave?

4 A. No, ma'am.

5 Q. Did you make clear to him the subject that you
6 were going to interrogate him about?

7 A. Yes, I did.

8 Q. Where did you do this interview?

9 A. At my desk at the Law Enforcement Center?

10 Q. On what date?

11 A. This would have been on January 21, 2009.

12 Q. Did you ask him if he could read and write?

13 A. Yes, ma'am.

14 Q. And what was his answer?

15 A. Yes. He said, yes.

16 Q. Did he ask you for anything before you started
17 the interview?

18 A. No, he did not.

19 Q. Before you began the interview, what was the
20 first thing you did?

21 A. The first thing we do is we read the person that
22 we interview the rights, the waiver rights form that we
23 use at the Sheriff's Office. I got a copy of it here.

24 (Waiver Rights form marked as State's Exhibit
25 No. 1 for identification.)

State versus Willie Poole

1 BY MS. MUNSON:

2 Q. I'd like to show you what's been marked as
3 State's Exhibit No. 1, if you would take a look at that.

4 A. Okay.

5 Q. Do you recognize that?

6 A. Yes, ma'am.

7 Q. And what is that form?

8 A. That is the waiver of rights form that we use at
9 the Sheriff's Office when we read somebody their rights.

10 Q. And how did you advise the defendant of his
11 rights?

12 A. When I first begin the interview, I just take
13 preliminary information as far as name, address and birth
14 date, social security number, a little bit of educational
15 background, the name of the school they graduated from or
16 at least attended. I then read each line one by one to
17 the person I'm interviewing. After I reach each line, I
18 asked them to place the initials at the beginning of the
19 line and this indicates that we did, in fact, read the
20 line out loud and went over it.

21 After I read each one of the individual
22 lines, I ask the person I'm interviewing to read this line
23 right here that starts with, "You have a right to talk to
24 a lawyer." I have them actually read that out loud to me.
25 That way I know that they can, in fact, read.

State versus Willie Poole

1 Q. Did you do that with this defendant?

2 A. Yes, I did.

3 Q. And he was able to read that to you?

4 A. Yes, he did. Then after they read that out loud
5 to me, then I have them sign their name after it that way
6 I know they did read it out loud to me.

7 Then once we go over that part, we go on to
8 the Waiver of Rights.

9 Q. Let me interrupt, I'm sorry. Once you advised
10 him of his rights, did he have any questions for you?

11 A. No, ma'am, he did not.

12 Q. Did he ask for a lawyer?

13 A. No, he did not.

14 Q. Did he seem to understand what you were talking
15 to him about?

16 A. Yes, he did.

17 Q. Okay. Once you advised him of his rights, what
18 was the next step?

19 A. Then we went to the Waiver of Rights part and I
20 always read this out loud to the person I'm interviewing.
21 Once I read it out loud, I always go back to the word
22 coercion. A lot of people aren't familiar with that word.
23 I explain the word to them and have them place their
24 initials next to the word and then I ask them if they're
25 willing to talk to me without an attorney being present to

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1 sign their name on the line and I usually have them print
2 their name as well below, and then I sign my name as a
3 witness.

4 Q. Did he indicate that he wanted to waive his
5 rights and talk with you?

6 A. Yes, he did.

7 Q. What did you promise him in order to get him to
8 waive his rights?

9 A. Nothing.

10 Q. Did you threaten him with anything?

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

12 Q. Did he ask you for anything the whole time he was
13 with you?

14 A. No, ma'am, he did not.

15 Q. About how long were you with him during this
16 process?

17 A. For the Waiver of Rights process?

18 Q. Yes.

19 A. It takes about five minutes roughly.

20 (Willie James Poole statement marked as
21 State's Exhibit No. 2 for identification.)

22 BY MS. MUNSON:

23 Q. Now, let me show you State's Exhibit No. 2, do
24 you recognize that?

25 A. Yes, ma'am, I do.

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1 Q. What is that document?

2 A. This is the type statement that Willie James
3 Poole provided me on the 21st of January, 2009.

4 Q. Now, explain for the Court exactly how that
5 statement got typed that way?

6 A. We sat at the desk, I sat at my computer. I
7 asked, in this case Mr. Poole, what it is that took place.
8 As he's telling it to me, I'm typing it out. And then
9 once I get it all typed out, I give him a copy of the
10 statement, the original statement, and ask him to read
11 over it to make sure that everything in it is correct. I
12 explain to people to make sure everything is right, maybe
13 I misunderstood something that was said or mistyped or you
14 don't like the way it sounds, or whatever, and if it's
15 something you don't like, let me know and we'll go back
16 and change it.

17 Q. Did he have any changes he wanted you to make?

18 A. No, ma'am, he did not.

19 Q. Any additions?

20 A. No, ma'am.

21 Q. Did you ask him to sign it?

22 A. Yes, ma'am, I did.

23 Q. What was the purpose of getting him to sign it?

24 A. To show that this was, in fact, his statement.

25 Q. Thank you.

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1 MS. MUNSON: I have nothing further at this
2 time, Your Honor.

3 MR. SULLIVAN: Nothing from the defense.

4 THE COURT: Any motions?

5 MR. SULLIVAN: Nothing from the defense.

6 THE COURT: All right, I'm going to find it
7 was freely, voluntarily, and intelligently made.

8 MS. MUNSON: There is another matter we can
9 take up right now, Judge, and that would be State's
10 Exhibit No. 14.

11 THE COURT: Okay.

12 MS. MUNSON: On the original statement, the
13 first line is, "It was on a Friday. It was on the same
14 day of the murder that I was under arrest for." I've
15 redacted that sentence. Further on down in the statement
16 is a line that says, "Her name is Taleba Allen. She is
17 the one that died." I have redacted, "She is the one that
18 died."

19 MR. SULLIVAN: No objection.

20 THE COURT: Okay, no objection to the
21 redaction.

22 Y'all ready to go.

23 MS. MUNSON: Yes, Your Honor.

24 THE COURT: All right, let's get them.

25 MS. MUNSON: I just want to see if we can get

State versus Willie Poole

1 these marked before they come in here.

2 (Whereupon, State's Exhibits Nos. 3 through
3 13 photographs were marked for identification.)

4 (Whereupon, State's Exhibit No. 14, redacted
5 statement was marked for identification.)

6 (Jury panel returns to the courtroom.)

7 THE COURT: Okay. Whenever you're ready.

8 Jeff Fuller is your fore person.

9 (Whereupon, note regarding fore person was
10 marked as Court's Exhibit No. 1 for identification and
11 admitted into evidence.)

12 Mr. Fuller, thank you for agreeing to serve
13 as the fore person and we are now ready to begin the
14 trial.

15 Ms. Munson.

16 MS. MUNSON: Thank you. If it please the
17 Court.

18 Evidence will show that on January 9, 2009
19 started out like every other day for Krystal Wells and it
20 ended like none other. See, Krystal was at your job at
21 Dixie Estates here in Greenville County as the office
22 manager. About 4:30 in the afternoon while she was
23 working two individuals came rushing into the office and
24 robbed her at gunpoint. After they left, she was able to
25 get a good description of the car and get a tag number.

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1 She called law enforcement and they came and an
2 investigation began.

3 Now, at the close of this case, I'm going to
4 ask you to find this defendant, Willie Poole, guilty of
5 armed robbery.

6 The evidence is not going to show that he
7 went in. He did not go into the trailer. He is not the
8 one who held a gun on Ms. Wells. So you might ask
9 yourself what are we even doing here? Because the law in
10 this State is the hand of one is the hand of all. When
11 two people get together to commit a criminal act, each one
12 is as guilty as the other.

13 The evidence in this case will show that this
14 defendant came up with the idea to rob Dixie Estates. He
15 got two other people to go with them. He drove them to
16 Dixie Estates. They went in, robbed Krystal at gunpoint
17 and then he drove away.

18 Now, some of the people that you're going to
19 here from today have less than stellar reputations. They
20 have criminal records. The defense will probably want you
21 to think in your head, they have criminal records so I can
22 not believe them. We challenge you to go further. How do
23 they know what they knew? Who do they hang around with
24 during that time? Where were they staying? How did they
25 come to this information? And what do they have to gain

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1 or lose by telling you what they're going to tell you?

2 At the close of the case, I am going to ask
3 you to find the defendant guilty of armed robbery and the
4 evidence will show that he is and I'm going to ask you to
5 render that verdict on behalf of the people of Greenville
6 County. Thank you.

7 MR. SULLIVAN: If it please the Court.

8 THE COURT: Yes, sir.

9 MR. SULLIVAN: Ms. Munson.

10 Ladies and gentlemen, I'm Tim Sullivan and I
11 represent Mr. Willie Poole in this. There are parts of
12 armed robbery. You can be an accessory to the act. Keep
13 in mind this is not just an armed robbery. This is an
14 armed robbery but there are further options besides armed
15 robbery and burglary. Now, what's interesting in this
16 case, you will not hear one victim, not one witness, not
17 one police officer, no one, to say who did this except the
18 statements by two people. They had no idea who committed
19 this.

20 Willie Poole, he said, look I know about this
21 armed robbery. It wasn't a big deal. It wasn't on tv and
22 you probably never even saw it, but this is what happened.
23 I was kind of involved in it but this is what happened and
24 then the arrested another individual, Hagood, and he gives
25 a statement about the robbery. So from those two people

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1 are the only two people you will hear from about the
2 robbery.

3 Mr. Poole gave a statement and then
4 Mr. Hagood gave a statement, but then Mr. Hagood gave
5 another statement. And then Mr. Hagood gave another
6 statement, so you need to look at all this and not just
7 stop in one spot to see if Mr. Poole was involved in an
8 armed robbery or was caught up in something more like an
9 accessory if involved at all.

10 Now, I'm sure a lot of you watch tv shows and
11 enjoy it or whatever, this will be interesting so sit
12 back and enjoy it, but you when you watch tv, you can go
13 back and see it again or talk to your friends and say,
14 hey, I missed that the first time so my job is to be like
15 a little TVO machine. We're going to go through these
16 things and there are certain things that tie together
17 because you might say, I didn't catch that, so I'm going
18 to help you try and catch it so the second time it might
19 make more sense to you.

20 I've had the advantage of having this file
21 and discovery. I've studied it but you haven't. It's my
22 job to tie this together so think of me as TVO, parts of
23 the show, and then you can come up with a verdict. I
24 can't tell you what the verdict should be, it's going to
25 be up to y'all that Mr. Poole is not guilty of armed

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1 robbery. Thank you.

2 THE COURT: All right. Call your first
3 witness.

4 MS. MUNSON: Your Honor, the State calls
5 Krystal Wells.

6 THE CLERK: Place your left hand on the Bible
7 and raise your right hand.

8 KRYSTAL WELLS, having been duly sworn,
9 testified as follows:

10 Please be seated. State your full name for
11 the record.

12 THE WITNESS: Krystal Wells.

13 DIRECT EXAMINATION

14 BY MS. MUNSON:

15 Q. Hello, Ms. Wells. How old are you, ma'am?

16 A. Twenty-eight.

17 Q. And where do you live?

18 A. In Piedmont.

19 Q. Is that in Greenville County?

20 A. Yes.

21 Q. How long have you lived there?

22 A. Five years.

23 Q. Who lives there with you?

24 A. I have five children.

25 Q. Anybody else besides your kids live there with

Krystal Wells - Direct Examination

1 you?

2 A. No, ma'am.

3 Q. What are there ages?

4 A. I have a 10 year old, 8 year old, my son is 6
5 today and a 4 month old.

6 Q. Do you work outside the home?

7 A. Yes, sir.

8 Q. Where do you work?

9 A. Dixie Estate Mobile Trailer Park.

10 Q. How long have you been working there?

11 A. Since May of 2005.

12 Q. And what are you duties?

13 A. I'm the office manager. I work in the office,
14 accept the rent payments and lease the properties there.

15 Q. Now, I want to call your attention to the events
16 that bring us here today.

17 A. Yes, ma'am.

18 Q. Do you remember that incident.

19 A. Yes, ma'am.

20 Q. Do you remember the date?

21 A. January 8.

22 Q. Do you remember the day of the week?

23 A. It was a Friday.

24 Q. Were you working on that date?

25 A. Yes, ma'am.

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1 Q. Right before this incident happened, can you
2 explain to the jury what was going on?

3 A. Right before it happened -- I came to work at
4 3:00 that day. I had came late. My grandmother was in
5 the hospital and when I came in at 3:00, I came in with my
6 children. And we -- was a regular day just sitting there.
7 My kids had a new game and they were play DX that they had
8 gotten for Christmas and they had just gotten a new game
9 that day to play at the hospital.

10 We were sitting there playing a game and I
11 had a customer come in and he came in paying his rent.

12 Q. Who is that customer?

13 A. Dudley Hatchcock(ph).

14 Q. Does he still live there?

15 A. No, ma'am, he doesn't.

16 Q. Do you know about how long ago he left Dixie
17 Estates?

18 A. It's been, I would say, maybe a year-and-a-half.
19 I'm not exactly sure how long.

20 Q. Did he leave you a forwarding address?

21 A. No, ma'am.

22 Q. Do you know where he is now?

23 A. No, ma'am.

24 Q. So he's in there and your children are in there?

25 A. Yes, ma'am. He paid his rent and after he paid

Krystal Wells - Direct Examination

1 his rent -- he paid his rent every two weeks and he had
2 missed his rent the week before -- the two weeks before
3 because it was Christmas and he was explaining to me that
4 he didn't pay his rent because of Christmas and he had
5 three daughters. He wanted to set up a payment plan to
6 catch the rent up.

7 So after I took his payment, I started
8 talking to him and we made a payment arrangement and he
9 was just explaining about Christmas and how Christmas had
10 set everybody back, just small talk, just conversating.

11 Q. This was a Friday, was that the normal day to
12 collect rent?

13 A. We collect rent every week but that's our busiest
14 day of the week. I would say 75 percent of my customers
15 who pay weekly do pay on Friday.

16 Q. So as you're talking with this other tenant, did
17 you notice anything?

18 A. We have a camera system and it's a monitor and
19 it's right here to the side of my desk and I noticed on
20 the monitor a blue car pull up. It originally stopped
21 like right on this side of our driveway. There's some
22 trash cans -- they originally stopped there and then
23 pulled on up. I didn't think anything about it because I
24 had a tenant that drove a car that looked similar to that.
25 I assumed that it was her.

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1 I remember looking at the car seeing that I
2 had shoes that had leather shoe strings so I had my foot
3 propped up and I was missing my shoe there because they're
4 kind of hard to keep tied. I seen the car but then I just
5 turned and I wasn't even looking at the monitor at that
6 time and I started to write the receipt for that customer
7 because I assumed it was her.

8 Q. When you saw this blue car, you thought it was a
9 certain customer so you started even writing out the
10 receipt?

11 A. Yes.

12 Q. What you could see on the monitor, was it being
13 recorded at all at the time?

14 A. No, ma'am, it wasn't being recorded.

15 Q. And why is that?

16 A. When we first got it, it had a glitch that didn't
17 record all the time. We had it set up where it was set to
18 record motions but we had it programmed wrong so it wasn't
19 recording motion. It recorded when it was still instead
20 of the motions, but we had that repaired now. It does
21 record at all times.

22 Q. So as your writing out this receipt, what was the
23 next thing that happened?

24 A. Mr. Hatchcock(ph), he was getting ready to leave
25 and he said have a good day and he got up -- there's a

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1 chair at the end of the desk that he had sat down in and
2 he stood up and to walk towards the door, and when he went
3 towards the door he was like, oh, God, and when he said
4 that I looked up and the door slammed open and two guys
5 with masks -- they didn't have masks, they had bandana
6 tied right here around their face and they come down --
7 they came in the door with guns.

8 Q. The blue car that you saw pull up, did you see
9 anybody get out of it?

10 A. I did. I did but I didn't. I seen the doors
11 open and I seen it but like I said I wasn't paying it any
12 attention. I know that it was the passenger side that
13 opened and it was the front and the back door and it was
14 the passenger side and I still didn't think anything about
15 it. I just knew that it was my customer's car.

16 Q. About what time of the day or night did this
17 happen?

18 A. It was a little after 4:00. I think it was like
19 around 4:10, 4:15.

20 Q. Okay. Now, as these two people came ---

21 A. The first guy that came in, he went to the right.
22 Our office is a mobile home and to the right when you come
23 in the front door is what in a mobile home would be like
24 the second bedroom and the small bathroom. They went like
25 that way like step back to the hall and let the second guy

Krystal Wells - Direct Examination

1 come in ahead. I don't know if the first guy was checking
2 to see if something or somebody else was there. I don't
3 know what he was doing.

4 The second guy came straight on up to my
5 desk. The first guy kind of lingered behind him a little
6 bit. For some reason, I don't know why, I noticed the
7 second guy more than -- I mean the first guy more than I
8 did the first guy even though the second guy was right
9 directly in front of me. The other one just was moving
10 and I guess that why I draw my attention to him because he
11 was moving.

12 He said for everyone to get on the floor.
13 When he said that, I guess being a mother, I couldn't get
14 on the floor because I was behind the desk. In order for
15 me to get on the floor, I couldn't see my children. I
16 couldn't do it. I'm sorry. But I stood up and when I
17 stood up -- I thought at first they was joking, but I
18 didn't expect to get robbed. If you had asked me five
19 minutes before they came in if I expected to get robbed, I
20 would have said, no.

21 So I stood up and the guy said where's it at,
22 where's it at. I knew he was talking about the money, but
23 I still thought it was a joke and this is not funny, my
24 kids are in here. And he was like this is not a joke,
25 where's it at?

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1 Q. Which guy said to you where's it at, where's it
2 at?

3 A. The second guy. He's the one that came up to my
4 desk but the first guy he's the one that said for everyone
5 to get on the floor. My customer laid down on his stomach
6 on the floor and my children was still over here playing a
7 game and I did the opposite. I couldn't lay down and not
8 be able to see my kids. I couldn't do it so I stood up.

9 I really didn't look at him that much and I
10 knew then what was going on but everything was happening
11 so fast I was worried that my kids were going to do
12 something. By then it clicked to me that somebody was
13 still in that car and I was scarred that one of my kids
14 might run out the door and somebody would grab him and put
15 him in the car. I didn't know what possibly would happen
16 at this point. I'm thinking the worse.

17 And we have a desk drawer and the top drawer
18 and we have an envelope and when someone makes a payment,
19 I put the money in my envelope and I write down the house
20 number and the amounts.

21 Q. And you do that every time?

22 A. I do that every time that somebody comes in. And
23 it was the bad habit that I broke now but I would do it as
24 the customer would come in and as soon as they hand me the
25 money, I took that money out and I would put it in there,

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1 so everybody knew that envelope. Anybody knows that
2 envelope is there. Now, I leave that money on my desk
3 until after they leave. I don't pull that envelope out
4 any more.

5 I opened the drawer and I got the envelope
6 and I went to hand it to him and I just dropped it. I
7 just dropped it on the desk. He picked it up and he
8 looked at it and because I hadn't been the whole day
9 because like I said my grandmother was in the hospital, it
10 wasn't full like it normally is. And I don't know if they
11 knew that it usually would be more in it because he looked
12 at it. It was like he knew what he was doing. He looked
13 at it and stuck it in his pocket and he was like where's
14 the rest of it at? And I said, that's it, I don't have
15 nothing else; I swear I don't have nothing else.

16 Q. Okay.

17 A. The first guy that had my customer on the ground,
18 he said everybody empty their pockets. Well, I didn't
19 have pockets. I didn't have any pockets and all I had was
20 my cell phone and my keys on the desk. My customer went
21 to raise up, he was on his stomach, and when he went to
22 raise up, he kind of pushed him back down with his foot,
23 and he took his wallet.

24 Q. And this is the first guy that came in?

25 A. Yes, ma'am. And he took my customer's wallet out

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1 of his back pocket, and my customer raised up and he said
2 there's nothing in it. When he opened the wallet and
3 that's when the second guy that was with me at my desk and
4 he's like real loud, where's it at? At that point, that's
5 when my kids got scarred.

6 They were still holding the game that they
7 were at this point they wasn't playing. They kind of
8 looked up and trying to figure out what was going on and
9 my son he dropped the game. And when he dropped the game,
10 our chairs -- the legs of the chairs are metal -- so when
11 the game hit the chair, it made kind of a loud noise. And
12 the guy that was with me, he turned around and he pointed
13 the gun at my son and he's like I told you not to move.

14 That's kind of when everything really started
15 speeding up and going fast because you can't see a gun
16 pointed to your seven-year-old child's head. I mean, you
17 just can't do it. My son he leaned back and he told me
18 daughter to run and my daughter jumped up and ran. She
19 ran back towards the master bathroom towards the kitchen,
20 the opposite way from the front door.

21 When she got up and ran that's when he turned
22 from me. He went to the door and he pushed his back up
23 against the door like to open the door not with his hands.
24 It was a screen. The wooden door was still open, he was
25 pushing on the screen.

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1 This first guy was still looking in the
2 wallet but he was looking through the picture part. I
3 don't know what he was looking through wallet or whatever.
4 The second guy said, come on, come on, Jit, come on.

5 Q. Come on what?

6 A. Jit.

7 Q. How would you spell that?

8 A. J-I-T, I guess. He said, come on, Jit, come on.

9 I'm not sure if that was the guy's name or that's the
10 nickname that somebody goes by or if that was just
11 something used to throw me off.

12 Q. So after the second one says to the first one,
13 come on, Jit, what did the first one do?

14 A. He still looked in the wallet again and then he
15 threw the wallet down and they took off out the door and
16 as soon as they took off out the door, I pick up the phone
17 and then I got to dial 911 but I just throw the phone down
18 because I realize then my kids are back her and I'm
19 feeling comfortable that they're safe but I know that I
20 don't got a good description of what these people look
21 like.

22 Q. Okay.

23 A. I don't know nothing and I feel like I have to
24 find out what this car looks like because if not, my kids
25 will never get justice. And I already know that seven

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1 year old is not going to be able to sleep at night knowing
2 that somebody -- and you know -- had not -- so I go out
3 the door. And my customer he pulls me back and he says
4 you can't go out the door, they have guns. I tell them at
5 this point I do not care about a gun, I care about these
6 people going to jail. They put a gun on my child. My son
7 is my life.

8 So I see the tag number where I'm at. So I
9 dial 911 and I'm telling her I just got robbed and I see
10 the tag number. The tag was XKF-485. That was the tag
11 number. I still remember it. When I seen the tag number,
12 I thought it was XX because the way the tag letters and
13 they kind of look the same. So I'm telling the 911
14 operator but at the time that they went to turn, I seen it
15 was straight line and I was like, no, it's a K, and at
16 this point I go out the door.

17 Q. So when the two people went out ---

18 A. I didn't go out the door -- I was going out the
19 door but my customer grabbed me back.

20 Q. What did you see them do?

21 A. They got in on the passenger's side. As soon as
22 they got in on the passenger's side, the car just rolled a
23 little bit like it was already in gear. It wasn't in
24 park. It rolled just a little bit but they didn't take
25 off. There wasn't in no hurry but that's how I seen the

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1 tag. It's a stop sign.

2 Q. Okay.

3 A. And they got right there to the stop sign and
4 then they turned to the left. When they started to turn
5 to the left, that's when I seen the K and that's when I
6 said I'm going out the door. I went out the door. As
7 soon as I go out the door, I see coming from inside of our
8 neighborhood a cop so I'm telling 911 operator the cops
9 are already here. For some reason I was assuming that
10 they were there for the robbery that quick, but they were
11 there for something else, and I'm telling them that car
12 right there they robbed me.

13 And the officer, I think because I was just
14 yelling and in such a panic road, I don't think the cop
15 quite understood me at that point?

16 Q. Well, don't talk about what anybody else might
17 have thought, but when you saw the car, do you know which
18 way it turned at the stop sign?

19 A. Yes, ma'am, it went to the left.

20 Q. Okay. What can you tell the jury, if anything,
21 about the two individuals that came into your office?

22 A. I know that -- the only thing that I can really
23 say positively that I know for a fact is they were both
24 black males. At the time, I was thinking 6' 3", 6' 4",
25 but then after I started thinking when I was standing off

Krystal Wells - Direct Examination

1 how even I was with them, I don't think they were actually
2 that tall. When you have a gun held to you, people look a
3 lot bigger than they are. I do know that.

4 Q. What about their size? Were they heavy or thin?

5 A. They wasn't heavy. They were both thinner guys
6 and they both sounded young. They had like a child
7 attitude about them, you know. They seemed young to me.

8 Q. Let me ask you this, do you know a guy named
9 Willie Poole?

10 A. I do.

11 Q. How do you know him?

12 A. Him and I think it was his girlfriend, they rent
13 from me.

14 Q. How long was he living out there with his
15 girlfriend?

16 A. I think they lived there for almost a year.

17 Q. In that year that Willie Poole was living there,
18 did you see him around the place?

19 A. Yes, I would see him. The way the mobile park
20 home is, the first street, they lived on that first
21 street. So I pretty much -- to go anywhere, I would put
22 letters on people doors when they overran or there was a
23 problem with music being too loud and stuff like that or
24 had to go to someone's house, I almost always had to pass
25 their house.

Krystal Wells - Direct Examination

1 Q. Would you recognize him if you saw him again?

2 A. Yes, I would.

3 Q. Is he in the courtroom?

4 A. Yes.

5 Q. Can you point him out to the jury?

6 A. He's right there.

7 Q. When you say right there, can you describe
8 something he's wearing?

9 A. The black shirt.

10 Q. Okay. Now, do you know whether or not Willie
11 Poole is the one that came in?

12 A. I don't believe he was the one that came in.

13 Q. What's different about him?

14 A. His size. I think he was bigger than the guys
15 that came in.

16 Q. Let me show you, Krystal, State's Exhibits 3, 4,
17 5, 6, 7 and 8. Can you just take a look at these.

18 A. (Witness complies).

19 Q. Do you recognize those exhibits?

20 A. This is my office.

21 Q. Are State's Exhibits 2 through 8 a true and
22 accurate depiction of the way you're office was set up on
23 the date of the trial?

24 A. Yes, ma'am. We have different chairs but it's
25 pretty much the same. My desk is in the same place.

Krystal Wells - Direct Examination

1 MS. MUNSON: Your Honor, I'd offer State's 3
2 through 8 into evidence.

3 MR. SULLIVAN: No objection.

4 THE COURT: Without objection.

5 (Whereupon, photographs marked State's
6 Exhibit No. 3 through 8 for identification was admitted
7 into evidence.)

8 BY MS. MUNSON:

9 Q. Ms. Wells, what I'm putting up here now is
10 State's Exhibit No. 3 and it's in evidence. What does
11 State's Exhibit No. 3 show?

12 A. That's the front door of the office. That's the
13 driveway and you come right up those steps and come up
14 into the front office.

15 Q. When you're talking about things in the
16 photographs, if you could use the laser pointer, it would
17 help us.

18 A. Okay. That's fine. That's the front door of the
19 office and the driveway is just right here and you just
20 turn right here.

21 Q. I'm showing you State's Exhibit No. 4, what does
22 that show?

23 A. That's the front door of the office. We keep
24 this door here open at all times and the screen here is
25 normally shut. And that's the door that people open.

Krystal Wells - Direct Examination

1 This actually here is the sign to let them know it's the
2 office.

3 Q. Now, this is State's Exhibit No. 5, could you
4 explain to the jury what is shown in State's Exhibit No.
5 5?

6 A. That's our office. Right here is the door. When
7 the first guy came in, he went to this little hall where
8 you can't see behind the door, and the second guy just
9 came straight in and he came straight up here to the desk
10 and he was kind of this side. I really can't get the
11 pointer up here. This was the chair and my customer was
12 right there. When they asked him to lay down, he laid
13 down right here in the floor.

14 Q. Now, this is State's Exhibit No. 6. What does
15 State's Exhibit No. 6 show?

16 A. This is the monitor where I was saying that I
17 seen the car when it pulled up. We had six cameras. The
18 first camera shows the inside of our office. One camera
19 shows the driveway, one says every car coming in and one
20 shows every car that goes out at the stop sign. So you
21 get a very good view of the road where the car was parked
22 at.

23 Q. Now, let's take a look at State's Exhibit No. 7.

24 A. Right here is right where the man was standing
25 at. That's my chair and I was standing there. I had the

Krystal Wells - Direct Examination

1 chair facing directly to the front, right here is to the
2 side, and I stood up right here in that spot?

3 Q. Now, in State's Exhibit No. 7, can you point out
4 where the envelop with money was kept?

5 A. It's this drawer like right there, a top right in
6 the very corner of the desk.

7 Q. Where were your children?

8 A. You can't see in this picture. Maybe if you can
9 -- I think you might have seen a little bit in the picture
10 before this one.

11 Q. That would be State's 6.

12 A. I'm sorry. It must have been the one before
13 that.

14 Q. Now, we're at State's Exhibit 5.

15 A. There's the chair here, a small end table and
16 there was another chair right here in this corner and
17 that's where they were children were and they were sitting
18 in the floor and if you see this rug right here, there's
19 like a little runner here and my children were actually
20 sitting on that bit?

21 Q. How about State's Exhibit No. 8, what does that
22 show?

23 A. That is right outside of our office. That's the
24 stop sign by the car and the car was parked like right
25 here. When it went to leave, it paused and then it just

Krystal Wells - Direct Examination

1 turned out and went that way.

2 Q. Now, let me show you State's Exhibits 9, 10, 11,
3 12 and 13. Would you take a look at these. Do you
4 recognize them?

5 A. Yes.

6 Q. When you say that's the car.

7 A. That's the car the guys got out.

8 Q. How do you know that's the car?

9 A. I did not get a good look at the guys so I made
10 sure that I focused on the car. I knew that I need to
11 know what the car looked like.

12 MS. MUNSON: Your Honor, I'd like to enter
13 State's 9 through 13.

14 MR. SULLIVAN: No objection.

15 (Photographs marked as State's Exhibit Nos. 9
16 through 13 for identification, was admitted into
17 evidence.)

18 BY MS. MUNSON:

19 Q. This is State's Exhibit No. 9. What does that
20 depict for you?

21 A. That's the best view of the car that I have
22 because like I said I looked at it when it was turning.
23 In my statement, I told the investigators I noticed that
24 it was a brand new paint job and I knew that it was fairly
25 decent paint job. I got a look at the tag, so I remember

Krystal Wells - Direct Examination

1 the tag number and I knew that it had factor rims and I
2 knew it was a smaller four-door car. I didn't know what
3 kind of car it was.

4 Q. Now, I'm showing you State's Exhibit 10.

5 A. That's the tag number. That tag number is in my
6 head?

7 Q. Okay. I'll ask you to look at State's Exhibit
8 No. 11, what does this show to you?

9 A. That's the side of the car that the two guys that
10 came in got out. That's what I could see. They were
11 facing out and I seen it. I didn't know the type of car
12 because it doesn't say on the side and when they turned I
13 wasn't looking to see what kind of car it was, I was
14 looking at the tag number. I know the tag number was
15 important. I knew when I told the investigators I knew
16 that it had these small regular tires. I knew that it
17 didn't have any rims, I knew it was regular tires. I
18 looked to see any kind of rims or something that would
19 make it stand out.

20 MS. MUNSON: I have nothing further at this
21 time, Your Honor.

22 THE COURT: Cross.

23 MR. SULLIVAN: I have a couple of things,
24 Your Honor.

25 CROSS-EXAMINATION

Krystal Wells - Cross-Examination

1 BY MR. SULLIVAN:

2 Q. Do you need a break? Do you need any time to
3 catch your breath?

4 A. No, I'm fine.

5 Q. Just a couple of questions.

6 A. Yes, sir.

7 Q. I'm just curious. On the screen door and the
8 other door, the solid door, you say you keep ---

9 A. The solid door open.

10 Q. The screen door, is it a storm door or a screen
11 door?

12 A. It has glass in it. Is that what you asking?

13 Q. Yes. Now, this happened either the 8th or the
14 9th, a Friday night.

15 A. It was a Friday afternoon.

16 Q. And you talked to one officer first and then you
17 gave a statement and talked to another officer, Officer
18 Fortner.

19 A. Yes, sir.

20 Q. And that was on the 13th. I know this was over
21 two years ago. I'm not going to try and trip you up.

22 A. Yes, sir.

23 Q. On your statement to Ms. Munson you said both
24 suspects were armed with handguns.

25 A. Yes, sir.

Krystal Wells - Cross-Examination

1 Q. Suspect one, suspect two, both had handguns?

2 A. Yes, sir.

3 Q. And they didn't just kind of peep in, they sort
4 of crashed in the door so that it had been jerked off?

5 A. Yes, they came in the door pretty quick.

6 Q. They came flying in the door, both armed?

7 A. Yes, sir.

8 Q. And then you gave a statement to that effect and
9 also to Officer Fortner. Now, on the photo where the side
10 of the car you could see from the back to the front the
11 door was open, that's what you could see when they came
12 up?

13 A. Yes, sir.

14 Q. You saw them get out of the car?

15 A. Yes, sir.

16 Q. Did they have on masks and guns when they got
17 out?

18 A. No, sir. If I would have seen the masks, I would
19 have, you know, but once they got out of the car, it's
20 happen you just look.

21 Q. I think you said you thought it was a customer's
22 car?

23 A. Yes, sir, when I looked and I seen the doors open
24 I really just didn't pay no attention ---

25 Q. Nothing to just draw you to them being robbers.

Krystal Wells - Redirect Examination

1 A. No, sir. I was messing with my shoe and I
2 started writing my receipt. I didn't really even realize
3 that they had masks on until my customer he seen them
4 first. He said something and that's when ---

5 Q. When they came busting in the door.

6 A. Uh-hum.

7 Q. Now, you said Mr. Poole and his girlfriend lived
8 out there for about a year.

9 A. Yes, sir.

10 Q. Who paid the rent? How was it paid? By check.

11 A. She paid the rent. For the first several months
12 they lived there, she would pay cash and then she got let
13 off from her job and she was drawing unemployment checks
14 and she started paying with unemployment checks.

15 Q. So the girlfriend paid the rent?

16 A. Yes, sir, she did.

17 Q. Now, just one more question and I might be done.
18 When they were leaving, the second guy said Jit. That's
19 what you have on your statement from Mr. Fortner and he
20 said Jit, come on Jit.

21 A. Yes, sir.

22 Q. On the day of the robbery when they were leaving,
23 come on, Jit?

24 A. Yes, sir.

25 MR. SULLIVAN: I have nothing further, Your

Michael Kastner - Direct Examination

1 Honor.

2 MS. MUNSON: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. MUNSON:

5 Q. How much time did it take from when these two
6 fellows that got out of the car for them to get in the
7 office?

8 A. I would say maybe a minute or so because I
9 finished tying my shoe and I had a receipt wrote. On my
10 receipt, I put the date, customer's name, address, I sign
11 my name. The only thing I didn't have filled in is the
12 amount because I didn't know the exact amount.

13 Q. Was it a long time?

14 A. I would say maybe close to a minute.

15 Q. Okay. As far as how long it usually take to walk
16 that distance ---

17 A. A couple of seconds, 15 seconds. It's two steps
18 from the car was to where the steps are is maybe 15 or 16
19 steps and then you walk up two steps.

20 MS. MUNSON: I have nothing further, Your
21 Honor.

22 THE COURT: Okay, ma'am, you can step down.

23 THE WITNESS: Thank you.

24 (Witness leaves the witness stand.)

25 MS. MUNSON: Your Honor, the State calls

Michael Kastner - Direct Examination

1 Deputy Kastner.

2 THE COURT: Okay.

3 THE CLERK: Sir, please place your left hand
4 on the Bible and raise your right hand..

5 MICHAEL C. KASTNER, having been duly sworn,
6 testified as follows:

7 Thank you. Please be seated. Please state
8 your full name for the record.

9 THE WITNESS: Michael C. Kastner.

10 DIRECT EXAMINATION

11 BY MS. MUNSON:

12 Q. Who do you work for, sir?

13 A. The Greenville County Sheriff's Office.

14 Q. How long have you been with them?

15 A. Close to four years.

16 Q. What do you do for them?

17 A. I'm assigned to the Uniform Patrol Division. I
18 respond to calls for service, also I carry out small
19 investigative duties as far as reports. Mostly my main
20 duties is to respond to call for service from citizens of
21 Greenville County.

22 Q. Okay. Were you with the Sheriff's Office in
23 January of 2009?

24 A. Yes, ma'am.

25 Q. And did you get a call in reference to this case?

Michael Kastner - Direct Examination

1 A. Yes, ma'am.

2 Q. On what date?

3 A. January 9th, 2009.

4 Q. About what time did you get the call?

5 A. It was approximately 4:33 p.m.

6 Q. Where did you go in response to the call that you
7 got?

8 A. I went to 23 Dixie Circle which is the leasing
9 office at Dixie Estates Apartments.

10 Q. And what county is that?

11 A. It's in Greenville County, ma'am.

12 Q. And when you got there did you speak with anyone?

13 A. Yes, I did.

14 Q. And what did you do when you first got there?

15 A. When I got to the scene, I spoke with Krysal Well
16 and also W. Hatchcock. I spoke with them and got the
17 story. Anytime I respond to an armed robbery or a robbery
18 call, my first responsibility is to get as much
19 information as I can to go ahead and issue a BOLO or
20 broadcast on the radio so they can go ahead and get the
21 information to deputies in the area to look out for
22 possible suspects in that case.

23 Q. And did you have some information to get out on
24 the radio in this case?

25 A. Yes, ma'am.

Michael Kastner - Cross-Examination

1 Q. About people or about the car?

2 A. People and the car.

3 Q. What did you do with the information you got from
4 Ms. Wells?

5 A. The information I gave from my hand held radio
6 and advised my dispatcher communication center about the
7 information that I got.

8 Q. And how long do you say you were at Dixie Estates
9 with her?

10 A. From the time that I got there and then left the
11 scene?

12 Q. Yes, sir.

13 A. It was almost an hour, about 50 minutes to an
14 hour.

15 Q. Okay. Now, when you left there, were you still
16 on duty?

17 A. Yes, ma'am.

18 Q. What were your hours that night?

19 A. 2:00 p.m. to 2:00 a.m.

20 Q. What did you do after you left Dixie Estates?

21 A. Looked up the vehicle, attempted to locate the
22 vehicle and also answer -- you know, go back to my normal
23 duties responding to calls for service.

24 Q. Now, in a situation where there's a robbery that
25 takes place and there's no one arrested that night, where

Michael Kastner - Cross-Examination

1 does your involvement -- what else do you have to do?

2 A. I write the initial report for this incident.

3 Q. And then what involvement do you have after that?

4 A. After that nothing else. After I write the
5 initial report approved by my supervisors, they get sent
6 to the division to follow up with the case.

7 Q. Okay. Thank you.

8 MS. MUNSON: I have nothing further.

9 CROSS-EXAMINATION

10 BY MR. SULLIVAN:

11 Q. You responded on the scene Friday afternoon
12 January 9th?

13 A. Yes, sir.

14 Q. And in your report, do you have it in front of
15 you?

16 A. Yes, sir.

17 Q. On Page 3 about halfway down that big paragraph
18 it say, "Suspect No. 2 had moved," do you see that?

19 A. No, sir.

20 Q. Let me show you this to save some time.

21 A. "Suspect No. 2 had moved to the door and told
22 suspect No. 1, Jit, let's go."

23 Q. In other words, he's telling him a name, Jit
24 let's go.

25 A. Yes, sir.

Michael Kastner - Cross-Examination

1 Q. In the other report you're spelling it
2 phonetically, J-I-T, this is G-I-T, but it's the same?

3 A. Yes.

4 Q. But he called him by a name?

5 A. Yes, sir.

6 MR. SULLIVAN: Thank you. Nothing further.

7 MS. MUNSON: No redirect, Your Honor.

8 THE COURT: All right, thank you, you can
9 step down.

10 (Witness leaves the witness stand.)

11 MS. MUNSON: We ask that this witness be
12 excused.

13 MR. SULLIVAN: No objection.

14 THE COURT: Okay.

15 MS. MUNSON: Your Honor, the State calls
16 Charles Timothy Brown.

17 THE CLERK: Step up to the Bible, place your
18 left hand on the Bible and raise your right.

19 CHARLES TIMOTHY BROWN, having been duly
20 sworn, testified as follows:

21 MS. MUNSON: Your Honor, we need to approach.

22 THE COURT: All right, y'all come on up.

23 (Whereupon, there was a bench conference.)

24 Thank you. You may be seated.

25 DIRECT EXAMINATION

Timothy Brown - Direct Examination

1 BY MS. MUNSON:

2 Q. Mr. Brown, how old are you?

3 A. I'm 41.

4 Q. Are you married?

5 A. Yes, ma'am.

6 Q. Do you have any kids?

7 A. Yes, I do.

8 Q. What are their ages?

9 A. 20 and 16.

10 Q. Where do they live?

11 A. With they mom.

12 Q. So you're obviously in some kind of a jumpsuit,
13 where are you confined right now?

14 A. The Detention Center.

15 Q. For what?

16 A. Driving under suspension.

17 Q. What else?

18 A. Failure to stop for a blue light.

19 Q. You came to the Detention Center from where?

20 A. (Inaudible).

21 Q. What was the sentence you were doing there?

22 A. 120-day sentence.

23 Q. Okay. Mr. Brown, have you had any contact with
24 your family since you been locked up?

25 A. My wife.

Timothy Brown - Direct Examination

1 Q. Do you intend to go back there when you get out?

2 A. I do.

3 Q. When are you due to get out?

4 A. Saturday.

5 Q. This coming Saturday?

6 A. Yes.

7 Q. I want to call your attention back to January of
8 2009. Do you remember back then?

9 A. Somewhat.

10 Q. Where were you living back then?

11 A. You talking about -- what you mean where I was
12 living.

13 Q. In January 2009, where were you staying?

14 A. I stayed a couple weeks with Mr. Poole there.

15 Q. When you say Mr. Poole there, who are you talking
16 about?

17 A. Mr. Poole.

18 MS. MUNSON: Your Honor, let the record
19 reflect that he's referring to the defendant.

20 BY MS. MUNSON.

21 Q. You said a couple of weeks with him, where did
22 you stay? Where was this?

23 A. I think on Henry Street.

24 Q. What was at Henry Street? Was it an apartment, a
25 house, a camper, what was it?

Timothy Brown - Direct Examination

1 A. It was a house.

2 Q. Anybody stay there with you?

3 A. Me and Denise and him and his girlfriend.

4 Q. What was your relationship with Denise at the
5 time?

6 A. Just friends.

7 Q. Now, why were you staying with the defendant on
8 Henry Street at that time?

9 A. I had just left home and I was out in the streets
10 and he let me lay there for a couple of weeks.

11 Q. And you say out in the streets, maybe doing some
12 drugs?

13 A. Yeah.

14 Q. What was your arrangement with the defendant as
15 far as rent or anything like that?

16 A. I really didn't have any -- I had a car and I
17 needed to stay for a couple of weeks and that was
18 basically it.

19 Q. When you were staying on Henry Street at the
20 defendant's house in January of 2009, what were you doing
21 during the day?

22 A. I'd be in the backroom watching tv, watching
23 moving, something like that.

24 Q. So who all lived there? It was you, Denise, the
25 defendant and his girlfriend. Was anybody else there?

Timothy Brown - Direct Examination

1 A. No.

2 Q. Did you have a car during that time?

3 A. Yes, I did.

4 Q. What kind of car was it?

5 A. It was a Mazda 629.

6 Q. I'm going to show you, Mr. Brown, State's Exhibit
7 Nos. 9, 10, 11, 12 and 13. Would you just take a look at
8 these?

9 A. (Witness complies).

10 Q. Now, Mr. Brown, is the vehicle shown in these
11 exhibits your car.

12 A. My car.

13 Q. And that's the car you had back in January of
14 '09?

15 A. That's right.

16 Q. Do you know where the car is now?

17 A. No, I don't.

18 Q. Did anybody else that was living there on Henry
19 Street have a car?

20 A. No.

21 Q. So did you let other people use the car?

22 A. Yes.

23 Q. How did that work? Did they ask you or just take
24 it or how did it work?

25 A. They would ask me and I let them.

Timothy Brown - Direct Examination

1 Q. Did you get anything in exchange for that?

2 A. I would get a little something.

3 Q. You say you stayed at defendant's house for how
4 long did you say?

5 A. A couple of weeks.

6 Q. Right near the end of your time there, do you
7 remember your conversation with the defendant about a
8 robbery?

9 A. Not about a robbery but I think something like
10 make a lick or something of that nature.

11 Q. Make a lick, who said make a lick?

12 A. The defendant.

13 Q. And who did he say that to?

14 A. In my presence and Denise's presence too.

15 Q. What does make a lick mean?

16 A. It means several things, come up with something,
17 something.

18 Q. Try to come up with something?

19 A. Come up with some money or something of that
20 nature.

21 Q. So when he said to you -- how did he put it to
22 you, that he wanted to make a lick or how did he put it to
23 you?

24 A. To be honest, I can't remember but something of
25 that nature came up.

Timothy Brown - Direct Examination

1 Q. It just came up. And how did you react to the
2 defendant mentioning make a lick?

3 A. I didn't want to do with no parts of it.

4 Q. You did have anything to do with it?

5 A. I didn't want no parts of it.

6 Q. You didn't want no part of it. How did Denise
7 react to the defendant talking about making a lick?

8 A. She didn't want no part of it either.

9 Q. Okay. After that conversation, did the defendant
10 -- where did he go?

11 A. Can't say.

12 Q. Do you know whether or not he took your car?

13 A. He had the car, yeah.

14 Q. After he took your car, after talk about getting
15 a lick, when was the next time you saw him?

16 A. The next day.

17 Q. Do you remember what day of the week that was?

18 A. I don't.

19 Q. Right now, Mr. Brown, are you charged with
20 anything? Today is the Solicitor's Office charging you
21 for anything? Do you have any pending charges?

22 A. No.

23 Q. What have you been promised in exchange for your
24 testimony today?

25 A. Nothing.

Timothy Brown - Cross-Examination

1 Q. What threats have been made to you?

2 A. None.

3 MS. MUNSON: I have nothing further.

4 THE COURT: Cross.

5 CROSS-EXAMINATION

6 BY MR. SULLIVAN:

7 Q. What's your wife's name, Mr. Brown?

8 A. Amanda.

9 Q. So at the time you were staying with Mr. Poole,
10 somewhere you were seeing a girl named Denise?

11 A. Right.

12 Q. So you had a little on the side?

13 A. She was just a friend.

14 Q. That was it?

15 A. She was a friend.

16 Q. Where does she live? You have no idea. Have you
17 ever heard of a fellow named Sergio Jones?

18 A. No.

19 Q. Why would his fingerprints show up in your car?

20 MS. MUNSON: Objection, Your Honor.

21 THE COURT: The basis?

22 MS. MUNSON: Based on facts not in evidence
23 whether or not this witness has any knowledge about
24 fingerprints.

25 THE COURT: I'll overrule that.

Timothy Brown - Cross-Examination

1 MR. SULLIVAN: I can simplify it.

2 BY MR. SULLIVAN:

3 Q. Do you know Sergio Jones?

4 A. I don't know nobody by that name.

5 Q. Now, on this car you had, this blue Mazda, are
6 you familiar with the term issue car?

7 A. I am.

8 Q. Was this basically -- what is an issue car?

9 A. You let somebody borrow it for drugs or whatever.

10 Q. So somebody wanted to use it for drugs, they may
11 give you a little bit and you let them use your car?

12 A. That's what an issue car is.

13 Q. And this Mazda was an issue car?

14 A. No, I wouldn't say that.

15 Q. Different people drove it. Can you say who all
16 drove it when you didn't have it?

17 A. I know who drove it. I know who I gave the key
18 to.

19 Q. Do you know who they gave the key to?

20 A. No, I don't.

21 Q. At that time you weren't working?

22 A. I wasn't.

23 Q. And you were staying at Mr. Poole's house?

24 A. That's correct.

25 Q. And drinking, smoking pot, watch tv?

Octavious Hutchinson - Direct Examination

1 A. That's right.

2 Q. And for that you left Mr. Poole use the car?

3 A. I consider him as a front.

4 Q. How long you known Willie?

5 A. I known him quite a while.

6 Q. You also know him as Scoop?

7 A. That's right.

8 Q. And you say that when you stayed there, Denise
9 stayed with you there?

10 A. Uh-hum.

11 Q. Y'all spend the night together?

12 A. Uh-hum.

13 Q. Y'all more than just friends?

14 A. Just friends.

15 Q. Y'all stay at his house and spend the night
16 together?

17 A. Right.

18 MR. SULLIVAN: Nothing further, Your Honor.

19 THE COURT: Redirect.

20 MS. MUNSON: No redirect, Your Honor.

21 THE COURT: All right, you can step down.

22 (Witness leaves the witness stand.)

23 MS. MUNSON: Your Honor, the State calls
24 Octavious Denise Hutchinson.

25 THE CLERK: Ma'am, please come forward. If

Octavious Hutchinson - Direct Examination

1 you'll pause here at the end of the bench, please place
2 your left hand on the Bible and raise your right hand.

3 OCTAVIOUS DENISE HUTCHINSON, having been duly
4 sworn, testified as follows:

5 Thank you. Please be seated. Please state
6 your full name for the record.

7 THE WITNESS: Octavious Denise Hutchinson.

8 THE CLERK: You need to move in a little bit
9 so they can hear you.

10 DIRECT EXAMINATION

11 BY MS. MUNSON:

12 Q. Denise, I'm going to ask you to speak up a little
13 bit so we can hear you. You got to speak up really loud,
14 okay. How old are you?

15 A. I'm 42.

16 Q. Where do you live?

17 A. [REDACTED], Judson.

18 Q. Who do you live there with?

19 A. My grandfather.

20 Q. How long have you been living there?

21 A. About almost three weeks.

22 Q. Where did you live before that?

23 A. I stayed on Anderson Road.

24 Q. Who lives there besides your grandfather? Your
25 grandfather and anybody else?

Octavious Hutchinson - Direct Examination

1 A. Just me and my grandfather.

2 Q. Okay. How old is he?

3 A. He's 64.

4 Q. Do you have any children?

5 A. I have three.

6 Q. And what are their ages?

7 A. 23, 22 and 17.

8 Q. Do you have any grandchildren?

9 A. Yes, I have two.

10 Q. Now, Denise, you've had some troubles with the
11 law in the past, haven't you?

12 A. Yes, I have.

13 Q. You've been convicted of giving false information
14 to the police, hit and run.

15 A. (Witness nods).

16 Q. Do you have any ---

17 MR. SULLIVAN: Objection. She didn't answer
18 those questions.

19 THE COURT: You got to speak up, ma'am, and
20 answer verbally. Ask the questions again.

21 BY MS. MUNSON:

22 Q. You been convicted of false information to
23 police?

24 A. Yes.

25 Q. And hit and run with injury?

Octavious Hutchinson - Direct Examination

1 A. Yes.

2 Q. Great bodily injury?

3 A. Yes.

4 Q. All right. Do you have any charges pending
5 against you right now?

6 A. No.

7 Q. Now, I want to call your attention back to
8 January of 2009. In early January of 2009, where were you
9 living?

10 A. I was living with Willie.

11 Q. When you say Willie, who are you talking about?

12 A. Willie Poole.

13 Q. Who else was living at Willie Poole's house where
14 you were?

15 A. Timothy Brown and Adrian.

16 Q. Who is Adrian?

17 A. Willie's girlfriend.

18 Q. What was your relationship with Mr. Brown?

19 A. We was friends.

20 Q. Did you know he was married?

21 A. Uh-hum.

22 Q. How did you come to live there with Willie Poole
23 and Mr. Brown?

24 A. Tim brought me there.

25 Q. He brought you there. How long did you live

Octavious Hutchinson - Direct Examination

1 there?

2 A. About a month.

3 Q. About a month?

4 A. Yeah, about a month.

5 Q. Did you have any kind of arrangements with the
6 defendant or anybody else about rent?

7 A. Well, Tim did.

8 Q. So you didn't have to pay any rent?

9 A. No.

10 Q. So what did y'all do all day?

11 A. Sleep, eat, mostly, whatever.

12 Q. Maybe do some drugs?

13 A. Yes.

14 Q. What kind of drugs were you doing back then?

15 A. We did pot.

16 Q. When you were living over there with Tim and
17 Willie Poole, do you remember a conversation about a
18 robbery?

19 A. It wasn't actually a conversation about a
20 robbery, it was a conversation about a lick.

21 Q. Well, the conversation -- were you in this room
22 when this conversation took place?

23 A. Partially in and out.

24 Q. Who was talking?

25 A. It was Willie and James Evans was talking about

Octavious Hutchinson - Direct Examination

1 it.

2 Q. You heard them talking to one another?

3 A. Yeah.

4 Q. Now, what did you hear the defendant say?

5 A. They just had a lick.

6 Q. They had a lick?

7 A. Had a big lick.

8 Q. Did he say anything to Mr. Brown about a lick?

9 A. I didn't hear him say anything.

10 Q. Do you remember about -- was it in the morning,
11 afternoon or night when you heard the defendant talking
12 about a lick?

13 A. It was like the afternoon time.

14 Q. And when the defendant was talking to Mr. Evans
15 about a lick, how did he say it? What did he say?

16 A. He just said that he was ---

17 MS. SULLIVAN: Objection, hearsay.

18 THE COURT: Yeah. Are you talking about
19 Evans?

20 MS. MUNSON: No, I asked her about what the
21 defendant said to Mr. Evans.

22 THE COURT: Okay.

23 MR. SULLIVAN: Withdrawn.

24 THE WITNESS: He said he had a lick to do and
25 he had ---

Octavious Hutchinson - Direct Examination

1 MR. SULLIVAN: Could you speak up a little
2 bit.

3 THE WITNESS: He just said that he had a lick
4 to do and actually I just didn't hear it all. It's like
5 bits and pieces.

6 BY MS. MUNSON:

7 Q. What does it mean to have a lick to do?

8 A. It means a -- I really can't say. I really can't
9 say.

10 Q. So you don't know what it means?

11 A. The way I would put it is that it's a
12 (inaudible).

13 Q. It's a what?

14 A. Just something to get money.

15 Q. Anything to get money?

16 A. Anything to get money.

17 Q. Did the defendant have anything to say to Tim
18 Brown about this lick?

19 A. He talked to him about it but I can't actually
20 say what they talked about. I know Tim wanted to go and I
21 told him I didn't want him to go so he didn't go.

22 Q. Why did you not want Tim to go?

23 A. Because it didn't feel right.

24 Q. Why not?

25 A. Because it was something up to no good.

Octavious Hutchinson - Direct Examination

1 Q. Okay. Something illegal?

2 A. Yes.

3 MR. SULLIVAN: Objection, she said she didn't
4 know what it means.

5 THE COURT: Well, that's all right. Go
6 ahead.

7 BY MS. MUNSON:

8 Q. You didn't want Tim to go.

9 A. No.

10 Q. And he did it?

11 A. No.

12 Q. Do you know how Willie Poole left the house?

13 A. He left in Tim car.

14 Q. After the conversation about a lick?

15 A. (Witness nods).

16 Q. Did you see the car any more that day.

17 A. No, I didn't see it until the next morning.

18 Q. Were you there at the Henry Street house the
19 whole time?

20 A. Yeah, I was there.

21 Q. Are you on probation or parole right now?

22 A. No.

23 Q. Tell the jury what the Solicitor's Office has
24 offered you in order to get you to testify today?

25 A. Nothing.

Octavious Hutchinson - Cross-Examination

1 Q. What threats have been made against you?

2 A. None.

3 MS. MUNSON: I have nothing further at this
4 time.

5 MR. SULLIVAN: Just a couple of questions.

6 CROSS-EXAMINATION

7 BY MR. SULLIVAN:

8 Q. How long did you stay there with Tim Brown?

9 A. All day.

10 Q. I mean the time frame, two weeks, a month?

11 A. About a month.

12 Q. When did you move in? This conversation happened
13 around the 9th and you stayed there a month, were you
14 there for Christmas?

15 A. I actually can't remember.

16 Q. December 9th, January 9th, that would take you
17 through Christmas, wouldn't it?

18 A. You talking about on that day?

19 Q. How long were you there? A month.

20 A. About a month.

21 Q. Did y'all have Christmas there?

22 A. No.

23 Q. Did you have Christmas with your grand children?

24 A. No.

25 Q. And various people were interviewed by the

Octavious Hutchinson - Cross-Examination

1 police, were you interviewed by the police in this case?

2 A. Excuse me, sir?

3 Q. Were you ever interviewed by an officer about
4 this case? Did you ever give a statement?

5 A. Yes.

6 Q. To whom?

7 A. To the police.

8 Q. When? I need to know when did you talk to an
9 officer about this case?

10 A. After they arrested him.

11 Q. Ma'am?

12 A. I think after they arrested them.

13 Q. After they arrested who?

14 A. Willie Poole.

15 Q. You gave a statement to the police about staying
16 there with Mr. Brown to the police?

17 A. Uh-hum.

18 Q. They took it and put it in writing?

19 A. Yes, they did.

20 MR. SULLIVAN: Judge, I'd like to excuse the
21 jury for a minute.

22 THE COURT: Okay. Ladies and gentlemen, we
23 got an issue to talk about. I also have another jury out
24 and they need to come back and talk to me for a minute, so
25 I'm going to excuse y'all to the jury room. Don't discuss

Octavious Hutchinson - Cross-Examination

1 the case and we'll get back with you very shortly. Thank
2 you.

3 (Whereupon, the jury exited the jury room.)

4 MR. SULLIVAN: Judge, I found out about this
5 witness maybe a week ago or two weeks ago and Ms. Munson
6 and shared information. She told me that this lady gave
7 me no statement and just had been discovered within the
8 last couple of weeks prior to the trial. She had nothing
9 in writing and as far as she knew. They were talking
10 about the murder case and she volunteered this. There is
11 nothing in writing about this and I have nothing in
12 writing before hand and I have received nothing in
13 writing.

14 THE COURT: Ms. Hutchinson, who did you give
15 the statement to?

16 THE WITNESS: To the Greenville County when
17 they asked me about the murder trial.

18 THE COURT: Well, who?

19 THE WITNESS: Detective -- I can't remember.

20 THE COURT: Is it that guy out there?

21 Stand up, please.

22 Do you know who that is?

23 THE WITNESS: No.

24 THE COURT: Well, what did the guy look like?

25 Was he white or black, Hispanic, what?

Octavious Hutchinson - Cross-Examination

1 THE WITNESS: The one I talked to when all
2 this went down was Italian.

3 THE COURT: He said it was an Italian deputy.

4 MS. MUNSON: It was John Devatoria(ph), Your
5 Honor.

6 THE WITNESS: Yes.

7 MS. MUNSON: After Defendant Poole was
8 arrested for the murder of Taleba Allen, Ms. Hutchinson is
9 one of the people that they talked to. She did give a
10 written statement regarding the murder. She gave no
11 written statement regarding the robbery which is what I've
12 been saying all along.

13 THE COURT: Does that answer your question,
14 Mr. Sullivan?

15 MS. MUNSON: She's confused in other words.
16 She certainly did give a written statement.

17 THE COURT: Well, show it -- do you have a
18 copy of it?

19 MS. MUNSON: No, I don't have it here because
20 it's in the murder file, which has nothing to do with this
21 robbery. And it is true, Your Honor, that in interviewing
22 witnesses preparing for the murder trial, we did come
23 across Ms. Hutchinson and she did give me information
24 about the robbery, about what little bit she knew about
25 it, which I relayed to Mr. Sullivan.

Octavious Hutchinson - Cross-Examination

1 There is no written statement giving by her
2 regarding the robbery.

3 THE COURT: All right. Y'all talked to the
4 Italian?

5 MS. MUNSON: John Devatorio.

6 THE COURT: Could you be mistaken about what
7 you gave your statement about?

8 THE WITNESS: Yes, I could.

9 MR. SULLIVAN: Judge, I want them to tie down
10 when she gave a statement about this case. The murder
11 case statement I have that and it says nothing about this
12 robbery. I want to know why she knew about a robbery case
13 she sat on for two years and just came out of the woodwork
14 two weeks ago. Who did she first give a statement to
15 about the robbery.

16 THE COURT: Ms. Munson, how did you stumble
17 upon this witness?

18 MS. MUNSON: In interviewing her regarding
19 the murder case. I was trying to decide whether to put
20 the murder on the docket or the robbery so I was talking
21 to every name I could find in the file and other names
22 that would come to my attention that weren't in the file
23 and Ms. Hutchinson was one of them. So in talking with
24 her, I believe we were at Starbucks actually and then she
25 told me -- we were talking about the blue car and how the

Octavious Hutchinson - Cross-Examination

1 blue car got from one place to another and then she told
2 me about the blue car being gone and then coming about,
3 and then she gave me information about the robbery, which
4 I turned over to Mr. Sullivan. I didn't ask her to write
5 out a statement.

6 THE COURT: Okay. She's got no written
7 statement about the robbery.

8 MR. SULLIVAN: I understand I still want to
9 know why she waited two years to mention to the police
10 about the robbery -- when she gave a statement, written or
11 otherwise, about this robbery?

12 THE COURT: That's fine. That's good for
13 cross-examination.

14 MR. SULLIVAN: That's all I was asking. She
15 said she gave a statement and I was trying to find out
16 about the statement.

17 THE COURT: Well, I tell you you're treading
18 on thin ice when you get into why she was talking to the
19 police.

20 MR. SULLIVAN: I understand that, but I was
21 curious when she told the police about the robbery. She
22 didn't mention it any other place.

23 THE COURT: Okay. I got to deal with this
24 other jury so we'll be on break in the Poole case.

25 Ms. Hutchinson, you can stand down. Don't

Octavious Hutchinson - Cross-Examination

1 you go anywhere and don't talk about your testimony.

2 Okay. Behave yourself.

3 (Whereupon, there was a short recess.)

4 (Witness leaves the witness stand.)

5 (Jury re-enters the courtroom.)

6 THE COURT: Ladies and gentleman, thank you
7 for your patience. We had another jury out, that case
8 finished and we had to take care of that so that's what
9 the long delay was about. I have spoken to Mr. Sullivan
10 about his decimal level of his talk, but I tell you I've
11 known him for a long time and he's a spoken guy anyway and
12 he'll do his best to keep his voice level up. If you all
13 can not hear a question, signal and I'll make sure he
14 repeats it so everyone can hear.

15 The other thing we want to tell you is that
16 there were no more questions for Ms. Hutchinson and with
17 respect to the fact there was some discussion about a
18 written statement concerning the robbery, there actually
19 was not.

20 The attornies agree to that, is that correct?

21 MS. MUNSON: Yes, Your Honor.

22 MR. SULLIVAN: Yes, Your Honor.

23 THE COURT: And if you remember I told you
24 about stipulations, that's a fact beyond dispute and
25 should accept it as being true.

Donnell Hagood - Direct Examination

1 MS. MUNSON: The State calls Donnell Hagood.

2 THE CLERK: Turn around this way, if you'll
3 pause at the end of the bench. If you would place your
4 left hand on the Bible and raise your right hand.

5 DONNELL STEVEN HAGOOD, having been duly
6 sworn, testified as follows:

7 Thank you. Please be seated. State your
8 full name for the record.

9 THE WITNESS: Donnell Hagood.

10 DIRECT EXAMINATION

11 BY MS. MUNSON:

12 Q. Mr. Hagood, you're in the Greenville County
13 Detention Center?

14 A. Yes.

15 Q. You're going to have to speak up.

16 A. Yes, ma'am.

17 Q. Why are you there?

18 A. Armed robbery.

19 Q. Armed robbery and conspiracy?

20 A. Yes, ma'am.

21 Q. Is this the armed robbery of Dixie Estates?

22 A. Yes, ma'am.

23 Q. How long have you been in jail?

24 A. Two years.

25 Q. So you're charged with this armed robbery as

Donnell Hagood - Direct Examination

1 well?

2 A. Yes, ma'am.

3 Q. What has the Solicitor's Office offered you in
4 order to get you to testify?

5 A. Nothing.

6 Q. What promises or threats have been made to you by
7 anybody to get you to testify?

8 A. None, ma'am.

9 Q. Now, this armed robbery that's pending against
10 you, you've had some other problems in the past, haven't
11 you?

12 A. Yes, ma'am.

13 Q. You got convicted of a strong armed robbery in
14 2008?

15 A. Yes, ma'am.

16 Q. And you've had drug convictions in 2005?

17 A. Yes, ma'am.

18 Q. Possession of crack?

19 A. Yes, ma'am.

20 Q. Now, how old are you, Mr. Hagood?

21 A. Twenty-eight.

22 Q. Do you have a wife?

23 A. No, ma'am.

24 Q. Do you have any kids?

25 A. Yes, ma'am.

Donnell Hagood - Direct Examination

- 1 Q. How old are they?
- 2 A. One, four, and three.
- 3 Q. One, four, and three?
- 4 A. Yes, ma'am, two girls and a boy.
- 5 Q. Where do they stay?
- 6 A. With they momma.
- 7 Q. Do you have any other family in the area? Are
- 8 you parents alive?
- 9 A. Yes, ma'am.
- 10 Q. Have you had any contact with them since you been
- 11 locked up?
- 12 A. Yes, ma'am.
- 13 Q. Do you know Mr. Willie Poole?
- 14 A. Yes, ma'am.
- 15 Q. How do you know him?
- 16 A. Related.
- 17 Q. How are you related to him?
- 18 A. Cousins.
- 19 Q. How are you cousins?
- 20 A. It's on my mom's side.
- 21 Q. Did you know him growing up?
- 22 A. Not quite often.
- 23 Q. Not quite often.
- 24 A. Off and on I see him. We didn't grow up together
- 25 but I know his sister and his brother?

Donnell Hagood - Direct Examination

1 Q. Where did you go to high school?

2 A. Carolina.

3 Q. Do you know where he went to high school?

4 A. No, ma'am.

5 Q. Is he older or younger than you?

6 A. Older than me.

7 Q. Do you know how old he is?

8 A. No, ma'am.

9 Q. Let's go back to January of 2009, where were you
10 living then?

11 A. With my mom.

12 Q. And where is that?

13 A. I can't remember the address but I know it was on
14 (inaudible) Street.

15 Q. Did you have a conversation with Willie Poole
16 about a robbery?

17 A. He came to me -- I was my cousin's house before
18 he died and he said some dude named Dee ---

19 Q. Let's back up. Willie Poole came to your
20 cousin's house and picked you up.

21 A. Yes, ma'am.

22 Q. Did you have any conversations with him before he
23 came to your cousin's house to pick you up?

24 A. No, ma'am.

25 Q. So he picks you and then what happens?

Donnell Hagood - Direct Examination

1 A. We was riding around and he seen this dude named
2 Dee, picked him up and we went to Dixie Estates.

3 Q. Who's Dee?

4 A. Some friend of his.

5 Q. What's he look like?

6 A. About my complexion, a little bigger than me,
7 older than me.

8 Q. About your height?

9 A. A little taller than me.

10 Q. Now, when you were in the car with him and you
11 picked up Dee, where did he get into the car?

12 A. In the back seat.

13 Q. What car was this?

14 A. I can't remember what kind of car was it.

15 Q. Had you ever seen the car before?

16 A. No, ma'am.

17 Q. Before Willie Poole came to pick you up from you
18 cousin's house, did he talk to you before you did he just
19 show up?

20 A. Repeat that again.

21 Q. When Willie Poole came to pick you up at your
22 cousin's house, did he call you before he came over there
23 and picked you up or did he just show up?

24 A. He called me on the phone.

25 Q. Did he tell you why he was coming over there?

Donnell Hagood - Direct Examination

1 A. That he was coming to pick me up in Berea and we
2 was going for a ride.

3 Q. And when you got Dee in the car, you said you
4 were going to Dixie Estates?

5 A. Yes, ma'am.

6 Q. Had you ever been there?

7 A. Dixie Estates?

8 Q. Yeah.

9 A. A long long time ago. I have some friends there,
10 though.

11 Q. Had you ever lived there.

12 A. No, ma'am.

13 Q. Did you ever go over there when Willie Poole was
14 living there?

15 A. No, ma'am.

16 Q. So when you got to Dixie Estates, what happened.

17 A. Dee got out of the car, I got out behind him.
18 Dee drew a gun out on Krystal. I was standing beside the
19 door, he got the money and ran out of the house. He
20 grabbed my shirt and pulled me.

21 Q. You're Jit, aren't you?

22 A. No.

23 Q. You never go by that name?

24 A. No, ma'am.

25 Q. Do you remember giving a statement to Detective

Donnell Hagood - Direct Examination

1 Fortner on February 4th of 2009 about a month after the
2 robbery?

3 A. Yeah, I guess so.

4 Q. Let me just show you this.

5 A. Dee is the name he goes by.

6 Q. What did you say?

7 A. Dee is the name.

8 Q. You say Dee goes by Jit?

9 A. No, then name on that paper.

10 Q. Let's back up, so you remember talking to the
11 police in February of '09.

12 A. Yes, ma'am.

13 Q. And what I just showed you was your written
14 statement?

15 A. Yes, ma'am.

16 Q. Did you not tell the officer that Vellie(ph)
17 calls you Jit?

18 A. Ain't nobody called me no Jit.

19 Q. No one has ever called you Jit?

20 A. No, ma'am.

21 Q. When you signed this statement telling the police
22 that Vellie calls you Jit, and that Vellie said come on
23 Jit, let's go, you were lying to them?

24 A. Yes, ma'am. Dee is what he go by but nobody
25 never called me Jit.

Donnell Hagood - Direct Examination

1 Q. Nobody calls you Jit?

2 A. No, ma'am.

3 Q. And Vellie doesn't call you Jit?

4 A. No, ma'am.

5 Q. So why did you tell the police that Vellie does
6 call you Jit?

7 A. At the time I was scarred and I was trying to get
8 out of a mess.

9 Q. Are you scarred now?

10 A. Yes, ma'am.

11 Q. Are you trying to get out of a mess now?

12 A. I ain't do nothing. I ain't draw no gun on
13 nobody. Ain't took no money out of nobody hand. I ain't
14 took no money out of nobody purse.

15 Q. What did you do?

16 A. The only thing I did I was in the car with them,
17 we rode up, got out of the car with Dee and stand by the
18 door. Dee drawed a gun out on Krystal and got the money
19 out.

20 Q. Was there another guy in the office?

21 A. Yes, ma'am.

22 Q. You didn't have any contact with him?

23 A. No, ma'am.

24 Q. You didn't touch his wallet?

25 A. I ain't touch nothing.

Donnell Hagood - Direct Examination

1 Q. When you went in, did you have your face covered
2 with a bandanna?

3 A. I ain't had nothing on my face. If I had
4 something on my face, they couldn't have pointed me out.
5 I had this tattoo on my face. I didn't have nothing on my
6 face.

7 Q. You didn't cover your face with a bandanna?

8 A. No, ma'am.

9 Q. But you did go in the office?

10 A. Yes, ma'am.

11 Q. Now, before you got over there, did you know you
12 were going over there to commit a robbery?

13 A. No, ma'am.

14 Q. When did it come to you that you were going to
15 commit a robbery?

16 A. I went in there and (inaudible) and then Dee ran
17 in the trailer and then I seen Dee draw a gun on Krystal.

18 Q. You seen Dee draw a gun on Krystal. What did you
19 do, just stand there?

20 A. Dee tied his head up and he ran in the house and
21 that's when he grabbed my shirt and pulled me out the
22 house with him.

23 Q. He did grab you?

24 A. He grabbed my shirt and he said come on.

25 Q. He did grab your shirt but he didn't say come on

Donnell Hagood - Direct Examination

1 Jit?

2 A. No, ma'am.

3 Q. So it was you in there and he was you he was
4 yelling at on the way to the car?

5 A. Yes, ma'am.

6 Q. Now, did you know where the money was going to be
7 in there?

8 A. No, ma'am.

9 Q. Do you remember giving a statement to the police
10 in January of 2009?

11 A. Can I see it?

12 Q. Yeah, sure. Is that a copy of the statement that
13 you gave to the police?

14 A. Yes, ma'am.

15 Q. Were you telling them the truth?

16 A. Yes, ma'am.

17 Q. So when you told the police in January of 2009
18 that, "The screen door was open and I was looking back and
19 forth, Black was inside and told the lady to give him the
20 money. Black got the money, grabbed my shirt and said
21 come on let's go," who's Black?

22 A. Dee.

23 Q. Black is Dee?

24 A. Yes, ma'am.

25 Q. And who's Vellie?

Donnell Hagood - Direct Examination

1 A. The dude in the back seat of the car goes by Dee.

2 Q. He goes by Dee?

3 A. That's what I'm saying, I don't know where he
4 front. He was by Citiview. That's my first time seeing
5 this guy. I know he's a friend of my cousin.

6 Q. What I'm saying is you know him by Dee and by
7 Black?

8 A. Yes, ma'am. That's the names he gave me.

9 Q. Now, getting back to your statement, the
10 statement you gave in February of 2009, did you tell the
11 truth in this statement?

12 A. Yes, ma'am.

13 Q. So when you told the police that there would only
14 be one girl in there, the money was in the third drawer
15 down and it would be in an envelope.

16 A. That's what they told me. I didn't know about
17 the money or nothing. It was just going by what they were
18 telling me.

19 Q. Wait. Is it truth that you told the police that
20 the money would be in the third drawer, is that truth?

21 A. Yes, ma'am.

22 Q. And from where did you get that information?

23 A. From Dee and Scoop.

24 Q. From Dee and Scoop?

25 A. Yes, ma'am.

Donnell Hagood - Direct Examination

1 Q. So let's back up. While you're riding over there
2 to Dixie Estates, Dee and Scoop are talking about this
3 robbery?

4 A. Yes, ma'am. I really wasn't paying any attention
5 when they were talking. When they were talking, I was
6 listening to music. I really wasn't listening to what the
7 conversation was about.

8 Q. Okay. Let's back up a bit. Scoop, who is Scoop?

9 A. My cousin.

10 Q. Your cousin who?

11 A. Willie Poole.

12 Q. He's driving, where are you?

13 A. I'm on the passenger's side.

14 Q. Passenger's side front or back?

15 A. In the front on the right hand side.

16 Q. On the way over there, Scoop and Dee are talking
17 about robbing Dixie Estates?

18 A. Yes, ma'am.

19 Q. And who is it that knew that there would only be
20 one girl in there?

21 A. Dee and Scoop.

22 Q. Dee and Scoop?

23 A. Yes, ma'am, or Scoop one, either one.

24 Q. And who is that knew the money would be in the
25 third drawer down and be in an envelope?

Donnell Hagood - Direct Examination

1 A. Scoop told me.

2 Q. And then when you got there who had the gun?

3 A. Dee.

4 Q. Where did it come from?

5 A. It came from Scoop.

6 Q. Scoop gave the gun to Dee?

7 A. Yes, ma'am.

8 Q. And then what did he tell one or both of y'all to
9 do?

10 A. He was telling Dee to go in there and get the
11 money and stuff and when I was in the house I was right
12 beside the door and I seen Dee pull the gun on Krystal and
13 the other guy. When he got the money, he ran out the
14 house and grabbed my shirt.

15 Q. But you didn't go in the house at all?

16 A. I was standing right there outside the door.

17 Q. Was Dee wearing anything on his face?

18 A. Yes, ma'am.

19 Q. What was he wearing?

20 A. A bandanna.

21 Q. But you didn't have one?

22 A. No, ma'am.

23 Q. And you didn't have a gun?

24 A. No, ma'am.

25 Q. When Dee came out and pulled you on the shirt and

Donnell Hagood - Direct Examination

1 said let's go, where did you go?

2 A. We jumped in the car.

3 Q. Okay. Did you get back in the front seat?

4 A. Yes, ma'am.

5 Q. What did the defendant say to you when you got
6 back in the car?

7 A. I can't remember.

8 Q. Let me show you a written statement and see if
9 that helps you. You look at it first and see if you
10 remember what it says?

11 A. (Witness reviews the document).

12 Q. Now, do you remember what the defendant told you
13 after the robbery.

14 A. Yes, ma'am.

15 Q. What did he tell you?

16 A. That I didn't do nothing, he would fight me.

17 Q. If you didn't do anything he would fight you?

18 A. Yes, ma'am.

19 Q. What do he mean by that?

20 A. About bulling me and telling me what to do and
21 stuff right there.

22 Q. Did he tell you before or after the robbery he
23 was going to fight me?

24 A. In between.

25 Q. Do before the robbery -- so why did you do this?

Donnell Hagood - Direct Examination

1 Why did you get out of the car and go up there to the door
2 knowing that a robbery was going to happen? Why did you
3 do that?

4 A. Because I was scarred.

5 Q. Scarred of what?

6 A. My cousin.

7 Q. Why?

8 A. Because of what I said in my statement.

9 Q. No. I'm asking you to tell the jury why you were
10 afraid of him?

11 A. I mean he would ---

12 Q. Let's not talk about anything else but what
13 happened right then, okay.

14 A. Yes, ma'am.

15 Q. Now, before the robbery you went in and did this
16 because he told you.

17 A. Told you.

18 Q. After the robbery when you got back in the car,
19 what did he say to you?

20 A. If I don't do nothing like he told me to ---

21 Q. Did he call you a pussy?

22 A. Yes, ma'am.

23 Q. Did he hit you?

24 A. Yes, ma'am.

25 Q. Why?

Donnell Hagood - Direct Examination

1 A. Because I didn't really want to do nothing.

2 Q. Now, you gave one statement to the police on
3 January 26, 2009, right?

4 A. Yes, ma'am.

5 Q. And then later on in February, you called the
6 detective and gave another statement, didn't you?

7 A. Yes, ma'am.

8 Q. And you changed your story a little bit?

9 A. Yes, ma'am.

10 Q. How did you change your story?

11 A. Can't go back that far. I can't remember.

12 Q. Did it have anything to do with who the third
13 person was?

14 A. The only other person is Dee and me and Scooter,
15 that's the name I can remember.

16 Q. Do you remember the name Vellie?

17 A. That's the name Dee said he go by.

18 Q. All right, so Dee and Vellie ---

19 A. Are the same person.

20 Q. Dee and Vellie are the same person. Is Nicholas
21 Williams the same person as Dee?

22 A. Yes, ma'am.

23 Q. So Dee, Vellie, Nicholas Williams, and Black
24 they're all the same name?

25 A. That the name the dude gave me. I asked him

Donnell Hagood - Direct Examination

1 what's his name and that's the name he gave me.

2 Q. Why did you call the detective in February of '09
3 after you had been locked up charged with this robbery,
4 gave your statement, said that you were there, why did you
5 call the detective in February of '09 and give another
6 statement?

7 A. I was trying to get out of some mess. I was
8 trying to get out of something before my little girl was
9 born.

10 Q. So you just decided to call the detective and
11 give a different statement?

12 A. Yes, ma'am.

13 Q. But no one asked you to do that?

14 A. No, ma'am.

15 Q. You did it on your own?

16 A. Yes, ma'am.

17 MS. MUNSON: I beg the Court's indulgence.

18 BY MS. MUNSON:

19 Q. Now, after the robbery, where did you guys go?

20 A. To my mom house.

21 Q. Who all went to your mom's house?

22 A. Me, Dee and Scooter.

23 Q. What did you do with the money?

24 A. Split it up.

25 Q. How did it get split up?

Donnell Hagood - Direct Examination

1 A. I was in the living room and they was in the
2 kitchen.

3 Q. How much did you get?

4 A. Nothing.

5 Q. You got nothing?

6 A. Nothing.

7 Q. Why did you get nothing?

8 A. Because I ain't do nothing. I ain't have no gun,
9 I ain't robbed nobody. I ain't do nothing.

10 Q. Are you really telling this jury you didn't do
11 anything that day? You did nothing wrong?

12 A. I ain't pull no gun on nobody. I ain't robbed
13 nobody, I ain't took no money from nobody. How can I rob
14 somebody and I ain't have no gun? It don't make sense.

15 Q. You didn't have the gun but you are telling this
16 jury that you did nothing wrong by getting out of the car,
17 knowing there was going to be a robbery and going up
18 there, you're saying you didn't do anything wrong?

19 A. That's wrong right there getting out of the car
20 knowing it was going to be a robbery.

21 Q. Okay. All right. So when you got back to your
22 mother's house, split up the money, where did Willie Poole
23 go?

24 A. He left. Dee called a cab, Dee left. I stayed
25 at my momma's house.

Donnell Hagood - Direct Examination

1 Q. Now, have you had any contact with the defendant
2 since you been locked up?

3 A. Like talking on the telephone?

4 Q. Talking to him, him sending you notes, sending
5 you letters?

6 A. One letter to the jail and that was about two
7 years ago. I had gave it to my mom and my mom gave it to
8 Chase -- to the other lawyer. I can't remember all it had
9 said but I gave it to my mom.

10 Q. You can't remember what it said?

11 A. It's been two years ago.

12 Q. And had you had any other contact with him down
13 there, like face to face contact and him talking to you.

14 A. Now, like that but through the windows.

15 Q. And through the windows, did he ask you to do
16 anything regarding this case?

17 A. This case?

18 Q. This robbery case.

19 A. Recent, no.

20 Q. Has he ever asked you to do anything regarding
21 this robbery case?

22 A. He told me to keep my mouth shut.

23 MS. MUNSON: I have nothing further at this
24 time, Your Honor.

25 THE COURT: Cross.

Donnell Hagood - Cross-Examination

1 MR. SULLIVAN: I'll try to speak up.

2 THE COURT: Use that microphone, Tim. Pull
3 it down if you can.

4 MR. SULLIVAN: Will that help?

5 THE COURT: Yeah.

6 CROSS-EXAMINATION

7 BY MR. SULLIVAN:

8 Q. You say on the day of the robbery which was
9 January 9th which was right afternoon, but you was home
10 about 4:00 or 5:00. You gave a statement which I think
11 Ms. Munson has been talking about which is 1-26-09.

12 A. Yeah.

13 Q. Let me go over this a little bit. You said, "I
14 was at home," ---

15 MS. MUNSON: Your Honor, I apologize. I need
16 to object. If he's going to read the statement to the
17 witness I would suggest that we just put them both in
18 evidence.

19 MR. SULLIVAN: I was going to ask him some
20 questions about it.

21 THE COURT: Well, ask him the questions and
22 if he needs to refresh his memory --

23 BY MR. SULLIVAN:

24 Q. Did Scoop call you first or come by?

25 A. He called my mom house. I was at my parent's

Donnell Hagood - Cross-Examination

1 house before they got killed in Berea.

2 Q. Now, on this day ---

3 A. He came by my parent's house and picked me up:

4 We seen Dee walking in Berea somewhere. He got in the

5 back seat of the car. We went to Dixie Estates on White

6 Horse Road. I don't know this guy. I never saw him.

7 This was my first time seeing him?

8 Q. In this statement you say when he picked you up,

9 Dee was in the car?

10 A. Dee was walking, saw him, we pulled over and Dee

11 got in the car -- got in the back seat.

12 Q. You say that he threatened you and if you didn't

13 do this, he'd beat you up?

14 A. Yeah.

15 Q. And that when he picked you up, Dee was in the

16 car with you already.

17 A. We picked Dee up like ---

18 Q. No, this statement says Dee was already in the

19 car when they picked you up.

20 A. No, I didn't. I said we went and picked Dee up,

21 seen Dee walking. I said we seen Dee walking and Dee got

22 in the back of the car. I don't know who this dude was?

23 Q. And you say his name was Black?

24 A. Black, Dee, that's the name the dude gave me. So

25 I don't know who this dude is.

Donnell Hagood - Cross-Examination

1 Q. So you got to Dixie Estates and you never put on
2 a mask?

3 A. No, sir.

4 Q. You never went inside the place?

5 A. I was inside right by the front door when Dee
6 drew a gun on Krystal and got the money out the drawer.

7 Q. How did you know her name was Krystal?

8 A. Well, my cousin said that's the girl name that
9 would be in the trailer.

10 Q. The door is open, right?

11 A. (No response).

12 Q. The screen door was shut. You opened the screen
13 door and then you opened it up and then Dee went in with
14 the gun.

15 A. Yes, sir.

16 Q. You didn't go in. You just kind of stand outside
17 looking around?

18 A. I was inside. I didn't look outside the trailer.
19 I was right beside the door.

20 Q. You just barely went in the door. Okay. In this
21 statement you said, "Black went inside and I stayed right
22 there on the porch. The screen door was open." Is that
23 what happened. Would you like to refresh your memory?

24 A. I said what I said.

25 Q. You said two things, Mr. Hagood. You said you

Donnell Hagood - Cross-Examination

1 went inside a little bit and this says you didn't go
2 inside, you stood outside on the porch looking around?

3 A. I didn't say I was outside on the porch looking
4 around. I said I went in.

5 Q. What does it say right here? It says, "Black
6 went inside," and then what does it say?

7 A. "Black went inside."

8 Q. Right here, what does that say?

9 A. "Black went inside first, I went in."

10 Q. Read what it says. What does it says you say you
11 did.

12 A. It says I was standing outside on the front porch
13 and Black went inside the house.

14 Q. "Black went inside the house. I stayed right
15 there on the porch. The screen door was open and I was
16 blank back and forth."

17 Where does it say you went inside the house?

18 A. You just said it.

19 Q. You stood on the porch.

20 A. The only thing I can say is that I stood there
21 right by the front door.

22 Q. You never went down the hallway to make sure
23 nobody else was in there?

24 A. No, sir. I didn't go nowhere down the hallway,
25 nowhere.

Donnell Hagood - Cross-Examination

1 Q. You had no gun?

2 A. No.

3 Q. No mask?

4 A. No.

5 Q. Now, in this statement you say that a guy named
6 Black and a guy named Dee and later on you get to a guy
7 named Vellie, all the same person?

8 A. That's the name the dude gave me.

9 Q. Now, you say that when you got home you all went
10 in your momma's house?

11 A. Uh-hum.

12 Q. And Scoop, who is Willie, and Dee, Vellie, Black,
13 the third guy, split the money up in the living room and
14 you went where?

15 A. I was in the house. I was in the living room and
16 they was in the bedroom or somewhere in the house. I
17 can't say that I remember. It was two years ago. I can't
18 remember that far back, two years ago.

19 Q. You got nothing for it.

20 A. No.

21 Q. And you said that Scoop threatened to beat you up
22 and you wouldn't have done that except you were afraid of
23 him, right?

24 A. Right.

25 Q. You never done anything with him where you got

Donnell Hagood - Cross-Examination

1 any money? Had you ever been involved in a situation that
2 you claim with Mr. Poole, with Scoop, where you got some
3 money?

4 A. Say that again?

5 Q. This thing says that you didn't do anything so he
6 called you a pussy and hit you in the head and got out of
7 the car. It says, "I got out of the car, Scoop told the
8 other guy get in the front seat and they left," they never
9 went in your house. Is that what that says?

10 A. We was at my momma's house, yeah, your right,
11 that's what it says.

12 Q. Never went in your momma's house, did he?

13 A. They came to my momma's house Friday night.

14 Q. You say they were at your momma's house. Read
15 what it says right here on this statement, right there,
16 where it starts, "He didn't"?

17 A. Right.

18 Q. Do you want me to tell them what it said. "He
19 didn't put the car in park."

20 Now, how did he not put the car in park and go
21 inside and split up the money and come out and the car
22 hasn't gone anywhere?

23 A. (No response).

24 Q. You don't have to answer that. That's the
25 statement of 1-26. You did this because you were afraid

Donnell Hagood - Cross-Examination

1 of Scoop and you didn't get any money, right?

2 A. That's right.

3 Q. You're momma called Officer Fortner and on 1-28
4 you gave another statement about you and Scoop, didn't
5 you? You'd like to see a copy of it?

6 MS. MUNSON: Your Honor, I'm going to object
7 to this.

8 THE COURT: What's the objection?

9 MS. MUNSON: Relevance and probably something
10 we should take up outside of the jury's presence.

11 THE COURT: Well, y'all come up here.

12 (Whereupon, there was a bench conference).

13 MS. MUNSON: Your Honor, I'm going to ask
14 again that if Mr. Sullivan is going to continually read
15 pieces of paper to this witness, the jury should be
16 allowed to look at it. I'd ask that they come into
17 evidence.

18 THE COURT: He's not moving them in.

19 MR. SULLIVAN: Just asking him some questions
20 about it.

21 BY MR. SULLIVAN:

22 Q. Mr. Hagood, would you look at this statement. On
23 1-28 of '09, your momma called Fortner and said you'd like
24 to talk to him. Is that your signature?

25 A. Yes.

Donnell Hagood - Cross-Examination

1 Q. You make this statement to the officer?

2 A. Yeah, but this right here don't have anything to
3 do with the case right here.

4 Q. Well, we'll find out. You said that you were
5 afraid of Scoop and that's why you did it and he didn't
6 give you any money, is that right, on the robbery at Dixie
7 Apartments?

8 A. Yeah.

9 Q. You said that in September of '08 that you ---

10 THE WITNESS: Judge, I'd like to talk to my
11 lawyer.

12 THE COURT: I'd like to see the two lawyers
13 up here.

14 Ladies and gentlemen, we're going to take a
15 short break. If you would retire to your jury room.
16 Please don't discuss the case. I'll get back with you as
17 quickly as I possibly can. Thank you.

18 (Jury exits the jury room.)

19 Mr. Robinson, he wants to talk to you.

20 Do you want to talk to him right here?

21 THE WITNESS: No, sir.

22 (Whereupon, Attorney Robinson confers with
23 his client).

24 THE COURT: How much longer is this going to
25 be?

Donnell Hagood - Cross-Examination

1 MR. SULLIVAN: I don't know how much long. I
2 probably got another 20, 30 minutes. I got this
3 statement, another statement, line-up and some other
4 stuff. I was honest about that when I said about an hour.

5 THE COURT: That was 45 minutes ago and now
6 you're saying an hour-and-a-half two hours.

7 MR. SULLIVAN: I can't always tell how people
8 are going to act or react. I'll try to keep it ---

9 THE COURT: Have you talked enough to
10 Mr. Robinson because I don't think he's going to be here
11 in the morning.

12 THE WITNESS: I'm all right.

13 THE COURT: Are you sure?

14 THE WITNESS: Yes, sir.

15 THE COURT: If you need to talk to a lawyer
16 tomorrow, I'll get you a lawyer. He's not going to be
17 here tomorrow so are you squared off with him.

18 We're going to break now if it's going to
19 talk all of this.

20 Mr. Robinson, I'm going to ask you to meet
21 with this gentleman and make sure that all of his concerns
22 are satisfied after we break.

23 Bring the jury back in.

24 (Jury re-enters the court room).

25 Ladies and gentlemen of the jury, it's almost

State versus Willie Poole

1 10 til 6:00. I hate to do it, we're going to break this
2 examination and come back in the morning. I know some of
3 y'all commitments that you have to live up to so we're
4 going to break for the evening. Y'all going to be home
5 with people who you see tonight is going to want to know
6 what you're doing and they're going to want to talk with
7 you. And if I'm any judge of human nature, you're going
8 to want to talk about you're doing to, I think we all know
9 that. Y'all have sworn an oath not to do that and I can't
10 emphasize enough how important it is that you not do that.

11 Just remember that all the sacrifices you are
12 making to be here and someone who is not doing that should
13 not have any input into how this case is resolved. Don't
14 go on the Internet and do research. Don't go and visit
15 the scene or anything like that. Go home and relax. Have
16 a pleasant evening. We'll ask you to be back at 9:30 in
17 the morning.

18 Thank you very much.

19 (Whereupon, jury exits for the day at
20 5:50 p.m.)

21 All right, Mr. Hagood, we know where you'll
22 be. You talk to Mr. Robinson and get all your questions
23 answered.

24 THE WITNESS: Okay.

25 THE COURT: We're going to crank back up in

State versus Willie Poole

1 the morning at 9:30.

2 ---End of transcript record for Day 1 of trial---

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State versus Willie Poole

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the 26th day of April, 2011.

9 I do further certified that I am neither of
10 kin, counsel, nor interest to any party hereto.

11
12
13 July 8, 2011

14
15 _____
16 Caroline Hiskell
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25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF GENERAL SESSIONS
3) 2010-GS-23-3428
4)
4 State of South Carolina) TRANSCRIPT OF RECORD
5 vs)
6 Willie Poole)
7)

8 Day 2 - April 27, 2011
Greenville, South Carolina

9 B E F O R E:

10 THE HONORABLE EDWARD MILLER, Judge

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

12 Judy Munson, Esquire
13 Assistant Solicitor
13 Attorney for the State

14 Tim Sullivan, Esquire
15 Attorney for the Defendant

16
17 Caroline Hiskell
Circuit Court Reporter
18
19
20
21
22
23
24
25

Donnell Hagood - Cross-Examination

P R O C E E D I N G S

(Whereupon, the trial of State versus Willie Poole continues on this day, April 27, 2011.)

THE BAILIFF: All rise. Court is now in session. The Honorable Edward Miller presiding.

THE COURT: Thanks. Please be seated.

Y'all ready to roll.

MS. MUNSON: State's ready, Your Honor.

MR. SULLIVAN: Defense is ready.

THE COURT: Let's get the witness back. We're going.

(Whereupon, Witness Hagood, returns to the stand.)

You're still under oath.

THE WITNESS: Yes, sir.

(Jury re-enters the court room.)

Ladies and gentlemen of the jury, welcome back.

Mr. Sullivan.

CROSS-EXAMINATION - CONTINUED

BY MR. SULLIVAN:

Q. Mr. Hagood, I owe you an explanation, son. Before you came out yesterday, I had some other witnesses and the jury said that they were having trouble hearing me. So if I'm talking loud at you, it's not because I'm

Donnell Hagood - Cross-Examination

1 yelling at you or mad at you or screaming at you. It's
2 I'm trying to make them be able to hear me. I'm not
3 trying to scare you or trick you or anything like that.
4 I'm talking louder so people can hear me.

5 THE COURT: Okay.

6 MR. SULLIVAN: Okay. With that out of the
7 way.

8 BY MR. SULLIVAN:

9 Q. We were at your statement of 1-28-09. I think
10 you looked at about three separate incidents that you had
11 given to Officer, I think, Fortner. We're not going to
12 read the whole thing but you did give that statement?

13 A. Yes, sir.

14 Q. You told Officer Fortner that prior to this --
15 this happened on 1-9-09, the Dixie Estates?

16 A. Yes, sir.

17 Q. You said in September of '08, Scoop and Josh
18 Carter, Scoot's brother, and your cousin, you robbed a
19 couple of guys at a motel; is that correct?

20 A. Yes, sir.

21 Q. Y'all split up \$300?

22 A. Yes, sir.

23 Q. You said in October, you and Scoop and your
24 cousin Terrence went to the ladies house and got \$1800 and
25 30 or 32 grams of crack cocaine. You told that to, didn't

Donnell Hagood - Cross-Examination

1 you?

2 A. Yes, sir.

3 Q. You told him in middle of October of '08 that you
4 and Scoop and McDenny talking about taking down some drug
5 dealer so you and your cousin went over to the house and
6 got in a shoot out and y'all got away?

7 A. Yes, sir.

8 Q. Were you ever charged for any of these crimes?

9 A. No, sir.

10 Q. Now, when you gave your first statement you said
11 that you wasn't sure who the guy was. His name was Dee or
12 Black; is that correct?

13 A. Yes, sir.

14 Q. And he never called you Jit?

15 A. No, sir.

16 Q. You got back again with Officer Fortner on
17 February 4th. You said you thought you knew who Dee was;
18 is that correct?

19 A. Yes, sir.

20 Q. He showed you a line up of some people in and you
21 picked out a guy named William Nicholas; is that correct?

22 A. Yes, sir.

23 Q. And you said that William Nicholas was the guy
24 and you signed this affidavit. Is that your signature?

25 A. Yes, sir.

Donnell Hagood - Cross-Examination

1 Q. And this affidavit said that this fellow Nicholas
2 was with you and Willie at the robbery and you knew him as
3 Vellie; is that correct?

4 A. Yes, sir.

5 Q. Now, on that same day you gave another statement,
6 February 4, about the robbery; is that correct? Is that
7 your signature?

8 A. Yes, sir.

9 Q. Just a couple more questions and I'm going to be
10 through. In this statement you said, "Vellie went inside
11 and made her give him to money, went in the other man's
12 pocket. When Vellie was through he ran by me and grabbed
13 my shirt and said let's go Jit, let's go." And then you
14 said, "Vellie calls me Jit." Is that what you statement
15 says? _

16 A. My name ain't Jit. That's what the statement
17 says.

18 Q. The statement says Vellie knows you as Jit; is
19 that correct?

20 A. That's what the statement says.

21 Q. And the statement says, "Let's go Jit."

22 A. Yes, sir.

23 Q. You said that didn't happen on your first
24 statement. You weren't called Jit, correct?

25 A. Yes, sir.

Donnell Hagood - Redirect Examination

1 Q. Now, William Durrant Williams who was Vellie
2 because of your statement was charged with armed robbery,
3 conspiracy.

4 A. Yes.

5 Q. Those charges were dismissed, weren't they.

6 A. Sir?

7 Q. Against, Nicholas, they were dismissed.

8 A. Yes, sir.

9 MR. SULLIVAN: Nothing further, Your Honor.

10 THE COURT: Redirect.

11 REDIRECT EXAMINATION

12 BY MS. MUNSON:

13 Q. Mr. Hagood, the things that Mr. Sullivan was just
14 asking you about, the other three robberies that you told
15 the detectives about that you did with Willie Poole, how
16 did the idea for those robberies come up?

17 A. He came up with the idea.

18 Q. He came up with the ideas?

19 A. Yes, ma'am.

20 Q. And when you told the officers about the first
21 robbery you said that happened in September of 2008, did
22 you tell the officers he, meaning Poole, told us to act
23 like we had some drugs then take the money and run out of
24 the room?

25 A. Yes, ma'am.

Donnell Hagood - Redirect Examination

1 Q. Scoop. Who's Scoop.

2 A. Willie Poole.

3 Q. You're going to have to speak up. I'm sorry.

4 A. Willie Poole.

5 Q. "Scoop had given my cousin his gun." Is that
6 true?

7 A. Yes, ma'am.

8 Q. He said to point the gun and take the money and
9 run; is that true?

10 A. Yes, ma'am.

11 Q. On the second robbery that you told the officers
12 about you said, "He told me to go to this lady's house,
13 Neligial," N-E-L-I-G-I-A-L, "they called her Gail for
14 short."

15 A. Yes, ma'am.

16 Q. "His son goes by Midle." Did you know that?

17 A. No, ma'am.

18 Q. Where did you get that information?

19 A. Willie Poole.

20 Q. "Scoop took my cousin Terrence Hagood over to
21 Woodside Avenue." Is that right?

22 A. Yes, ma'am.

23 Q. "He said she worked for some Mexicans that had
24 given her some drugs to sell," how did you know that?

25 A. Willie Poole.

Donnell Hagood - Redirect Examination

1 Q. "Scoop said to knock at the door and said for
2 Terrence to point the gun at her and then go in and get
3 the money and the drugs out of the house." Who told you
4 to do that?

5 A. Willie Poole.

6 Q. "He said was easy and he was nobody."

7 A. Yes, ma'am.

8 Q. "She smokes drugs and sells it too. He said we'd
9 better do this."

10 A. Yes, ma'am.

11 Q. Now, what did he mean by, "we'd better do this."

12 A. Like it's easy and there's nothing to it. We'd
13 better do it and that's it?

14 Q. And in the last one that you told the officers
15 about -- did you tell the officers, "He said there should
16 be two bricks of cocaine and about \$30,000 in cash."

17 A. Yes, ma'am.

18 Q. Who told you that?

19 A. Willie Poole.

20 Q. "The dude came to the door and told my cousin to
21 get away and don't come back." Did that happen?

22 A. Yes, ma'am.

23 Q. "We started running and we heard gunshots. When
24 we got back home, Scoop asked us what happened."

25 A. Yes, ma'am.

Donnell Hagood - Redirect Examination

1 Q. Was he with you during that robbery?

2 A. No, ma'am.

3 Q. "He started cussing and fussing at everybody," is
4 that right?

5 A. Yes, ma'am.

6 Q. So these three robberies that you told the
7 detectives about, where was Willie Poole when these
8 robberies were happening?

9 A. Not there.

10 Q. And you did these without him there?

11 A. Yes, ma'am.

12 Q. Why did you do that?

13 A. Because he told us to do that and I don't know
14 why.

15 Q. Now, I'll try to make this easy for everybody.
16 When you got arrested for armed robbery, you gave a
17 statements to the detectives, right?

18 A. Yes, ma'am.

19 Q. What did the detectives tell you to say?

20 A. I can't remember. I can't remember what the
21 detectives said.

22 Q. Did they threaten you in any way?

23 A. No, ma'am.

24 Q. Did you feel afraid of the detectives?

25 A. No, ma'am.

Donnell Hagood - Redirect Examination

1 Q. Did you feel like you had to say something or the
2 detectives were going to do something to you?

3 A. No, ma'am.

4 Q. Did they promise you anything?

5 A. No, ma'am.

6 Q. The words that you gave the detectives, whose
7 words were those?

8 A. I can't remember the name he said.

9 Q. You can't remember what the detective said, but
10 the information that got typed down, the version of the
11 facts that got typed down by the detectives, where did
12 that version of the facts come from?

13 A. The detectives.

14 Q. The detectives told you what to say?

15 A. No, no, he didn't say nothing. I was telling him
16 what happened. He asked me if I know anything or anything
17 that Willie Poole commit me with and everything that's on
18 that paper is what I said.

19 Q. That's what you said?

20 A. Yes, ma'am.

21 Q. Now, the first statement you gave, you said it
22 was a Friday. Is that your testimony now that this
23 happened on a Friday?

24 A. Yes, ma'am.

25 Q. "I was at home when about 4:00 or 5:00 p.m.,

Donnell Hagood - Redirect Examination

1 Scoop came by."

2 A. Yes, ma'am.

3 Q. So you were at home and he came by?

4 A. Yes, ma'am.

5 Q. His real name is Willie Poole?

6 A. Yes, ma'am.

7 Q. "He is my second cousin." Is that still your
8 testimony?

9 A. Yes, ma'am.

10 Q. "He was in a blue or black four-door car with
11 tinted windows. I don't know what kind of car it was but
12 it may have been a Mazda."

13 A. Yes, ma'am.

14 Q. Anything about that so far you want to change?

15 A. No.

16 Q. "He was like I need you to do something with me."
17 Did he say that to you?

18 A. Yes, ma'am.

19 Q. "I told him that I was on probation." Is that
20 true?

21 A. Yes, ma'am.

22 Q. And that's what you told him?

23 A. Yes, ma'am.

24 Q. "He was like, I got ya," did he say that to you?

25 A. Yes, ma'am.

Donnell Hagood - Redirect Examination

1 Q. "He threatened me." Did he threaten you?

2 A. Yes, ma'am.

3 Q. "He told me that the next time he saw me he was
4 going to fight me if I didn't tell." Did he say that to
5 you?

6 A. Yes, ma'am.

7 Q. "All of this was over the phone." So he called
8 you and told you these things.

9 A. Yes, ma'am.

10 Q. He wasn't standing right in front of you.

11 A. No.

12 Q. "I am scarred of Scoop because he had beat me up
13 one time before." Is that true?

14 A. Yes, ma'am.

15 Q. "He is a lot bigger than me."

16 A. Yes, ma'am.

17 Q. "He then showed up at my house."

18 A. Yes, ma'am.

19 Q. "I was outside waiting for one of my home boys
20 when Scoop showed up."

21 A. Yes, ma'am.

22 Q. "I didn't know he was coming." Is that true?

23 A. Yes, ma'am.

24 Q. "He was in that car I told you about with some
25 other guy named Black."

Donnell Hagood - Redirect Examination

1 A. Yes, ma'am.

2 Q. So when the defendant got to your house, he was
3 already with somebody else?

4 A. Yes, ma'am.

5 Q. Somebody you know as Black?

6 A. Yes, ma'am.

7 Q. Had you ever seen this guy before?

8 A. Nope.

9 Q. "I don't know anything about the guy named Dee."
10 Is that what was in your statement?

11 A. Yeah.

12 Q. Why did you say you didn't know anything about
13 the guy named Dee?

14 A. I don't know anything about him. I ain't never
15 saw him.

16 Q. Is Dee and Black the same person?

17 A. Uh-hum.

18 Q. And you don't know anything about him. Also in
19 your statement you say, "Scoop was like get in the car."
20 Did he tell you to do that?

21 A. Yes, ma'am.

22 Q. "I asked him if he could take me to the Spinx by
23 Westview."

24 A. Yes, ma'am.

25 Q. "When we pulled off, that was when everything

Donnell Hagood - Redirect Examination

1 broked down." Did you say that?

2 A. Yes, ma'am?

3 Q. Is that what happened?

4 A. Yes, ma'am.

5 Q. "We then went to Dixie Estates." Is that what
6 you said?

7 A. Yes, ma'am.

8 Q. Is that what happened?

9 A. Yes, ma'am.

10 Q. "That was when he told me to get out of the car."
11 Where were you in the car?

12 A. I was in the car, passenger's side, but when Dee
13 ran in the house and I went behind him and Dee drewed a
14 gun on Krystal and took the money from Krystal. He
15 grabbed me and told me let's go and that was it.

16 Q. "He told me to watch Black." The defendant told
17 you to watch Black?

18 A. Yes, ma'am.

19 Q. "Black went inside the office and I stayed right
20 there on the porch." Is that true?

21 A. Well, not there on the porch but right -- well,
22 half way in and half way out.

23 Q. So you didn't stay completely on the porch. You
24 went a little way in?

25 A. Yes, ma'am.

Donnell Hagood - Redirect Examination

1 Q. "The screen door was open." Did you say that in
2 your statement?

3 A. I can't remember that. Yeah.

4 Q. Do you think you would helped if you looked at a
5 photograph of the office?

6 A. Uh-hum.

7 MS. MUNSON: Your Honor, I'm showing the
8 witness State's Exhibit No. 4.

9 THE COURT: Okay.

10 BY MS. MUNSON:

11 Q. Take a look at that.

12 A. That's it.

13 Q. Now, when you say the screen door was open in
14 your statement -- did you say that in your statement?

15 A. Yes, ma'am.

16 Q. And is the screen door shown in Exhibit No. 4?

17 A. Yes, ma'am.

18 Q. And is the screen door in Exhibit No. 4 open or
19 shut?

20 A. Open.

21 Q. And is this how it was when you went in?

22 A. Yes, ma'am.

23 Q. "I was just looking back and forth." Did you say
24 that?

25 A. Yes, ma'am.

Donnell Hagood - Redirect Examination

1 Q. And is that what you did?

2 A. Yes, ma'am.

3 Q. "Black was inside and I seen the lady give him
4 the money because Black pulled out the gun."

5 A. Yes, ma'am.

6 Q. "Black got the money and he grabbed my shirt and
7 said come on. We went back to the car. I hesitated
8 because I panicked because I couldn't believe it went down
9 like that."

10 A. Yes, ma'am?

11 Q. You said that in your statement?

12 A. Yes, ma'am.

13 Q. Is that the truth?

14 A. Yes, ma'am.

15 Q. "We got back to the car and we took off."

16 A. Yes, ma'am?

17 Q. "Scoop was driving. Scoop told me that he was
18 taking me home."

19 A. Yes, ma'am?

20 Q. "He called me a pussy."

21 A. Yes, ma'am.

22 Q. "He said he was taking my pussy ass home."

23 A. Yes, ma'am.

24 Q. "He pulled up his right fist and hit me in the
25 side of the head."

Donnell Hagood - Redirect Examination

1 A. Yes, ma'am.

2 Q. "He was just fussing and stuff and he took me
3 straight to my house."

4 A. Yes, ma'am.

5 Q. "I got out of the car and Scoop told the other
6 guy to get in the front seat."

7 A. Yes, ma'am.

8 Q. "He didn't put the car in park. I walked to my
9 house and Scoop left. I didn't get anything from the
10 robbery because Scoop told me I didn't do anything."

11 A. Yes, ma'am.

12 Q. Is there anything about this that you want to
13 change now in front of this jury?

14 A. No, ma'am.

15 Q. In the second statement you gave to police on
16 February of 2009.

17 A. Yes, ma'am.

18 Q. Do you remember giving a second statement?

19 A. Yes, ma'am.

20 Q. And how did that happen? Did the cops come to
21 you or did you call the cops?

22 A. I was in the County. I called Fortner.

23 Q. You called Fortner and he came and got you?

24 A. Yes, ma'am.

25 Q. Why did you call Fortner and tell him that you

Donnell Hagood - Redirect Examination

1 wanted to give another statement?

2 A. To get out of this mess and be with my little
3 girl when she come home and all of this would carry up and
4 be like this.

5 Q. So you decided on your own to call Fortner?
6 Nobody asked you to call him?

7 A. No, ma'am.

8 Q. Now, in the second statement, you say, "I was at
9 my cousin's house in Berea."

10 A. Yes, ma'am?

11 Q. So when all this started, were you at your
12 cousin's house or were you at your mom's house?

13 A. I left my mom's house and went to my cousin's
14 house.

15 Q. "Scoop had called my mom's house looking for me."

16 A. Yes, ma'am.

17 Q. "My mom told him where I was and then he called
18 me."

19 A. Yes, ma'am?

20 Q. Where were you when Scoop called you?

21 A. I was at my people house before he did. He
22 called the cell phone.

23 Q. "He came and picked me up."

24 A. Yes, ma'am.

25 Q. When you say, "he," who are you talking about?

Donnell Hagood - Redirect Examination

1 A. Scoop.

2 Q. And from where does Scoop pick you up?

3 A. At the apartment in Berea.

4 Q. At your cousin's house?

5 A. Yes, ma'am.

6 Q. So why did you say in your first statement that
7 he picked you up at your mom's house?

8 A. I don't remember saying that. If I did, I
9 apologize but he call my mom's house and asked where I was
10 at. My mom probably told him I was at my cousin's house.
11 He came to pick me up and when we seen Dee walking, Dee
12 got in the car. That was in Berea and we went to Dixie
13 Estates.

14 Q. So he picked you up. So you left and went out
15 towards City View; is that right?

16 A. Yes, ma'am.

17 Q. "We saw Nicholas Williams walking down the road
18 in City View near the Parker Road Drug Store."

19 A. Yes, ma'am.

20 Q. Now, where did you get the name Nicholas
21 Williams?

22 A. From Willie Poole.

23 Q. When did Willie Poole give you the name Nicholas
24 Williams?

25 A. I don't remember but it's on the statement and

Donnell Hagood - Redirect Examination

1 you can read it out.

2 Q. On February 4th is when you gave the statement.
3 When did Willie Poole give you the name Nicholas Williams.

4 A. The day of the robbery.

5 Q. Was it Nicholas Williams that was with you?

6 A. No. Nicholas Williams was another person, he
7 didn't have nothing to do it. Dee go by Black and we
8 pulled up.

9 Q. You don't know anything about Dee.

10 A. Yes, ma'am.

11 Q. Dee and Black are the same person.

12 A. Yes, ma'am.

13 Q. Dee and Black are not Nicholas Williams.

14 A. Yes, ma'am.

15 Q. You saw "Nicholas Williams walking down the road
16 in City View near Parker Road Drug Store and Scoop said
17 there was his boy."

18 A. Yes, ma'am.

19 Q. "I know him as Vellie."

20 A. Yes, ma'am.

21 Q. Do you know Nicholas Williams as Vellie?

22 A. Yeah. That was a different person. He ain't
23 have nothing to do with this case right now.

24 Q. Nicholas Williams is Vellie?

25 A. Yes, ma'am.

Donnell Hagood - Redirect Examination

1 Q. And you do know Nicholas Williams?

2 A. Yes, ma'am.

3 Q. And when you told the detectives that, "Vellie
4 went inside, made the girl give him the money and then
5 went through the other man's pockets and when Vellie was
6 through, he ran by me, grabbed my shirt and said, come on
7 Jit, let's go."

8 A. Yes, ma'am.

9 Q. Jit is not your nickname?

10 A. No, ma'am.

11 Q. But does Vellie call you that?

12 A. No, ma'am.

13 Q. So why did you tell the detective that Vellie
14 calls you Jit?

15 A. I don't remember telling them that they call me
16 Jit. No one calls me Jit.

17 Q. No one calls me Jit.

18 A. No, ma'am.

19 Q. Do you know what the term hit a lick means.

20 A. Yeah.

21 Q. Hit a lick, do you know what that means?

22 A. Yes, ma'am.

23 Q. What is it?

24 A. Committing a robbery.

25 Q. Have you ever heard him use that term?

Donnell Hagood - Redirect Examination

1 A. Yes, ma'am.

2 Q. Did he ask you to hit a lick with him on this
3 day?

4 A. No, ma'am.

5 Q. Now, you said yesterday that you were not wearing
6 anything on your face.

7 A. Yes, ma'am.

8 Q. Were you wearing anything else like gloves or
9 hat?

10 A. Nothing.

11 MS. MUNSON: I have nothing further, Your
12 Honor.

13 THE COURT: Anything else?

14 MR. SULLIVAN: I'm through with this witness.

15 THE COURT: You can step down. Thank you.

16 (Witness leaves the witness stand.)

17 MS. MUNSON: The State calls Michael Fortner.

18 THE CLERK: Could you step up here to the
19 Bible. Place your left hand on the Bible and raise your
20 right hand to be sworn in.

21 MICHAEL EUGENE FORTNER, having been duly
22 sworn, testified as follow:

23 Thank you. State your full name for the
24 record.

25 THE WITNESS: Michael Eugene Fortner.

Michael Fortner - Direct Examination

DIRECT EXAMINATION

BY MS. MUNSON:

Q. Who do you work for?

A. The Greenville County Sheriff's Office.

Q. What is your title?

A. Investigator.

Q. And how long have you been an investigator with the Sheriff's Office?

A. I been in Investigations approximately 12 years now.

Q. Are you assigned to any particular part of the Investigative Division right now?

A. Yes, I am, armed robbery.

Q. How long have you been in that division?

A. I worked robberies now for a total of five years, two different stints of it.

Q. In your course of investigating armed robberies, how many suspects would you say you have interviewed about armed robberies?

A. Probably a couple hundred at least.

Q. How many witnesses would you say?

A. Probably several hundred.

Q. And you got familiar with terms used in the armed robbery world for lack of a better term?

A. Yes. Yes, I have.

Michael Fortner - Direct Examination

1 Q. Have you ever heard the phrase in all of your
2 experience, hit a lick?

3 A. Yes, several times. Yes.

4 Q. In your experience, what does hit a lick mean?

5 A. That means they're going to do a robbery.

6 Q. Now, when were you first assigned to this case?

7 A. This case occurred on January 9th which was a
8 Friday. We don't work Saturdays and Sundays, so Monday
9 would have been when I would have come in next. So I
10 probably got this case assigned to me on the 12th.

11 Q. What was the first thing you did in relation to
12 investigating this case?

13 A. Once you get a case assigned to you, you first,
14 of course, review the case, the report that's filed, and
15 then you begin interviewing any victims or witnesses.
16 This case here I first called up Krystal Wells who was the
17 office manager and set up an appointment for her to come
18 in and give a statement.

19 Q. Did she do that?

20 A. Yes, she did.

21 Q. On what date did she do that?

22 A. She came in on January 13th of 2009.

23 Q. After speaking with her were you able to get any
24 kind of a good description about the people who had come
25 in and robbed her?

Michael Fortner - Direct Examination

1 A. Yes, I was.

2 Q. What description did she give?

3 A. She provided -- let's see -- the first subject
4 that came to the door she described as a black male,
5 approximately 17 to 20 years of age. She described him as
6 being approximately 6' 3" to 6 foot 3, and skinny. She
7 also said that he was wearing a bandanna and that it was
8 either a red one or a blue one.

9 Q. Okay.

10 A. And the second suspect she described as being
11 approximately the same size and height but dark-skinned.
12 She said that this was wearing a black jacket and had a
13 red strip all the way from the shoulder all the way down
14 to the end of the sleeve of both arms. That's pretty much
15 it.

16 Q. Was she able to give you a description of the
17 vehicle that might have been used?

18 A. Yes, she gave us a good description of the
19 vehicle, provided us with a tag number on the vehicle, as
20 well as she said the vehicle was a four-door -- she
21 described it as being dark blue. She described it as
22 having a good paint job on it but did not look like it was
23 beat up or abused or anything. And she also felt like it
24 was probably going to be about a 1997 model vehicle.

25 Q. Did you eventually locate that vehicle?

Michael Fortner - Direct Examination

1 A. Yes, the vehicle was located.

2 Q. Do you know what date it was located?

3 A. Yes. The vehicle I got located on January 5,
4 2009.

5 Q. Did you go to where the vehicle was?

6 A. Not on that date, no. On that day, they arrested
7 an individual that was driving that vehicle on an
8 unrelated charge and I spoke with that individual that
9 evening when he was picked up and I believe it was the
10 following day, on the 16th when we did a search warrant on
11 the vehicle.

12 Q. What evidence did you gather that the person
13 caught in the car had anything to do with the robbery?

14 A. Nothing.

15 Q. Okay. I'm showing you what is in evidence as
16 State's Exhibits 9, 10, 11, 12 and 13. Could you take a
17 look at those.

18 A. Okay.

19 Q. Do you recognize those exhibits?

20 A. This is the Mazda 626 that we served the search
21 warrant on.

22 Q. And were you there when these photographs were
23 taken?

24 A. Yes, I was.

25 Q. Did you speak with anyone else other than the

Michael Fortner - Direct Examination

1 suspects about the Dixie Estates robberies?

2 A. Yes, I did.

3 Q. And who was that?

4 A. That was the other victim that was inside, a
5 Mr. Hatchcock(ph), the tenant that lived at the mobile
6 park who was there paying his rent at the time.

7 Q. And what date did you speak with him?

8 A. Let's see, that would have been on January 13th.

9 Q. Now, have you had any contact with him since
10 January 13, 2009?

11 A. No, I have not.

12 Q. Do you have any knowledge of where he might be
13 now?

14 A. No, I don't.

15 Q. Now, at some point, did you speak with the
16 defendant in this case?

17 A. Yes, I did.

18 Q. At what point did you speak with him?

19 A. I was notified on January 20, 2009 that the
20 defendant possibly had some information about this and on
21 January 21, 2009 is when I actually spoke with him.

22 Q. Where did you speak with him?

23 A. At the Law Enforcement Center.

24 Q. Was anybody else with you?

25 A. There were probably some other investigators in

Michael Fortner - Direct Examination

1 the office working. There are five of us total down
2 there.

3 Q. Were any of them actively participating in the
4 interview?

5 A. No, they were not.

6 Q. Before you interviewed him, did you make it clear
7 to him what you wanted to talk to him about?

8 A. Yes, I did.

9 Q. And was he or was he not free to leave?

10 A. No, he was not free to leave.

11 Q. Definitely in custody?

12 A. Yes.

13 Q. Now, when you are going to interview somebody who
14 was in custody -- well, let's talk specifically about this
15 defendant. You were going to interview this defendant who
16 was in custody, what's the first thing that you did?

17 A. We always read someone who is in custody who is
18 not free to go their rights just like what you see on tv.

19 Q. How did you read him his rights?

20 A. We have a form that we use, right here, and what
21 I start off doing is get preliminary information from the
22 individual that I'm talking to; name, address, birth date,
23 social security number, level of education, where they
24 went to high school at, and then each individual rights is
25 listed one by one on the form here. I read each one of

Michael Fortner - Direct Examination

1 those rights out loud to the individual I'm speaking with.
2 As I read each one the lines, I have them place their
3 initials out to the side of the line that indicates to me
4 as well as the person I'm speaking with that we did, in
5 fact, go over that right and that he did understand it.

6 Q. I think I can speed this up a little bit. I'm
7 showing you what's been marked as State's Exhibit No. 1.
8 If you could just take a look at that.

9 A. Okay.

10 Q. Do you recognize it?

11 A. Yes, I do.

12 Q. Whose handwriting is on there?

13 A. Well, my handwriting for one and the defendant's
14 signature and initials.

15 Q. You say it's the defendant's signature and
16 initials, how do you know that?

17 A. I was present when he signed it and initialed it.

18 Q. And is that document in the same condition that
19 it was when you took the statement from him?

20 A. Yes.

21 MS. MUNSON: Your Honor, I'm going to move
22 State's No. 1 into evidence.

23 MR. SULLIVAN: No objection, Your Honor.

24 THE COURT: All right, without objection.

25 (Whereupon, statement previously marked as

Michael Fortner - Direct Examination

1 State's Exhibit No. 1 for identification was admitted into
2 evidence.)

3 BY MS. MUNSON:

4 Q. Investigator Fortner, let's start up here case
5 number, what does that mean?

6 A. That's the case number that is assigned to the
7 incident report.

8 Q. And this information right here, "Willie James
9 Poole, [REDACTED], Greenville, South Carolina," zip
10 code, what is all this?

11 A. That would indicate in this case Mr. Poole's
12 information about who it is that I'm interviewing, that's
13 whose information that goes up there about what I know and
14 that this Waiver of Rights is in particular with Mr. Poole
15 in the case.

16 Q. And whose handwriting is this.

17 A. That's my handwriting up there.

18 Q. And where did you get this information about date
19 of birth, social, level of education, where did you get
20 this information?

21 A. From Mr. Poole.

22 Q. After you get that preliminary information, this
23 line here it says on here, "Sheriff's Office, Greenville,
24 South Carolina," date and time. What does the date
25 indicate?

Michael Fortner - Direct Examination

1 A. That's the date of the interview when I read him
2 his rights.

3 Q. "09:35," what does that indicate on the exhibit?

4 A. That's the time. That's 9:35 in the morning.

5 Q. And what does that time mean?

6 A. That's the time I start reading the rights there,
7 when everything starts.

8 Q. And then each one of these you read it out loud
9 to him?

10 A. Yes, ma'am.

11 Q. Do you know whether or not he could read?

12 A. Yes, ma'am. When I get done reading everything
13 to him and get his initial to sign at the side, that
14 fourth line down that starts, "You have a right to talk to
15 a lawyer," I always have who ever it is that I'm
16 interviewing read that out loud to me to show me that they
17 can, in fact, read. And then I'll have them sign their
18 name after that line so that I'll know that I did, in
19 fact, have them read that out loud to me.

20 Q. So these little marks there out to the left of
21 each of the rights, what is that?

22 A. That's a "WP," Willie Poole, his initials.

23 Q. And did you have him do that?

24 A. Yes, that's his handwriting.

25 Q. Why did you have him put his initials after each

Michael Fortner - Direct Examination

1 of his rights?

2 A. Like I told him when I read him his rights, that
3 indicates to me that, one, I read him that right and also
4 that he understood that right, and after saying that he
5 does, he puts his initials out there.

6 Q. And then this fourth line, "You have a right to a
7 lawyer," if you don't mind, you read it.

8 A. Yes. "You have a right to talk to a lawyer for
9 advice before we ask you any questions and have him with
10 you during questioning."

11 Q. And then he has not only initialed but written
12 his name.

13 A. That's correct.

14 Q. Why is that?

15 A. That indicates to me that he actually read that
16 line out loud to me. Every interview I do when reading
17 somebody their rights, I do it the same way, and I always
18 have them sign their name after that, that way I know they
19 read it out loud to me.

20 Q. This is in evidence, but for our purposes just go
21 ahead and read each right out loud if you would.

22 A. Well the first line, "Before we ask you any
23 questions, you must understand your rights. You have the
24 right to remain silent. Anything you say can and will be
25 used against you in court. You have the right to talk to

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1 a lawyer for advice before we ask you any questions and.
2 have him with you during questioning. If you have no
3 money to pay a lawyer's fees, the court will appoint one
4 to represent you without cost if you wish. If you decide
5 to answer questions now without a lawyer present, you will
6 still have the right to stop answering at any time. You
7 also have a right to stop answering at any time until you
8 talk to a lawyer."

9 Q. Okay. Investigator, when you talked to him, did
10 he appear to be under the influence?

11 A. No, he was not.

12 Q. Did he ask you for anything before or after you
13 read him his rights?

14 A. No, ma'am, he did not.

15 Q. And at the bottom of this form after he signs it
16 and you sign it, there's as 09:40, what does that time
17 indicate?

18 A. That's 9:40 in the morning. That time indicates
19 after I read him his rights and we go over the Waiver of
20 Rights, he signs the form and I sign as a witness and then
21 I write down the time.

22 Q. So from the time you started advising him of his
23 rights until the time he waives them was about five
24 minutes?

25 A. Approximately, yes.

Michael Fortner - Direct Examination

1 Q. After you read him his rights, did he appear to
2 understand them?

3 A. Yes, he did.

4 Q. Did he ask you for anything after he indicated
5 that he understood his rights?

6 A. No, he did not.

7 Q. Did he have any questions about his rights?

8 A. No, he did not.

9 Q. Now, after you read the defendant his rights and
10 you were satisfied that you understood them, what was the
11 next thing he did?

12 A. After we go over what his rights are, then the
13 second portion on the form for the Waiver Rights, I read
14 that out loud to the individual that I'm interviewing and
15 always go over the word coercion that's mentioned in here
16 because a lot of people aren't familiar with the word
17 coercion so I always go ahead and just explain that to
18 them and I have them place their initials next to the word
19 coercion, which indicates that I did, in fact, go over
20 that word with them. And then I asked them if they're
21 willing to talk to me without an attorney being with them.
22 I asked them to sign their name and I normally have them
23 also print their name below it then I sign as a witness
24 and put down the ending time.

25 Q. The Waiver of Rights portion of the form of

Michael Fortner - Direct Examination

1 State's Exhibit No. 1, could you just read that to the
2 jury.

3 A. It says that, "I have read this statement of my
4 rights and understand what my rights are. I am willing to
5 make a statement and answer questions. I do not want a
6 lawyer at this time. I understand and know what I'm
7 doing. No promises or threats have been made, no pressure
8 or coercion of any kind has been used against me."

9 Q. Did you read that to him or did he read it on his
10 own?

11 A. No, I read it out loud.

12 Q. Did he have any questions after that?

13 A. No, ma'am, he did not.

14 Q. Did he ask you for anything?

15 A. No, he did not.

16 Q. Now, at any time during this five minute process
17 where you're advising him of his rights and then trying to
18 see if he wants to waive his rights and talk to you, what
19 did you threaten him with?

20 A. Nothing.

21 Q. What promises did you make to him?

22 A. I made no promises.

23 Q. Did he indicate to you whether or not he wanted
24 to give up his rights and talk to you?

25 A. Yes, he did.

Michael Fortner - Direct Examination

1 Q. Did he appear to be doing that voluntarily?

2 A. Yes.

3 Q. Now, after he says he wants to give up his rights
4 and talk to you, what process did you go through with this
5 defendant?

6 A. At that time, he indicated that he wished to
7 speak to me and that he had information about this, and I
8 asked him what it was that knew about it and he told me
9 what he knew about it and as he's telling it to me, I type
10 it down. And once I get the statement typed out, I hand
11 him the original statement and have him read over it, make
12 sure everything in it is correct, if there's anything in
13 it he wants me to change, he doesn't like the way it
14 sounds or maybe I misunderstood him or whatever. I ask
15 him to point anything out to me that he doesn't like and
16 we'll go ahead and change it for him.

17 He didn't indicate that anything was wrong.
18 And once he did that, I have him initial the first word
19 and the last word of each paragraph on the statement and
20 then I ask him to sign, print his name on the bottom, and
21 sign my name as a witness.

22 Q. Did you do that in this case?

23 A. Yes, I did.

24 Q. And after you typed out the statement, did he
25 have any changes to make or deletions?

Michael Fortner - Direct Examination

1 A. No, he did not.

2 Q. Investigator Fortner, I'm showing State's Exhibit
3 No. 14. If you could just take a look at that.

4 A. Okay.

5 Q. You recognize that?

6 A. Yes, I do.

7 Q. What is that?

8 A. That's the statement that Willie Poole gave me.

9 Q. I'm going to ask you to publish that to the jury?

10 A. You want me to read it out loud to them?

11 Q. Yes.

12 A. It starts off, "It was on a Friday," part of it
13 has been redacted and then it says, "that I was at Uncle
14 Junior's house smoking blunts with Mann. He is Donnell
15 Hagood. Dee, I don't know his real name and my cousin
16 Tario Poole. We were in Tim's car. It was as blue Mazda.
17 It is a four-door with tinted windows. It's like a royal
18 looking blue. We left my uncle's house to ride around.
19 All of a sudden, Donnell was like pull over here. He was
20 talking about there where Krystal was at. Donnell said he
21 needed to make a move. Krystal works at Dixie Estates. I
22 used to live there and my baby's momma did. Her name is
23 Taleva Allen. I parked on the side of the trailer.
24 Donnell and Dee went inside. They said that they had to
25 make a move. At first I didn't realize what they were

Michael Fortner - Direct Examination

1 doing. They were inside for approximately two to three
2 minutes. They came running out. They came out and had
3 bandannas covering their faces. Donnell had either a .32
4 or .38 revolver in his hand. It was black. The gloves
5 that Donnell was wearing was white with gray bottoms. The
6 grips were gray. They came back to the car and said go,
7 go, go, go. Donnell said I got you. Then we went to
8 Donnell Hagood's house and then I watched them split the
9 money up. The money was in an envelope with some checks
10 in it. They got anywhere between \$1000 to \$1500. That's
11 all I seen anyway."

12 Q. Now, at some point you took statements from
13 Donnell Hagood as well.

14 A. Yes, ma'am.

15 Q. And that was before or after you spoke to this
16 defendant?

17 A. That would have been afterwards.

18 Q. The process that you just described that you went
19 through with this defendant, is that the same thing you
20 did with Donnell Hagood?

21 A. Yes, it is.

22 Q. What threats did you make to Donnell Hagood?

23 A. None.

24 Q. Any promises?

25 A. No, ma'am, no promises.

Michael Fortner - Direct Examination

1 Q. After you took the first statement from him, do
2 you know what date that was?

3 A. Are we referring to Donnell now?

4 Q. Yes.

5 A. The first statement was taken on January 26,
6 2009.

7 Q. And how did you come to take a statement from
8 him? Who initiated the conversation.

9 A. I did.

10 Q. And you spoke with him again, did you not?

11 A. Yes, ma'am.

12 Q. In February?

13 A. Right in February and also on January 28th, but
14 also on February 4th.

15 Q. On January 28th, without reading the statements
16 again, what was the general contents of those statements?

17 A. He wanted to tell me about some other robberies
18 that he had been involved in, in which Willie Poole had
19 told him to do.

20 Q. How did you come to speak with him on that day,
21 how did that get initiated?

22 A. I actually got a call from his mother telling me
23 that Donnell wanted to talk to me again so I went to the
24 Detention Center and got him out.

25 Q. And the third conversation that you had with

Michael Fortner - Cross-Examination

1 Donnell Hagood, what date was that?

2 A. That occurred on February 4th of 2009.

3 Q. And how did that happen?

4 A. This was here Donnell actually called me from the
5 Detention Center. They got the ability to make toll free
6 calls and investigators we accept those calls and Donnell
7 Hagood told me he wanted to talk to me again.

8 Q. And did you go get him?

9 A. Yes, I did.

10 Q. Did he tell you why he wanted to talk to you that
11 second time?

12 A. Yes, he did.

13 Q. Why did he tell you he needed to talk to you
14 again?

15 A. He said that he wanted to tell me who the third
16 guy was that was involved in the robbery.

17 Q. Did he do that?

18 A. Yes, he did.

19 MS. MUNSON: I have nothing further at this
20 time, Your Honor.

21 THE COURT: Cross.

22 CROSS-EXAMINATION

23 BY MR. SULLIVAN:

24 Q. Officer, you heard them tell me to speak up so
25 I'm not trying to holler at you, I'm just trying to go

Michael Fortner - Cross-Examination

1 along. Now, Mr. Poole was in custody?

2 A. Yes, sir.

3 Q. And he requested to talk to you about this case?

4 A. Yes, sir, that's correct.

5 Q. Now, in your initial investigation when you
6 talked to Ms. Wells and Mr. Hatchcock(ph), they really
7 didn't know who did this?

8 A. Right. I had no suspects at that time.

9 Q. They had a car and a tag. Now, I believe
10 Mr. Hatchcock(ph) is no longer available. He has moved
11 with no forwarding address.

12 A. That's correct. Yes, sir.

13 Q. But you did talk to Ms. Wells?

14 A. Yes, sir.

15 Q. And in your discussion with her, did she make the
16 statement that both suspects were armed and had on
17 bandannas?

18 A. Yes, she did.

19 Q. Did she say that both suspects came into the
20 office?

21 A. Yes, I believe she did. Yes, sir.

22 Q. When they were leaving, did she tell you that the
23 second suspect yelled Jit come on and that's when they
24 left?

25 A. Yes, sir, she did.

Michael Fortner - Cross-Examination

1 Q. And she referred to Jit very distinctly?

2 A. Right, correct, yes, sir.

3 Q. So at that point you had a description of the
4 car, nobody had ever seen the driver, and they really
5 couldn't tell you who the other two guys were?

6 A. That's correct. Yes, sir.

7 Q. And then you find out the car was owned by Tim
8 Jones and you found out he wasn't involved and he was let
9 go?

10 A. The car actually belonged to Timothy Brown.

11 Q. Right.

12 A. And I actually never spoke to Timothy Brown.

13 Q. He wasn't arrested in this case.

14 A. No, sir, he was not?

15 Q. So you're initial break came from Scoop, Willie
16 Poole?

17 A. Yes, sir, that's correct.

18 Q. After you talked with him you initially charged
19 him with accessory to armed robbery. You didn't charge
20 him with armed robbery at that time?

21 A. That's correct, yes.

22 Q. As a result of that conversation, you picked up
23 the name Donnell?

24 A. That's correct, yes.

25 Q. Donnell Hagood, also known as Mann?

Michael Fortner - Cross-Examination

1 A. Yes.

2 Q. And then you interviewed him I think on three
3 occasions. You interviewed him on 1-21-09, about a week
4 or so or 10 days after the robbery?

5 A. Donnell.

6 Q. 1-26.

7 A. Yes, sir, that's correct.

8 Q. And you weren't threatening and you did a good
9 interview.

10 A. Yes.

11 Q. I have no problem with that. And that Scoop
12 picked him up and there was a guy named Dee in the car
13 with him.

14 A. Yes, sir. That's correct.

15 Q. And then et cetera and we know what he said in
16 that one. And later, his mother called you and said he
17 would like to talk to you again.

18 A. That's correct, yes.

19 Q. That was on 1-28.

20 A. Yes. His mother probably called me a day or two
21 before that.

22 Q. And that's when he told you about these various
23 robberies.

24 A. That's correct, yes, sir.

25 Q. And then in your report of that interview and

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1 all, you looked into the dates and maybe other reports, I
2 think it's on your report of 2-4, Page 3 -- the bottom of
3 Page 3 -- you did some research and was not able to find
4 any reports that matched what you told you about any of
5 these robberies?

6 A. That's correct, yes, sir.

7 Q. Nobody reported being robbed on any of these
8 occasions?

9 A. No, sir, they did not.

10 Q. And then Mr. Hagood got in contact with you again
11 on 2-4?

12 A. Yes, sir.

13 Q. And again you went through your same -- I have a
14 copy of it attached -- you went through your same
15 interview, Waiver, no promises this type of thing. An
16 excellent interview, right?

17 A. Yes, sir.

18 Q. In that one he says that Scoop picked him up and
19 they saw a fellow and that's my boy and I know him as
20 Vellie.

21 A. Yes.

22 Q. Now, he didn't say that in the first statement.
23 He said that Dee was already in the car.

24 A. That's correct, yes, sir.

25 Q. And he gave another statement about the robbery

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1 and said, "When Vellie was through, he ran by me, grabbed
2 my shirt and said come on Jit let's go. Vellie calls me
3 Jit."

4 A. Yes, sir, that's correct?

5 Q. Now, about that same time he said he knew who
6 Vellie, Dee, Black all these people were, he said it was a
7 guy name William Nicholas?

8 A. It's actually Nicholas Williams.

9 Q. I'm reading it backwards. I'm dyslexic.

10 A. That's fine.

11 Q. And he picked him out of a line up and then
12 signed a statement that he was the guy named Vellie who
13 did this robbery with him.

14 A. That's correct, yes.

15 Q. Then you checked Mr. Williams out. I think he
16 was at Saint Francis Hospital pretty much all day with his
17 girlfriend?

18 A. That's what he claimed, yes, sir.

19 Q. He was charged initially with armed robbery,
20 initially in this case Mr. Poole was charged with
21 accessory. Mr. Hagood was charged with armed robbery and
22 some things and Mr. Williams was charged with some armed
23 robbery and some things?

24 A. Yes, sir, that's correct.

25 Q. And on the other things Mr. Hagood had been

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1 talking about, there were no charges in those cases?

2 A. That's correct, no charges.

3 Q. And then on the charge on Mr. Williams who he
4 claims is Vellie, this is Hagood, those charges have been
5 dismissed; is that correct?

6 A. That is correct, yes, sir.

7 Q. So the only two people left in this case is
8 Mr. Poole and Mr. Hagood?

9 A. That's correct, yes, sir.

10 Q. And the only evidence you have as far as who did
11 it is from their statements?

12 A. That is correct, yes.

13 Q. And as far as the details of the robbery, armed
14 and bandanna and that thing came from an independent
15 witness Ms. Wells?

16 A. Yes, sir.

17 MR. SULLIVAN: I have nothing further.

18 REDIRECT EXAMINATION

19 BY MS. MUNSON:

20 Q. Investigator Fortner, on those other robberies
21 Mr. Sullivan asked if any charges were made on these, how
22 did you go about investigating if anybody had claimed to
23 have been robbed in these events?

24 A. I had very limited information with what
25 Mr. Hagood had provided me with. He didn't know

Michael Fortner - Cross-Examination

1 necessarily the names of the victims, the addresses of
2 them, so about the only way I really had to following up
3 on it to see if there was anything that took place was to
4 go through, I guess you would call, the mastery log to go
5 through all the cases and just kind of leaf through that
6 book for about the time frames to see there was anything
7 that sounded familiar or similar to what he described. I
8 was not able to find anything.

9 Q. So as to the dates that Donnell gave, what kind
10 of dates did you have?

11 A. September of 2008 and the other one he didn't
12 really have a date on other than it had something to do
13 with Mr. Poole was on house arrest in October. And the
14 other one was about the middle of 2008.

15 Q. And what's the similarity as to the victim in all
16 three of those robberies?

17 A. They're either the selling of drugs or the using
18 of drugs.

19 Q. And in your experience how often does as drug
20 dealer or drug user call the police and say somebody stole
21 my drugs?

22 A. Not very often somebody calls and tells us
23 somebody robbed them of their two bricks of cocaine or
24 \$30,000. It doesn't happen very often.

25 MS. MUNSON: I have no further questions.

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1 MR. SULLIVAN: Nothing further, Your Honor.

2 THE COURT: Thank you, sir, you may stand
3 down.

4 (Witness leaves the witness stand.)

5 MS. MUNSON: If it pleases the Court, that is
6 the State's case.

7 THE COURT: Ladies and gentlemen, this is one
8 of those times I have to take up legal matters, it's
9 probably a good time for a morning break so please retire
10 to your jury room and we'll get back to you very shortly.
11 Don't discuss the case yet.

12 (Whereupon, jury exits the courtroom.)

13 Do we have any motions?

14 MR. SULLIVAN: I have grounds on this one,
15 armed robbery, I'd move for a directed verdict on that.
16 The only thing is we have Willie's statement which is in
17 evidence that he did not know what happened and Donnell
18 had the gun and went in and came out and he drove off and
19 he was charged with accessory. I think we should submit
20 accessory to the jury. Mr. Hagood, he was all over the
21 place, Judge.

22 THE COURT: Sir, are you asking me to make a
23 judgment on the facts, Mr. Sullivan?

24 MR. SULLIVAN: Yes, sir, but I now you can't.
25 Anyway, I think they have a super weak case on armed

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1 robbery and they have a pretty good case on accessory. I
2 would move to admit accessory only and move for directed
3 verdict on the armed robbery.

4 THE COURT: We haven't gotten to jury charges
5 yet.

6 MR. SULLIVAN: I understand.

7 THE COURT: I deny your motion to dismiss the
8 armed robbery.

9 Mr. Poole, raise your right hand for me.

10 DEFENDANT POOLE: The truth, sir.

11 THE COURT: Well, my question is do you swear
12 to tell the truth?

13 DEFENDANT POOLE: I swear to tell the truth,
14 sir.

15 WILLIE POOLE, having been duly sworn,
16 testified as follows:

17 THE COURT: I want you to know that in your
18 position as a criminal defendant, you have an absolute
19 Constitutional right to testify in your own defense. You
20 have an equal Constitutional right to not testify in your
21 own defense and that can not and can never be held against
22 you. There are all sorts of strategic reasons to testify
23 and there are all sorts of strategic reasons not to
24 testify.

25 I will tell you that if you do testify and

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1 you do have a prior criminal history that qualifies under
2 our rules, you can be impeached. Your believability can
3 be impeached with your prior criminal history.

4 There are other strategic to testify or not
5 to testify and have you had enough time to talk to your
6 attorney about that?

7 DEFENDANT POOLE: Yes, sir.

8 THE COURT: We're going to take a break. I'm
9 going to want you to speak with him again and I'm going to
10 know whether or not you intend to take the witness stand
11 in your own defense and testify.

12 DEFENDANT POOLE: Yes, sir.

13 THE COURT: Anything else before we break?

14 MS. MUNSON: Nothing from the State, Your
15 Honor.

16 (Whereupon, there was a brief recess.)

17 THE COURT: Have you made a decision about
18 whether you want to testify or not?

19 DEFENDANT POOLE: No, sir.

20 THE COURT: You haven't made that decision.

21 DEFENDANT POOLE: Not to testify.

22 THE COURT: Do you want to testify?

23 DEFENDANT POOLE: No, sir.

24 THE COURT: Have you had enough time to make
25 that decision?

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1 DEFENDANT POOLE: Yes, sir.

2 THE COURT: And do you have any questions you
3 need to ask about that decision?

4 DEFENDANT POOLE: No, sir.

5 THE COURT: Do you fully understand it?

6 DEFENDANT POOLE: Yes, sir.

7 THE COURT: Mr. Sullivan, are you going to
8 have anything else to put up.

9 MR. SULLIVAN: The defense rests.

10 THE COURT: I'll allow you to do that in
11 front of the jury if you want to do that. Let's talk
12 about the jury charges. Anything you want in particular?

13 MR. SULLIVAN: Accessory.

14 THE COURT: Well, I thought about that and I
15 don't believe it's a lesser included offense of the
16 indicted offense so I'm not going to charge it.

17 MR. SULLIVAN: Just for the record, I'm going
18 to object to you not giving that charge of accessory
19 after. You ruled against me and I take exception to it.
20 I understand the elements and have to be there and I
21 understand what you're talking about.

22 THE COURT: I think it's Blockburger. Is
23 that right, solicitor?

24 MS. MUNSON: Of course it is, Your Honor.

25 MR. SULLIVAN: I remember that now.

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1 THE COURT: Anything else you want charged?

2 MS. MUNSON: We would certainly want the hand
3 of one is the hand of all.

4 THE COURT: I think that's appropriate. You
5 want the charge on the failure of your client to testify
6 and that it not be held against him?

7 MR. SULLIVAN: Sure, yes.

8 THE COURT: Do you want anything about
9 anything else?

10 MR. SULLIVAN: It's pretty straight forward.

11 MS. MUNSON: Your Honor, there is the matter
12 of -- it's listed right now as State's Exhibit No. 2 which
13 is the original statement taken by Investigator Fortner,
14 the unredacted version and we had talked before about may
15 be making it a Court's Exhibit if you would be willing to
16 do that.

17 THE COURT: Sure. As long as it's in the
18 record and it's not presented to the jury.

19 MS. MUNSON: Correct.

20 MR. SULLIVAN: Just in case this is an
21 appeal, we would have the full record.

22 THE COURT: Y'all ready to get going?

23 MR. SULLIVAN: I'd like to take a moment.

24 MS. MUNSON: As would I.

25 THE COURT: We already took 20. Okay, take a

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1 couple of minutes and get yourself organized. We're not
2 going to wait too long.

3 (Whereupon, there was a brief recess.)

4 Are you ready?

5 MS. MUNSON: Yes, Your Honor.

6 MR. SULLIVAN: Yes, Your Honor.

7 THE COURT: Bring in the jury.

8 (Whereupon, jury re-enters the courtroom.)

9 Mr. Foreman, ladies and gentleman of the
10 jury, thank you for your patience. I want to tell you if
11 you remember the little procedural road map I gave you
12 yesterday and I can tell you where we are. We have
13 completed the first two phases of the trial, that was the
14 opening statements, and now you have all of the evidence
15 and testimony that's going to be presented in this case.
16 So we are prepared at this time to move forward into the
17 closing arguments of each of the attorneys.

18 I asked you all to pay great attention so far
19 and I ask you to continue to do that through the arguments
20 of these fine attorneys. Thank you very much.

21 MS. MUNSON: If it please the Court, Your
22 Honor.

23 THE COURT: Yes, ma'am.

24 MS. MUNSON: Ladies and gentleman, I submit
25 to you at this point there can be no doubt at all

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1 reasonable or otherwise that Krystal Wells was a victim of
2 an armed robbery. There's no doubt about that.

3 I submit to you that there's no doubt that
4 Donnell Hagood was involved in that robbery, that he's
5 guilty of that armed robbery. There's no doubt about
6 that. There's no doubt that Willie Poole drove the car
7 over there to Dixie Estates and drove the people away from
8 the robbery. There's no doubt about that and I submit
9 that to you respectfully.

10 The question for you is not whether Donnell
11 Hagood had on a bandanna, whether or not Donnell's name is
12 Jit, if he used his right hand or his left hand. That's
13 not the issue. I say to you ladies and gentlemen, the
14 issue in this case is did he plan it? Did he know that
15 robbery was going down? Did he get these guys to go with
16 him? Did he drive them over there, direct them to go in,
17 tell them where the money was, tell them that Krystal was
18 in there and there was a lot of money, and then when they
19 got in the car drove them away. Oh, and for good measure,
20 hit Donnell upside of the head and called him a pussy
21 because he didn't act the way he wanted him to. That's
22 the issue, ladies and gentlemen.

23 Because if you don't believe that this was
24 Willie Poole's game, then he's not guilty and that should
25 be your verdict. If you believe, as the evidence shows,

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1 that he planned it, then he's guilty and that is the
2 verdict that you should render.

3 Now, how do we decide this kind of stuff? It
4 comes down to credibility, believability. I admit, three
5 of the people that I put up on the stand were not exactly
6 the people you would run into at your church or your
7 grocery store. These are people with criminal records.
8 Tim Brown and Denise Hutchinson told you they were laid up
9 at this defendant's house having a friend relationship.
10 Tim Brown told you that he had sort of been out in the
11 streets and he was away from his family and away from his
12 wife. That's how they were living back then.

13 They didn't have to pay rent. They were
14 relying on him, on his friendship, I guess, as Tim Brown
15 put it because if you will remember that he considered
16 Willie Poole a friend.

17 And then we have Donnell Hagood with all the
18 problems that he's had. Donnell Hagood is a cousin to
19 this defendant. What this defendant wants you to do is
20 shut your mind and say these guys have criminal records, a
21 couple of them were in jumpsuits, we can't believe them
22 because of that. That's what he wants you to do, but you
23 have to think beyond that.

24 These people who were doing dope, these
25 people who were laid up away from their families, these

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1 people who had convictions for shoplifting and telling the
2 police lies, these people are his people. Tim Brown and
3 Denise Hutchinson were living in his house. He tried to
4 get Tim to go with him that day. Denise didn't want Tim
5 to go and Tim didn't want to go talking about hitting a
6 lick. We know what hitting a lick is. We know that from
7 Donnell and we know that from the detective.

8 The defendant tried to get these people to go
9 with him. Both of them said they didn't want to go
10 because they knew something bad was going to happen. Tim
11 Brown gives this defendant the keys to his Mazda and where
12 does he go to get his boy Donnell.

13 I'm not sure how it helps you disbelieve
14 Donnell that Donnell admitted to committing a lot of
15 robberies with this guy or for this guy. That might not
16 make any sense to you but you have to examine it. Why
17 would he do that? Why would Donnell Hagood every time
18 this defendant said go do this for me, go do that for me,
19 why would Donnell do that? Well, I'm going to submit to
20 you respectfully because I know some of his family is in
21 here, he didn't come across as somebody is very capable of
22 thinking things through on his own. He needs to be led
23 and he's afraid of that guy. He's beaten him up before
24 and he's a lot bigger than him. Why not beat him up
25 again? It didn't make sense.

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1 This is the man who knew. The most important
2 thing I submit to you in this case is not whether somebody
3 had on a bandanna or whether or not it was Black or
4 Nicholas Williams. The most important thing about this
5 case is where it happened. Who knew where Dixie Estates
6 was? Nobody else, but him. Nobody else in the file had
7 been there. Donnell had never been there, never visited
8 there. He knew where it was because he had been there.
9 He called the victim Krystal in his own statement. He
10 called her Krystal. He lived there. He knew when rent
11 was paid. He knew when rent was due. He knew when
12 Krystal would be alone. He knew where the money was.

13 You would recall from Donnell's testimony
14 that he knew it would be an envelope in the drawer and
15 what did Krystal tell you? She told that she's made some
16 security changes since then but any time a customer comes
17 in, she writes it down and puts it in the drawer. Who
18 knew that? He knew it. He knew it and for him to expect
19 you to believe that he's just riding around completely at
20 the mercy of these other two people in the car and they
21 decided on Dixie Estates and they had no idea that a
22 robbery was going on, he's expecting you to be his people.
23 He's expected you to believe it because he says it. He's
24 expecting you to do that.

25 He's expecting you to say, oh, can't believe

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1 any of those folks. They're drug dealers, they drug
2 addicts. You can't believe them. He's expecting you to
3 be his people too.

4 You say, ladies and gentlemen, Mr. Sullivan
5 is an advocate and a good one. I'm advocate as well,
6 hopefully an adequate one, for the State and His Honor
7 will tell about the judges of the facts and all that, but
8 you're also advocates. You are advocates for the truth
9 and no matter how slimy or unseemly or how disgusting or
10 whatever personal feelings you may have about the people
11 who took that witness stand and how they live their lives,
12 you have to put that aside and be an advocate for the
13 truth. And the truth is, he didn't recruit a teacher or
14 he didn't recruit somebody you would automatically accept
15 as credible.

16 He didn't recruit people like that to work
17 for him. He picked people that he could control. He
18 picked people who are afraid of him. He picked people who
19 are smaller than him. He picked people in worse physical
20 and economic shape than him and they've always done it.
21 They always done it until today.

22 I submit to you that it was obvious that Tim
23 Brown didn't want to do it. He considered this defendant
24 a friend. It was his car and we know it was his car. He
25 also told you the day of the robbery the defendant was

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1 talking about hitting a lick. Ms. Hutchinson told you
2 this defendant said he had a big lick to hit.

3 Did either one of them seem excited about
4 being here. Did either one of them have anything to gain
5 or lose? They're not charged with a crime. They had
6 nothing to gain or lose by telling you what they're
7 telling you. Yes, they're not the kind of people you may
8 not want to hang around with, but are they incapable of
9 telling the truth just because of their circumstances in
10 life?

11 He thinks you're going to go, yeah, they're
12 nothing just like he said about the woman that he had
13 robbed, she's nothing. That's what he thinks. That's he
14 thinks about the people he had help him, that's what he
15 thinks about this whole thing. He thinks you're going
16 shut off your mind. He thinks you're going to get
17 emotional about the lot of people who testified against
18 him, but as bad as they are, they're his people who were
19 living with him, they're related to him. They're hanging
20 out with him.

21 Ladies and gentlemen, I could stand up here
22 for about 35, 40 minutes talking about inconsistencies in
23 Donnell's statements. You've heard it and I'm sure you
24 don't want to hear me go through it again, but just
25 remember this, he gave one statement and stated he didn't

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1 know who Dee was and didn't know who this other guy was
2 Dee/Black and he told you today that's my testimony today.
3 The only reason Donnell Hagood gave a second statement is
4 because he told him to. Willie Poole told him to. Go
5 back to the cops and tell them it was Nicholas Williams.
6 Oh, and tell him that thing about Jit.

7 Well, we know that third individual said Jit
8 on the way out because Krystal Wells told us that. I
9 submit to you that some people will call people a nickname
10 all the time. For example, some person may refer to every
11 lady that he says as lady, hey, lady, or hey man or hey
12 guy or this cat or that cat. The people is Donnell Hagood
13 told the cops on the second statement, again, what he told
14 him to say.

15 He also told you, and I anticipate that
16 Mr. Sullivan is going to make yahoo about, oh, Nicholas
17 Williams got away with it. Remember what Donnell Hagood
18 said, Nicholas Williams didn't have anything to do with
19 it. They got the name Nicholas Williams from this
20 defendant.

21 Ladies and gentlemen, as advocates for the
22 truth, and putting everything aside, I urge you to find
23 him guilty of this robbery.

24 No, he go in. No, he didn't scare the
25 bagezzits(ph) out of Krystal Wells and her children. No,

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1 he didn't do that and you might have some person feeling
2 about that. You might think, oh, well, he didn't go in so
3 he might not be responsible. Well, there's a thing about
4 that. There's a law here in South Carolina. Each and
5 every one of you took an oath to take the law as Your
6 Honor gives it to you, not as you think it ought to be.
7 So when Your Honor tells you that the hand of one is the
8 hand of all, that's the law.

9 If you believe he did it, if you believe he
10 knew what was going on, if you believe he sent them over
11 there to do it, then you must find him guilty and on
12 behalf of the people in South Carolina, that's what I ask
13 you to do.

14 Thank you.

15 THE COURT: Mr. Sullivan.

16 MR. SULLIVAN: If it pleases the Court, Your
17 Honor, Ms. Munson, Ms. Reeves. I'll told you before I'll
18 try to help you remember some things that I think is
19 important. I'll try to talk loud enough for you to hear
20 me.

21 We know that on January 9, '09, there was a
22 robbery of Ms. Wells and I would be upset of somebody was
23 pointing a gun at me, but her testimony is she saw a car
24 pull up and two guys got out. They had no masks, no guns
25 and no indication of any problem. They got out of the car

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1 without these things being displayed.

2 They went around the corner and put it on and
3 burst in the door, and Ms. Wells said they both came in
4 and the both had bandannas and they both had guns. She
5 has no reason to lie. She told that to Officer Kastner
6 and she also told that to Officer Fortner, the same story.
7 There's an old saying that says, if you tell the truth,
8 you don't have to remember. Her story was consistent.

9 She also said she knew Willie Poole. She
10 said she knew him for a year a long time ago. \ He never
11 came in the office. He never paid the rent. She just
12 happened to see him because the trailer that he and his
13 girlfriend lived in was near them. He had never been in
14 there, never paid the rent. He didn't know where the
15 money was.

16 Then she said as they were leaving, unknown
17 Mr. X pulled on Donnell's shirt and said come on Jit let's
18 go. Come on Jit. They run out and say we did it, let's
19 go, let's go, and they take off and leave. They have no
20 idea who did this robbery.

21 Now, here's something to think about. If I
22 lived somewhere for a while am I going to drive up to that
23 place where I live, where people know me and still know
24 me, to commit a robbery and see somebody I may have known.
25 I'm not going to rob somebody in my own neighborhood.

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1 That doesn't make sense right there.

2 Ms. Wells said they both came in. She even
3 pointed with a power pointer on the wall that Hagood went
4 inside down the hallway to see to make sure nobody else
5 was there.

6 Now, his statement -- let's do it in
7 sequence. Mr. Hagood has gotten himself in trouble so he
8 calls Officer Fortner and said, hey, I know what happened
9 in that robbery. They had no clue. I was with my cousin
10 and friend of his named Dee. I don't really know who he
11 is. We were riding around and they said let's go to Dixie
12 Estates. We're going to make a move. Who knows what make
13 a move means. They didn't say let's go hit a lick. The
14 seems to be the word of the day. They said let's go make
15 a move.

16 He pulls up and they get out and then they
17 come running out. Then he sees they got guns on. You got
18 his statement here. He said he didn't what was going
19 happen until afterwards when he left and drove them off.
20 That's accessory after the fact of a crime. He's not
21 charged with that. If he's guilty of something is being
22 an accessory after the robbery, not a participant, not a
23 planner.

24 The hand of one, the hand of all. I come up
25 to Ms. Munson and say I want to drive a convenience store.

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1 You give and I go in and rob it, that's a hand of one hand
2 of all. We're both guilty. If I say, Ms. Munson drive me
3 to the store to get a pack of cigarettes, I go in and get
4 the cigarettes and I run out of there with a bunch of
5 money and she drives off, she's not guilty of armed
6 robbery. Maybe accessory.

7 Now, you might think that Hagood did this
8 only because he was afraid of Willie, that he was too
9 stupid to go what was going on, and we'll get to that in a
10 minute.

11 The next two witnesses testified about what
12 happened. We know they both went in. We know they both
13 had bandannas, we know they both had guns but didn't have
14 them when they got out of the car.

15 You got Brown, he's a buddy and you got
16 Ms. Hutchinson. I'm not going to discuss her. Not only
17 did she not want to be here, I'm not sure she knew she was
18 here. She's confused and said I don't know what they
19 said. I was in and out of the room. Brown said I was
20 laying around all day smoking dope and admitted it. I was
21 drinking beers, smoking blunts and watching tv and let
22 Willie use the car. I heard something about a lick.
23 Brown said he was there for about two weeks, she said a
24 month. I said did that include Christmas, she said, I
25 don't know.

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1 January 9th, December 9th, somewhere in there
2 is Christmas. This lady didn't even know what time of
3 year it was must less what the conversation was. Those
4 two can be dismissed.

5 Now, get down to Mr. Hagood. They would not
6 know anything about this crime except for Mr. Poole. Now,
7 Hagood was involved in it. Mr. Poole was originally
8 charged with accessory, which is what he was. So on the
9 stand Mr. Hagood testified I was read my rights that next
10 day. That was the first statement of 1-26-09. In that
11 statement he said I did not have on a bandanna. He did
12 not know who the third person was, I did not have a gun, I
13 stood on the porch and I looked around.

14 In his testimony he said Willie drove off and
15 then went into his house, split the money up but wouldn't
16 give him any. But then in his statement, Willie drove up
17 to my house and didn't even put the car in park. I got
18 out, Mr. X got in the front and they drove off. Something
19 is wrong there. You can't leave a car out in the street
20 not in park and go in and come back and it's still there.

21 You can't Ms. Wells point to where he went
22 down the hall almost and him saying I stayed on the porch.
23 Somebody's lying and it's not Ms. Wells.

24 So then now Hagood said, doggone, I nearly
25 got away with that robbery so he said I did it but I was

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1 afraid of Willie and he said, well, I'll call the officer
2 and said let me tell you some stuff, in September, we went
3 and robbed some other people and split up \$300 bucks. We
4 went and robbed a lady of a bunch of money and crack. And
5 then another place we went to rob it, we had a shoot out
6 and we got away. There are no incident reports. You got
7 three robberies and nobody is charged or they don't
8 believe him. He's lying.

9 Well, he's still mad at Willie, Scoop. He
10 said I'm going to talk some more about it. Okay. Then on
11 February 4th he called in and he said, yeah, let me tell
12 me what really happen. Willie was picked me up at my
13 house and we were going down the street and he said,
14 that's my boy. We were sitting in the car and he said
15 that's Vellie, I know him as Vellie, and then he goes on
16 to more.

17 Officer Fortner shows him a line up and he
18 says, yeah, that's him, Mr. Williams, Nicholas Williams.
19 That's Vellie, that's what I know him as. He was the
20 third man at the robbery with us. The line up and that
21 statement, Officer Fortner arrests Mr. Williams. They
22 check out his alibi, he wasn't involved. That case was
23 dismissed.

24 So here is Hagood lying the whole time even
25 trying to put Vellie in the case. He was at the hospital

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1 at Saint Francis with his girlfriend. So Hagood in that
2 statement says I know him as Vellie and Vellie calls me
3 Jit. Now, we've got Ms. Wells here is calling him Jet and
4 Vellie saying that's what he calls me, talking about
5 Vellie. So we know he was called Jit when he left the
6 place. We know he said another guy calls him Jit so his
7 nickname is Jit. He says it's not his nickname and nobody
8 ever called me that.

9 Now, we've got Mr. Poole's statement, if you
10 read that, you'll find him guilty of accessory after the
11 fact of armed robbery. That's what it is. Except he did
12 go and cooperate after a while within about two weeks.
13 This happened on 1-9 and 1-21 he gave his statement. So
14 he's the one that brought the case. He was charged with
15 accessory and then they upped it to armed robbery based on
16 Hagood. Totally on Hagood.

17 Now, you saw him. If you find Willie guilty,
18 then you have to believe Mr. Hagood. Now, to believe him,
19 I suggest you have to have coins with you and flip them to
20 see which one of his statements you want to believe that
21 he gave. He gave a bunch and none of them match, all are
22 different. The only thing that is the same is that he was
23 involved in every last one of them.

24 Now, if somebody threatened to beat me up if
25 I don't do a robbery, I'd pick up the phone and all the

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1 cops. I'm going to tell you if they threatened to beat me
2 up at the motel, I'll testify against them. After this
3 and he got my money, yeah, I'll testify against him. He
4 did it because he wanted to, crack head, that's what it
5 amounts to.

6 So you're going to have to find Willie of
7 guilty or not guilty of armed robbery. You can not find
8 him guilty of what he did because that's not what he's
9 charged with. They made the wrong choice. If he was
10 charged with accessory, we wouldn't be here.

11 So think about what Ms. Wells said about who
12 went in with the bandanna on and Willie's statement and
13 the statements of Mr. Hagood. Ms. Hutchinson, I don't
14 believe she knew she was here. Mr. Brown said maybe so
15 maybe not, I'm not sure.

16 The other thing about Willie and the
17 statements and Mr. Hagood's statements, they were his
18 statements. Nobody told him to change them. That's the
19 way I remember it. You may remember it differently.

20 Ms. Munson said that Willie, Scoop told him
21 to change the statement and told him that Vellie was the
22 one. I remember as hard as she tried Hagood said nope we
23 didn't have any conversation. He wrote a letter and I
24 gave it to my momma. I don't know what it said. We
25 didn't talk about this case. Willie never told him what

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1 to say. He said, these are my words, nobody turned them
2 around, every one of them are mine. Which one of them is
3 true, I don't know, but every one of them are his. That's
4 how I remember it. It's up to you as to how you remember
5 it.

6 You may think he should be guilty of
7 accessory, but you can't find him guilty of accessory
8 because he's not charged with accessory. You either find
9 him guilty of armed robbery or not guilty. If it's of
10 armed robbery, you got to believe Hagood.

11 Thank you.

12 THE COURT: Mr. Foreman, ladies and
13 gentlemen, it is my responsibility to rule on the
14 admissibility of the evidence that's offered during the
15 trial and to preside over the trial of the case itself.
16 It is also my duty to charge you the law applicable to the
17 case, and it is your duty as jurors to accept and apply
18 the law as I now stated to you.

19 As I told you in my opening comments, if you
20 think you have any idea as to what the law is or what the
21 law should be and it differs from what I tell you the law
22 is, you have sworn an oath to set aside your opinion and
23 apply the law precisely as I state it to you. I would
24 also remind you that in every case tried in this court
25 before the jury, you the jury are the sole and exclusive

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1 judges of the facts and a trial judge can not comment on
2 or have any opinion about the facts of the case. So
3 please don't think that anything I may have said or done
4 throughout the course of the trial, that I have an
5 opinion. I do not and the law does not allow it.

6 I instruct you that the fact that the
7 defendant was arrested, charged and indicted in this case
8 is not evidence of guilty, nor does it create any
9 presumption or inference of guilty. These documents are
10 simply the formal written instruments which contain a
11 charge, an allegation made against the defendant and they
12 serve as the vehicles by which this case is processed and
13 brought into court.

14 And necessarily, your job includes that you
15 must determine the credibility or believability of the
16 witnesses who have testified in the case and it becomes
17 your duties as jurors to evaluate and determine which
18 evidence convinces you as to what is true. And in
19 determining the believability of the witnesses, you may
20 believe one witness over several or several over one. You
21 may believe a part of the testimony of a witness and
22 reject the remaining part. You may believe the testimony
23 of a witness in its entirety or you may reject that same
24 testimony in its entirety.

25 And you may consider whether the witness has

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1 an interest in the result of the trial, whether the
2 witness is prejudiced or biased towards either the State
3 or the defendant, the opportunity for the witness to have
4 seen the matters and things about which the witness
5 testified, the way the witness acts on the witness stand
6 are what we call the witness's demeanor.

7 I instruct you and I emphasis that the fact
8 that the witness did not testify is not a factor to be
9 considered by you in any way in your deliberations on the
10 question of guilt or innocence. It must not be considered
11 by you in any manner whatsoever. Every citizen has the
12 Constitutional Right to remain silent and the assertion of
13 this right must not be considered by you in your
14 deliberations.

15 Now, the defendant has pled not guilty to
16 this indictment and that plea puts the burden on the State
17 to prove the defendant guilty. A person charged with
18 committing a criminal offense in South Carolina is never
19 required to prove themselves innocent and I charge you
20 that it is a cardinal and an important rule of the law
21 that a defendant in a criminal trial is always presumed to
22 be innocent of the crime for which an indictment is issued
23 unless guilt has been proven by evidence satisfying you of
24 guilt beyond a reasonable doubt.

25 Now, reasonable doubt is the kind of doubt

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1 that would cause a reasonable person to hesitate to act.
2 And reasonable doubt may arise from the evidence which is
3 in the case or from the lack or absence of evidence in the
4 case and you, the jury, must determine whether or not
5 reasonable doubt exists as to guilt of this defendant.
6 The State has the burden of proving each and every element
7 of a crime beyond a reasonable doubt and any reasonable
8 doubt that you have in your deliberations should be
9 resolved in favor of the defendant.

10 The defendant is charged with armed robbery
11 and in order to prove this offense, the State must first
12 prove beyond a reasonable doubt that the defendant took
13 personal property from the person or presence of another
14 person. Property is within the presence of a person if it
15 is within the person's reach, inspection, observation or
16 control so if the person could, if not overcome with
17 violence or prevented by fear, keep possession of the
18 property.

19 The State must also prove beyond a reasonable
20 doubt that the defendant carried away the property
21 intending to permanently deprive the owner of the property
22 and to keep the property for the defendant's own use. The
23 slightest removal of the property or the complete
24 possession of the property even for an instant by the
25 defendant is sufficient to show a taking and carrying away

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1 of the property, and the taking and carrying away of the
2 property must have been done with violence or by putting
3 the owner of the property in fear of violence.

4 Finally, the State must prove beyond a
5 reasonable doubt that the defendant was armed with a
6 deadly weapon during the robbery or alleged either by
7 action or words that he was armed while using the
8 representation of a deadly weapon or any object which a
9 person present during the commission of a robbery
10 reasonably believed to be a deadly weapon. And a deadly
11 weapon is any article, instrument or substance which is
12 likely to cause death or great bodily harm. And whether
13 an instrument has been used as a deadly weapon depends on
14 the facts and circumstances of each case.

15 The following are examples of instruments
16 which may be used as deadly weapons: a pistol, a shotgun,
17 riffle, a dirk, a dagger, a knife, a slingshot, metal
18 knuckles, razor, gasoline, fire bomb or Molitoff cocktail.
19 A gun may be a deadly weapon even if it's no operating.

20 I will tell you that if a crime is committed
21 by two or more people who are acting together in
22 committing a crime, the act of one is the act of all. A
23 person who joins with another to accomplish an illegal
24 purpose is criminally responsible for everything done by
25 the other person which occurs as a natural consequence of

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1 the acts done in the carrying out the common plan or
2 purpose.

3 For example, two or more people can be guilty
4 of killing another person when only one had a gun. There
5 was only one bullet and only one of the two fired the shot
6 that caused the death. If two or more people are acting
7 together and they are together assisting each other in
8 committed an offense, the act of one is the act of all or
9 as it is sometimes said, the hand of one is the hand of
10 all.

11 A principal in a crime is one who either
12 actually commits the crime or who is present aiding,
13 abetting or assisting in committing the crime and when a
14 person doesn't act in the presence of and with the
15 assistance of another, the act is done by both. Where two
16 or more acting with a common plan or attempt are present
17 at the commission of a crime, it does not matter who
18 actually commits the crime, all are guilty. The hand of
19 one is the hand of all.

20 Present at the commission of a crime means to
21 be sufficiently near to aid and abet and assist in the
22 commission of a crime. However, mere presence at the
23 scene of a crime is not sufficient to convict one as a
24 principal on the theory of aiding and abetting. Intent is
25 also a necessary element for there must have been a common

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1 design or intent to commit the crime and the crime must
2 have been pursuant thereto the person aiding and abetting
3 by some overt act.

4 Intent means intending the result which
5 actually occurs, not accidentally or involuntarily and
6 intent may be shown by acts and conduct of the defendant
7 and other circumstances from which you may naturally and
8 reasonably infer intent. And, again, the State must prove
9 these elements beyond a reasonable doubt.

10 Now, ladies and gentlemen, there are two
11 possible verdicts which you may reach in this case and
12 there is absolutely no significance in the order of which
13 I state them. One has got to be state first and the two
14 possible verdicts are guilty or not guilty.

15 I would tell you that all 12 of you must
16 agree on your verdict. It must be a unanimous verdict and
17 the verdict can not be based on sympathy, passion,
18 prejudice or emotion or any other consideration which is
19 not in evidence in the case.

20 So please remember you have no enemies to
21 punish and you have no friends to reward.

22 Mr. Foreman, when you all have reached your
23 unanimous verdict, we're going to provide this verdict
24 form and we're going to send it back to the jury room with
25 you. I think it's pretty self-explanatory and when you've

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1 decided unanimously what the verdict is then you will mark
2 it. Please sign it and date it and then signal to the
3 bailiffs and we will receive you back into the courtroom
4 to receive your verdict.

5 Now, I'm going to send you back to your jury
6 room at this time and I'm going to ask you not to begin
7 your deliberations until the verdict form comes back with
8 all the evidence in this case. I need to go over my
9 charge on the law to you with the attorneys to make sure I
10 did not omit anything or misstate something and when you
11 receive the verdict form with the evidence, then you may
12 begin your deliberations.

13 So I'll excuse you this time to your jury
14 room with the exception of Mr. Bruce if you would state
15 please.

16 (Jury exits the courtroom.)

17 Mr. Bruce, you are just as qualified as every
18 one of those 12 people who just left. You made ever
19 sacrifice they've made but the law only allows 12 to
20 deliberate so I can't let you go back to the jury room
21 with them. I do have kind of a reward for you, I guess,
22 even though it's only Wednesday I'm going to cut you loose
23 for the rest of the week. You've done your service and I
24 know that there's lunch ordered for you so if you will go
25 with Mr. Fuller -- I don't know if it's here or not -- but

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1 if you will go with Mr. Fuller, that's another part of the
2 big reward you get. You're also free to talk about the
3 case now all you want.

4 Anybody bothers you about it and you don't
5 want to talk about it, just let the Clerk's Office know
6 and we'll fix that because we don't want anybody bothering
7 you. Thank you for your service.

8 MR. BRUCE: Thank you.

9 THE COURT: Any objections or exceptions to
10 the charge other than those previously stated?

11 MS. MUNSON: Nothing from the State, Your
12 Honor.

13 MR. SULLIVAN: Nothing from the defense.

14 THE COURT: Okay. Make sure all the evidence
15 is there and send it on back.

16 We'll be at ease.

17 (Whereupon, jury deliberations began at
18 12:30 p.m.)

19 (Whereupon, verdict reached at 2:20 p.m.)

20 (Jury re-enters the courtroom.)

21 Mr. Foreman, I understand you've reached a
22 verdict.

23 MR. FOREMAN: Yes, we have.

24 THE COURT: Would you hand it to the bailiff.

25 THE CLERK: Your Honor, this is Case No.

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1 2010-GS-23-3428, the State of South Carolina versus Willie
2 James Poole. As the charge of armed robbery, we the jury
3 find the defendant guilty. This is signed by Mr. Fuller,
4 our foreman.

5 Ladies and gentlemen, if you agree that this
6 is the verdict you reached in the jury room, would you
7 please raise your right hand.

8 (Jury collectively complies).

9 THE COURT: Okay. Anything further for the
10 jury from the State or the defense?

11 MS. MUNSON: No, Your Honor.

12 MR. SULLIVAN: No, Your Honor.

13 THE COURT: Ladies and gentlemen, thank you
14 for your service. It's Wednesday, we've got two more days
15 of court left. Y'all excited about that, aren't you? I'm
16 just being a little factious. I want to tell you that you
17 have done a great job. I hope I didn't make a liar out of
18 myself when I told you that you'd feel rewarded and have a
19 sense of satisfaction. I hope that's true.

20 I want to tell you that now I'm giving you an
21 option. We are going to hold court tomorrow but we have a
22 large pool, large panel and I'll cut you all loose for the
23 week if you so desire. If you want to come back tomorrow,
24 just call back after 6:00, but you're free to not come
25 back. Okay. Your service is concluded for the week if

State versus Willie Poole

1 you want it to be and of course you can exempt out for
2 three years.

3 Thank you very much for your service and
4 y'all have a pleasant week. Y'all can talk about the case
5 if you want to and if somebody talks to you and you don't
6 want to talk to them and they bother you, just get their
7 name and tell the Clerk's Office and we will fix that
8 problem for you.

9 Thank you very much.

10 (Jury dismissed from this case).

11 Any motions?

12 MS. MUNSON: No, Your Honor.

13 MR. SULLIVAN: No, Your Honor.

14 THE COURT: Are we going to sentencing now?

15 MR. SULLIVAN: Yes, sir.

16 THE COURT: How long has he been in jail?

17 MS. MUNSON: 827 days.

18 THE COURT: Okay. Anything you want to tell
19 me with, Mr. Sullivan? Well, let's first get his prior
20 record.

21 MS. MUNSON: His prior record, Your Honor, is
22 July 28, '97; simple assault and battery; November 25, '98
23 possession of marijuana, also possession of crack. He got
24 probation on that. Then in April 14th of 2000, he got 10
25 years for either distribution or PWID crack, two counts of

State versus Willie Poole

1 that; May 23 of 2000, simple assault and battery; April
2 16, 2001 seven years for either distribution of PWID
3 crack. And in September 15 of 2008 he has failure to stop
4 for a blue light and that's the extent of it, Your Honor.

5 THE COURT: Anything else you want to tell
6 me?

7 MS. MUNSON: That's it, Your Honor. We've
8 asked Ms. Wells if she wants to address the Court and she
9 does not want to talk.

10 THE COURT: Mr. Sullivan, what do you want to
11 tell me.

12 MR. SULLIVAN: Judge, if you've heard the
13 record, he's had problem with drugs and has never had a
14 violent crime. He's had a couple of simple assaults come
15 from street spats or something like that. He broke the
16 case. Without his cooperation, this case wouldn't be in
17 court today. He cooperated and gave a statement and
18 implicated Mr. Hagood.

19 You got a lot of leeway here and I would ask
20 you to consider the lower end. His record has been drugs
21 and not robberies or assaults or attempts to kills or
22 things like that.

23 THE COURT: Okay. Is there anything you want
24 to tell me?

25 DEFENDANT POOLE: No, sir.

State versus Willie Poole

1 THE COURT: Nothing?

2 DEFENDANT POOLE: I can't believe I was found
3 guilty of something I didn't do.

4 THE COURT: Well, what did you do?

5 DEFENDANT POOLE: Nothing.

6 THE COURT: Nothing.

7 DEFENDANT POOLE: I didn't know he robbed it.
8 I took off and I let them know what happened. I couldn't
9 have said nothing and she would have been the person who
10 never knew who robbed her if it wasn't for me. The only
11 reason why I told who robbed her was because she's my baby
12 momma's friend and she helped us out on numerous occasions
13 when we didn't have our money. I had no indication that
14 he goes in there and robs this woman.

15 You know, I'm not this man that says go in
16 there and do this, you know. That man is a grown man.
17 That man is over 21. He make his own decision as to what
18 he want to do.

19 MS. MUNSON: Judge, I've got to clear
20 something up here on the record. There's all this talk
21 about this defendant just one his own because he's a good
22 citizen coming forward and talking about this robbery.
23 That's just no true. He was under arrest for murder and
24 he used this robbery as an alibi for the murder.

25 DEFENDANT POOLE: No, no.

State versus Willie Poole

1 MS. MUNSON: That's how it went down and
2 that's how it will come out at trial. It's not a
3 situation where he all of a sudden had an attack of I got
4 to tell the cops what happened; I got to break this
5 robbery case. That's not how it happened.

6 THE COURT: Well, explain this to me.

7 MR. SULLIVAN: Your Honor, the murder
8 happened ---

9 DEFENDANT POOLE: I don't know when the
10 murder happened. I don't know. Don't nobody know.

11 THE COURT: Well, anything?

12 MS. MUNSON: Nothing from the State, Your
13 Honor.

14 THE COURT: Well, he did make a statement.
15 I'm going to give him 25 years. Good luck.

16 MR. SULLIVAN: Judge, for the record in case
17 something happens to me, he wants me to file an appeal.

18 THE COURT: Okay. He understands he has a
19 right to appeal.

20 MR. SULLIVAN: He asked me to do it and
21 because of my health, you never know.

22 THE COURT: Okay. Good luck.

23 ---END OF TRANSCRIPT RECORD---

24

25

State versus Willie Poole

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Circuit Court of Greenville County, South Carolina on
8 the Day 2, 27th day of April, 2011.

9 I do further certified that I am neither of
10 kin, counsel, nor interest to any party hereto.

11
12
13 July 8, 2011

14
15 Caroline Hiskell
16
17
18
19
20
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLEWillie James Poole, #270914

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2013-CP-23- 06255

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Inst., Bishopville, S.C. (SCDC)
2. Name and location of Court which imposed sentence General Sessions, Greenville
3. Name(s) of co-defendant(s) (if any) Donnell Hagood
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-23-3428
 - (b) N/A
 - (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 27, 2011 — 25 Years
 - (b) N/A

Revised 3/2003

 FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENS
 11/19 PM 2

- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty YES
- (c) after a plea of nolo contendere N/A
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. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. Conviction Confirmed
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. June 20, 2013
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Not Known
- ii. N/A
- iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of counsel that did violate my 5th, 6th and 14th Amendments to the United States Constitution.
- (b) Prosecutorial misconduct that did violate my 14th Const. Amend.
- (c) N/A

11. State concisely and in the same order the facts which support each of the grounds set out in (10): Counsel failed to make timely objections throughout, investigate, call relevant witnesses, request necessary jury instruction, and failed to prepare defendant to testify as requested by defendant.

- (a) failed to prepare defendant to testify as requested by defendant.
- (b) State failed to correct false evidence known to be such by State.
- (c) N/A

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
- (c) the disposition thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
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?
- N/A
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
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) Not allowed to argue as issue on direct appeal.
- (b) Not ripe for review - objection requirement not met for appeal.
- (c) N/A
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (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? N/A

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. Timothy Sullivan, 305 E. North St., Ste. 123, Greenville, SC 29601
- ii. Susan B. Hackett, P.O. Box 11589, Columbia, SC 29211-1589
- iii. N/A
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
- ii. Direct Appeal
- iii. N/A

19. State clearly the relief you seek in filing this application:

Reverse conviction and remand back to lower court for a new trial.

20. Are you now under sentence from any other court that you have not challenged?

YES

STATE OF SOUTH CAROLINA)

County of Lee)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



Willie J. Poole, #270914
 Lee C.I. - Flo. N. 2129
 990 Wisacky Highway
 Bishopville, SC 29010-1775

SWORN to and subscribed before me this 7th
 day of November, 2013.

Michele Michel (L.S.)
 Notary Public

My Commission Expires: 9-3-2014

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Willie J. Poole, 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.~~

Willie J. Poole

Applicant

Willie J. Poole, #270914
Lee C.I. - Flo. N. 2129
990 Wisacky Highway
Bishopville, SC 29010-1775

SWORN or affirmed to and subscribed before me this
7th day of November, 2013.

Michelle Michel

Notary Public

My Commission Expires: 9-3-2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2013-CP-23-6255
COUNTY OF GREENVILLE	)	
	)	
Willie James Poole,	)	
S.C.D.C. No. 270914,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed November 19, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the May 2010 term of General Sessions for armed robbery (2010-GS-23-3428A). C. Timothy Sullivan, Esquire represented the Applicant.

After the State brought the case to trial, the Applicant was found guilty. On April 27, 2011, the Honorable Edward W. Miller sentenced the Applicant to twenty-five years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Elizabeth A. Franklin-Best, Esquire and Susan Hackett, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense represented the Applicant on appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Poole, Op. No. 2013-UP-268 (S.C. Ct. App. filed June 19, 2013). The Remittitur was sent on July 9, 2013.

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 South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of trial counsel:
 - a. Failed to make timely objections.
 - b. Failed to investigate.
 - c. Failed to call relevant witnesses.
 - d. Failed to request necessary jury instruction.
 - e. Failed to prepare the Applicant to testify.
2. Prosecutorial misconduct:
 - a. "State failed to correct false evidence known to be such by State."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington 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, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held

and counsel appointed to represent the Applicant.

Respectfully submitted,

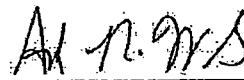
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for Respondent

May 28, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2013-CP-23-6255

WILLIE JAMES POOLE, 270914)

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:

Willie James Poole, 270914
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

DATED this 28th day of May, 2014.


Judy A.C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2013CP2306255
	)	
Willie James Poole,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

October 21, 2014
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

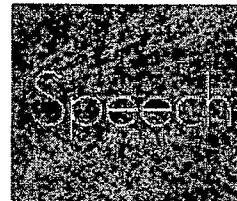
A P P E A R A N C E S:

KAREN RATIGAN, Esquire
Attorney for the State

MILLS ARIAIL, Esquire
Attorney for the Applicant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7

I N D E XDIRECT CROSS REDIRECT RECROSS

Motions 4

Willie Poole

by Mr. Ariail 6

Timothy Sullivan

by Ms. Ratigan 15

by Mr. Ariail 20

Certificate of Reporter 21

EXHIBITS PAGENO.DESCRIPTIONID EV**APPLICANT EXHIBITS**

(No exhibits offered.)

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 21st day of October, 2014 at approximately 10:37 a.m.)

MR. ARIAIL: Your Honor, we can go ahead if you want to call it. This is the armed robbery case.

MS. RATIGAN: Right. This is the armed robbery trial that is next on the docket. It is 2013-CP-23-6255. Mr. Poole was indicted for armed robbery. He was represented by Mr. Sullivan. The case was brought to trial on April 27th of 2011. He was found guilty. Judge Miller gave him a 25-year sentence. The case was appealed. The matter was affirmed by the Court of Appeals in June 2013. The State is ready to proceed. However, I have been advised Mr. Ariel has a motion to make at this time.

THE COURT: All right. Yes Sir.

MR. ARIAIL: Your Honor, I discussed this with my client. He is wanting me to make a motion for continuance based on my not being prepared in this. I can let him address you to let you know his reasons for the continuance if you would like to hear from him.

1 **THE COURT:** All right. Mr. Poole?

2 **THE DEFENDANT:** The witnesses I need, I
3 can get them. The witnesses I need for the
4 case, I didn't notify them and he wasn't able
5 to notify them. Also, I need complete
6 discovery. I asked for discovery.

7 **THE COURT:** What are you saying that you
8 are still short on discovery?

9 **THE DEFENDANT:** I haven't got discovery or
10 know nothing about it right now.

11 **THE COURT:** Mr. Ariail, have you had an
12 opportunity to look at this matter?

13 **MR. ARIAIL:** I have, Your Honor, and I am
14 ready. I have got the information. We
15 discussed some of it in regard to it. I've got
16 the transcript. We have gone through it. It
17 is an armed robbery involving, I guess it is
18 really one individual testifying. He gave a
19 statement in regards to it. I think I have got
20 the information I need to be able to go
21 forward.

22 **THE COURT:** I appreciate that and I
23 appreciate your candor to the court about that.

24 Mr. Poole, here is what we're going to do,
25 we are going to go forward with it. If there

1 is something in listening to it that I feel
2 like we need to supplement the transcript here
3 today or the record here today, then I will ask
4 that that be supplemented at a later time. I
5 won't rule until I get it. All right? Fair
6 enough?

7 All right. You ready to proceed?

8 MR. ARIAIL: Yes, Your Honor. I call Mr.
9 Poole to the stand.

10 WILLIE POOLE

11 having first been duly sworn, testifies as follows:

12 THE CLERK: Thank you. Please state your full
13 name for the record.

14 THE WITNESS: Willie James Poole.

15 THE CLERK: Thank you. You may be seated.

16 DIRECT EXAMINATION

17 BY MR. ARIAIL:

18 Q Thank you, Mr. Poole. This just made it a
19 little bit easier to kind of go through each of the
20 cases you have had. Now, this deals with the armed
21 robbery. I want to go through if you were
22 represented by Mr. Sullivan in this case also, right?

23 A Yes.

24 Q Now I want to get various, just a little
25 background in regards to when you were arrested on

1 this, how long after you were arrested did you talk
2 to Mr. Sullivan?

3 A I talked to Mr. Sullivan -- Mr. Sullivan,
4 you know, in the beginning, like I said, he was sick.
5 So I did not see Mr. Sullivan until 2010, towards the
6 end. Towards the end.

7 Q All right. So tell me how long -- after
8 you were incarcerated, you did not get out on bond,
9 correct?

10 A Yes.

11 Q So you went in, it looks like you were
12 arrested. Go back and look at your warrants here.
13 Tell me how long after you were and do you believe
14 that you talked to him.

15 A We talked maybe about 30 minutes apiece
16 each time.

17 Q So the initial time after you were
18 incarcerated, how long do you think after that?

19 A The trial was April. April 27, something
20 like that.

21 Q Okay. After you were in there, you talked
22 to him. Initially, did you go over the discovery?
23 Did you already have a copy of it?

24 A Yes, sir.

25 Q So you went over that?

1 A Yes, sir.

2 Q So he explained to you what the facts, I
3 guess what they were alleging against you, correct?
4 And it was pretty much two other individuals involved
5 who were saying that you were driving the car. They
6 went in, did a robbery. And then, in addition to
7 that, there was a statement you gave in regards to
8 that, is that right?

9 A It was Denise and Tim that said I was at
10 the house talking about planning something. I had a
11 witness to let them know I was nowhere near there. I
12 don't know what they were talking about.

13 Q Tell me -- and that is where I want to go
14 with this. Tell me, the witness, that is one of the
15 things you're saying he didn't do was investigate or
16 talk to your witness. Who was the witness who was
17 going to say something different than what Mr. Hagood
18 was going to say?

19 A Mr. Hagood, he just -- like during the
20 trial, he said the solicitor, the Solicitor's office
21 didn't offer him anything to testify against me. I
22 had sent Ms. Munson -- I gave her a motion. She sent
23 me back, she sent me a document telling me that he
24 did indeed.

25 Q So he did indeed do --

1 A He said during trial the Solicitor's office
2 didn't give him nothing to testify against me. I got
3 some documents saying the Solicitor's office did
4 offer him something to testify against me.

5 Q I think what you are saying is you found
6 out that he was given a 10-year --

7 A Minimum.

8 Q -- minimum sentence is what you found out.
9 You are saying during the trial, he said he wasn't.

10 A He wasn't offered nothing.

11 Q Wasn't offered nothing. But Mr. Sullivan
12 didn't cross-examine him on that issue, is that
13 right?

14 A During the cross-examination, he brought out
15 some inflammatory saying, talking about the robbery
16 that ain't never happened. I had some witnesses that
17 will say they don't even do robberies. Mr. Hagood
18 was lying all over the place.

19 Q I guess what I am getting at is what did
20 Mr. Sullivan not do in regards to the testimony of
21 Mr. Hagood?

22 A I feel like he didn't adequately cross-
23 examine him good. He didn't ask him that the
24 solicitor -- I guess he lied. On top of that, when
25 you were asking him about the armed robbery, I feel

1 like he shouldn't have never asked him about the
2 armed robbery. They gave the solicitor ammo to jump
3 back at me.

4 Q Okay. Now, the other, I guess, you are
5 saying there was a witness that was going to testify,
6 Mr. Poole, is that right?

7 A Actually he was there. But Mr. Sullivan
8 said he wanted the last closing arguments, he would
9 not have had the last impact on the jury so we didn't
10 call any.

11 Q What was Mr. Poole going to testify to?

12 A He was going to tell them that I -- the
13 whole thing was that I planned it. I wanted to prove
14 that I didn't plan the robbery. It was something
15 that happened spontaneous.

16 Q Understand there are two different things.
17 Planning and participating. It was that witness
18 going to say you didn't participate?

19 A Correct.

20 Q Mr. Poole?

21 A He was going to tell them I didn't
22 participate.

23 Q He could not say you weren't a part of it
24 or in the car or anything like that?

25 A He couldn't do that.

1 Q Are you acknowledging that you were in the
2 car?

3 A I was in the car.

4 Q What you're saying is you didn't know what
5 they were going to do?

6 A Correct.

7 Q Did Mr. -- did you explain that to Mr.
8 Sullivan?

9 A Yes.

10 Q Did you ask him to draw all of that out or
11 trying to show that as a defense that you do not know
12 what you were doing?

13 A Yes.

14 Q You didn't know this was going to happen?

15 A Yes.

16 Q Was there anybody else that could say --
17 Mr. Poole, was he going to just testify -- I am still
18 a little bit confused on what Mr. Poole was going to
19 testify to. What was he going to say about your
20 knowledge or understanding that they were going to do
21 this robbery?

22 A Really all he could say was -- really all
23 he could say was I did not discuss it in front of Tim
24 and Denise Hutchinson. I did not discuss it in front
25 of him about no robbery.

1 Q So he would have tried to, I guess, help
2 you with the testimony of Octavius Denise Hutchinson
3 and then Tim Brown, is that right?

4 A It was showing that they were committing
5 perjury basically.

6 Q So that would've helped out with that?

7 A The outcome of the trial would have been
8 way different.

9 Q How would it have helped in regards to the
10 testimony of Mr. Hagood?

11 A You said how did the testimony help?

12 Q I am trying to rule out to say how Mr.
13 Poole was going to help you prove that Mr. Hagood was
14 not telling the truth in this that you didn't have
15 any participation in this?

16 A It wouldn't have proved.

17 Q What is that?

18 A From what you are saying, it really
19 wouldn't have proved.

20 Q So then it was going to be whether or not
21 the jury believed Mr. Hagood?

22 A Yes.

23 Q Now there is also a statement that you
24 gave, did you discuss that with Mr. Sullivan as to
25 how you were going to deal with that or what he was

1 going to do with that?

2 A I was telling Mr. Sullivan I did never -- I
3 just know what happened. I never did say I went over
4 here and did this or nothing like that. I just told
5 what happened.

6 Q Okay. As part of that statement, did you
7 acknowledge or say that you were in the car or part
8 of it?

9 A No. I never did say I was part of it.

10 Q Did you acknowledge you were in the car?

11 A Yes.

12 Q You acknowledge you went in a place and saw
13 them splitting up the proceeds?

14 A That was after.

15 Q After the fact? Okay. But you didn't say
16 in that statement that you were participating in or
17 had directed or done anything like that. Who -- any
18 other witnesses that you say you want to call or he
19 didn't investigate?

20 A No, sir.

21 Q So Mr. Poole was the only one?

22 A Yes, sir.

23 Q Mr. Poole, today, trying to locate him --
24 do you know where he is?

25 A No.

1 Q Have you been able to get in touch with
2 them?

3 A I could. With a little research, I can get
4 in touch with them.

5 Q My question, the next one is, I don't know
6 if it is any relation but is he related to you in any
7 way?

8 A Yes.

9 Q What relation?

10 A Cousin.

11 Q Cousin. Okay. Now, any other items were
12 you told him to investigate or do things that
13 would've helped you out that he didn't do?

14 A I told him about the robberies, the
15 backgrounds on the robbery, what the detective said,
16 then he didn't have anything on the record saying
17 nothing about a robbery.

18 Q Okay.

19 A My only issue is really that he said on the
20 stand that he didn't get nothing. He wasn't promised
21 no leniency for testifying. I had to prove -- I got
22 the proof that said he was.

23 Q So I guess what you are talking about is
24 Mr. Poole not being called and also not cross-
25 examining appropriately whether or not he was given

1 some plea offer or some benefit for testifying?

2 A (Nods head.)

3 Q Okay. And that is part of the transcript
4 I'm going to let Judge Verdin review that and figure
5 that. That's all the questions I have.

6 THE COURT: All right.

7 MS. RATIGAN: I have no cross, Your Honor.

8 THE COURT: All right. Thank you, Sir.
9 You can step down.

10 MR. ARIAIL: That is our case, Your Honor.

11 THE COURT: All right.

12 MS. RATIGAN: We would call Mr. Sullivan
13 again.

14 THE COURT: All right.

15 TIMOTHY SULLIVAN

16 having first been duly sworn, testifies as follows:

17 THE CLERK: Thank you. Please state your
18 full name.

19 THE WITNESS: C. Timothy Sullivan.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MS. RATIGAN:

23 Q Mr. Sullivan, were you appointed to
24 represent Mr. Poole?

25 A I was.

1 Q Did you file discovery motions related to
2 this armed robbery charge?

3 A Yes, I got discovery.

4 Q Did you review those materials with Mr.
5 Poole?

6 A I did.

7 Q Did he inform you of his version of what
8 happened that day?

9 A Yes, he did. He gave a statement to the
10 police.

11 Q Did you review with Mr. Poole the impact
12 that statement had on your ability to put together a
13 defense?

14 A It was kind of odd. He was arrested on the
15 murder charge. This robbery had been given to me but
16 nobody knew anything about it as far as suspects. So
17 I think Willie was trying to set up an alibi for the
18 murder by telling the police about the armed robbery.
19 In effect, after he was arrested on the murder
20 charge, later he told Investigator Fortner that he
21 could give information on the armed robbery. At that
22 time, he gave a statement.

23 In the trial, we redacted part. It says on the
24 morning of the day of the murder, that was taken out.
25 In effect, it says he was in a car and these guys

1 said we need to make a stop here. Willie did. He
2 said they came running out and jumped in the car and
3 said go, go, go and he did not know they were
4 planning a robbery and did not participate in and did
5 not know that they had robbed anybody until later
6 when they left the place.

7 Q Did you know at trial that the State will
8 call Denise and Tim to testify about Mr. Poole
9 setting up the robbery?

10 A Tim was the one to call, Tim Brown. Tim
11 was staying with Willie because Tim was homeless.
12 Denise was staying there. You can hear discussion of
13 different things, but I think they ended up in the
14 trial saying they needed to make some money.

15 Q You knew prior to the trial that they were
16 going to testify about this?

17 A I had the statement.

18 Q Did you explain to Mr. Poole that the
19 statement that he gave was damaging in terms of
20 putting them at the scene?

21 A It put him at the scene. If you believe
22 his version, he was not an active participant in the
23 planning. The best thing would be he made the
24 accessory afterwards. He did not turn them in
25 afterwards.

1 Q Did he ask you to contact his cousin to
2 testify about the planning of the robbery in front of
3 Denise and Tim? You remember any of that being
4 discussed?

5 A No.

6 Q Do you remember him asking you to contact
7 any witnesses regarding the armed robbery?

8 A No. He admitted that he was present. His
9 position was he wasn't actively involved in it. He
10 got nothing for it. The worst thing was he didn't
11 turn his cousin in for doing it. That would be
12 accessory after according to his version.

13 Q His cousin is --

14 A Huh?

15 Q Hagood?

16 A Yeah, Hagood was his cousin. Hagood gave
17 about three different statements. He also tried to
18 say that he had been involved with about three or
19 four other robberies. It came out that there had
20 never been an incident report on any of them. Nobody
21 had ever been arrested and nobody had been charged.

22 We were using that not to impair Willie's
23 character, but to show that Hagood was totally not
24 reliable. He was confessing to murders, armed
25 robberies that never took place. Nobody took him

1 serious. They should not take him serious in this
2 case. He and the other fellow, Hagood, even
3 identified a guy named William Nixon as being a third
4 guy in the robbery. He was in St. Francis Hospital.
5 He changed his story and put somebody else in his
6 story. Hagood was all over the map.

7 Q Speaking of Hagood, do you have any
8 information that the state had made him any kind of a
9 deal or offer prior to the trial?

10 A I think someone may have said he wasn't
11 promised anything. I don't recall what he ended up
12 getting or anything.

13 Q You don't have any information just in your
14 recollection --

15 A I didn't know he was promised anything, no.
16 If I had, I would've jumped on it. I think Judy
17 opened up whether he had been promised anything. But
18 as far as the complaints about Mr. Poole that placed
19 his character into evidence about going into these
20 other robberies, the thing was it was not placing his
21 character into evidence but because it never happened
22 that Hagood would lie and say anything anybody wanted
23 him to.

24 Q So that was just a trial strategy decision?

25 A Yeah.

1 Q Okay.

2 MS. RATIGAN: That is all I have, Your
3 Honor.

4 THE WITNESS: I couldn't get around
5 Willie putting himself there. It was just the
6 amount of his participation.

7 MS. RATIGAN: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. ARIAIL:

10 Q Tim, just a few questions. He acknowledges
11 he was a participant, a part of it?

12 A There is an actual statement that we
13 redacted. We didn't want Judy to know. He said it
14 was the Friday of the murder and I was driving with
15 Hagood and another guy. We got ready to stop
16 somewhere. They did. They came out, jumped in the
17 car and said go, go, go. He left and learned that
18 they robbed the place. But he had no planning in it,
19 didn't know they were going to do it and afterwards
20 he got nothing for it.

21 Q Okay. Afterwards, did you discuss with him
22 about what your view of that was and how it was going
23 to play in front of a jury?

24 A Well, I said that's going to put you there
25 and is just going to depend on how much they think

1 you were involved. If they think you were involved
2 afterwards, it would be accessory afterwards. If
3 they think you were a participant according to Hagood
4 -- the only people that testified who went in,
5 they're going to testify that somebody drove up.
6 They could see the car and saw two guys get out.
7 They can identify whether they saw another guy. They
8 got in the car. They got a tag number. The tag came
9 back to Tim Brown. That is how they got -- started
10 tracking people down. That is when Willie called
11 Fortner in January and gave a statement in February
12 about what happened.

13 As far as planning goes, that was Hagood.
14 He was totally unreliable. As far as being there,
15 Willie put himself there. It was a matter of trying
16 to -- Hagood. He picked someone out of a lineup and
17 he was nowhere near the place. We bought that out,
18 the fact that he said he was involved in all of these
19 robberies and Willie planned them. They had never
20 been indicted. Nobody ever been arrested. There was
21 no incident report showing.

22 Q Okay. So it came down to the credibility
23 of Hagood, I guess.

24 A Hagood as far as who planned it. Willie
25 admitted he was there.

1 Q Now, Poole, did you talk to Poole, Mr.
2 Poole?

3 A Willie?

4 Q No, his cousin. He mentioned someone there
5 would tell that he didn't have any involvement in
6 planning it.

7 A I remember they had the people that were
8 living with them. How long they've been there, they
9 could not remember that. I think they were all doped
10 up. There was a girl and a guy who was crashing.
11 Watched TV and smoked coke all day. Tim Brown owned
12 the car, the issue car that he said people used for
13 drugs.

14 Q Okay. I guess it came down to was there
15 anybody that would have testified, not really an
16 alibi but a witness who said he wasn't participating
17 or planning, not planning it?

18 A I don't recall anybody that would say that
19 Willie didn't plan it. He said he didn't.

20 Q You remember any other witnesses he gave
21 you?

22 A No.

23 Q Okay.

24 MR. ARIAIL: Your Honor, that's all the
25 questions I have. Thank you, Tim.

1 THE COURT: All right.

2 MS. RATIGAN: I have no redirect. The
3 State would rest, Your Honor. And again, I
4 would waive closing arguments.

5 MR. ARIAIL: Yes, Your Honor.

6 THE COURT: All right. Mr. Poole, once
7 again, I'm going to take this matter under
8 advisement. I want to look -- I've begun to
9 look at the trial transcript in this case but I
10 want to read it in full and see if there's
11 anything else that I need before I make a
12 decision in this case. All right. So I will
13 take it under advisement but I anticipate
14 issuing a decision today. All right. Thank
15 you.

16
17 (WHEREUPON, the proceedings conclude at
18 approximately 11:00 a.m.)
19
20
21
22
23
24
25

CERTIFICATE

24

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, 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 all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 12th day of March, 2015

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Official Court Reporter

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. No. 2013-CP-23-625

Willie Poole, S.C.D.C. No. 270914,
Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,
Respondent.)

FILED-2013-CP-23-625
GREENVILLE CO. S.C.
PAUL E. WOODBURN, CLERK
2014 DEC 19 PM 4:44

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed November 19, 2013. The Respondent made its return on May 28, 2014. A hearing into the matter was held on October 21, 2014 before Judge Letitia H. Verdin at the Greenville County Courthouse. The Applicant was present and represented by R. Mills Ariail, Jr., 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 plea counsel, C. Timothy Sullivan, Esquire. The Court had before it the transcript of the guilty plea hearing; the Greenville County Clerk of Court records, including the arrest warrant, indictment and sentencing sheet; the Applicant's South Carolina Department of Corrections Records; the PCR Application; and the Return.

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 May 2010 term of the Greenville County Grand Jury for armed robbery (2010-GS-23-3428A). He was represented by C. Timothy Sullivan, Esquire.



After the State called the case to trial, the Applicant was found guilty. On April 27, 2011, the Honorable Edward W. Miller sentenced him to twenty five (25) years.

A Notice of Appeal was timely 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 the Applicant's convictions and sentenced. State v. Poole, Op. No. 2013-CP-268 (S.C. Ct. App. June 19, 2013). The remittitur was sent July 9, 2013.

ALLEGATIONS

In this application, the Applicant alleges that he received ineffective assistance of counsel and that during trial the Assistant Solicitor committed prosecutorial misconduct.

Regarding the ineffective assistance of counsel claim, the Applicant particularly alleges the following:

- a. Failure to make timely objections throughout the course of the trial;
- b. Failure to fully investigate and call relevant witnesses;
- c. Failure to adequately cross-examine;
- d. Failure to request a necessary jury instruction; and
- e. Failure to properly prepare the Applicant to testify as requested.

During his PCR hearing, the Applicant proceeded solely on his ineffective assistance claim, particularly items (b) and (e).

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 (2013).



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, 686 (1984); Porter v. State, 368 S.C. 378, 629 S.E.2d 353, 356 (2006). Regarding the first prong, the Applicant must in essence show that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). 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, 466 U.S. at 686).

Furthermore, the decisions and advice of trial counsel should be assessed for reasonableness under all the circumstances, with heavy deference given to counsel's judgment. Simpson v. Moore, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). A criminal defense attorney has a duty to conduct a reasonable investigation so that he may discover all reasonably available mitigation evidence, as well as any reasonably available evidence tending to rebut evidence produced by the state. McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 361 (2008). There is a strong presumption that adequate assistance of counsel was rendered, and that reasonable care



was exercised—particularly in the arena of professional judgments. Ard v. Catog, 372 S.C. 318, 331, 642 S.E.2d 590, 597 (2007).

a. Failure to make timely objections throughout the course of the trial.

An examination of the trial record reveals that Applicant's trial counsel made timely and appropriate objections throughout the course of the proceeding. During the PCR hearing, the Applicant did not point to any specific instance in which his counsel failed to object. The PCR Application provides no further evidence on this subject. To the extent that the Applicant in his application for PCR was referring to the issues raised in his direct appeal, this Court finds that his arguments are unpersuasive. Therefore, the Applicant has failed to meet his burden of proof on this issue.

b. Failure to fully investigate and call relevant witnesses.

The Applicant claims that witnesses existed who could have provided an alibi, or who could have called the credibility of the State's witnesses into question. Additionally, the Applicant claims that there was a potential witness who was in the courtroom throughout his trial who would have testified that the Applicant had taken no part in the planning of the armed robbery, though he was present when it occurred. However, the other witness was not disclosed to Applicant's trial counsel and during his PCR hearing the Applicant admitted that he did not know the whereabouts of this witness.

The Applicant's trial counsel claimed that the Applicant wanted to provide an alibi, but had never received a name of such a witness. Additionally, trial counsel's examination of the State's discovery materials did not reveal any other possible witnesses. Trial counsel further testified that the Applicant's written confession of the crime had a substantial effect upon his investigation and subsequent trial strategy. In light of these facts, this Court finds that the



Applicant failed to meet his burden of proving that his trial counsel failed to adequately investigate and call additional witnesses.

c. Failure to adequately cross-examine.

The Applicant claims that his trial counsel did not adequately demonstrate the bias of the State's witnesses during the course of the trial. He alleges that at least one of the State's witnesses was offered a reduced sentence in exchange for his testimony at trial, and this point should have been more prominently brought out at trial. An examination of the trial transcript reveals that trial counsel conducted a cross examination of all of the State's witnesses. (Trial Tr. 56-58, 63-64, 71-72, 81-87, 107-24, 158-66.) Further, these cross examinations focused on the witnesses' credibility and inconsistent statements. (E.g., Trial Tr. 107-24.) A specific agreement, if one existed, was not brought out during the cross examination of any witness.

The Applicant's trial counsel testified at the PCR hearing that he felt that each witness' credibility had been sufficiently impeached. Trial counsel further testified that he did not recall any deal being made with a witness who testified at trial. This Court finds that such determinations relating to cross examination strategy are entitled to strong deference in accordance with Simpson v. Moore, 367 S.C. at 597, 627 S.E.2d at 706. In light of the record contained in the trial transcript and the testimony presented at the PCR hearing, this Court finds no error in trial counsel's cross examination of the State's witnesses.

d. Failure to request a necessary jury instruction.

The Applicant claims that his trial counsel did not request a necessary jury instruction for his case. However, the trial transcript reflects that at the appropriate time trial counsel requested that the jury be charged with accessory after the fact in addition to or in lieu of the armed robbery charge. (Trial Tr. 166-67, 169.) The trial Court denied the Applicant's request on the



grounds that it was not a lesser included offense to the indicted offense. (Trial Tr. 169.) The Applicant's trial counsel noted his objection to this decision on the record, and the Court continued to discuss the charge. (*Id.*) This issue was not raised during the Applicant's PCR hearing. Further, there is no indication of what jury charge was should have been requested by the Applicant's trial counsel. This Court's examination of the trial record does not yield any further information as to an essential jury charge which was not requested or used in this case.

In the absence of any evidence supporting this contention, this Court finds that the Applicant has failed to meet his burden of proving that an additional jury instruction should have been requested. This Court further notes that while trial attorneys may request particular jury charges, the Court ultimately determines which charges to include or to exclude. Therefore, PCR will not be granted on this ground.

e. Failure to properly prepare the Applicant to testify as requested.

The Applicant claims that he told his attorney that he wished to testify at trial, and that he wished to be prepared for this testimony by his attorney. However, there is no evidence of this request in the trial transcript, and nothing presented at the PCR hearing supports this claim. After the presentation of the State's case, the trial Court discussed with the Applicant his constitutional right to testify in his own defense. (Trial Tr. 167.) The Court then permitted the Applicant to take a twenty minute break to discuss the merits of testifying with his trial counsel. (Trial Tr. 168.) After this break, the Defendant indicated that he did not wish to testify, and confirmed that he had been given adequate time to make this decision and that he fully understood his decision. (Trial Tr. 168-69.)

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 that trial counsel committed wither errors or omissions in his representation of the Applicant. This Court also finds that 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, 351 S.C. at 389, 570 S.E.2d at 174.

Prosecutorial Misconduct

To prevail on a claim of prosecutorial misconduct, a defendant must show that the prosecutor’s remarks or conduct were, in fact, improper, and that such remarks or conduct prejudiced the defendant to such an extent as to deprive the defendant of a fair trial. 21 Am. Jur. 2d Criminal Law § 429 (2014). In South Carolina, prosecutorial misconduct may occur through intentional or unintentional conduct of the State’s attorney. State v Inman, 395 S.C. 539, 559, 720 S.E.2d 31, 42 (2011). Where prosecutorial misconduct is identified, a court must take steps to cure the error. The prejudicial effect of prosecutorial misconduct is determined by (1) the cumulative effect of such misconduct; (2) the strength of the properly admitted evidence of the defendant’s guilt; and (3) the curative actions taken by the court. Inman, 395 S.C. at 565, 720 S.E.2d at 45.

The Applicant claims that the State failed to correct false evidence that it knowingly presented at trial. However, the Applicant provided no other evidence to support this contention. Additionally, this Court finds no evidence of prosecutorial misconduct within the trial transcript. Therefore, the Applicant has not proved that prosecutorial misconduct occurred, and he is not entitled to post-conviction relief



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

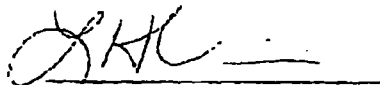
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by Counsel's representation. Furthermore, this Court finds no evidence of prosecutorial misconduct. 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 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 8 day of Dec. ~~November~~, 2014.



Letitia H. Verdin
Circuit Court Judge
Thirteenth Judicial Circuit



WITNESSES

Michael Fortner 

Greenville County Sheriffs Office

1/21/2009

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB: 11/21/1978 B/M SSN: 251-39-4703

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-
WIB

003428A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2010

4 27-11

THE STATE

vs.

WILLIE JAMES POOLE

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 **MAY 04 2010** the Grand Jurors of Greenville
County present upon their oath:

That WILLIE JAMES POOLE did in Greenville County, on or about the 9th day of January, 2009, 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: US currency from the person or presence of Krystal Wells, an employee of Dixie Estates Mobile Home Park. 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